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WASTE, FRAUD, AND ABUSE AT K-TOWN: HOW MISMANAGEMENT HAS DERAILED DOD'S LARGEST SINGLE FACILITY CONSTRUCTION PROJECT

HEARINGS

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST AND SECOND SESSIONS

JUNE 28, 2007 AND JUNE 25, 2008

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WASTE, FRAUD, AND ABUSE AT K-TOWN: HOW MISMANAGEMENT HAS DERAILED DOD'S LARGEST SINGLE FACILITY CONSTRUCTION PROJECT

THURSDAY, JUNE 28, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 2154, Rayburn House Office Building, Hon. Henry A. Waxman (chairman of the committee) presiding.

Present: Representatives Waxman, Cummings, Davis of Illinois, Tierney, Watson, Higgins, Davis of Virginia, Shays, Platts, Duncan, Issa, and Sali.

Staff present: Phil Schiliro, chief of staff; Phil Barnett, staff director and chief counsel; Karen Lightfoot, communications director and senior policy advisor; David Rapallo, chief investigative counsel; John Williams, deputy chief investigative counsel; Margaret Daum and Suzanne Renaud, counsels; Molly Gulland, assistant communications director; Earley Green, chief clerk; Teresa Coufal, deputy clerk; Caren Auchman, press assistant; Zhongrui "JR" Deng, chief information officer; Leneal Scott, information systems manager; Sam Buffone, staff assistant; David Marin, minority staff director; Larry Halloran, minority deputy staff director; Jennifer Safavian, minority chief counsel for oversight and investigations; John Brosnan, minority senior procurement counsel; Emile Monette, minority counsel; Patrick Lyden, minority parliamentarian and member services coordinator; Brian McNicoll, minority communications director; and Benjamin Chance, minority clerk.

Chairman WAXMAN. The meeting of the committee will please come to order.

I would like to ask unanimous consent that the chairman and the ranking member or his designee each have 10 minutes of time for questioning when we begin this morning.

Today's hearing will be the seventh hearing the Oversight Committee has held this year on waste, fraud, and abuse in the Federal Government. We are holding this hearing to examine what has gone wrong at the K-Town Mall, a $200 million Defense Department construction project.

On September 28, 2006, this committee held a hearing on the Baghdad Police College. This was a U.S. project to build new barracks and classrooms to educate and train Iraqi police forces. As

we learned at that hearing, the project was in shambles. I have some pictures of that project which I would like to show.

At the hearing we heard testimony from the Special Inspector General for Iraq Reconstruction that construction was so deficient that toilets were draining through the reinforced concrete floors and literally raining on the cadets. Auditors told us about light fixtures so full of urine and feces that they would not operate.

The excuse from the Defense Department was that this was a war zone.

Today we consider a different construction project. This project is not in a war zone. It is not in Iraq or Afghanistan. This project is being built on a U.S. military base in Germany. U.S. project officials live and work every day next to the facility. It is called the Kaiserslautern Military Community Center, also referred to as the K-Town Mall. Yet, it is also over budget, behind schedule, and falling apart.

The K-Town Mall is the Pentagon's largest single facility construction project in the world. It will have a hotel, sports bar, slot machines, and over 800,000 square feet of retail space. But, just like the Baghdad Police College, the construction has been deficient, and U.S. oversight has been wholly inadequate.

I have some pictures of this project, and the similarities are striking. Here is one showing how the roof is leaking continually and is causing damage to the finished construction underneath. This will cost millions of dollars to replace. Here are some additional pictures of the faulty construction, and here is another picture showing how flammable sealant was used in kitchen exhaust ducts.

How could this have happened? How could construction of a modern-day facility in a western country on a U.S. military base resemble the shoddy and makeshift practices of a war zone? That is what we are here to find out.

Certainly there are problems with the contractor on this project, which is a German government-controlled entity called LBB, and we will hear about some of these deficiencies today. But the bottom line is that this is a U.S. Government project. We are spending over $200 million in U.S. funds to build the K-Town Mall, yet the Air Force has failed in its responsibilities to conduct proper planning and oversight. The project is millions of dollars over budget, has no validated cost estimate. The project was supposed to be done last year, but now there is no working completion date in sight.

I want to introduce for the record an audit issued by the Air Force Audit Agency just last week on June 22nd. This audit report is the European Area Audit Office, June 22, 2007. This report details literally dozens of oversight defects by the U.S. Government in the K-Town Mall project. Let me just read a few from it.

"The Air Force did not provide adequate oversight of the planning procedures. The Air Force did not establish a process for the contractors to provide contractor qualification for U.S. review. The Air Force did not establish procedures directing project managers to review and validate cost estimates and did not properly monitor and approve contractor payments. The U.S. Air Force paid for ma-

terials in excess of approved contract quantities and did not properly appoint certifying and accountable officials."

This is a long report, over 100 pages, so I asked my staff to prepare a short fact sheet with the key auditor findings, and that fact sheet is available to Members, and I ask unanimous consent it be included in the record. Without objection.

[The information referred to follows:]

Fact Sheet

GOVERNMENT AUDIT OF K-TOWN MALL FINDS DOZENS OF FAILURES IN PROJECT OVERSIGHT

Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform

On June 22, 2007, the Air Force Audit Agency issued an audit report on the Defense Department's construction of the Kaiserslautern Military Community Center.[1] This project, called the "K-Town Mall," is being built on Ramstein Air Base in Germany and will include a new 844,000 square foot multi-use retail facility with an eight-story, 350-room hotel and visiting quarters, a four-plex movie theater with stadium seating, a sports bar, slot machines, and a spa. Managed by the Air Force, the $200 million K-Town Mall is the Pentagon's largest single facility construction project in the world.

In its report, the Air Force Audit Agency found at least 35 significant deficiencies in critical areas, including: (1) project planning and construction design; (2) solicitation and award oversight; (3) construction change orders; (4) cost and schedule growth; (5) improper contractor payments; and (6) architect-engineer liability. The auditors concluded that the Air Force made fundamental errors in planning the project and overseeing its German contracting agent, Landesbetrieb Liegenschafts -und Baubetreung (LBB). Despite agreeing with the auditor recommendations, the Air Force refused to cure defects in key areas.

Project Planning and Construction Design

The auditors found that the Air Force failed to properly plan and oversee the design of the K-Town Mall. The auditors concluded that the Air Force:

- "did not conduct thorough project planning or architectural design reviews" (p. i);
- "did not establish policy to estimate and mitigate risk" (p. 3);
- "did not provide adequate oversight of the planning procedures" (p. 3);
- "did not perform pre-design validation reviews" (p. 2);
- "did not conduct a 65 percent architectural design review to estimate and mitigate project risk" (p. 2); and
- "did not follow up on 35 percent review comments to ensure they were properly incorporated in subsequent designs" (p. 3).

As a result of these deficiencies, the auditors reported that "at least 173 change orders reviewed, totaling €5.2 million ($6.1 million), were preventable" (p. 3).

[1] Air Force Audit Agency, *Installation Report of Audit: Military Construction Project — Kaiserslautern Military Community Center (KMCC), United States Air Forces in Europe, Ramstein AB Germany* (F2007-0065-FDE000) (June 22, 2007).

Solicitation and Award Oversight

The auditors found that the Air Force failed to properly oversee the solicitation process used by the contractor, as required by the ABG-75, the bilateral agreement between the U.S. and Germany that governs this project. The auditors conduded that the Air Force:

- "did not ensure the bid process was properly documented" (p. 6);
- did not "establish[] a process for the contractors to provide contractor qualifications for US review" (p. 6);
- "did not request the LBB provide contractor qualification documents in accordance with German contract law" (p. 7);
- "did not establish policies or procedures to submit contractor quality, qualification, and timeliness concerns to the LBB" (p. 7);
- "did not ensure KMCC contracts included all clauses necessary to protect U.S. interests" (p. 9); and
- did not obtain "assurance the contractors could be held liable if they are incapable of performing all contract requirements" (p. 9).

As a result of these deficiencies, the auditors reported that "the US did not have the opportunity to reject a contractor or provide evidence to support that rejection prior to selection" (p. 7).

Construction Change Orders

The auditors concluded that the Air Force failed to oversee the process by which the contractor increased its scope of work through hundreds of change orders. The auditors concluded that the Air Force:

- "did not properly monitor and approve all construction change orders" (p. 11);
- "did not receive or adequately follow up to ensure the LBB provided 427 of 490 (87%) LBB or contractor-initiated change order (CO) documents" (p. 11);
- "did not effectively establish construction change order review processes to ensure change orders were valid, authorized, and within project scope prior to payment" (p. 12); and
- "did not request notification of construction change orders from the LBB prior to change order implementation" (p. 12).

As a result of these deficiencies, the auditors reported that the Air Force "was not able to validate at least €11.9 million ($13.7 million) in construction change orders for which the contractor could potentially bill and receive payment" (p. 13).

Cost and Schedule Growth

The auditors concluded that the Air Force failed to properly control increases on project cost or schedule delays. The auditors concluded that the Air Force:

- "did not effectively monitor the KMCC military construction project changes to limit cost and schedule growth" (p. 15);
- "did not track construction change order amounts, description, resulting projected schedule delays, or costs" (p. 15);

- "did not verify design review comments were appropriately incorporated in project designs" (p. 16);
- began construction "before designs were completed" (p. 16);
- "approved the use of trade-wise agreements, essentially forcing the LBB to act as a general contractor without implied general contractor authority or liability" (p. 16);
- "did not implement internal controls to obtain and review construction orders prior to implementation" (p. 16);
- "did not review and validate cost estimates or justifications for the aforementioned 427 construction change orders before implementation" (p. 16);
- "did not establish procedures directing project managers to review and validate cost estimates" (p. 16); and
- failed to "discuss construction task sequencing as schedule changes occurred" (p. 16).

As a result of these deficiencies, the auditors estimated that costs for the K-Town Mall have increased from $131.1 million to at least $201.6 million (pp. 16-17). Although the project was originally scheduled to be operational by the end of 2005, the auditors reported that it is only 65% finished and has no determined completion date (p. 17).

Improper Contractor Payments

The auditors found that the Air Force failed to properly oversee the process by which it paid contractor invoices. The auditors concluded that the Air Force:

- "did not properly monitor and approve contractor payments" (p. 24);
- "paid ... for materials in excess of approved contract quantities" (p. 24);
- "did not receive change order documentation for €3,172,625 (52 percent) of these payments" (p. 24);
- "did not implement established invoice review procedures to validate contractor invoices with contract and change order specifications and actual contractor work completed prior to authorizing payment" (p. 25); and
- "did not properly appoint certifying and accountable officials" (p. 25).

As a result, the auditors reported that the Air Force "improperly paid KMCC contractors over €5.9 million ($6.7 million) for 248 contract line items on 3 invoices" (p. 25). The auditors also warned that the Air Force "may be in violation of the ABG-75 agreement, German contract law (VOB), and Section 8137 of Public Law 103-335 and could be held pecuniarily liable for improper payments made" (p. 25).

Architect-Engineer Liability

The auditors found that the Air Force failed to properly evaluate the potential liability of the Architect-Engineer contractor, which is supposed to oversee that quality, accuracy, and coordination of services. The auditors concluded that the Air Force:

- "did not assess and pursue A-E contractor liability" (p. 29);
- "did not request the LBB assess liability for 21 deficiencies confirmed by an independent expert as design errors which could have been prevented" (p. 29);
- "did not establish A-E liability assessment policy and procedures, provide training, implement detection controls, or provide management oversight required to identify design errors and report them to the LBB" (p. 31); and

- allowed a situation in which "A-E contractors were also selected as construction managers and, therefore, not independent" (p. 31).

As a result, the auditors reported that the Air Force "cannot verify investigations and recovery actions will be pursued in a cost-effective and timely manner to mitigate damages, minimize administrative costs, strengthen the likelihood for full recovery, and allow the reuse of project funds" (p.32).

Air Force's Refusal to Implement Audit Recommendations

While the Air Force agreed with the auditors' recommendations, it refused to cure defects in key areas, such as properly reviewing change orders and invoices before paying contractors.

For example, when the auditors recommended that the Air Force "[i]mplement internal controls to review construction change orders prior to implementation" (p. 18), the Air Force responded that it would "maintain existing internal controls" (p. 21). The auditors disagreed with this approach, stating:

> "[M]anagement comments are non-responsive to the issues raised in the report, and management does not plan to take action to correct the problems noted. ... [A]udit disagrees that existing internal controls to obtain and review construction change orders prior to change order implementation were effectively implemented prior to the audit. Further, [the Air Force] did not provide any evidence to validate their statement that adequate internal controls over construction change orders were in place since the project start" (p. 22).

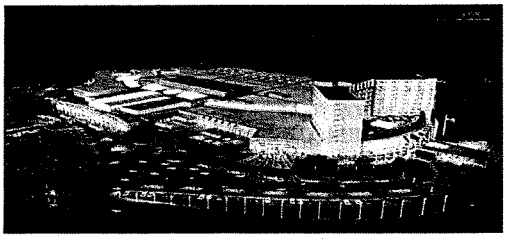
Similarly, when the auditors recommended that the Air Force "[i]mplement established invoice review procedures to ensure invoices are validated with contract and change order specifications, and that work is completed prior to payment" (p. 26), the Air Force responded that, "[s]ince the beginning of the project, [Air Force] personnel have been checking LBB validated/certified invoices to verify work was accomplished according to contract price and quality" (p. 27). Again, the auditors disagreed, stating:

> "[A]lthough management concurred with our audit results and recommendation, they do not plan to take action which we believe will correct the deficiency. ... Specifically, [Air Force] personnel have not been properly reviewing LBB validated/certified invoices to verify work was accomplished according to contract price and quantity 'since the beginning of the project' per their statement. ... The improper payments occurred because construction managers did not properly validate contractor invoices with contract and modification specifications and actual contractor work completed prior to authorized payment" (p. 28).

INSTALLATION
REPORT OF AUDIT

F2007-0065-FDE000

Military Construction Project - Kaiserslautern Military Community Center (KMCC)
United States Air Forces in Europe
Ramstein AB Germany



European Area Audit Office

22 June 2007

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INTRODUCTION

The Kaiserslautern Military Community Center (KMCC) is currently the largest single facility construction project in the Department of Defense. The KMCC will consolidate and expand existing Army and Air Force Exchange Service (AAFES), 435th Air Base Wing Services (435 ABW/SVS), and other non-appropriated fund activities into one location. The KMCC is currently funded at €128,341,080 ($164.3 million). This total funding amount does not include €13.8 million in European payment in-kind funds associated with the Rhein Main Transition Program (RMTP).

OBJECTIVES

(FOUO) This was a locally initiated audit to determine whether USAFE Civil Engineering personnel exercised effective control over the KMCC military construction project. Specifically, we determined whether personnel properly:

- **(FOUO)** Conducted project planning and architectural design reviews.
- **(FOUO)** Performed pre-solicitation reviews, solicitation and award of contracts, and included all clauses necessary to protect US interests.
- **(FOUO)** Monitored and approved contract change orders and monitored project status to minimize cost and schedule growth.
- **(FOUO)** Monitored and approved contractor payments.
- **(FOUO)** Assessed and pursued Architect-Engineer (A-E) liability.

CONCLUSIONS

(FOUO) USAFE Civil Engineer personnel could improve control of the KMCC construction project. Specifically:

- **(FOUO)** USAFE project managers did not conduct thorough project planning or architectural design reviews to verify KMCC contracts met project requirements. Adequate project planning and design reviews ensure communication of US construction planning information

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necessary for the German authorities to properly coordinate construction projects to ensure the optimum use of German design and construction capacities. Further, we conservatively estimate at least 173 change orders reviewed, totaling €5.2 million ($6.1 million), resulted from the inadequate project planning and construction design and, thus, were preventable. (Tab A, page 1)

- **(FOUO)** German contracting agent, Landesbetrieb Liegenschafts- und Baubetreuung (LBB), personnel properly performed pre-solicitation reviews, solicitation, and award of the KMCC contracts; however, the LBB did not inform USAFE personnel of the bid date or location of bid opening, or provide copies of the invitations to bid, the potential contractor list, or the results until after the contractor was recommended for selection. Further, USAFE personnel did not ensure the bid process was properly documented. As a result, USAFE personnel did not have the opportunity to reject a contractor or provide evidence to support that rejection prior to selection. Although this procedure had no impact on the KMCC contracts, it represents an internal control problem that should be corrected for future contracts. (Tab B, page 6)

- **(FOUO)** USAFE personnel did not ensure KMCC contracts included all clauses necessary to protect US interests. As a result, neither USAFE nor LBB has assurance the contractor could be held liable if he is found incapable of performing all contract requirements. (Tab B, page 9)

- **(FOUO)** USAFE Project Management Office (PMO) personnel did not properly monitor and approve all construction change orders. As a result, USAFE was not aware of at least €11.9 million ($13.7 million) in potential construction change orders not yet billed to the government. (Tab C, page 11)

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- **(FOUO)** USAFE personnel did not effectively monitor the KMCC military construction project status to limit cost and schedule growth. As a result, project costs could increase by more than €15 million ($17.4 million) over the remaining 35 percent of construction (as of 27 October 2006). In addition, each day the occupancy date is delayed due to schedule growth costs the government $10,173 to billet personnel off base (more than $3.7 million per year). Further, the US may be held financially liable for contractor delay claims resulting from improper scheduling. (Tab C, page 15)

- **(FOUO)** USAFE personnel did not properly monitor and approve contractor payments. As a result, KMCC contractors improperly billed and were paid for materials in excess of approved contract quantities, costing over €5.9 million ($6.7 million) for 248 contract line items on 3 invoices. (Tab D, page 24)

- **(FOUO)** USAFE project management personnel did not assess and pursue A-E contractor liability. Specifically, as of October 2006 there were numerous design deficiencies discovered during the construction of the KMCC that contributed to contract change orders that conservatively could result in USAFE being billed at least €952,954 ($1.1 million). However, because USAFE did not request the LBB properly assess A-E liability, they may not be able to dispute the quality of A-E services. Request for recoupment for A-E design errors or performance deficiencies could provide the Air Force a potential monetary benefit of at least €952,954 ($1.1 million). (Tab E, page 29)

MANAGEMENT CORRECTIVE ACTION During the audit, USAFE/A7 management completed 15 corrective actions. Reference tabs for specific actions taken.

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RECOMMENDATIONS We made 19 recommendations to improve the management of construction funds. Reference Tabs A, B, C, D, and E for specific recommendations.

MANAGEMENT'S RESPONSE **(FOUO)** Management officials reviewed this report and agreed with the majority of the audit results; however, do not agree that some areas adequately describe actions, conditions, or current situation. Audit believes the management comments to Recommendations C.1 and C.2 are partially responsive. In addition, audit contends that Recommendations C.6, D.1 and D.2 are non-responsive. Therefore, we will elevate the issues in disagreement to the appropriate Air Force level of command for resolution in accordance with AFI 65-301, *Audit Reporting Procedures*. (Reference Appendix II and III for additional management comments)

TESA L. LANOY
Team Chief, Ramstein AB

JAMES R. MILLER
Office Chief, European Area Audit Office

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BACKGROUND

The Auftragsbaugrundsaetze 1975 (ABG-75) Administrative Agreement is a bilateral agreement between the United States Forces and the Federal Republic of Germany (FRG) applicable to all US Forces construction in Germany. In accordance with ABG-75, German authorities plan, execute, and administer construction on behalf of US Forces. Therefore, the ABG-75 requires US Forces coordinate construction planning with the German Government Construction Agency (GGCA) to ensure the optimum use of German design and construction capacities. USAFE Civil Engineer personnel accomplish this coordination annually on USAFE Form 105 (ABG Form 1), *Program of Construction for the US Forces*.

Civil engineer personnel coordinate with German state construction authorities to design, contract for, and perform the construction management of a project in accordance with the ABG-75. The US Army Corps of Engineers (USACE) typically provides oversight for many of the military construction (MILCON) projects in Germany and manages the projects with the LBB on behalf of the Air Force. USAFE or base civil engineer personnel provide input and coordination of project issues with USACE. The USAFE Program Management Branch personnel provide Air Force oversight of LBB-administered contracts for projects that do not have the USACE involvement.

Pre-Design Validation Reviews include a presentation of the timeline for construction, a review of funding documents, validation of scope and functional requirements, approval of infrastructure systems to support the facility, review of comprehensive site plans, proper clearance of environmental concerns, and an adequate budget cost estimate. In addition, the PDVR includes a review of Anti-terrorism/Force Protection criteria, communication requirements and associated technical solutions, special project issues, and the proposed method of execution. All PDVR actions should be complete before starting the project design.

A pre-design conference occurs after the GGCA has accepted the project and includes representatives from the German contracting agent, Landesbetrieb Liegenschafts- und Baubetreuung (LBB); design firms; and all US agencies. Attendees should establish key project milestones including design start, periodic design reviews (i.e., 5-10 percent pre-concept design submittal review, 35 percent concept design review, 90-95 percent final design review, and 100 percent corrected final design), the design completion date and bid advertisement date. When requested by the MAJCOM or functional users or on large projects, an additional concept design review can occur at the 65 percent design stage. This review is to ensure designs meet functional and technical requirements and all comments from the 35 percent review have been appropriately incorporated in the design.

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Modifications (change orders) are negotiated "mini-contracts" which are formalized within the context of the scope of the original contract. They allow equitable adjustments to contract requirements due to changes which include differing site conditions, unforeseen conditions, corrections of errors and omissions (to include design deficiencies), contractor or weather delays, and work suspensions. Modifications frequently add time to the schedule of construction and are expensive because they are not usually competitively bid. The fees paid to the LBB fall into three general categories: administrative, translation, and actual cost for secondary services. They are calculated on separate percentages based on ABG-75 classifications of major or minor construction and are based on final construction costs. For new construction, the administrative compensation fee is 5 percent, and the translation fee is 0.6 percent. Although modifications will be necessary throughout the contract, proper project planning is important to control overall construction costs.

Trade-wise contracts were established to subdivide a large contract into several smaller contracts, thus, allowing smaller contractors who specialize in a certain trade, like stonework, to bid on the project. The benefit of this type of contracting for the KMCC was to limit the need for subcontractors and offer opportunities for small companies who would otherwise not be able to compete for a contract of this magnitude to form a conglomerate by trade. In Germany, trade-wise agreements require line-item contracts that specifically list the number of labor hours and material required. Therefore, the project design and schedule must be very specific in order to properly coordinate all contractors involved.

(FOUO) AUDIT RESULTS 1 – PROJECT PLANNING/DESIGN REVIEWS

Condition. (FOUO) USAFE project managers did not conduct thorough project planning or architectural design reviews to verify KMCC contracts met project requirements. Specifically:

- **(FOUO)** USAFE personnel did not complete ABG Form 1 project planning documents or forward them to the LBB for use in workload planning.
- **(FOUO)** USAFE personnel did not perform pre-design validation reviews.
- **(FOUO)** USAFE personnel did not conduct a 65 percent architectural design review to estimate and mitigate project risk and did not ensure user comments were fully incorporated into subsequent designs.

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Cause.

- **(FOUO)** USAFE/A7CCP, Project Management, personnel did not prepare ABG Form 1 documents because USAFE/A7CP, Programs Division, had prepared them in the past, and when USAFE A7, Civil Engineer, reorganized, senior management did not assign this responsibility to the proper office.

- **(FOUO)** USAFE senior management did not establish policy to estimate and mitigate risk and did not provide adequate oversight of the planning procedures.

- **(FOUO)** Project management personnel did not conduct all appropriate architectural design reviews because a senior manager within USAFE/A7 removed the 65 percent review from the review process in an attempt to expedite the design process, although a 65 percent design review was requested by AAFES and the 435 ABW/SVS. In addition, the USAFE Project Manager did not follow up on 35 percent review comments to ensure they were properly incorporated in subsequent designs because the senior management emphasis was on expediting design and schedule rather than ensuring personnel conducted appropriate design reviews.

Impact.

- **(FOUO)** Adequate project planning and construction design reviews ensure timely communication of US construction planning information necessary for German authorities to properly coordinate construction projects to ensure the optimum use of German design and construction capacities.

- **(FOUO)** Adequate project planning and architectural design reviews ensure construction plans meet requirements and help limit unexpected cost and schedule growth. An independent review was performed by a qualified architect to determine whether the modifications could have been prevented with proper project planning and architectural design reviews. We conservatively estimate at least 173 change orders reviewed, totaling €5.2 million ($6.1 million), were preventable. [1]

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[1] **(FOUO)** The construction exchange rate for fiscal year 2007 is .8530 to $1 based on the *Foreign Currency Conversion Rates Effective 1 November 2006*, from the Defense Finance and Accounting Service. This rate was used to convert Euro amount to US dollars throughout this report.

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(FOUO) Management Corrective Actions. USAFE/A7CCP completed the following corrective actions:

- **(FOUO)** Corrective Action A.1. On 9 November 2006, USAFE/A7CCP established and implemented procedures to provide management oversight of project planning using pre-design validation reviews. In addition, this project planning tool allows project managers to estimate and mitigate risk on all future MILCON projects.

- **(FOUO)** Corrective Action A.2. USAFE/A7CCP established procedures to post key construction documents to a project website to better facilitate KMCC team communication.

(FOUO) Recommendations. The Director of Mission Support (USAFE/A7) should:

- **(FOUO)** Recommendation A.1. Establish procedures to ensure the Chief of Project Management (USAFE/A7CCP) or the Chief of Programs Division (USAFE/A7CP) properly completes ABG Form 1 project planning documents on all MILCON projects and forwards them to the LBB.

- **(FOUO)** Recommendation A.2. Require project managers to conduct 65 percent design reviews for major construction contracts.

- **(FOUO)** Recommendation A.3. Require project managers to ensure 35 and 65 percent design review comments are incorporated in the project designs prior to contract award.

(FOUO) Management Comments. Although management concurred with the audit result and recommendations, additional comments to this result are provided in Appendix II. In response to the audit recommendations, management stated:

- **(FOUO)** Recommendation A.1. "Concur with comment. USAFE/A7CC annually provides copies of the MILCON Future Years Defense Plan to GBB and LBB leadership in lieu of the ABG Form 1. In the future, USAFE/A7CC will prepare ABG Form 1 project planning documents on all MILCON projects and forward them annually to the LBB. Estimated completion date: 30 November 2007.

- **(FOUO)** Recommendation A.2. "Concur. The design review process for each project should be tailored on the basis of complexity, cost, and schedule. ABG-75 provides for some flexibility in coordinating design reviews with German authorities, and the US

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incurs additional costs for the 65 percent design reviews. We will make a conscious management decision for each project; just as was the decision to forego a 65 percent review on the KMCC and conduct weekly coordination meetings in its place. This policy was established in our 19 April 2007 memorandum to the HQ USAFE/A7CCP project managers. Action completed: 19 April 2007. **(CLOSED)**

- **(FOUO)** Recommendation A.3. "Concur. We will require project managers to ensure design review comments are incorporated into all future project designs through back check reviews by all technical designers. This policy was established in our 19 April 2007 memorandum to the HQ USAFE/A7CCP project managers. Action completed: 19 April 2007. **(CLOSED)**"

(FOUO) Evaluation of Management Comments. Management concurred with Recommendation A.2., but their comment is not totally responsive. Management stated that: "We will make a conscious management decision for each project; just as was the decision to forego a 65 percent review on the KMCC and conduct weekly coordination meetings in its place." However, audit agrees that for some projects a 65 percent review may not be necessary. Therefore, management comments addressed the issues presented in the tab and actions taken or planned should correct the problem.

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BACKGROUND

The German contracting agent (LBB) prepares a contract cost estimate for use in bid evaluation, prepares a bid schedule, announces the tender opening, and obtains bids on contracts. The ABG-75, Part II, Article 5, paragraph 5.2 states, "The (US) Forces shall be informed in good time of the date and place of opening of the tenders." Further, it states, "To ensure the timely notification, the US Forces shall be furnished the 'invitation to tender' at the same time as the proposed tenderers." After the LBB evaluates bids received, they notify the US Forces of their recommendation for contract award and for approval or disapproval of the award by the US Forces. Approval authorizes LBB to award a contract for construction services.

Bid process documentation should include the LBB prequalification of construction contractors, should result in a list of sources determined qualified to perform specific construction contracts, and limit offerors to those with proven competence to perform in the required manner. The contract agent and USAFE personnel should maintain records of the contractor's qualifications.

Under German law, liquidated damages are not a precondition for claiming damages. The ABG-75, Part II, Article 4.1, paragraph 4.1.2 states, "Liquidated damages are agreed upon if the contractor is late completing the construction work." Although German courts have ruled against these clauses in the past, liquidated damage clauses are still possible as long as they are in compliance with the Verdingungsordung für Bauleistungen (VOB) and German Civil Code. The US must prove actual damages in order to recover costs in a German court.

(FOUO) AUDIT RESULTS 2 – SOLICITATION AND DOCUMENTATION

(FOUO) Condition. LBB personnel performed proper pre-solicitation reviews, solicitation and award of the KMCC contracts. However:

- **(FOUO)** The LBB did not inform the US of the bid date or location of bid opening. Also, LBB did not provide copies of the invitations to bid, the potential contractor list, or the results until after the contractor was recommended for selection.

- **(FOUO)** USAFE personnel did not ensure the bid process was properly documented. Specifically, LBB performed a prequalification review, which resulted in a list of qualified construction contractors but did not maintain records of the contractor qualifications. Further, neither the US nor the LBB established a process for the contractors to provide contractor qualifications for US review.

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(FOUO) Cause. This occurred because:

- **(FOUO)** The LBB personnel stated the contract bid procedures were more secure without US involvement. However, US involvement was required by ABG-75.

- **(FOUO)** The USAFE Project Manager did not request the LBB provide contractor qualification documents in accordance with German contract law.

- **(FOUO)** German contract law does not specifically require LBB to maintain records of the contractor qualifications.

- **(FOUO)** The US did not establish policies or procedures to submit contractor quality, qualification, and timeliness concerns to the LBB.

(FOUO) Impact. As a result, the US did not have the opportunity to reject a contractor or provide evidence to support that rejection prior to selection as in accordance with the ABG-75. Therefore, no record exists of US concerns provided for LBB review during contractor selection. Although this had no impact on the KMCC contracts, it represents an internal control problem that should be corrected for future contracts.

(FOUO) Recommendations. The USAFE/A7 should:

- **(FOUO)** Recommendation B.1. Request the LBB allow joint participation in the contractor prequalification process.

- **(FOUO)** Recommendation B.2. Request the LBB inform the US of the bid date and location of bid opening and provide copies of the invitations to bid, the contractor list, and the results of the tendering.

- **(FOUO)** Recommendation B.3. Request the LBB provide contract bid schedules, recommendations, and contractor qualification documents prior to contract award.

- **(FOUO)** Recommendation B.4. Request the LBB maintain records of contractor qualifications or, alternatively, provide a record to USAFE to maintain in the project file.

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- **(FOUO)** Recommendation B.5. Establish policies or procedures to formally report specific contractor quality, qualification, performance, and timeliness concerns to the LBB.

(FOUO) Management Comments. Although management concurred with the audit result and recommendations, additional comments to this result are provided in Appendix II. In response to the audit recommendations, management stated:

- **(FOUO)** Recommendation B.1. "Concur. As we did with the housing program, we will also request the LBB allow joint participation in the contractor prequalification process for future regular MILCON projects. In addition, the US Army Corps of Engineers is in the process of developing a joint agreement with the LBB to solicit construction contract bids using the Best-Value Procurement Method.[2] If they are successful in implementing this initiative, USAFE may also benefit from the changes to the contract bid process, including potential gains in price-performance trade-off. Estimated completion date: 20 July 2007.

- **(FOUO)** Recommendation B.2. "Concur. We will request the LBB inform the US of the bid date and location of bid opening, and provide copies of the invitations to bid, the contractor list, and the results of the tendering. Estimated completion date: 20 July 2007.

- **(FOUO)** Recommendation B.3. "Concur. We will request the LBB provide contract bid schedules, recommendations, and contractor qualifications prior to contract award as part of the ABG Form 4 (tender acceptance form) documentation IAW ABG-75. Estimated completion date: 20 July 2007.

- **(FOUO)** Recommendation B.4. "Concur. We will request the LBB maintain records of contractor qualifications or, alternatively, provide a record to USAFE to maintain in the project file. Estimated completion date: 20 July 2007.

- **(FOUO)** Recommendation B.5. "Concur with comment. Effective procedures were and remain in place for USAFE PMO personnel to identify problems to the LBB and its oversight contractors. USAFE/A7CC routinely sends letters to LBB and GBB expressing

[2] **(FOUO)** Best-Value Procurement Method is defined as a balance between the need to obtain full and open competition and the need to efficiently fulfill the Government's requirements.

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dissatisfaction and concern over quality, performance, and timeliness. During the audit, USAFE/A7 began providing more detailed reports to the LBB outlining construction deficiencies (e.g., roof construction and kitchen exhaust duct construction deficiencies). In our opinion, this correspondence sufficiently addressed the recommendation to establish policies or procedures to formally report specific quality, qualification, performance, and timeliness concerns with the LBB. Action completed: 7 December 2006. **(CLOSED)**"

(FOUO) AUDIT RESULTS 3 — CONTRACT AWARD

(FOUO) Condition. USAFE personnel did not ensure KMCC contracts included all clauses necessary to protect US interests. Specifically, KMCC contracts did not include liquidated damages clauses. For example, one trade-wise contract was established to consolidate mechanical, electrical, and plumbing requirements. The trade contractor then subcontracted a firm to provide electrical services which totaled a significant amount of the work (roughly 40 percent of the contract requirements); however, no provisions were established in the contract to address potential liabilities if the subcontractor would have been unable to perform as required.[3]

(FOUO) Cause. This occurred because USAFE management approved the use of trade-wise contracts versus using a general contractor. Because USAFE was not involved in the subcontracting process, it is unknown why LBB did not ensure contracts included clauses for assessing liquidated damages.

(FOUO) Impact. As a result, neither the US nor LBB has assurance the contractors could be held liable if they are incapable of performing all contract requirements. This could result in contractor default and additional charges incurred by the US.

(FOUO) Recommendation B.6. USAFE/A7 should jointly establish procedures with the LBB to insert liquidated damages clauses in future trade-wise construction contracts.

(FOUO) Management Comments. Although management concurred with the audit result and recommendations, additional comments to this result are provided in Appendix II. In response to the audit recommendation, management stated: "Concur. We will request the LBB to insert

[3] **(FOUO)** Although the VOB states subcontracting is permissible under trade-wise agreements, it does not specifically state this percentage should be limited, as the Federal Acquisition Regulation requirements for US contracts requires subcontracting to be limited to 12 percent.

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liquidated damages clauses in future general contractor and trade-wise construction contracts as allowed by ABG-75. Estimated completion date: 30 June 2007."

(FOUO) Evaluation of Management Comments. Management stated that management comments addressed the issues presented in the Tab and actions taken or planned should correct the problem.

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BACKGROUND

User-requested change orders are modifications generated internally and are processed, negotiated, and contracted through the contracting agent (LBB). Construction change orders are generally LBB or contractor-initiated modifications. The GGCA initiates an ABG Form 5, *Change Order Document*, when approved, is recorded as an increase or decrease to the total project obligation amount. Construction change orders initiated by the LBB, construction agent, or contractors but not received or approved by the Air Force are considered missing change orders.

The ABG-75, Part II, Article 7, Paragraph 7.1 states, "No later than 1 month upon receipt of the ABG Form 5, the GGCA shall determine, in accordance with the responsible agency of the US Forces, the course of the requested services and shall furnish the US Forces a time schedule hereon." Also, paragraph 7.6. states, "Within 20 working days after the date for construction commencement has been established, a construction time schedule shall be submitted to the US Forces. In the event of any significant changes in established dates, the monthly construction progress reports required by Article 7.1.7 shall be supplemented by a revised construction time schedule which reflects the most recent status." Article 9, paragraph 9.1. states, "If there is indication that the agreed upon schedules cannot be met for any phase of the project, the Forces and the LBB authorities will notify each other in a timely manner of any pending delay and reasons for the delay and will propose alternative courses of action for consideration and remedying. The same applies for cost growth exceeding the approved amount of funds and/or scope of work."

(FOUO) AUDIT RESULTS 4 – MISSING CONSTRUCTION CHANGE ORDERS

(FOUO) Condition. The USAFE PMO personnel did not properly monitor and approve all construction change orders. Specifically, they did not receive or adequately follow up to ensure the LBB provided 427 of 490 (87 percent) LBB or contractor-initiated change order (CO) documents timely prior to 24 July 2006. (See Table 1)

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(FOUO)

COs	Number of COs	Value	COs On-Hand	COs Missing	Value of Missing COs[4]
Lot 1	50	€ 2,507,715	19	31	€ 1,851,703
Lot 2	41	1,449,182	2	39	1,095,032
Lot 3	20	868,502	4	16	334,996
Lot 4	21	351,918	2	19	499,512
Lot 5	0	0	0	0	0
Lot 6	45	1,092,345	0	45	1,092,345
Lot 7	24	344,130	0	24	344,130
Lot 8	14	265,825	0	14	265,825
Lot 9 & 10	90	3,027,146	2	88	2,946,114
Lot 11	113	2,278,065	10	103	2,145,448
Lot 12a	8	114,714	0	8	151,014
Lot 12b	0	0	0	0	
Lot 12c	5	42,572	0	5	42,572
Lot 13	4	56,884	0	4	56,884
Lot 14	0	0	0	0	0
Lot 15	0	0	0	0	0
Lot 16	0	0	0	0	0
Lot 17	0	0	0	0	0
Lot 18	0	0	0	0	0
P3L1 Aussenanlage	42	2,630,230	22	20	1,148,752
P3L2 Parkdeck	13	89,797	2	11	Unknown Value
Totals	**490**	**€ 15,119,025**	**63**	**427**	**€ 11,974,327**
					$13,734,553

(FOUO) Table 1. Missing Construction Change Orders.

(FOUO) Cause. This occurred because:

- **(FOUO)** USAFE PMO personnel did not effectively establish construction change order review processes to ensure change orders were valid, authorized, and within project scope prior to payment.

- **(FOUO)** USAFE personnel did not request notification of construction change orders from the LBB prior to change order implementation per the ABG-75 and German law

[4] **(FOUO)** As of 20 September 2006.

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(the Vergabe-und Vertragsordnung für Bauleistungen [VOB]) because this is how construction change orders were historically handled on this project.

- **(FOUO)** The LBB did not provide notification of construction change orders or ABG Form 5 documents in a timely manner because they stated they were short personnel to perform the document processing. Further, USAFE did not raise this issue to the Geschäftsbereich Bundesbau (GBB) for resolution.[5]

(FOUO) Impact. As a result, USAFE was not able to validate at least €11.9 million ($13.7 million) in construction change orders for which the contractor could potentially bill and receive payment.

(FOUO) Management Corrective Actions.

- **(FOUO)** Corrective Action C.1. On 6 September 2006, USAFE/A7CCP formalized its change order review process to include a Change Order Review Board and weekly review of user-requested and construction change orders, including appropriate cost estimates, cost increases, and schedule delays. Additionally, a formalized user-requested change order approval process began in January 2006 when the user-requested change orders increased to six user requested changes. This process was ended in July 2006 (when construction was approximately 60 to 65 percent complete) to minimize the impact of user requested changes to planned construction activities.

- **(FOUO)** Corrective Action C.2. On 22 December 2006, USAFE/A7 requested the LBB provide outstanding ABG Form 5 documents immediately. In addition, management requested the LBB adhere to ABG-75, specifically for notification and written approval of change orders prior to implementation for all future changes.

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[5] **(FOUO)** The Geschäftsbereich Bundesbau (GBB) of the Land Rheinland-Pfalz is the German Federal Construction Division which represents the building administration of Rheinland-Pfalz as well as the public builder. The GBB provides standardized rules for project management, handles public relations, performs valuation, and monitors infrastructure of the US Forces, NATO, and allied forces. The GBB oversees the LBBs, but is not in the direct reporting chain of command.

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(FOUO) Recommendations. The USAFE/A7 should:

- **(FOUO)** Recommendation C.1. Review and validate contractor invoices with approved ABG Form 5 documents to ensure requested payments are valid, authorized, and within project scope in accordance with the ABG-75, VOB, and US Code. Only pay outstanding invoices USAFE PMO personnel can validate with approved ABG Form 4 (contract) and ABG Form 5 (change order) documents to confirm the invoiced services are complete, authorized, and within project scope.

- **(FOUO)** Recommendation C.2. Proceed with partial invoice payments for valid and authorized line items based on a thorough review of all invoiced line items with contracted quantities and with approved ABG Form 5 documents.

- **(FOUO)** Recommendation C.3. Request a meeting with the GBB to review and evaluate existing ABG-75 guidance to address methods to better provide, review, and dispute modification documents and associated invoices. Audit suggests USAFE should propose an amendment to the ABG-75 placing financial liability on the LBB for any interest or penalties incurred as a result of US Forces not paying outstanding invoices until modification documentation is provided and properly evaluated. Upon agreement of an acceptable method, jointly propose changes to the ABG-75 through diplomatic representatives from both governments to improve the construction contract modification and invoice review processes.

(FOUO) Management Comments. Although management concurred with the audit result and intent of the recommendations, additional comments to this result are provided in Appendix II. In response to the audit recommendations, management stated:

- **(FOUO)** Recommendation C.1. "Concur with comment. We will continue to review and validate contractor invoices to ensure requested payments are valid, authorized, and within project scope in accordance with the ABG-75, VOB, US Code, and the Grassley Amendment to Public Law 103-335. When available, an approved ABG 5 will be the basis for verification. When an ABG Form 5 is not yet available, USAFE will require LBB to provide a full explanation of the change and why it was required, as outlined in USAFE/A7's 2 November 2006 memorandum to LBB which was coordinated by the USAFE/JA staff. Action completed: 2 November 2006. **(CLOSED)**

- **(FOUO)** Recommendation C.2. "Concur. We will proceed with partial invoice payments for valid and authorized line items based on a thorough review of all invoiced

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line items with contracted quantities and with approved ABG Form 4 and ABG Form 5 modification documents. The only exception is the current backlog of change orders (549) identified prior to 2 November 2006. For these change orders, USAFE has agreed (with concurrence of the USAFE/JA staff) to process payment provided LBB certifies in writing that the work was 1) necessary, 2) properly performed, and 3) fairly and reasonably priced. As an additional measure, USAFE/A7CCP personnel require LBB provide a full explanation of invoiced changes not supported by an approved ABG Form 5 document. Action completed: 2 November 2006. **(CLOSED)**

- **(FOUO)** Recommendation C.3. "Concur. The USAFE Vice Commander is the appropriate official to request a meeting with IMCOM-Europe to review and evaluate existing ABG-75 guidance to address methods to better provide, review, and dispute modification documents and associated invoices. The USAFE/A7 will propose an amendment to the ABG-75 placing financial liability on the LBB for any interest or penalties incurred as a result of US Forces not paying outstanding invoices until modification documentation is provided in enough time to be properly evaluated. Estimated completion date: 30 June 2007."

(FOUO) AUDIT RESULTS 5 – COST AND SCHEDULE GROWTH

(FOUO) Condition. USAFE personnel did not effectively monitor the KMCC military construction project changes to limit cost and schedule growth. Specifically:

- **(FOUO)** USAFE personnel did not track construction change order amounts, description, resulting projected schedule delays, or costs.

- **(FOUO)** The LBB provided a construction schedule at project initiation; however, construction delays, primarily due to the numerous change orders, resulted in schedule shifting which affected future construction milestone dates.[6]

(FOUO) Cause. This occurred because:

[6] **(FOUO)** The majority of construction change orders were quantity changes and not scope changes.

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- **(FOUO)** The USAFE Project Manager did not verify design review comments were appropriately incorporated in project designs.

- **(FOUO)** Construction began before designs were completed.

- **(FOUO)** The LBB recommended and a USAFE senior manager approved the use of trade-wise agreements, essentially forcing the LBB to act as a general contractor without implied general contractor authority or liability.

- **(FOUO)** The LBB hired the design contractors to perform construction management duties. This action did not allow a proper separation of duties that would normally result in an independent review of construction costs and schedule concerns.

- **(FOUO)** USAFE/A7 management did not implement internal controls to obtain and review construction change orders prior to implementation. Specifically, personnel did not review and validate cost estimates or justifications for the aforementioned 427 construction change orders before implementation. (See Table 1, page 12)

- **(FOUO)** The LBB did not provide ABG Forms 5 to support construction change orders in a timely manner.

- **(FOUO)** Management did not establish procedures directing project managers to review and validate cost estimates.

- **(FOUO)** Neither LBB nor construction managers met with USAFE nor contractor personnel to discuss construction task sequencing as schedule changes occurred.

(FOUO) Impact.

- **(FOUO)** The KMCC project authorization was originally approved at $115.3 million, plus €13.8 million ($15.8 million) of Rhein-Main Transition Program (RMTP) funding provided by our German partners.[7] As of January 2006, the KMCC project authorization was increased to $164.3 million (excluding RMTP funds). The resulting total cost,

[7] **(FOUO)** The construction exchange rates for these funds ranged from 0.72 to 1.1916 (for each US dollar) due to the different submission dates of the DD Form 1391s, *Military Construction Project Data.*

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including change orders, as of September 2006 was approximately $168.4 million (€146.8 million). Further, if the current trend continues, audit estimates the project cost will increase by another $17.4 million (€15 million) for a total of $185.8 million (€162 million) over the remaining 35 percent of construction.

- **(FOUO)** Properly reviewing and validating cost estimates and justifications for change orders is necessary to ensure funds are available and to help prevent unneeded project changes.

- **(FOUO)** The KMCC project has missed its original beneficial occupancy dates (BODs) for the Visiting Quarters (VQ) and the KMCC Mall.[8] As of this date, the BODs are undeterminable. The cost to billet personnel off the installation each day the VQ BOD is delayed is approximately $10,173, resulting in more than $3.7 million per year.[9] Further, the US may be held financially liable for contractor delay claims resulting from improper scheduling.

(FOUO) Management Corrective Actions. USAFE/A7CCP implemented the following management corrective actions:

- **(FOUO)** Corrective Action C.3. On 30 October 2006, USAFE/A7CCP supplemented an existing process to track all change order amounts, descriptions, and costs to monitor trends in cost and schedule growth, by including a spreadsheet to track anticipated modifications.

- **(FOUO)** Corrective Action C.4. On 22 July 2006, USAFE/A7CCP obtained permission to hire a contractor claims analyst and established procedures for the claims analyst to

[8] **(FOUO)** The original pre-award/planned BOD for the VQ was 31 December 2005; The original pre-award/planned BOD for the Mall was 15 June 2006.

[9] **(FOUO)** The Air Force incurs a cost to lodge official travel personnel at commercial operations off the installation, thereby, greatly increasing government travel costs. Local lodging rates range between €50 and €100 per night. Using the average of €75 Euro (or $98.00 per night) off-base and the average on-base rate of $42 we would save approximately $56 per night for 182 rooms or $10,173 per day if the VQ was open. These figures are based on the 435 SVS non-availability information for May through October 2006 and do not include additional transportation and incidental costs. In addition, this does not include lost revenues that could have been generated from billeting space available travelers.

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document schedule delays and evaluate contractor delay claims. USAFE/A7CCP received funding to proceed with this hiring action on 22 November 2006.

- **(FOUO)** Corrective Action C.5. On 19 September 2006, USAFE/A7CCP established procedures for the claims analyst to use the schedule delay list to elevate contractor delay claim concerns to the LBB and refute invoices resulting from scheduling deficiencies.

- **(FOUO)** Corrective Action C.6. Project managers have been and will continue to review and validate cost estimates on all change orders processed on an ABG Form 5. For all future change orders, LBB will be providing pre-information (on a one-page form) on change orders for approval as directed by USAFE/A7 in a 2 November 2006 memorandum.

(FOUO) Audit Comment. A recommendation to require the USAFE Project Manager ensures design review comments are appropriately incorporated in future project designs and construction does not begin before design reviews are completed is addressed in Tab A.

(FOUO) Recommendations. The USAFE/A7 should:

- **(FOUO)** Recommendation C.4. Evaluate the risks of contracting by estimated quantities before agreeing to trade-wise agreements and accepting the resulting role of the GGCA to act as a general contractor without implied general contractor authority.

- **(FOUO)** Recommendation C.5. Ensure design contractors hired to perform construction management duties maintain a proper separation of duties that would result in an independent review of construction costs and schedule concerns.

- **(FOUO)** Recommendation C.6. Implement internal controls to review construction change orders prior to implementation.

- **(FOUO)** Recommendation C.7. Request the LBB and construction managers meet with USAFE or contractor personnel to ensure proper and effective construction task sequencing as schedule changes occur.

(FOUO) Management Comments. Although management concurred with the audit result and intent of the recommendations, additional comments to this result are provided in Appendix II. In response to the audit recommendations, management stated:

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- **(FOUO)** Recommendation C.4. "Concur. USAFE/A7CC carefully considers the risks of contracting by estimated quantities before agreeing to trade-wise agreements and accepting the resulting role of the GGCA to act as a general contractor without implied general contractor authority. USAFE regularly communicates in a variety of forums its policy against accepting use of trade contracts on any future project. Action completed: 16 January 2007. **(CLOSED)**

- **(FOUO)** Recommendation C.5. "Concur. USAFE/A7CC will enforce that LBB ensures design contractors hired to also perform construction management duties establish a proper separation of duties that would result in an independent review of construction costs and schedule concerns. We pay LBB a substantial amount of money to perform the construction management duties outlined in ABG-75. To the extent LBB hires contractors to perform oversight duties not specifically required of LBB, then we don't see that as improper. If we do see that such contractors are not properly performing their duties, or that a conflict of interest arises then we agree that the US should call those deficiencies to LBB's attention and demand corrective action as we did with the former construction manager for the KMCC project—resulting in their removal as construction manager by the LBB on 26 September 2006. Action completed: 26 September 2006. **(CLOSED)**

- **(FOUO)** Recommendation C.6. "Concur. USAFE/A7CC will maintain existing internal controls to obtain and review construction change orders prior to implementation. Again, the US cannot direct the contractors in any regard because the US contract is with the LBB, not the individual contractors. The record shows A7CC has since at least March 2006 regularly emphasized to LBB the criticality of processing modifications in a timely manner so we can review prior to implementation. Action completed: 19 October 2006. **(CLOSED)**

- **(FOUO)** Recommendation C.7. "Concur. We will request the LBB and construction managers meet with USAFE or contractor personnel to ensure proper and effective construction task sequencing as schedule changes occur. Action completed: 11 October 2006. **(CLOSED)**"

(FOUO) Evaluation of Management Comments. Although management concurred with the audit results and recommendations, they have not taken (or do not plan to take) action which we believe will correct the deficiencies; therefore, management comments to Recommendations C.1 and C.2 are partially responsive, and C.6 is non-responsive to the issues raised in the report. We

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will elevate the issues in disagreement to the appropriate Air Force level of command for resolution in accordance with AFI 65-301. Specifically:

- **(FOUO)** Recommendation C.1.
  - **(FOUO)** Management Comments. "Concur with comment. We will continue to review and validate contractor invoices to ensure requested payments are valid, authorized, and within project scope in accordance with the ABG-75, VOB, US Code, and the Grassley Amendment to Public Law 103-335. When available, an approved ABG Form 5 will be the basis for verification. When an ABG Form 5 is not yet available, USAFE will require LBB to provide a full explanation of the change and why it was required, as outlined in USAFE/A7's 2 November 2006 memorandum to LBB, which was coordinated by the USAFE/JA staff."
  - **(FOUO)** Audit Response. Audit contends that management's comments are partially responsive to the issue raised, and the action planned should correct part of the problem identified. Specifically, management agreed to review and validate contractor invoices to ensure requested payments are valid, authorized, and within project scope. However, management's policy to review and validate contractor invoices without an approved ABG Form 4 or ABG Form 5 based on LBB's written assurance is non-responsive to the audit recommendation. An approved obligating document is required, except in an emergency situation, in order to match an invoice disbursement with the obligation, as defined in the DoD Financial Management Regulation. Further, the US should not be held financially liable for change orders for which they did not give prior approval. Audit contends management should not make payments on invoices for which they cannot validate the invoice with an approved ABG Form 4 and/or 5 to confirm it is valid, authorized, and within project scope by in accordance with the ABG-75, VOB, and US Code.
- **(FOUO)** Recommendation C.2.
  - **(FOUO)** Management Comments. "Concur. We will proceed with partial invoice payments for valid and authorized line items based on a thorough review of all invoiced line items with contracted quantities and with approved ABG Form 4 and ABG Form 5 modification documents. The only exception is the current backlog of change orders (549) identified prior to 2 November 2006. For these change orders, USAFE has agreed (with concurrence of the USAFE/JA staff) to process payment provided LBB certifies in writing that the work was 1) necessary, 2)

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properly performed, and 3) fairly and reasonably priced. As an additional measure, USAFE/A7CCP personnel require LBB provide a full explanation of invoiced changes not supported by an approved ABG 5 document."

- **(FOUO)** Audit Response. Audit contends that management comments are partially responsive to the issue raised, and the action planned should correct part of the problem identified. Specifically, management agreed to review and validate invoice payments for valid and authorized line items based on a thorough review of all invoiced line items with contracted quantities and with approved ABG Form 4 and ABG Form 5 modification documents. However, the ABG Form 5, *Change Order Document*, is required in order to match an invoice disbursement with the obligation, as defined in the DoD Financial Management Regulation. In addition, the ABG-75, Part II, Section A, Article 4, paragraph 2.2 of the Implementing Instructions states,"The realization of changes under 2.1 always require a change request (ABG Form 5 Part I or 5 A) and an order of the US Forces by use of ABG Form 5 Part II." Further, the US should not be held financially liable for change orders for which they did not approve prior to the contractor performing the work. Audit contends management should not make payments on invoices for which they cannot validate the invoice with an approved ABG Form 4 and/or 5 to confirm it is valid, authorized, and within project scope by in accordance with the ABG-75, VOB, and US Code. This includes partial invoice payments. If management continues to make payments without proper invoice validation with the modification document as they propose in their alternative action to request LBB make a "full explanation" of the change order requirements as opposed to validating them with approved ABG Form 4s and/or ABG 5s, they may be in violation of the ABG-75, VOB, and US Code, and may be held pecuniarily liable. As a result, audit concludes management agreed with our audit results but proposed alternative corrective actions that we find non-responsive and will not correct issues identified.

- **(FOUO)** Recommendation C.6.
  - **(FOUO)** Management Comments. "Concur. USAFE/A7CC will maintain existing internal controls to obtain and review construction change orders prior to implementation. Again, the US cannot direct the contractors in any regard because the US contract is with the LBB, not the individual contractors. The record shows A7CC has since at least March 2006 regularly emphasized to LBB the criticality of processing modifications in a timely manner so we can review prior to implementation."

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- **(FOUO)** Audit Response. Audit contends that management comments are non-responsive to the issues raised in the report, and management does not plan to take action to correct the problems noted. Audit determined personnel did not review and validate cost estimates or justifications for the aforementioned 427 construction change orders. (See Table 1, page 12) Further, the LBB did not provide ABG Forms 5 to support construction change orders in a timely manner. Thus, audit disagrees that existing internal controls to obtain and review construction change orders prior to change order implementation were effectively implemented prior to the audit. Further, USAFE did not provide any evidence to validate their statement that adequate internal controls over construction change orders were in place since the project start.

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BACKGROUND

The contractor submits their accounting documents and quantity determinations to the GGCA (LBB) and the construction manager for review. The LBB's contracted construction management personnel review the documentation and assign an apportionment cost to the applicable users. Personnel forward this documentation to the GGCA for preparation of the ABG Form 8, *Construction Costs*, to invoice for construction completed. Construction management personnel review the ABG Form 8 and invoice prior to returning it to the GGCA. The GGCA submits invoices and apportionment costs directly to USAFE/A7. The civil engineer is required to validate each invoice, certify it for payment, and deliver it to the user designated in the Military Interdepartmental Purchase Request (MIPR) or funding agreement. Payments should be made within 30 days; however, ABG-75 payments are not subject to the Prompt Payment Act and, therefore, do not accrue automatic interest penalties. Payments for goods or services not received, excessive quantities of labor or material, or for construction work completed as a result of a construction change order but not approved by the Air Force are considered improper payments. The US government must request reimbursement of overpayments to the LBB because there is no contract between the US government and the contractors hired by the LBB. Prior to payment of the final invoice, the LBB should adequately adjust the next cumulative invoice from the contractor for overpayments substantiated to the LBB in accordance with the VOB. Once the final invoice has been paid, the LBB must file a claim with the contractor for any substantiated overpayment.

The ABG-75 Part II, Article 4, paragraph 4.4 states, "Measures changing or affecting the scope, quality or cost of construction works from that specified by the Forces shall require the prior consent of the Forces." Article 12, paragraph 12.3 of the ABG-75 states, "The contract amounts (Article 7.1.6) may not be committed or exceeded unless written approval of the Forces has been obtained." The "contract amounts" within the meaning of Article 12.3 and the "amounts approved" within the meaning of Article 12.5 are those amounts which the US Forces confirmed as established on Part II of ABG Forms 4/5." Paragraph 12.5 states "Any costs in excess of the amount approved by the Forces (Article 12.3) will not be borne by them unless their prior approval for these additional funds has been obtained."

The 31 United States Code Section 3528, *Responsibilities and Relief from Liability of Certifying Officials*, states an official certifying a voucher is responsible for: (1) information stated in the certificate, voucher, and supporting records; (2) the computation of a certified voucher under this section and Section 3325 of this title; (3) the legality of a proposed payment under the appropriation or fund involved; and (4) repaying a payment that is determined illegal, improper, or incorrect because of an inaccurate or misleading certificate, prohibited by law, or that does not

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represent a legal obligation under the appropriation or fund involved. Further, Section 8137 of Public Law 103-335 requires the Secretary of Defense to match disbursements to specific obligations prior to disbursement.

German contract law (VOB), Part B, §2, paragraph 6(1) states, "If the contractor is called upon to undertake work not provided for in the original contract, then he shall be entitled to receive special remuneration for it. He is, however, required to notify the client of his claim before proceeding to execute the work." Further, Part B, §2, paragraph 6(2) states, "Whenever possible, the sum due shall be agreed before execution of the work." Paragraph 8(1) states, "Work executed by the contractor without instructions to do so, or as an unauthorized departure from the provisions of the contract, will not be remunerated." Further, Part B, §2, paragraph 8(2) states, "However, the contractor is entitled to receive remuneration for such work if the client subsequently accepts it. He is also entitled to remuneration if the work was necessary for completion of the contract, might be deemed to comply with the presumed intention of the client, and if the latter was given notice of it without delay."

(FOUO) AUDIT RESULTS 6 – IMPROPER PAYMENTS

(FOUO) Condition. USAFE personnel did not properly monitor and approve contractor payments. Specifically, KMCC contractors improperly billed the US (who paid) for materials in excess of approved contract quantities. During the audit, the quality assurance evaluators conducted a review of three previously approved invoices and identified quantity overruns of €5,913,588.[10]

(FOUO) Cause. This condition occurred because:

- **(FOUO)** USAFE/A7CCP management indicated that although they did not feel the payments were improper, these partial payments were made under intense pressure from the German contracting agency (LBB). For example, the LBB frequently discussed the possibility of the contractor walking off of the job unless the partial payments were made.

- **(FOUO)** Construction managers did not properly validate contractor invoices with contract and change order specifications and actual contractor work completed before forwarding the invoices to USAFE personnel for payment.

[10] **(FOUO)** USAFE did not receive change order documentation for €3,172,625 (52 percent) of these payments.

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- **(FOUO)** In addition, USAFE PMO personnel did not implement established invoice review procedures to validate contractor invoices with contract and change order specifications and actual contractor work completed prior to authorizing payment.

- **(FOUO)** USAFE/A7 also did not properly appoint certifying and accountable officials.

(FOUO) Impact. As a result, USAFE personnel improperly paid KMCC contractors over €5.9 million ($6.7 million) for 248 contract line items on 3 invoices. If personnel do not properly monitor and approve contractor invoices through comparisons with modification documents to ensure requested payments are valid, authorized, and within project scope, they may be in violation of the ABG-75 agreement, German contract law (VOB), and Section 8137 of Public Law 103-335 and could be held pecuniarily liable for improper payments made.

(FOUO) Audit Comment. Partial payments are appropriate if they can be supported by a valid obligating document. We did not claim a potential monetary benefit for the quantity overruns because the LBB is in the process of preparing obligation documentation for the identified quantity overruns. The issue of improper payments has been coordinated with the Air Force Office of Special Investigations.

(FOUO) Management Corrective Actions. USAFE/A7CCP implemented the following corrective action:

- **(FOUO)** Corrective Action D.1. During the audit, the project management personnel noted inadequacies with the LBB invoice review process. As a result, USAFE/A7CCP implemented significant changes to the invoice review process. Process changes include identifying to the LBB invoices submitted: 1) without approved change orders, 2) which include quantities in excess of contracted amounts, and 3) which request payment for work not yet accomplished.

- **(FOUO)** Corrective Action D.2. On 17 May 2007 USAFE/A7C appointed accountable officials for contractor invoices associated with this construction project. The appointment letters notify the individuals of pecuniary liability for illegal, improper, or incorrect payments that may result from the negligent performance of duties. In addition, the appointment letters include references to required training materials and related official guidance. Finally, the individuals were required to sign DD Forms 577, *Appointment/Termination Record.*

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(FOUO) Recommendations. USAFE/A7 should:

- **(FOUO)** Recommendation D.1. Request the LBB review construction managers' contractor invoice validations to verify invoices are properly validated with contract and change order specifications and contractor work.

- **(FOUO)** Recommendation D.2. Implement established invoice review procedures to ensure invoices are validated with contract and change order specifications, and that work is completed prior to payment.

(FOUO) Management Comments. Management concurred with the audit result and recommendations. Additional comments to this result are provided in Appendix II.

- **(FOUO)** Recommendation D.1. "Concur. Since 13 November 2006, LBB had agreed to review construction managers' contractor invoice validation to ensure invoices are properly validated with contract and change order specifications and contractor work. USAFE has LBB provide invoices accompanied with statements signed by both the senior project manager and project engineer certifying each invoice has been reviewed for accuracy that the work was 1) necessary, 2) properly performed, and 3) fairly and reasonably priced. Action completed: 13 November 2006. **(CLOSED)**

- **(FOUO)** Recommendation D.2. "Concur. Since the beginning of the project, USAFE/A7CCP personnel established procedures for invoice review. This review was accomplished concurrent with invoice processing, and if discrepancies were found, they could be adjusted prior to LBB issuing payment to the contractor. However, once we deemed these procedures insufficient in July 2006, we added a validation for change orders to ensure USAFE has approved all invoice change orders. Should the invoice include one of the 549 backlogged change orders without an approved ABG Form 5, USAFE/A7CCP personnel require LBB to provide a full explanation of the changes being invoiced. Since September 2006, invoice review is now accomplished prior to USAFE processing invoices for payment. If errors are suspected, USAFE/A7CCP demands a full explanation of the discrepancy prior to payment. If there is no resolution, USAFE/A7CCP downward adjusts the current partial invoice by the appropriate amount. In September/October 2006, the Project Management Office performed a line-by-line review of the invoices identified in the audit condition. As a result, we were able to validate that all items were completed and necessary for the project. Action completed: 5 October 2006. **(CLOSED)**"

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(FOUO) Evaluation of Management Comments. Management concurred with the audit results and recommendations. However, they have not taken (or do not plan to take) action which we believe will correct the deficiencies noted in recommendations. Therefore, management comments to recommendations are non-responsive to the issues raised in the report. We will elevate the issues in disagreement to the appropriate Air Force level of command for resolution in accordance with AFI 65-301. Specifically:

- **(FOUO)** Recommendation D.1
  - **(FOUO)** Management Comments. "Concur. Since 13 November 2006, LBB had agreed to review construction managers' contractor invoice validation to ensure invoices are properly validated with contract and change order specifications and contractor work. USAFE has LBB provide invoices accompanied with statements signed by both the senior project manager and project engineer certifying each invoice has been reviewed for accuracy that the work was 1) necessary, 2) properly performed, and 3) fairly and reasonably priced."
  - **(FOUO)** Audit Response. Audit contends that although management concurred with our audit results and recommendation, they do not plan to take action which we believe will correct the deficiency; therefore, the management comments are not responsive to the issues raised in the report. Specifically, proper invoice validation includes verifying the invoice against an approved obligation document in addition to reviewing the steps that USAFE has required of LBB. Except in limited situations, an obligation document will be approved prior to the work being accomplished. Upon review of management's response, audit concludes management agreed with our audit results, but we find the proposed alternative actions non-responsive to the issue identified as actions planned will not correct issues identified.
- **(FOUO)** Recommendation D.2.
  - **(FOUO)** Management Comments. "Concur. Since the beginning of the project, USAFE/A7CCP personnel have been checking LBB validated/certified invoices to verify work was accomplished according to contract price and quantity. As of July 2006, we have added a validation for change orders to ensure USAFE has approved all invoice change orders. Should the invoice include one of the 549 backlogged change orders without an approved ABG Form 5, USAFE/A7CCP personnel require LBB to provide a full explanation of the changes being invoiced. Since September 2006, invoice review is now accomplished prior to USAFE processing invoices for

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payment. If errors are suspected, USAFE/A7CCP demands a full explanation of the discrepancy prior to payment. If there is no resolution, USAFE/A7CCP downward adjusts the current partial invoice by the appropriate amount. The Project Management Office performed a line-by-line review of the invoices referenced in the audit condition. As a result, we were able to validate that all items were completed and necessary for the project."

- **(FOUO)** Audit Response. Audit contends that although management concurred with our audit results and recommendation, they do not plan to take action which we believe will correct the deficiency; therefore, the management comments are not responsive to the issues raised in the report. Specifically, USAFE/A7CCP personnel have not been properly reviewing LBB validated/certified invoices to verify work was accomplished according to contract price and quantity "since the beginning of the project" per their statement. Specifically, during the audit the auditor obtained modifications, invoices, and invoice validations from Program Management Office personnel. At the request of the auditor, the quality assurance evaluators applied the new invoice review process (established in September 2006) to previously approved invoices in order to quantify the magnitude of the problem. The quality assurance evaluators compared the quantities and services received with the items billed. The auditor then compared the paid invoices and the associated modification documents to the quality assurance evaluator's assessment to determine if invoice payments exceeded the amounts approved in the modification. The auditor then calculated the difference between the invoices paid and the validated amounts. The improper payments occurred because construction managers did not properly validate contractor invoices with contract and modification specifications and actual contractor work completed prior to authorizing payment. In addition, if management continues to make payments without proper invoice validation with the modification document, as they propose in their alternative action to request LBB make a "full explanation" of the change order requirements as opposed to validating them with approved ABG Form 4s and/or ABG Form 5s, they may be in violation of the ABG-75, VOB, and US Code and may be held pecuniarily liable. As a result, audit concludes management agreed with our audit results, but we find the proposed alternative actions non-responsive to the issue identified as actions planned will not correct issues identified.

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BACKGROUND

The Architect-Engineer (A-E) contractor is responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. Typical examples of Architect-Engineer (A-E) liability are an A-E design error or deficiency, or modification of an ongoing construction contract required due to a design-related failure after construction requiring rework. An A-E firm may also be liable for Government damages arising from failure to design within the funding limitations or to comply with the contract schedule or technical provisions. In all such instances, the contracting agent should consider the extent to which the architect-engineer contractor may be reasonably liable and enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The Government is entitled to seek recovery of damages resulting from any type of negligence, non-performance, or breach of contract terms. It is not necessary that the deficiency be corrected for the Government to recover damages. It is only necessary to show that the Government has incurred damages, or will in the future. The US government must submit an assessment of identified A-E liability issues to the LBB because there is no contract between the US government and the contractors hired by the LBB. The LBB may then request recoupment from the design contractor for substantiated instances of A-E design error or deficiencies.

(FOUO) AUDIT RESULTS 7 – ARCHITECT-ENGINEER LIABILITY

(FOUO) Condition. USAFE project management personnel did not assess and pursue A-E contractor liability. Specifically, USAFE did not request the LBB assess liability for 21 deficiencies confirmed by an independent expert as design errors which could have been prevented. (See Table 2)

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(FOUO)

Modification Number	Reason	Expert Assessment of Cause	Cost
3	Subframe mounted to accommodate glass on main steel beams.	Should have been coordinated and resolved per the original design.	€59,224
N/A[11]	Subframe mounted to accommodate glass on main steel beams.	Should have been coordinated and resolved per the original design.	100,051
45	Concrete slab grinded down for cable ducts.	Lack of coordination of design requirements with contractors.	148,736
47	Enlarging escalator pit.	Escalator designed at too steep of an angle.	66,301
52	Increasing height of door opening.	Door installation schedule not properly coordinated with other design drawings and schedule.	15,000
28	Damaged conduit in concrete columns.	Requirements not identified in design; lack of proper coordination between construction management team.	10,000
N/A	Core drillings into concrete floor slab.	Lack of coordination between the A-E and mechanical, engineering, and plumbing (MEP) contractor consultants.	140,000
N/A	Core drillings into masonry wall.	Lack of coordination between the A-E and MEP contractor consultants.	5,000
N/A	Core drillings into concrete floor slab.	Lack of coordination between the A-E and MEP contractor consultants.	5,000
N/A	Core drillings into concrete floor slab.	Lack of coordination between the A-E and MEP contractor consultants.	7,500
N/A	Concrete slab grinded to allow room for channels for electrical lines.	Lack of coordination between the A-E and MEP contractor consultants.	40,000
N/A	Rework of light openings in ceiling.	Wrong dimensions in design for lighting cut outs.	10,000

[11] **(FOUO)** This amount is an estimate for the remaining rework required as a result of the design error listed above; therefore, it is not counted as a separate design error.

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N/A	Brick wall above doors removed.	Lack of coordination between the A-E and MEP contractor consultants.	8,640
N/A	Excessive core drillings and saw cuttings required.	Lack of coordination between the A-E and MEP contractor consultants.	27,500
N/A	Two sets of parapet walls cut away to allow for rainwater runoff.	Lack of coordination between the A-E and MEP contractor consultants.	5,000
N/A	Wall detail incomplete causing problems for ceiling contractor.	Incomplete design and tardiness of completed design.	15,000
N/A	Large number of installed doors cut out of wall opening and reinstalled at correct height; door jam rust proofing damaged as a result.	Door installation schedule not properly coordinated with other design drawings and schedule.	10,000
N/A	Numerous door openings appear to have been reworked.	Door installation schedule not properly coordinated with other design drawings and schedule.	Unknown
N/A	Escalator opening too small.	Escalator technical requirements not properly incorporated into the design.	Unknown
N/A	Wrong screed epoxy resin on floors.	Lack of coordination of design requirements with contractors.	200,000
N/A	Expansion joint for the floor finishes.	Lack of coordination of design requirements with contractors.	80,000
N/A	Additional steel support required for excessive HVAC equipment.	HVAC technical requirements not properly incorporated into design.	Unknown
		Total Cost of Design Errors	**€952,954**
			$1,093,038

(FOUO) Table 2. Design Deficiencies.

(FOUO) Cause. This condition occurred because:

- **(FOUO)** USAFE/A7CCP personnel did not establish A-E liability assessment policy and procedures, provide training, implement detection controls, or provide management oversight required to identify design errors and report them to the LBB.

- **(FOUO)** A-E contractors were also selected as construction managers and, therefore, not independent.

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(FOUO) Impact.

- **(FOUO)** Because USAFE did not request the LBB properly assess A-E liability, they may not be able to dispute the quality of A-E services and products. Further, USAFE cannot verify investigations and recovery actions will be pursued in a cost-effective and timely manner to mitigate damages, minimize administrative costs, strengthen the likelihood for full recovery, and allow the reuse of project funds.

- **(FOUO)** Design deficiencies discovered during the construction of the KMCC contributed to contract change orders for which we conservatively estimate USAFE may be billed at least €952,954 ($1.1 million).[12] Request for recoupment of identified funds due to A-E design errors or performance deficiencies will provide the Air Force a one-time potential monetary benefit of at least €952,954 ($1.1 million) by reducing current funded contract requirement.

(FOUO) Management Corrective Actions. USAFE/A7CCP implemented the following corrective actions:

- **(FOUO)** Corrective Action E.1. Project management personnel in USAFE/A7CCP implemented an internal version of the proposed ABG Form 5B document to track future change orders. The US Army Corps of Engineers proposed ABG Form 5B is currently pending review at the Construction Working Group.

- **(FOUO)** Corrective Action E.2. On 26 September 2006, the LBB removed the construction agent from the KMCC construction management position for lack of performance of construction management.

- **(FOUO)** Corrective Action E.3. On 12 October 2006, the USAFE/CV met with Rhineland-Palatinate State Secretary Messal and other senior GBB/LBB officials to address ways to expedite processing of late contractor invoices. As a result of these discussions, GBB has provided the US written assurance that US acceptance of invoiced amounts in no way constitutes US approval of individual change orders. The GBB further assured exceptional measures from the US to process several invoices, which had

[12] **(FOUO)** USAFE received five change orders to correct design deficiencies (totaling €386,682 [$515,331]) and audit obtained cost estimates for the 16 remaining deficiencies without modification documents (totaling €566,272 [$754,671]).

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been waiting clarification or additional information related to pending change orders or exceedance of line item quantities could be later pursued for assessment of A-E liability if required.

- **(FOUO)** Corrective Action E.4. On 28 November 2006, USAFE/A7CCP formalized a policy and procedures to notify the construction manager and LBB of potential A-E liability.

- **(FOUO)** Corrective Action E.5. On 22 November 2006, USAFE received funding to hire a construction claims analyst to review, notify, and request LBB assessment of potential A-E liability concerns. The construction claims analyst computed the initial estimate of damages for A-E errors or omission at €2,892,500 (approximately $3.9 million). Personnel are pursing recovery of the damages, and these funds will be used to reduce future obligations on this project.

(FOUO) Audit Comment. Based on management's response to Recommendation C.5 to ensure design contractors hired to perform construction management duties maintain a proper separation of duties that would result in an independent review of construction costs and schedule concerns, we do need a recommendation addressing the second cause of this audit result.

(FOUO) Recommendation E.1. USAFE/A7 should implement established internal controls over invoice processing to detect and report mischarging for change orders. Specifically, require personnel to validate invoices prior to payment.

(FOUO) Management Comments. Although management concurred with the audit result and recommendation, additional comments to this result are provided in Appendix II. In response to the audit recommendation, management stated, "Concur. Internal controls have been in effect since at least 6 September 2006 to review invoice processing to detect and report mischarging for user-initiated (and constructive) change orders. Personnel are required to validate all invoices prior to payment. Action completed: 6 September 2006. **(CLOSED)**"

(FOUO) Evaluation of Management Comments. Management comments addressed the issues presented in the tab and actions taken or planned should correct the problem.

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(FOUO) AUDIT SCOPE

(FOUO) Audit Coverage. To evaluate the management of construction funds, we reviewed transactions and documentation dated between 12 August 1991 and 17 May 2007. We performed this audit from 13 June 2006 to 27 October 2006 and provided the draft report to management on 7 December 2006.

- **(FOUO)** To determine whether personnel performed project planning and construction design to meet contract requirements, we:
  - **(FOUO)** Interviewed the ABG-75 specialist to determine if USAFE prepares the ABG Form 1 project planning document and whether that document is provided to LBB as specified in the ABG-75.
  - **(FOUO)** Searched the KMCC and other Ramstein and Spangdahlem AB project files for a copy of an ABG Form 1 listing the project as planned.
  - **(FOUO)** Reviewed all contract files for evidence of planning, predesign meetings, and use of project planning tools. Specifically, we obtained and reviewed the draft version of the Project Management Plan. We also obtained and reviewed DD Forms 448, *Military Interdepartmental Purchase Requests*, identifying additional project costs, evidence of the 35 percent design review, the request for the 65 percent design review, the Requirements Document, LBB's suggestion to remove the 65 percent design review on 22 May 2003 to discuss the project time schedule, the LBB's official statement of 65 percent design review removal on 10 June 2003, a confirmation of the LBB's official statement of 65 percent design review removal in meeting minutes from the 10 June 2003 meeting, evidence of the 95 percent review, and the resulting 100 percent design review. In addition, the auditor reviewed meeting minutes from the predesign conference.
- **(FOUO)** To determine whether personnel performed pre-solicitation reviews and ensured proper solicitation and award of MILCON contracts, we:
  - **(FOUO)** Interviewed KMCC project personnel, including USAFE, US Army Corps of Engineers (USACE), LBB, and other related personnel, to determine whether personnel conducted appropriate market research prior to starting KMCC construction. We performed a review of LBB price estimates, price lists, historical average lists, and methods to estimate costs of materials and services without

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performing market research. In addition, we interviewed personnel to determine whether USAFE conducted market research before soliciting offers for acquisitions that led to a consolidation of contract requirements.

- **(FOUO)** Determined if personnel provided accurate independent US Government estimates of the cost of architect-engineer services to the contracting agent by obtained and reviewed supporting documentation. We interviewed LBB and USAFE personnel to determine the cost estimation process prior to contract bid. We also requested personnel provide cost estimates from USACE or USAFE that provide evidence of the cost for USACE services on the KMCC.

- **(FOUO)** Interviewed USAFE, USACE, and LBB personnel to determine whether construction agents participated in the construction contract negotiations and whether agreements covered all elements necessary for the construction required by laws, regulations, and customs of the United States and German government. We further obtained and reviewed supporting documents.

- **(FOUO)** Reviewed hard copy ABG Form 4 documents including contract specifications and supporting information.

- **(FOUO)** Discussed with LBB personnel the contracting process and whether statements of work were required by German contract law. We reviewed appropriate regulations and obtained and reviewed the original KMCC design requirements document.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine if project oversight of presolicitation procedures ensured contracting documents included a request for proposal and reviewed hard copy proposal sheets.

- **(FOUO)** Interviewed USAFE and LBB personnel to identify and document the prequalification process, reviewed prequalification documents on file at the LBB, reviewed appropriate regulations, interviewed USAFE and LBB personnel to determine the documentation prepared, obtained, and maintained to document contractor qualifications, and determined the LBB does not maintain documentation to validate whether they comply with the requirement to obtain, review, and prequalify contractors based on the VOB.

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- **(FOUO)** Interviewed personnel to determine how the contracting agent determined the contractor was capable of performing all contracted items since the LBB could not provide preaward surveys or other documentation for audit's review and reviewed appropriate regulations and supporting documentation. In addition, we interviewed USAFE and LBB personnel to determine if construction contracts of $1,000,000 or more awarded to large business firms had approved subcontracting plans prior to award of a contract.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine if contracts were properly solicited by using a bid schedule and to determine how the low bidder was evaluated and/or selected.

- **(FOUO)** Reviewed the ABG Form 3 document presented by USAFE and DD Forms 1391 to determine the original cost estimate and the amount underestimated and reviewed the exchange rate.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine the current subcontracting practices and obtained supporting evidence of subcontracting significant portions of construction work. In addition, we reviewed ABG 4 contract documents and supporting specifications to determine whether contracts limited contractors to a percentage of subcontracting. We interviewed LBB personnel to determine why percentages of subcontracting limitations were not expressed in ABG Form 4 documents.

- **(FOUO)** We obtained a list of subcontractors, interviewed USAFE and LBB personnel to determine why subcontracting plans were not provided to USAFE. We reviewed supporting documents and regulations. We interviewed USAFE and LBB personnel to determine the impact of using trade-wise agreements without ensuring liquidated damages assessment clauses were included in the contracts.

- **(FOUO)** Identified and reviewed 32 contracts in place as of 20 September 2006. We documented the total cost of the 32 contracts issued (€110,975,898) ($130,100,701) and noted the contract award dates. We then interviewed LBB and USAFE personnel to confirm the number of KMCC contracts.

- **(FOUO)** To determine whether personnel effectively monitored, documented, recorded, and reported construction contract changes to limit cost and time growth, we:

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- **(FOUO)** Determined the total number of project change orders to date (as of 20 September 2006) by obtaining the user-initiated change order register and documentation to support all change orders on hand with the LBB and USAFE. We reviewed each description and determined whether it was sufficient to determine the reason for the change.

- **(FOUO)** Obtained a flowchart of the modification review process and interviewed personnel to determine whether the established process was effectively implemented. We interviewed KMCC personnel to determine if personnel reviewed change orders prior to implementation.

- **(FOUO)** Obtained and reviewed project folders for 100 percent of KMCC change orders and determined whether the executed change orders exceeded the Congressional 25 percent cost-growth limitation.[13]

- **(FOUO)** Reviewed supporting documentation for each project change order and determined whether project change orders reason codes were consistent with supporting documentation.

- **(FOUO)** Reviewed logs, notes, pictures, and memos on file and determined whether personnel conducted site visits and maintained adequate documentation.

- **(FOUO)** Interviewed personnel to determine if USAFE Civil Engineer management provided adequate management oversight on MILCON projects that required subsequent change orders. In addition, we interviewed personnel to determine how USAFE maintains visibility over project change orders to include change orders initiated by the construction agent and what local procedures and management reviews existed.

- **(FOUO)** Interviewed personnel to determine if a construction schedule was prepared and obtained and reviewed copies of the KMCC construction schedules. We reviewed project change orders and noted those causing schedule growth.

- **(FOUO)** Interviewed personnel and reviewed documentation on hand to determine whether USAFE established procedures directing project managers to review and

[13] **(FOUO)** Cost growth exceeding 25 percent requires Congressional reporting.

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validate cost estimates. We reviewed the requirements document, dated 10 May 2003, for the original design requirements and the current list of user-initiated change orders. In addition, we attended the KMCC Financial Working Group and construction working group meetings at the KMCC construction site.

- **(FOUO)** To determine if personnel properly monitored and approved contractor payments, we:

  - **(FOUO)** Interviewed USAFE and LBB personnel to determine whether there was evidence of improper payments. We interviewed personnel to identify local procedures and management reviews, obtained invoices, viewed contract specification folders in the on-site project management office, and compared invoices to modification documents, contract specifications, and any other supporting documentation. We calculated the difference between payments and amounts approved by contracted quality assurance evaluators.

  - **(FOUO)** Interviewed USAFE and LBB personnel to determine if they were aware of contractors billing for services they were not contracted to provide. We then compared modification documents to contracts to identify any services or materials that do not appear to be related to the completion of the contracted requirements and discussed discrepancies with the project manager. We interviewed USAFE and LBB personnel to determine if personnel established appropriate controls to detect and report mischarging for user-initiated change orders.

- **(FOUO)** To determine if USAFE personnel assessed and pursued architect-engineer (A-E) liability, we:

  - **(FOUO)** Interviewed LBB personnel to determine if they require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit. We determined LBB actions if the price of construction proposed in response to an LBB solicitation exceeded the construction funding limitation in the architect-engineer contract. Further, we determined if policies and procedures were established requiring USAFE or LBB personnel to conduct A-E liability reviews.

  - **(FOUO)** Interviewed USAFE and LBB personnel to determine whether LBB awarded contracts for A-E services in addition to construction services. We further interviewed USAFE and LBB personnel to determine if A-E firms were properly

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selected for A-E contracts. We then reviewed LBB documents to confirm that the LBB evaluates A-E firms' (1) professional qualifications necessary for satisfactory performance of required services; (2) specialized experience and technical competence in the type of work required, including, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials; (3) capacity to accomplish the work in the required time; (4) past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules; (5) location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and (6) acceptability under other appropriate evaluation criteria.

- **(FOUO)** Interviewed USAFE and LBB personnel and reviewed hard copy documents to determine if design competition was used in the KMCC project. We further reviewed A-E contractor statements of work, interviewed USAFE and LBB personnel to determine if selection authorities held discussions with at least three of the most highly qualified firms regarding concepts and discussed the relative utility of alternative methods and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy efficiency in facility design, and determined through discussions with USAFE and LBB personnel who was responsible for selecting A-E firms and whether this person reviewed DD Forms 2631 or SF Forms 1421, Performance Evaluations (Architect-Engineer), to evaluate past performance of the contractor performance.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine the justification for selecting the specific A-E firms, interviewed USAFE and LBB personnel to determine whether there appeared to be undue influence exercised during A-E firm selection, and requested documentation to substantiate concerns with chosen A-E firms.

- **(FOUO)** Interviewed personnel to determine whether an independent Government estimate of the cost of A-E services was prepared and furnished to the contracting agent (the LBB) before commencing negotiations for each proposed contract or contract change order expected to exceed $100,000 and obtained and reviewed cost estimates on user-initiated change orders.

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- **(FOUO)** Reviewed ABG Form 4 documents and contract specifications to determine if evidence is present to confirm a contractual release from A-E liability.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine whether personnel established appropriate controls to detect and report design deficiencies, were trained to identify design deficiencies, provided appropriate oversight of A-E design and contracting procedures to prevent unnecessary design deficiencies, were trained to review change orders to identify and report potential A-E liability, and provided appropriate oversight of A-E design liability procedures. We also discussed whether controls were in place to prevent contract agents and construction agents from conspiring to add change orders to increase costs above the contracted amount.

- **(FOUO)** Interviewed USAFE and LBB personnel to determine whether policies and procedures are in place to require personnel to hold A-E contractors responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. In addition, we performed escorted walk-through of the KMCC and obtained specific evidence of design errors presented in discrepancy reports.

- **(FOUO)** Obtained construction designs, specifications, and additional supporting evidence for design deficiencies identified; consulted a subject-matter expert to review the designs, specifications, and supporting documentation to validate which change orders were, in fact, design deficiencies; determined the number and type of design flaws; determined if design flaws could have been avoided; determined if design errors had modification documents; documented the cost of the change orders associated with the design; and obtained two estimates of potential rework costs for design errors without modification documents. We determined the most conservative cost estimate based on the contractor estimates provided and summed the estimated costs for design deficiencies.

- **(FOUO)** Interviewed personnel to determine why A-E liabilities were not properly assessed and obtained and reviewed supporting documents.

- **(FOUO)** We reviewed German contract law (VOB), the Auftragsbaugrundsaetze 1975 (ABG-75), and other supporting laws and regulations as required.

(FOUO) Sampling Methodology. We used judgmental samples and computer-assisted auditing tools and techniques (CAATTs) to analyze data in this audit.

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- **(FOUO)** Sampling. We obtained the ACES-PM (Automated Civil Engineering System–Project Module) Weekly Status Reports-Construction as of 16 May 2006 to determine the number of open USAFE MILCON projects. We then judgmentally selected the KMCC construction project for detailed review.

- **(FOUO)** CAATTs. We used CAATTs to perform analysis of MILCON project data. We obtained reports from the ACES-PM, Commanders Resource Integration System (CRIS), the General Accounting & Finance System (GAFS), the Corps of Engineers Financial Management System (CEFMS), the Corps of Engineers Project Management Information System (PROMIS), the Corps of Engineers Programs and Projects Delivery System (PPDS), and the Corps of Engineers Resource Management System (RMS). We then sorted, filtered, queried, subtotaled, and compared the data as necessary to determine the magnitude and history of project authorizations, obligations, unpaid obligations, commitments, firm and pending change orders, construction status, and invoices.

(FOUO) Data Reliability. We relied on information from ACES-PM, CRIS, GAFS, CEFMS, PROMIS, PPDS, and the RMS for our audit conclusions. We did not evaluate the systems' general and application controls. However, we established the data's reliability by comparing data from ACES-PM, to CRIS, US Army Corps of Engineers, and USAFE reports. We then further compared these reports with construction contracts, change orders, invoices, and other available manual records. Through these reviews and discussions with responsible personnel, we concluded the data were reliable to support audit conclusions and recommendations.

(FOUO) Auditing Standards. We conducted this audit in accordance with generally accepted government auditing standards and, accordingly, included tests of user-initiated controls related to construction and funds management.

(FOUO) Discussion with Responsible Officials. We discussed/coordinated this report with the USAFE Director, Mission Support; USAFE Civil Engineer; USAFE Civil Engineer Chief, Program Management; and other interested officials. We received management's formal comments on 16 January 2007 and worked with management to get additional comments that were provided on 8 June 2007.

PRIOR AUDIT COVERAGE

Our review of audit files and contact with the audit focal point disclosed no air force audit agency; inspector general, department of defense; US Government Accountability Office; or

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public accountant audit reports were issued to USAFE within the last 5 years related to our audit objectives.

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COMMENT LOCATION	RESPONSE
Executive Summary, Objectives, Bullet 5	**(FOUO) USAFE/JAI:** Assessment and pursuance of A-E (and contractor) liability may be requested by US personnel, but nevertheless is the responsibility of LBB, Article 7.1.9.3 ABG-75.
	(FOUO) AFAA: In our opinion, USAFE/A7 should make an initial assessment of whether a change order resulted from A-E liability to determine whether to pursue it with the LBB. Not performing the initial assessment could make it more difficult to contest or refute change orders for which the US should not be held responsible. Although audit does not discount the LBB's role in assessing and pursuing A-E liability; if USAFE does not perform their initial assessment and request the LBB assess and pursue liability, there is an increased risk that the US will make the payment for the change order. Finally, requesting an A-E liability assessment at the time it is discovered is especially important due to the personnel turnover experienced during a construction project of this size.
Executive Summary, Conclusions, Bullet 3	**(FOUO) USAFE/A7:** The clause referred to here is liquidated damages. Despite the absence of specific contractual liquidated damages clause, LBB and the US Government still have recourse to pursue recovery of damages. This is further explained in Audit Result 7. **(FOUO)** Additionally, the legal assurance that the contractor will be held liable if it cannot perform its contract requirements is not related to any specific clause, but to the main contract. This is an enforceable contract by LBB according to the VOB. In addition to the VOB, there are also areas in the VOL (Vetragverlezung), Deutsches Institut für Normung (DIN) standards and German case law that enforce performance standards. If a contractor cannot perform its work, the LBB will contract someone else to perform the work and bill the original contractor for that portion of the work. These two issues should not be combined.
	(FOUO) AFAA: The ABG-75, Part II, Article 4.1, paragraph 4.1.2 states, "Liquidated damages are agreed upon if the contractor is late completing the construction work." Unlike US contracting

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	procedures, the ABG-75 does not require the inclusion of these clauses; however, the VOB (German contract law) does require them to pursue liability. **(FOUO)** Audit found no evidence of liquidated damages clauses in KMCC contracts and confirmed with the LBB that such clauses were not requested by the US government. Further, the LBB confirmed liquidated damages clauses are normally inserted in trade-wise contracts in accordance with the VOB. Specifically: • **(FOUO)** The VOB Part B, §5, paragraph 4 states, "If the contractor delays the start of work, or if he does not complete it on time, or if he does not meet his commitments under No. 3 above (detailing the required number of workers, equipment, materials, or components to execute work), the client may, if he maintains the contract, seek damages in accordance with §6, paragraph 6, or set the contractor a reasonable term for the fulfillment of the contract and serve notice of his intention to withdraw the contract id, on expiration of the term, the contract has not been duly fulfilled (cf. §8, No. 3)." Further, the VOB Part B, §6, details the LBB's actions in regard to contractor obstruction and interruption of work. • **(FOUO)** The ABG-75, Part II, Section A. Execution, Article 4.1, paragraph 2 states, "Liquidated damages are agreed upon if the contractor is late completing the construction work. Such damages will be at the rate of one-tenth of one percent of the final construction contract amount for each workday (i.e. calendar days excluding Sundays and German holidays) of delay, but in no event exceed a total of 10 percent of the contract amount." • **(FOUO)** The LBB personnel stated, "The LBB uses a paragraph reference to the liquidated damages in their contracts. Specifically, the LBB would have to prove the contractors were behind contracted schedules. Further, if the contractors agree to provide assurances they will fulfill the contract through the warranty period, the LBB will only pursue liquidated damages for hindrances by other contractors. In this process, the LBB evaluates alleged hindrances and when necessary, takes liable contractors to court using the hindered

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	contractors' calculations and statements of overhead." However, they cannot complete this action unless specific clauses are included in the contracts. **(FOUO)** An e-mail dated 9 January 2006 from USAFE CV and USAFE A7/CC validated USAFE's oversight in liquidated damages clauses. Specifically, it validated USAFE did not ensure the LBB inserted liquidated damages clauses in the KMCC contract. Audit notes this condition occurred because USAFE management did not provide appropriate oversight to ensure US interests were protected through LBB insertion of liquidated damages clauses in KMCC contracts. **(FOUO)** We did not audit contractor performance and contractor replacement and, therefore, did not evaluate the VOL. Instead, we evaluated KMCC contracts for clauses that protect US interests. As stated above, the VOB provides for liquidated damages clauses and specifically states how the LBB should pursue damages related to this area. Audit did not find any reference to the liquidated damages claims relating specifically to the contract, vice the required clause, in the VOB, per management's comments nor did management provide any reference material to substantiate this.
Executive Summary, Conclusions, Bullet 4	**(FOUO) USAFE/A7:** For clarification, these construction change orders being referred to here are change orders that have been approved by LBB for the contractor to do work for which paperwork had not yet been sent to the US Forces.
	(FOUO) AFAA: Tab C addresses both missing change orders, and cost and schedule growth. **(FOUO)** ABG-75, Part II, Section A, Article 4, paragraph 2.2 of the Implementing Instructions states, "The realization of changes under 2.1 always require a change request (ABG Form 5 Part I or 5 A) and an order of the US Forces by use of ABG Form 5 Part II." USAFEI 65-106, paragraph 2.1.3, states the GGCA initiates ABG Form 5, Change Order Document, (see also paragraph 3.4.3). The ABG Form 5 is a modification to the ABG Form 4 and constitutes an increase or

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	decrease to the recorded undelivered order outstanding (UOO). The ABG Form 5 can be initiated from either a US Forces requested change via the ABG Form 5A (USAFE Form 87) or by the German authorities, in which case only the ABG Form 5 is prepared. **(FOUO)** USAFEI 32-1006 states, USAFE Form 87, *Construction Change Request*, ABG Form 5A, Change Request, is used by USAFE, base civil engineers (BCE) and the US Corps of Engineers (USACE) to request a modification, addition, stop, continuation, cancellation of construction obligation, or deobligation of funds on a construction contract or project according to the indirect procedure. These modifications are termed internal modifications and are commitments for accounting purposes, as documented in paragraph 2.4.2 of USAFEI 65-106. External modifications (or construction change orders) are change orders to construction contracts that were initiated by the contracting agent (LBB), construction agent, or contractors. **(FOUO)** In both situations, when the change order is approved, this form is recorded as an increase or decrease in the obligation and reverses the previous commitment, as documented in paragraph 2.4.3 of USAFEI 65-106. Missing modifications are change orders to construction contracts that were initiated by the contracting agent (LBB), construction agent, or contractors that the AF did not receive and for which the AF did not give prior approval. **(FOUO)** The ABG-75 Part II, Article 4, paragraph 4.4 states, "Measures changing or affecting the scope, quality or cost of construction works from that specified by the Forces shall require the prior consent of the Forces." Article 12, paragraph 12.3 of the ABG-75 states, "The contract amounts (Article 7.1.6) may not be committed or exceeded unless written approval of the Forces has been obtained. The "contract amounts" within the meaning of Article 12.3 and the "amounts approved" within the meaning of Article 12.5 are those amounts which the US Forces confirmed as established on part II of ABG Forms 4/5." Paragraph 12.5 states, "Any costs in excess of the amount approved by the Forces (Article 12.3) will not be borne by them unless their prior approval for these additional funds has been obtained."

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	(FOUO) Audit contends USAFE did not properly monitor and approve change orders in both the sense that were not aware of and did not request missing change orders (427 of 490 LBB- or contractor-generated change orders) and that they did not monitor cost and schedule growth as a result of the significant number of change orders.
Executive Summary, Conclusions, Bullet 4	**(FOUO) USAFE/A7:** All contractor invoices are reviewed by both USAFE and PMO personnel for accuracy and against the current contract amount. Additionally, change orders (when submitted) are fully evaluated and not approved until all information is included. The problem is that the US cannot evaluate change orders not yet submitted for review. This issue is further explained in Audit Result 4.
	(FOUO) AFAA: In our opinion, the USAFE/A7 and PMO personnel did not establish sufficient internal controls to ensure invoices were properly validated with obligating documents (change orders) (refer to Tab C, Audit Results 6). Specifically, PMO personnel did not implement established invoice review procedures to validate contractor invoices with contract and change order specifications and actual contractor work completed prior to authorizing payment. In addition, USAFE/A7 did not properly appoint certifying and accountable officials. **(FOUO)** However, this audit result discusses change orders themselves, not the resulting invoices. Audit determined the PMO did not effectively implement established construction change order review processes to ensure change orders were valid, authorized, and within project scope prior to payment. Specifically, in accordance with paragraph 2.1.3 of USAFEI 65-106, the LBB issues ABG Form 8, *Construction Costs*, to invoice for construction completed (See paragraph 2.4.7). **(FOUO)** USAFEI 65-106, paragraph 5.6 states, "The GGCA submits invoices (ABG Form 8 or 9) directly to the HQ USAFE/CE (A7 under the current organizational structure). The civil engineer is required to validate each invoice, certify it for payment, and deliver it to the NAF activity designated in the MIPR or funding agreement."

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	(FOUO) Audit agrees USAFE cannot review change orders not yet submitted by LBB but contends making payments on invoices without proper obligating documents (the ABG Form 5 Change Order Document) results in improper payments. Improper payments are payments made on contractor invoices for contract construction work completed for which the AF did not give prior approval and was not notified change orders were required and for which the AF did not have obligating documents prior to disbursement. As previously stated, improper payments may be in violation of the ABG-75 Administrative Agreement, German contract law, and Section 8137 of Public Law 103-335 and could be held pecuniarily liable as a result.
Executive Summary, Conclusions, Bullet 5	**(FOUO) USAFE/A7:** The final cost projection for the project is still under the original DD 1391 Programmed Amount authorized by Congress. USAFE/A7 agrees that the US Government will expend additional resources to billet personnel off base. Because of this, USAFE leadership has been actively pursuing the schedule issue with the German Government. This issue is further explained in Audit Result 5.
	(FOUO) AFAA: As of September 2006, audit projected the cost at €146,845,349 ($168,431,615). This is still under the budgeted amount. However, the final cost is yet to be determined.
Executive Summary, Conclusions, Bullet 6	**(FOUO) USAFE A7:** Partial payments have been made to contractors for work that LBB has certified as completed. Where we have found or been made aware that the contractors have improperly billed the US, USAFE has downward adjusted the first possible partial payment (current partial payment if caught in time). This issue is further explained in Audit Result 6. In no case have erroneous payments exceeded the total amount of obligated funds on the contract.
	(FOUO) AFAA: LBB certifications did not meet the DoD or ABG-75 standards for obligating documents without the provision of the ABG Form 5, Change Order Document. Audit contends that making even partial payments for invoices without the appropriate obligating documents constitutes improper payments. As stated previously,

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	USAFE personnel may be held pecuniarily liable for improper payments.
Executive Summary, Conclusions, Bullet 7	**(FOUO) USAFE/A7:** According to ABG-75, A-E liability requires proof that errors were the fault of the designer and that the errors were negligent and caused harm. This process will occur concurrent or subsequent to construction work. As stated in Corrective Action E.3., it is clear that USAFE has not waived its right to pursue A-E liability, and in fact has acquired contract support of a German claims consulting firm to assist USAFE/A7C in a comprehensive effort to pursue claims against LBB's Construction Manager, including the area of A-E liability. A-E liability has to be proven, as is the case in the US, likely in the courts or through binding arbitration, and in the meantime we need to complete the construction. Further information regarding efforts taken by USAFE/A7CC to ensure A-E liability is properly documented and pursued is included in Audit Result 7 and paragraph 4 of the A7CC Response in Appendix III of this report.
	(FOUO) AFAA: Audit agrees USAFE has not waived its right to pursue A-E liability. Audit confirmed potential A-E liability concerns with an independent expert and contends USAFE would better pursue A-E liability by requesting the LBB assess and pursue A-E liability now rather than waiting until the final payment is made or taking no action at all. USAFE/A7CCP's decision to hire a contract claims consultant to identify liability issues is discussed in Corrective Action E.5.
Executive Summary, Management's Response	**(FOUO) USAFE/JAI:** To provide the level of control over the contracting process this report suggests USAFE should be exercising would require the addition of numerous personnel to essentially do what we're already paying LBB to do on our behalf. Given the current budget climate and the ongoing AF transformation such an increase in personnel is unlikely. If we wish to relieve LBB of those responsibilities and assume them for ourselves then we will need to amend the ABG-75 agreement. Even assuming all the parties would be agreeable, such a process would take years. If we wish to do away with the concept of indirect contracting then we will need the consent of all the parties to the Supplementary Agreement to the NATO SOFA (UK, FR, NL, BE, CN, US and FRG) along with the blessing of the

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	US State Department. The chances of that happening are slim.
	(FOUO) AFAA: The KMCC project is the largest construction project within DoD. If a construction project is of sufficient size to warrant the additional personnel, perhaps USAFE should consider adding personnel to improve internal controls. We cannot make recommendations to the LBB. All issues contained in this report and the resulting recommendations address USAFE internal control issues. Audit does not suggest USAFE should amend the ABG-75 to relieve LBB of their responsibilities, particularly when constructing a project of this magnitude. Given the internal control weaknesses identified during this audit, we conclude such a management decision could be detrimental to the AF and AF funds.
Tab A, Project Planning and Construction Design, Background, Paragraph 5	**(FOUO) USAFE/A7:** For clarification, line-item contracts stipulate that the contractor is only paid for work actually accomplished by line items (i.e., number of manholes installed or linear meters of cable). If the contract was written for 200 manholes and the contractor only installed 100, we would only be billed for 100 and the labor to install just the 100. The reverse is also true, if the contractor must install 250, they will be able to bill the US for the additional 50 after authorized by a change order. **(FOUO)** As the RMTP VQ project was integrated into the KMCC project, that portion of the VQ funding came from the RMTP funding partners. Breaking the project into strategic pieces was part of the "fast tracking" concept for the execution of the KMCC. However, the German authorities insisted on contracting more trade lots than was envisioned by USAFE/A7CC, citing VOB laws concerning limits to the amount of work that could be subcontracted by any given trade lot contractor.
	(FOUO) AFAA: The agreement to use trade-wise contracts forced the use of line-item contracting. Although line-item contracting is more prevalent in German construction, it is still optional, and the LBB confirmed the US could have requested a general contractor and lump sum contracts instead. Thus this decision should have been very carefully considered before it was agreed to and implemented.

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	(FOUO) Audit did not identify any documentation to confirm that the LBB cited VOB laws concerning limits to the amount of work subcontracted. The documentation in the KMCC files disclosed trade-wise contracts were thought to eliminate the need for subcontractors. The details behind the strategic contract portions should have been properly coordinated and documented prior to USAFE agreeing on the contracting method.
Tab A, Project Planning and Construction Design, Audit Result 1, Condition, Bullet 1	**(FOUO) USAFE/A7:** This project was integrally linked to the original RMTP program, and the German authorities were aware of the project as early as end of calendar year 1999. The project was slow to develop with design and construction starting in 2003, giving LBB ample time to plan the workload. The project was initiated by an office other than USAFE/A7 and therefore these types of documents would have been completed by them. When USAFE/CV transferred the project to USAFE/A7C, we were forced into the fast-track method of design-build procurement to meet the requirements of the new mission upon the closure of Rhein Main AB. We feel the absence of an ABG Form 1 did not play a significant role in the challenges faced by the project execution team. The purpose of the ABG Form 1 is simply to allow the German construction agencies to properly staff their organizations' workload. This function is fulfilled when project programming information is conveyed at annual planning conferences held in conjunction with the various LBBs. According to the ABG 75, Paragraph 18.a, projects not included in the annual submission for program coordination, but for which ABG 2 and/or ABG 3 actions have been initiated do not require ABG Form 1 submission.
	(FOUO) AFAA: Presentation of the ABG Form 1 to the LBB provides the German authorities with documentation to use in the determination of whether construction will affect public interests. This form is used to notify the Federal Ministries for Transportation, Construction, and Finance. Given the past communication problems between the US Forces and LBB, this could have been used as an opportunity to improve these relationships and possibly the outcome of this major project. **(FOUO)** Article 3 of the ABG-75 requires the US coordinate projects with the German government to allow the German Government

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	Construction Agency (GGCA) to structure their organization workload. Coordination is accomplished annually by HQ USAFE on USAFE Form 105 (ABG Form 1), *Program of Construction for the US Forces*. USAFE personnel then prepare DD Form 1391, *Military Construction Project Data*, to request Congressional project funding. USAFEI 32-1006 states the US Forces initiate design and construction of properly approved projects on the USAFE Form 95 (ABG Form 3), *Intergovernmental Construction Order*, which begins the design process. The ABG Form 3 document should include a statement of work or requirements document detailing the work required in both German and English and appropriate site plans and vicinity maps. This form is also submitted to the GGCA but is done at the time the design process begins. **(FOUO)** USAFE did not have evidence on file to verify their claim that the LBB was aware of the project prior to the ABG Form 3 submission, and audit was not provided documentation to support USAFE's claim that KMCC project programming information was conveyed at any annual planning conference. Further, considering the time constraints USAFE cites in this project, the LBB should have been provided notice for planning purposes to properly estimate their design expenses based on the project magnitude and to coordinate their workload prior to design start.
Tab A, Project Planning and Construction Design, Audit Result 1, Condition, Bullet 2	**(FOUO) USAFE/A7:** Feasibility reviews were performed prior to and during the design stage. Additionally, there were a series of pre-design meetings held after LBB contracted with construction manager as the design agent. Some but not all of the concerns addressed above were covered through the course of these reviews and meetings. Please provide the requirement defining pre-design validation reviews because this is a term unfamiliar to MILCON practice.
	(FOUO) AFAA: Audit found no evidence of feasibility reviews that met the best practice standard of pre-design validation reviews. The USAFE/A7CCP provided an example of the pre-design validation review process conducted at AETC as an example of a best management practice currently in use. This cause was included at the

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	request of A7CCP in order to include a recommendation to use PDVRs in the future.
Tab A, Project Planning and Construction Design, Audit Result 1, Condition, Bullet 3	**(FOUO) USAFE/A7:** USAFE conducted monthly design reviews with AAFES, USAFE Services, Base, LBB, Corps of Engineers, and the A-E of record. Some of these reviews lasted an entire week. Due to the complexity of this project, USAFE/A7CC conducted these frequent design reviews in lieu of the typical 30-60-90 percent design reviews. This approach provided users enhanced opportunity for review, and therefore USAFE/A7CC disagrees with the finding that USAFE did not conduct all appropriate architectural design reviews. However, despite all these design reviews, the fact still remains that several comments were not incorporated into the contract documents. **(FOUO)** Due to the complexity of the project (i.e., contract specifications for the mechanical, electrical, plumbing contract is 10,000+ pages) even if USAFE had held a traditional 65 percent design review, it is very likely that the same problems would have occurred.
	(FOUO) AFAA: The design process consists of four design conferences. They are the KVM-Bau (5 - 10 percent pre-concept design submittal), HU-Bau (35 percent concept design review), AFU-Bau I (90-95 percent final design review), and AFU-Bau II (100 percent corrected final design, tender action package). When requested by the MAJCOM or functional users or on large projects, an additional HU-Bau concept design review can occur at the 65 percent design stage. This is to ensure designs meet functional and technical requirements and all comments from the 35 percent review have been appropriately incorporated in the design. This additional review would allow for a more detailed technical review of open concerns not yet corrected in the designs. The coordination of design review comments is a USAFE project manager responsibility. **(FOUO)** During our review, we obtained evidence of both the 35 and 95 percent reviews. This evidence included meeting minutes of the 35 and 95 percent design reviews, copies of unincorporated comments to the design reviews, and documentation supporting the LBB and

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	management's decision to remove the 65 percent design review to expedite the design process. **(FOUO)** Specifically, the auditor obtained and reviewed DD Forms 448 (military interdepartmental purchase requests) identifying additional project costs, evidence of the 35 percent design review, the request for the 65 percent design review, requirements document, the LBB's suggestion to remove the 65 percent design review (22 May 2003 discussion of the project time schedule), the LBB's official statement of 65 percent design review removal (10 June 2003 meeting minutes), evidence of the 95 percent review, and the resulting 100 percent design review. In addition, the auditor reviewed hard-copy meeting minutes from the pre-design charrette. We did find evidence of any other design charettes. **(FOUO)** As a result, we conclude no evidence exists to support management's statement that they conducted frequent design reviews in lieu of the typical 30-60-90 percent design reviews. Further, we contend that the 65 percent review was more important due to the detailed nature of the specifications for the KMCC contracts, particularly the 10,000+ pages for the MEP contract.
Tab A, Project Planning and Construction Design, Audit Result 1, Condition, Bullet 3	**(FOUO) USAFE/A7:** By far the most prevalent design errors encountered on this project involve inaccurate quantity estimates—very detailed material take-offs that are well beyond the scope of Air Force design reviews which focus on functionality and constructability. Verification of quantity estimates is the responsibility of the A-E designer and construction agent.
	(FOUO) AFAA: Audit disagrees with this comment. Although quantity overruns were prevalent in the KMCC project, during the audit fieldwork, audit identified several examples of design errors and subsequent change orders that were not related to quantity estimates. **(FOUO)** For example, the glass domes modification was a direct result of the missing design review. The design called for steel frame domes in which glass would be laid. However, the contractor determined additional tonnage for the strengthening of steel was

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	required. The additional steel prevented the glass from sitting properly inside the dome, thus an additional superstructure had to be built and placed over the original dome in order for the glass to fit properly. This modification is one that should have been prevented by a thorough technical design review. The escalators, elevators, and bolts are also examples of these types of modifications. **(FOUO)** Further, the design review comments were not incorporated; therefore, the designs did not have clear specifications even after the 35 percent review, which resulted in more change orders later in the project. For example, the core drillings were supposed to be sealed closed, but this was not written in the specifications; therefore, a change order had to be created to address the additional cost to the contractor. Because this work would have to be done whether in the specifications or not, the resulting mod must be paid by USAFE, and this is not a design deficiency for which the A-E contractor is liable. **(FOUO)** Finally, a senior USAFE manager confirmed audit's concerns over not conducting 65 percent design reviews when he provided a letter from USAFE/A7, dated 4 Jan 06, to the CENAU/DE (COE). This letter documented USAFE's acknowledgement of design deficiency change orders and requested the Corps of Engineer's assistance in conducting independent constructability reviews and 65 percent design reviews on all future projects. He further confirmed he personally "pulled the 65 percent design review because LBB was behind schedule in design preparation and the US emphasis was on the schedule of this project" in a discussion with the auditors. In addition, he stated the original project manager "instituted a design charette at the 65 percent stage instead of the normal on board" review." However, he declined to provide information or documentation to support this review.
Tab A, Project Planning and Construction Design, Audit Result 1, Cause, Bullet 1	**(FOUO) USAFE/A7:** During the time the ABG Form 1, (*Program of Construction Projects for the US Forces in the Federal Republic of Germany*) should have been prepared; the KMCC project was managed by another organization within USAFE (but outside the A7 Directorate). USAFE/A7 officials dispute that its absence from the ABG Form 1 project listing in any way affected this project due to the

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	high visibility it received by linkage to the RMTP. This finding does not appear to bear any relevance to the substance of this report. An ABG Form 1 is used to notify MOC of upcoming work so that the workload is known and resources can be assigned to cover that workload. Because LBB was well informed of this significant project, an ABG Form 1 was not required. Since it was part of the RMTP and planning for this project had gone on for some time, LBB and GBB authorities were fully aware of the project during planning phases. **(FOUO) 435 CEG:** The ABG Form 1 is simply an announcement to the German government of proposed US Forces design and construction for the coming years. The form is filed annually and used by the German Government to adjust its resources to accomplish US Forces work. It is also an opportunity for US Forces to signal which projects they would like to accomplish via direct method.
	(FOUO) AFAA: Article 3 of the ABG-75 requires the US coordinate projects with the German government to allow the German Government Construction Agency (GGCA) to structure their organization workload. Coordination is accomplished annually by HQ USAFE on USAFE Form 105 (ABG Form 1), *Program of Construction for the US Forces*. USAFE personnel then prepare DD Form 1391, *Military Construction Project Data*, to request Congressional project funding. **(FOUO)** USAFEI 32-1006 states the US Forces initiate design and construction of properly approved projects on the USAFE Form 95 (ABG Form 3), *Intergovernmental Construction Order*, which begins the design process. The ABG Form 3 document should include a statement of work or requirements document detailing the work required in both German and English and appropriate site plans and vicinity maps. This form is also submitted to the GGCA but is done at the time the design process begins. **(FOUO)** During the audit fieldwork, the auditor searched the KMCC project files for a copy of an ABG Form 1 or any other form of documentation listing the project was planned. The auditor did not identify any such document. Therefore, audit concludes USAFE did

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	not have evidence on file to verify their claim that the LBB was aware of the project prior to the ABG Form 3 submission, and audit was not provided documentation to support USAFE's claim that KMCC project programming information was conveyed at any annual planning conference. **(FOUO)** Considering the time constraints USAFE cites in this project, the LBB should have been provided notice for planning purposes to properly estimate their design expenses based on the project magnitude and to coordinate their workload prior to design start. Audit discussed this concern with the ABG-75 Specialist, who confirmed USAFE has not prepared the required ABG Form 1 document detailing the construction workload in the last 7 years. The ABG-75 Specialist confirmed this document was historically prepared by the A7 Programming Division. Regardless of the initiating construction management office, USAFE/A7 was the original and appropriate office to complete this documentation and report it to the LBB. The USAFE and LBB can use this document as a management tool to assist in estimating the number of personnel required to manage the construction project, to include the volume of projected construction work.
Tab A, Project Planning and Construction Design, Audit Result 1, Cause, Bullet 2	**(FOUO) USAFE/A7 & JAI:** While USAFE recognized some of the key project risks during the planning phases, required completion date for the facility dictated that some calculated risks be taken; however, USAFE/A7CC did establish weekly design meetings and assisted the AF Services agency in setting up constructability reviews for technical issues associated with the VQ. The LBB implemented trade lots contracts for the entire RMTP program as a condition of the German funding involved. As a result of political considerations (protection of smaller local companies) trade lots contracts are the rule under German contracting law. General contracting is the exception, requiring detailed justification. During the main KMCC contracting period LBB was under extreme political pressure to use trade lots, due to the overall slow construction business in Germany. While construction by trade lots is not preferred by the US for vertical construction, it is not an unfamiliar method of contracting to the German government and the LBB.

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	(FOUO) AFAA: Audit notes the VQ does not constitute the entire KMCC project. Audit did not find documentation to support this statement nor did management provide any. Further, the Corps of Engineers confirmed the Passenger Terminal Annex project (also RMTP) was awarded to a general contractor and was not done by trade agreements. Audit notes the VOB allows for consolidation of contract requirements, in VOB Part A, Section 1, §4, paragraph 3 states, "For financial or technical reasons, two or more trade lots may be combined under one award." However, the LBB confirmed USAFE could have required LBB to contract a general contractor. **(FOUO)** The Ramstein Southside Fitness Center is an example of a project originally planned to use unit priced contracts, which was changed to lump sum contracting per USAFE's request. Detailed justification was not a factor in choosing the contracting method in this project. We found no evidence that USAFE attempted to prepare general contractor justification for the KMCC project. **(FOUO)** Audit agrees trade-wise contracts do not constitute unfamiliar contracting methodology for Germany or the LBB. However, audit does not agree familiarity justifies the lack of effort in requesting or obtaining a general contractor and contends it instead was not in the best long-term interest for the KMCC project.
Tab A, Project Planning and Construction Design, Audit Result 1, Cause, Bullet 3	**(FOUO) USAFE/A7C:** Due to the complexity of the project and to provide greater opportunities for coordination, the 65 percent design was replaced with monthly design review meetings. This revised process allowed for technical reviews beyond the typical 35-65-95 percent design submittal phases. Two design submittals were accomplished: Afu Bau (35 percent) and Hau Bau (95 percent). **(FOUO)** Including a 65 percent design submittal would have cost the US Government approximately $350K and the Project Delivery Team decided to hold monthly design reviews in lieu of the single 65 percent design review, thus saving $350K. None of the change orders encountered to date would likely have been avoided through the addition of a 65 percent design review.

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	(FOUO) AFAA: Audit contends USAFE personnel did not conduct all appropriate architectural design reviews to estimate and mitigate project risk and did not ensure user design review comments were fully incorporated into subsequent designs. **(FOUO)** Audit obtained evidence of both the 35 and 95 percent reviews. This evidence included meeting minutes of the 35 and 95 percent design reviews, copies of unincorporated comments to the design reviews, and documentation supporting the LBB and management's decision to remove the 65 percent design review to "expedite" the design process. Specifically, the auditor obtained and reviewed • **(FOUO)** DD Forms 448 (MIPRs) identifying additional project costs • **(FOUO)** Evidence of the 35 percent design review • **(FOUO)** The request for the 65 percent design review • **(FOUO)** Requirements document • **(FOUO)** LBB's suggestion to remove the 65 percent design review in a 22 May 2003 to discuss the project time schedule • **(FOUO)** LBB's official statement of 65 percent design review removal on 10 June 2003 • **(FOUO)** Confirmation of the LBB's official statement of 65 percent design review removal in meeting minutes from the 10 June 2003 meeting • **(FOUO)** Evidence of the 95 percent review • **(FOUO)** 100 percent design review • **(FOUO)** Meeting minutes from the predesign charrette **(FOUO)** Based on the documentation reviewed, audit was unable to validate management's assertion that their actions improved opportunities for coordination and technical reviews beyond the typical 35-65-95 percent design submittal phases. As a result, we cannot confirm the cost estimate management provides for the 65 percent design review or the Project Delivery Team's decision as stated above.

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	(FOUO) During the audit, several examples of design errors and subsequent change orders were identified that were not related to quantity estimates. Refer to our response to Tab A, Project Planning and Construction Design, Condition, Bullet 3 above. **(FOUO)** Audit contends this evidence supports USAFE/A7 management could have prevented some change orders if they had not removed the 65 percent design review from the design process.
Tab A, Project Planning and Construction Design, Audit Result 1, Impact, Bullet 1	**(FOUO) USAFE/A7:** The German government was fully aware of the KMCC project and the timeline of construction and therefore we disagree with this impact. Had the German government not been aware of this project, we would agree with this statement.
	(FOUO) AFAA: Based on the information reviewed during the audit, we disagree that the German government was fully aware of the KMCC project and the resulting construction timelines prior to the ABG Form 3 document submitted for the project and contend that the notification was not sufficient to allow the LBB to allocate appropriate resources for a project of this size, scope, and complexity.
Tab A, Project Planning and Construction Design, Audit Result 1, Impact, Bullet 2	**(FOUO) USAFE/A7:** As stated in the introduction, we disagree with the cost information provided in this audit. Although we have already experienced 5 percent cost growth from basic contract awards, we are not expected to exceed the programmed amount for the project. Our final cost estimate for the facility is €132.1M (~20 percent cost growth from basic contract awards) which is still under the programmed amount of €132.5M. Regarding the schedule growth, please refer to Audit Result 5. Additionally, we still contend that had the 65 percent design review been performed, the number of change orders would not have significantly changed due to the complexity of this particular project. **(FOUO)** In reference to the change orders, although some of them could have been avoided, it is not accurate to say that costs associated with these changes were preventable due to the line-item contracting method. This project incurred unusually high cost growth, perhaps

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attributable in part to its fast-track construction process. Major rework including escalator foundations, door opening lintels, and floor electrical outlets could possibly been prevented had more time been available for design phase.

(FOUO) While the modifications could have been avoided, because the project is a line-item contract, these modifications would have been included in the line-item contract costs and therefore it is not accurate to say that the costs associated with these changes were avoidable.

(FOUO) AFAA: We calculated the cost growth based on estimated contract costs for the original 12 KMCC trade-wise contracts. Specifically, the percent cost growth was calculated based on the original estimated construction cost (ABG Form 4s on file for the original 12 trade-wise contracts) plus all known ABG Form 4s, ABG Form 5s, and pending change orders (internal and external) to the date of the calculation (September 2006). Further, the original project cost, as approved by Congress in 2003, was $115,300,000. USAFE exceeded this amount when the original 12 ABG Form 4 documents were estimated. To illustrate:

(FOUO)

Original ABG 4s	**118,682,821.26 €**
ABG 5s on Original ABG 4s	**15,019,569.04 €**
% Growth	**12.66%**
ABG 4s resulting from Changes	**9,993,406.25 €**
ABG 5s on ABG4s resulting from Changes	**3,149,552.55 €**
Total Cost of Project	**146,845,349.10 €**
Total ABG 5s	**18,169,121.59 €**
Total Cost of Changes	**28,162,527.84 €**
Total % Cost Growth	**23.73%**

(FOUO) To determine whether change orders were preventable, we requested USAFE/A7CCP evaluate the LBB's list of change orders and identify whether change orders were a result of engineering changes, items missing from contacts specifications, user-requested

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	changes, miscellaneous change reasons, differing site conditions, value-engineering changes, or administrative changes. We included in the preventable category only change orders for items completely missing from the specifications (versus quantity concerns), user-requested changes, miscellaneous, and administrative changes. We did not include engineering changes, value-engineering changes, or differing site conditions. **(FOUO)** Audit agrees line-item contracting means the US should only pay for work completed. Certainly all line-item contracts will have some change orders. However, line-item contracting is not the cause for the preventable change orders identified in this audit result – the design not being technically sound was cause for additional change orders. Specifically, had the original design been properly reviewed and review comments properly incorporated, the project would not have incurred many of the change orders identified. **(FOUO)** As outlined in Audit Result 7: "USAFE did not request the LBB assess liability for 21 deficiencies confirmed by an independent expert as design errors which could have been prevented if USAFE performed proper design planning and conducted all design reviews." Design deficiencies discovered during the construction of the KMCC contributed to contract change orders for which we conservatively estimate USAFE may be billed at least €952,954 ($1.1 million). These 20 items resulted in change orders or expected billable costs to USAFE and are a good example of how appropriate design reviews and design comment incorporation leads to saving the government money. **(FOUO)** Management contradicts their previous statements that the 65 percent design review was not necessary. If management agrees they needed more time in the design phase, the 65 percent design review should have not been removed to expedite the design process as management previously. **(FOUO)** We agree that some changes are not preventable and believe the distribution above most accurately reflects that statement it accounts for unpreventable change orders and all those marked as questionable in management's change order review. Moreover,

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	USAFE/A7 identified these change orders as preventable during the audit.
Tab B, Solicitation and Award, Background, Paragraph 2	**(FOUO) USAFE/A7:** USAFE/A7CC worked with LBB to try to gain as much information as possible concerning its recommendation of contractors; however, neither the ABG-75 nor VOB require this information be provided to the sending state forces. Much of this information was relayed verbally, in closed discussions between senior officials because of the political and public climate during the execution of the KMCC. LBB-Kaiserslautern (KL) was under intense scrutiny over its contracting and evaluation procedures, and written or e-mail correspondence was curtailed to protect contract sensitive information. The potential that protests from contractors could delay the project indefinitely was a continual risk understood by leadership of all parties; especially due to recent legal rulings requiring two-week's notification to unsuccessful bidders in order to allow them to protest award decisions. **(FOUO)** All proposed contracting actions were required to be reviewed by GBB lawyers prior to submitting the ABG 4 to the Air Force recommending award of the contracts to specific contractors. **(FOUO)** The ABG-75 requires the LBB comply with German contracting laws and procedures; including determining whether a contractor was capable of completing the work required; the US could raise concerns, but had very limited influence on contractor selection unless USAFE could prove beyond doubt a particular contractor was incapable of completing the work. As an example, in July 2006 USAFE/A7CC provided LBB detailed concerns with one contractor on several recent projects on Ramstein AB in an (unsuccessful) attempt to have the firm barred from future work on base.
	(FOUO) AFAA: Regardless of the method used, the contract agent and USAFE personnel should maintain records of the contractor's qualifications. In this section of the Background, we are only stating the contract agent and USAFE personnel should maintain records of the contractor's qualifications as a management best practice.

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	(FOUO) We did not review if all proposed contracting actions were reviewed by GBB lawyers prior to submitting the ABG Form 4 to the Air Force as part of this audit. In addition, we did not identify nor did management provide any documented evidence to show USAFE collected or reported contractor concerns outside of verbal, weekly meetings with the LBB. In our opinion, these meetings did not result in actions to correct concerns identified. As such, audit made an audit comment to address this issue and a subsequent recommendation to more formally address this concern. **(FOUO)** Audit notes that the July 2006 USAFE/A7CC memorandum to LBB was written during the audit and occurred on another construction project, not the KMCC. While this action may be a partial management corrective action in addressing the concern, management also stated they were not successful. Since audit is not familiar with the project or contractor mentioned and management did not provide evidence of their claim, audit cannot determine why this action was unsuccessful.
Tab B, Solicitation and Award, Background, Paragraph 2	**(FOUO) 435 CEG:** In the US and in accordance with the FAR, the Contracting Officer notifies parties of the bid opening date, time, and location but that invitation is not to have customers object, select or recommend how selection is made. That decision is the Contracting Officer's decision. This is no different than contracting in Germany. The LBB as the Contracting Officer has the sole responsibility to determine if the bid is fair, company is competent technically, and able to perform the work.
	(FOUO) AFAA: While the Federal Acquisition Regulation (FAR) provides excellent guidance for construction contracting, it is not applicable in the German construction process, since the GGCA officially performs the contract negotiations and award. While we agree the LBB acting as the contract agent on behalf of the US has the responsibility to determine fair bids, technical competency, and capability of the contractor: • ABG-75, Article 5, paragraph 5.1 states, "The Forces may request deletions, additions or substitutions to be made (to the tender list). The German authorities shall check the capacity

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	and expertise as well as the financial reliability and technical capabilities of all firms nominated by German authorities and, if requested, those nominated by the Forces. The German authorities shall conform with regulations for awarding contracts for Federal building. The Forces' recommendations shall be compiled with in so far as they do not contravene these regulations. If they do contravene these regulations, the German authorities shall inform the Forces in writing giving the reasons for their objections to the Forces' recommendations." • **(FOUO)** ABG-75, Article 5, Paragraph 5.3 states, "The Forces may reject, through the German authorities, any tender in so far as this rejection is not in conflict with German law." **(FOUO)** Therefore, if the LBB does not inform the US Forces of the tender date and place of opening of tenders, provide copies of the invitations to tender at the same time as the proposed tenderers, the tender list, or the results of the tendering until after the contractor is selected (i.e., with the ABG Form 4 document listing the recommended tenderer/contractor), the US is not being afforded the opportunity to participate in the bid process or contractor selection process and cannot, therefore, reject a potential tenderer or provide evidence to support that rejection prior to the contract action. **(FOUO)** Audit agrees in accordance with the ABG-75, Article 10, paragraph 10.1.5. the US Forces submit "*their concurrence in the award of contract(s)...by return of ABG Form 4 with completed Part II.*" **(FOUO)** In our opinion, if the US Forces do not agree with the LBB's selection of a contractor, they have an opportunity to refuse the contractor by not submitting the ABG Form 4 section II completed. However, if this refusal is not in compliance with German laws, the LBB will be forced to select the contractor, regardless of the US opposition to the contractor. The point here is that there is no established process or procedures for the US to submit contractor quality, qualification, and timeliness concerns to the LBB, other than verbally. Thus, the US and the LBB must come to an agreement on

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	the best way for the US to report these concerns, and must gain German legal approval for the best way to pursue eliminating a contractor from the bid process if the US has due cause for not desiring to work with the contractor (i.e., the contractor is unable to accomplish the work, does not have the appropriate credentials, or is in some way not competent to perform the work required).
Tab B, Solicitation and Award, Background, Paragraph 2	**(FOUO) Army Corps of Engineers:** The VOB does not allow us to do best source selections as we do in the United States.
	(FOUO) AFAA: We agree; however, we are not recommending best value source selections. Management stated in their comments to Recommendation B.1., "The US Army Corps of Engineers is in the process of developing a joint agreement with the LBB to solicit construction contract bids using the Best-Value Procurement Method. If the Corps is successful in implementing this initiative, USAFE may also benefit from the changes to the contract bid process, including potential gains in price-performance trade-off."
Tab B, Solicitation and Award, Background, Paragraph 3	**(FOUO) USAFE/A7:** Liquidated damages would have to be evaluated by LBB to determine if this stipulation is in accordance to VOB. Liquidated damages will however be pursued within the scope of the comprehensive claims analysis being undertaken by USAFE/A7CC. This is described in some detail in the USAFE/A7CC Response to Audit Findings (Appendix II). Bottom line is that USAFE/A7CC will work with LBB in evaluating contractor delays and pursuing damages resulting from inadequate or negligent contractor performance. **(FOUO)** Below is an excerpt prepared for USAFE senior leadership prior to July 2006 outlining the process for pursuing liquidated damages: **(FOUO)** "We can have liquidated damage (LD) clauses in our contracts for poor performance. The ABG-75 is the administrative agreement between the German Federal Ministry and the US Forces governing the execution of construction of the sending states in Germany. Provisions for

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	LDs are included in the ABG-75 if the contractor is late completing the construction work. Such damages are assessed at the rate of one-tenth of one percent of the final construction contract amount for each work-day of delay, but are limited to no more than 5 percent of the final contract amount. **(FOUO)** When the liquidated damages verbiage is included in the preliminary remarks of a bid package, the LBB can pursue LDs with no proof of actual damages by the US. If the clause was not included, the US can still pursue damages by proving actual financial losses. We've learned recently that the LBB has stopped including this clause and we're pushing this issue with them on the Indoor Swimming Pool project. The clause was not included in any of the KMCC contracts or the Fitness Center project; however this doesn't preclude the LBB from pursuing damages from the contractor where we can prove actual damages. **(FOUO)** Based on our own experience along with the European District of the Army Corps of Engineers, pursuit of LDs presents a lesser threat to German contractors over what is typically experienced stateside. The biggest challenge in successfully pursuing LDs is the number of modifications typically required over the course of construction that are related to design errors/omissions, changed conditions, or user changes. All modifications must be negotiated and finalized before assessing the actual final contract completion date from which LDs would start. As the number of changes grow, the credibility of the LBB's position concerning the government position of true schedule decreases significantly if challenged in court. Secondly, the LBB must repeatedly notify contractors about poor performance during a contract and provide opportunities for remedy in order to successfully pursue LDs. The LBB has issued such notifications on the fitness center and on the KMCC MEP contracts. Even with measurable losses documented at the NCO Club, as well as notifications to the contractor; we're currently still working with LBB to resolve all outstanding modifications so that they can pursue LDs."

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	(FOUO) AFAA: Regarding the liquidated damage clauses, audit agrees there are differences between construction in the US and in Germany. This includes the methodology behind pursuing liquidated damages. However, these differences should not significantly impact USAFE/A7's ability to properly report and request assessment of potential damages. **(FOUO)** Audit notes management's excerpt was transcribed from an e-mail dated 9 January 2006 from USAFE CV and USAFE A7/CC discussing liquidated damages. It validates USAFE did not make sure the LBB inserted liquidated damages clauses in the KMCC or Fitness Center contracts. However, it does not provide evidence of pursuit of damages through the appropriate channels. **(FOUO)** Audit agrees the proposed action contained in management's response to Recommendation B.6 should assist in correcting the condition identified. Specifically, management stated: • **(FOUO)** "We will request LBB to insert liquidated damages clauses in future General contractor and trade-wise construction contracts as allowed by ABG-75." • **(FOUO)** "This matter will be explored thoroughly by the construction claims consultant A7CC acquired 13 December 2006 under contract through AFCEE. HQ USAFE/A7CC is committed to holding A-E firms responsible for the quality of their work and will aggressively pursue recovery of damages from negligence or breach of contractual duty where economically justified and in the best interests of the Government. Recovery actions will be pursued in close coordination with USAFE leadership, including JA and A7K contracting staff, employing litigation or political settlement as necessary to protect US interests. Pursuit of recovery will be conducted within the overall construct of the ABG-75 agreement and the VOB." **(FOUO)** We agree these actions are warranted and should help with the identification of potential damages. Audit further agrees in

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	management's proposed pursuit of damages through the appropriate channels. We conclude management's comments, when implemented, will sufficiently address the audit result identified.
Tab B, Solicitation and Award, Audit Result 2, Condition, Bullet 1	**(FOUO) USAFE/A7:** ABG-75 does not offer this option to the US It is an LBB process; and although the US asked to participate, we were not given the opportunity. We are however allowed to attend bid openings and review potential bid lists, and have done so. Bottom line is that historically the US has had minimal influence approving potential bidders.
	(FOUO) AFAA: The ABG-75, Part II, Article 5, paragraph 5.2 states, "The Forces shall be informed in good time of the date and place of opening of the tenders." Further, it states "To ensure the timely notification, the US Forces shall be furnished the "invitation to tender" at the same time as the proposed tenderers." Further, German contract law (the VOB), Part A, Section 1, §10, paragraph 1(a) states, "The tender documents include the letter of invitation (call for tenders), conditions of application, and the contract documents." This description could be reasonably substituted for the US FAR requirement for a Request for Proposal. Therefore, audit concludes the ABG-75 and German contract law both offer the US the opportunity to participate in the bid process. **(FOUO)** The issue discussed in this condition statement is that LBB did not perform to the level required of their role in the bid process as defined by the ABG-75 and the VOB. Further, they did not provide copies of the documentation, as required by the aforementioned regulations. Had the US requested to participate in the LBB bid process and requested resulting documentation, this would have indicated to the LBB that they wanted to be more involved in the contractor selection process, as provided by the ABG-75 and the VOB.
Tab B, Solicitation and Award,	**(FOUO) USAFE/A7:** As stated above, LBB was under intense scrutiny with all proposed award actions requiring GBB approval before submitting to the US for approval. Although there were discussions

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Audit Result 2, Condition, Bullet 2	between USAFE/A7CC and GBB officials once all German contract award evaluations were complete, this is an LBB process and the ABG-75 does not afford the US the opportunity to participate in contractor evaluations, despite our request to do so. **(FOUO)** The GBB, not USAFE, was held accountable for compliance with German contracting law, and therefore it took considerably more time than we anticipated in reviewing and approving award recommendations. The excerpt below is from a briefing addressing this topic: > **(FOUO)** We do not use best value contracts in Germany due to German contracting laws; however we do have some options to improve our chances for success on projects. The typical construction contract through LBB is awarded to the low bidder deemed acceptable during LBB's technical and cost evaluation. LBB does evaluate proposals and eliminates bidders that it assesses as incapable of performing the work or where technical/cost proposal is in obvious error. With the recent investigations ongoing with LBB-KL, these evaluations are under intense scrutiny and all proposed awards are forwarded to GBB for approval. **(FOUO)** Our best opportunity for success is through using selective bidder lists for our contracts. The selective bidders, typically about eight, are pre-qualified; awards are still based on low bid. Our housing program has enjoyed success using this process. The Ministry of Construction and GBB resist using selective bidders lists exclusively on our projects and entertain only those projects that are mission critical such as the 16 AF Air Operations Center; or on housing, where delays to any single phase of construction impacts subsequent phases.
	(FOUO) AFAA: The US participation in the bid process is authorized, as promulgated by the ABG-75 and the VOB. The LBB's investigation resulting in "intense scrutiny" does not release them from their responsibility to obtain and maintain records of contractor qualifications. Further, audit found no evidence USAFE requested this documentation. USAFE/A7 would benefit from the provision of

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	contractor qualifications both when validating whether contractors are competent and qualified to perform contracted work and when writing rebuttals to contractor selection in accordance with the ABG Form 4 process. Therefore, audit maintains its position that USAFE personnel did not ensure the bid process was properly documented. **(FOUO)** Management did not provide documentation related to the housing program for audit review at any time during or following the audit. As a result, audit cannot validate the document excerpt or its source or purpose. As a result, we can only make an assessment based on known data obtained during the audit.
Tab B, Solicitation and Award, Audit Result 2, Cause, Bullet 2	**(FOUO) USAFE/JAI:** LBB is required to examine bidder qualifications at public/open solicitations prior to the invitation to tender, VOB/A Section 25, Para 2. For details on the foreseen US involvement the examination and selection process see ABG 75, Article 5 plus the Implementing Instructions hereto. The German authorities shall furnish the US Forces timely information on the number and names of the proposed tenderers. No further details on which documentation must be provided is provided for in current agreements.
	(FOUO) AFAA: Audit agrees the LBB is required to examine bidder qualifications in accordance with the VOB, Part A: • **(FOUO)** Section 1, §8, paragraph 5(2) states, "Clients are entitled to require candidates or bidders to submit appropriate certificates issued by the responsible authorities or to make corresponding declarations" of their competence, efficiency, and reliability. • **(FOUO)** Part II of the ABG-75, Article 5, paragraph 5.1 states, whereas, "The method of invitation to tender for construction works shall be agreed between the German authorities and the Forces." "The Forces may request deletions, additions or substitutions to be made. The German authorities shall check the financial reliability and technical capabilities of all firms nominated by German authorities and, if requested, those nominated by the Forces. The German authorities shall

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	conform with regulations for awarding contracts for Federal building. The Forces' recommendations shall be compiled in so far as they do not contravene these regulations. If they do contravene these regulations, the German authorities shall inform the Forces in writing giving the reasons for their objections to the Forces' recommendations." o **(FOUO)** Paragraph 5.3 states, "The Forces may reject, through the German authorities, any tender in so far as this rejection is not in conflict with German Law." o **(FOUO)** LBB personnel validated if the US Forces believe the contractor selected is not reliable, the only way to request the bid not be accepted is to refuse to sign the ABG Form 4 document accepting the tenderer and provide an explanation of the reasons why not. This could potentially lead to litigation and the LBB would prefer to write additional qualifications into a contractor's contract requirements rather than proceed to litigation. This is because there are certain stipulations in the VOB in which the LBB can turn down a bid, and if the US's request not to select the contractor does not meet these legal requirements, the LBB would be required to select the contractor. o **(FOUO)** LBB personnel further confirmed the US currently does not provide information to the LBB on quality concerns. Further, the US and the LBB did not establish a process for the contractor to provide qualifications for US review, other than that stated in the VOB, Part A, Section 1, §8, paragraph 5(2). **(FOUO)** Therefore, audit concludes USAFE cannot reasonably contest the competency of a contractor without first knowing their specific qualifications, which would be provided by LBB, since there are currently no methods to otherwise obtain the information.
Tab B,	**(FOUO) USAFE/A7 & 435 CEG:** Ongoing, long-term discussions

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Solicitation and Award, Audit Result 2, Cause, Bullet 4	over proposed amendments to the ABG-75 have addressed the need for LBB contractor source selection criteria to include contractor past performance evaluations. This continuing effort affecting all sending state forces goes well beyond the purview of this audit. We have offered for LBB's consideration insight into the best value procurement methodologies DOD employs for awarding contracts including objective contractor source selection criteria. However, even if given the opportunity, USAFE is not in a suitable position to evaluate German contractors.
	(FOUO) AFAA: Audit contends this cause applies as much to identifying to the LBB and managing problems with contractors' and construction managers' (CMs) management of construction projects as it does to document submissions to LBB recommending selecting or rejecting contractors during the bid process. Although USAFE cited numerous concerns with contractors and CMs, during our audit fieldwork we did not identify any record of USAFE's previous concerns with contractors was on file with the LBB for their review during contractor selection. If contractor qualifications and concerns with contractor performance are not properly documented, neither USAFE nor the contract agent has adequate assurance the contractor could be held liable if he is found incapable of performing all contracted items. This could result in contractor default and/or additional charges to the government to re-solicit contracts or further subcontract original project requirements.
Tab B, Solicitation and Award, Audit Result 2, Impact	**(FOUO) USAFE/JAI:** Article 5.2 ABG 75 provides for the following: In the case of limited invitations to tender or open invitations to tender at the request of the Forces, the number and names of proposed tenderers for each tender action are to be agreed between the German authorities and the Forces. The Forces may request deletions, additions or substitutions to be made. The German authorities shall check the capacity and expertise as well as the financial reliability and technical capabilities of all firms nominated by German authorities and, if requested, those nominated by the Forces. The German authorities shall conform with regulations for awarding contracts for Federal building. The Forces' recommendations shall be complied with in so far as they do not contravene these regulations. If

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	they do contravene these regulations, the German authorities shall inform the Forces in writing giving the reasons for their objections to the Forces' recommendations. **(FOUO) USAFE/A7:** Although the US has the right to reject the selection of a particular contractor, USAFE has been unsuccessful in this process on recent projects even when past performance was well documented. Specifically, USAFE/A7CC formally submitted to LBB in July 2006 details of repeated poor performance of one contractor on several Ramstein AB projects, but we were still unsuccessful in denying that firm future work on base.
	(FOUO) AFAA: Audit agrees the LBB is required to examine bidder qualifications in accordance with the VOB, Part A, Section 1, §8, paragraph 5(2) states, "Clients are entitled to require candidates or bidders to submit appropriate certificates issued by the responsible authorities or to make corresponding declarations" of their competence, efficiency, and reliability. However, as management discloses above, Part II of the ABG-75, Article 5, paragraph 5.1 states, whereas "The method of invitation to tender for construction works shall be agreed between the German authorities and the Forces. The Forces may request deletions, additions or substitutions to be made. The German authorities shall check the financial reliability and technical capabilities of all firms nominated by German authorities and, if requested, those nominated by the Forces. The German authorities shall conform with regulations for awarding contracts for Federal building. The Forces' recommendations shall be compiled in so far as they do not contravene these regulations. If they do contravene these regulations, the German authorities shall inform the Forces in writing giving the reasons for their objections to the Forces' recommendations." Further, paragraph 5.3 states, "The Forces may reject, through the German authorities, any tender in so far as this rejection is not in conflict with German Law." **(FOUO)** LBB personnel validated if the US Forces believe the contractor selected is not reliable, the only way to request the bid not be accepted is to refuse to sign the ABG Form 4 document accepting the tenderer and provide an explanation of the reasons why not. This

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	could potentially lead to litigation, and the LBB would prefer to write additional qualifications into a contractor's contract requirements rather than proceed to litigation. This is because there are certain stipulations in the VOB in which the LBB can turn down a bid, and if the US's request not to select the contractor does not meet these legal requirements, the LBB would be required to select the contractor. LBB personnel further confirmed in August 2006 the US currently does not provide information to the LBB on quality concerns. Further, the US and the LBB did not establish a process for the contractors to provide qualifications for US review, other than that stated in the VOB, Part A, Section 1, §8, paragraph 5(2). **(FOUO)** Therefore, audit concludes USAFE cannot reasonably contest the competency of a contractor without first knowing their specific qualifications, which would be provided by LBB, since there are currently no methods to otherwise obtain the information.
Tab B, Solicitation and Award, Audit Result 2, Recommendation B.1	**(FOUO) 435 CEG:** Nowhere does the ABG-75 allow for joint participation in the source selection or prequalification. The agreement does provide for US to be present during bid opening but not as a voice of agreement or dissent. The only opportunity to reject is when LBB makes a tender offer on an ABG 4 and then that could be overruled if GBB believes this violates German law.
	(FOUO) AFAA: The ABG-75, Part II, Article 5, paragraph 5.2 states, "The Forces shall be informed in good time of the date and place of opening of the tenders." Further, it states, "To ensure the timely notification, the US Forces shall be furnished the "invitation to tender" at the same time as the proposed tenderers." Further, German contract law (the VOB), Part A, Section 1, §10, paragraph 1(a) states "The tender documents include the letter of invitation (call for tenders), conditions of application, and the contract documents." This description could be reasonably substituted for the US FAR requirement for a Request for Proposal. Therefore, audit concludes the ABG-75 and German contract law both offer the US the opportunity to participate in the bid process.
Tab B,	**(FOUO) 435 CEG:** LBB maintains these records and we have them

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Solicitation and Award, Audit Result 2, Recommendation B.5	with the ABG 4s.
	(FOUO) AFAA: Qualification surveys are completed by the contract agent to determine and evaluate the technical, production, quality assurance, and financial capabilities of the contractor and to determine accounting services and related internal controls. In addition, the qualifications survey would normally include an evaluation of property control, transportation, packaging, security clearance capability, safety, and environmental and engineering controls. **(FOUO)** Audit validated the contract agent (LBB) determines the contractor is capable of performing all contracted items by performing this survey, but they do not maintain records of the contractor's qualifications because the VOB does not specifically require them to do so. Further, the US and the LBB do not have an established process for the contractor to provide qualifications for US review, other than that stated in the VOB, Part A, Section 1, §8, paragraph 5(2) states, "Clients are entitled to require candidates or bidders to submit appropriate certificates issued by the responsible authorities or to make corresponding declarations" (of their competence, efficiency, and reliability). **(FOUO)** USAFE did not request contractor qualification documents. The ABG Form 4 document does not meet all requirements of a typical qualification survey, as outlined above. This pre-solicitation survey should be completed far before the bid process commences. Finally, if contractor qualifications and concerns with contractor performance are not properly documented, neither USAFE nor the contracting agent has adequate assurance the contractor could be held liable if he is found incapable of performing all contracted items. This could result in contractor default and/or additional charges to the government to re-solicit contracts or further subcontract original project requirements.
Tab B, Solicitation and	**(FOUO) USAFE/A7:** See the earlier comments on liquidated damages and the point that they can be enforced with or without

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Award, Audit Result 3, Condition	clauses. A7CC is focusing on having LBB document delays and financial impacts from poor performance in the areas of design and scheduling to pass onto the Construction Management. In regard to the liability of subcontractors, this is not required. LBB is required by VOB to hold the main contractor responsible for completion of the work, regardless if a subcontractor is used or not. If the main contractor is unable to perform part of its work, the LBB will contract with another company to perform the work and then bill the main contractor for that portion of the work in accordance with VOB. This actually occurred when one of the contractors declared bankruptcy and LBB then acted as general contractor to complete the work.
	(FOUO) AFAA: The ABG-75, Part II, Article 4.1, paragraph 4.1.2 states, "Liquidated damages are agreed upon if the contractor is late completing the construction work." Unlike US contracting procedures, the ABG-75 does not require the inclusion of this clause; however, the VOB (German contract law) does require them to pursue liability. Audit found no evidence of liquidated damages clauses in KMCC contracts and confirmed with the LBB that this clause was not requested by the US government. **(FOUO)** The LBB confirmed liquidated damages clauses should be inserted in trade-wise contracts in accordance with the VOB. Specifically, the VOB Part B, §5, paragraph 4 states, "If the contractor delays the start of work, or if he does not complete it on time, or if he does not meet his commitments under No. 3 above (detailing the required number of workers, equipment, materials, or components to execute work), the client may, if he maintains the contract, seek damages in accordance with §6, paragraph 6, or set the contractor a reasonable term for the fulfillment of the contract and serve notice of his intention to withdraw the contract id, on expiration of the term, the contract has not been duly fulfilled (cf. §8, No. 3)." **(FOUO)** The VOB Part B, §6, details the LBB's actions in regard to contractor obstruction and interruption of work. In addition, the ABG-75, Part II, Section A. Execution, Article 4.1, paragraph 2 states, "Liquidated damages are agreed upon if the contractor is late completing the construction work. Such damages will be at the rate of one-tenth of one percent of the final construction contract amount for

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	each workday (i.e. calendar days excluding Sundays and German holidays) of delay, but in no event exceed a total of 10 percent of the contract amount." **(FOUO)** LBB personnel stated, "The LBB uses a paragraph reference to the liquidated damages in their contracts. Specifically, the LBB would have to prove the contractors were behind contracted schedules. Further, if the contractors agree to provide assurances they will fulfill the contract through the warranty period, the LBB will only pursue liquidated damages for hindrances by other contractors. In this process, the LBB evaluates alleged hindrances and when necessary, takes liable contractors to court using the hindered contractors' calculations and statements of overhead." **(FOUO)** Audit found no evidence suggesting otherwise, nor did management provide any. An e-mail dated 9 January 2006 from USAFE CV and USAFE A7/CC validated USAFE's lack of oversight in liquidated damages clauses. Specifically, it validated USAFE did not make sure the LBB inserted liquidated damages clauses in the KMCC or Fitness Center contracts. Audit notes this condition occurred because USAFE management did not provide appropriate oversight to ensure US interests were protected through LBB insertion of liquidated damages clauses in KMCC contracts.
Tab B, Solicitation and Award, Audit Result 3, Cause	**(FOUO) USAFE/A7:** Neither of these observations is the reason liquidated damages have not yet been pursued. This wording suggests a single USAFE senior manager approved the decision to use trade contracts versus a general contractor. A previous program manager advises that this decision was not made in a vacuum and, based on the RMTP program which used no general contracts because of German financing; we do not believe general contracts could have been awarded on this project. **(FOUO)** Liquidated damages have no relation to the use of general contractor or trade contracts. Liquidated damages can still be pursued against LBB for inadequate performance of its responsibilities of design and construction management by way of A-E liability.

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	(FOUO) AFAA: There was no legal requirement to solicit the KMCC contracts as trade-wise agreements and limiting or eliminating the need for subcontractors was a concern for both security and invoice review processes. The design of the project began in May 2003, prior to the ABG Form 3 document submitted by the US Forces in October 2003. The US leadership requested the construction shell start first in August 2004, which resulted in a trade contract issued. Once contracted, the shell construction began November 2004. **(FOUO)** According to a senior USAFE manager, USAFE leadership wanted to perform infrastructure work while still in the design phase. This contracting method could be done either with a general contractor or through trade-wise contracts. The decision was recommended by LBB based on the size of the contract. Further, the LBB and the original Project Manager agreed the use of trade-wise agreements would eliminate the need for subcontractors; thus, the LBB confirmed this was the best way to offer opportunities for small companies who would otherwise not be able to compete for a contract of this magnitude to form a conglomerate by trade. Finally, a senior USAFE manager stated he agreed to the use of trade-wise contracts based on this understanding. **(FOUO)** We did not identify facts to substantiate the RMTP financing agreement required the use of trade-wise contracts. The Passenger Terminal Annex was an RMTP project done using a general contractor. In our opinion, the use of a general contractor would have provided the avenue to pursue concerns with subcontractor performance through the prime contractor, whereas the absence of liquidated damages clauses in trade-wise contracts did not allow the LBB to pursue concerns with trade contractors. **(FOUO)** We agree that liquidated damages can still be pursued against LBB for inadequate performance of its responsibilities of design and construction management; however, we recommend that USAFE/A7 should jointly establish procedures with the LBB to insert liquidated damages clauses in future trade-wise construction contracts.
Tab B,	**(FOUO) USAFE/JAI:** There can not be such thing as full legal

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Solicitation and Award, Audit Result 3, Impact	assurance the contractor could be held liable. There will always be a certain amount of risk involved. In fact there is no more assurance contractors will be held liable under the terms of the ABG-75 and German court action than there is if this was a project being executed in the US IAW the Federal Acquisition Regulation and US law. The mere fact the US makes a claim for some sort of breach by a given contractor does not guarantee a finding in favor of the US Contractors here have most of the same defenses and counterclaims they would have in the US and an equal right to present them to a court of law. To expect a guarantee that the US claim (even when made by the German government on our behalf) would prevail indicates unfamiliarity with the judicial process in general. And even should the US claim prevail, there is nothing neither the US nor the FRG could do to prevent a contractor from declaring bankruptcy and seeking protection against financial liability. Those are risks the US encounters in every contract it enters into, regardless of location.
	(FOUO) AFAA: Audit does not expect a guarantee that the US claim would prevail in a German court of law. Neither the US Air Force, nor its auditors, can force the LBB to pursue damages and neither has control over the proceedings and determinations of the German court system. However, audit can and does recommend the US request LBB pursue damages for suspected liability, as is prudent and required in accordance with Department of Defense Financial Management Regulations (DoD FMR). The risks mentioned by the USAFE/JAI do no prevent USAFE from following proper and prudent procedures in accordance with US and German Laws and the DoD FMR.
Tab C, Construction Change Orders and Cost and Schedule Growth, Background, Paragraph 1	**(FOUO) USAFE/A7:** Construction change orders are required to follow an approval process as outlined in both VOB and ABG-75. A simplified ABG-75 process for change order approval is outlined in Appendix III, Attachment 5. USAFE does approve construction change orders in accordance with the ABG-75 process.
	(FOUO) AFAA: Missing modifications are change orders to construction contracts that were initiated by the contracting agent (LBB), construction agent, or contractors that the AF did not receive

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	and for which the AF did not give prior approval. The ABG-75 Part II states: • **(FOUO)** Article 4, paragraph 4.4: "Measures changing or affecting the scope, quality or cost of construction works from that specified by the Forces shall require the prior consent of the Forces." • **(FOUO)** Article 12, paragraph 12.3: "The contract amounts (Article 7.1.6) may not be committed or exceeded unless written approval of the Forces has been obtained. The "contract amounts" within the meaning of Article 12.3 and the "amounts approved" within the meaning of Article 12.5 are those amounts which the US Forces confirmed as established on part II of ABG Forms 4/5." • **(FOUO)** Article 12, paragraph 12.5 states "Any costs in excess of the amount approved by the Forces (Article 12.3) will not be borne by them unless their prior approval for these additional funds has been obtained." **(FOUO)** In our opinion, USAFE did not properly monitor and approve change orders. For example, personnel were not aware of and did not obtain missing change orders (427 or 490 LBB- or contractor-generated change orders) and approve construction change orders in accordance with the ABG-75 process.
Tab C, Construction Change Orders and Cost and Schedule Growth, Background, Paragraph 2	**(FOUO) USAFE/A7:** Since early in the construction, LBB has not provided USAFE notification of change orders prior to implementation. This situation was the topic of several discussions and verbal requests to LBB since September 2006, and when results were not forthcoming, USAFE/A7 sent a memo 2 November 2006 to LBB requesting adherence with ABG-75, specifically for notification and written approval of change orders prior to implementation for all future changes.
	(FOUO) AFAA: German contract law (VOB) states:

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	• **(FOUO)** Part B, §2, paragraph 6(1): "If the contractor is called upon to undertake work not provided for in the original contract, then he shall be entitled to receive special remuneration for it. He is, however, required to notify the client of his claim before proceeding to execute the work." • **(FOUO)** Part B, §2, paragraph 6(2): "Whenever possible, the sum due shall be agreed before execution of the work." • **(FOUO)** Part B, §2, paragraph 8(1): "Work executed by the contractor without instructions to do so, or as an unauthorized departure from the provisions of the contract, will not be remunerated." • **(FOUO)** Part B, §2, paragraph 8(2): "However, the contractor is entitled to receive remuneration for such work is the client subsequently accepts it. He is also entitled to remuneration if the work was necessary for completion of the contract, might be deemed to comply with the presumed intention of the client, and if the latter was given notice of it without delay." **(FOUO)** Audit agrees prior to the audit documentation support request on 24 July 2006, LBB did not provide change order documentation to USAFE in a timely manner. This information was provided in the cause to this audit result. However, the ABG-75 Part II, Article 4, paragraph 4.4 states "Measures changing or affecting the scope, quality or cost of construction works from that specified by the Forces shall require the prior consent of the Forces." **(FOUO)** Further, when audit informed USAFE they were not receiving the LBB- or contractor-initiated change orders during the audit, USAFE did not raise this issue to the Geschäftsbereich Bundesbau (GBB) for resolution. The USAFE personnel contributed to problems with the change order process. Specifically, the PMO did not effectively implement established construction change order review processes to ensure change orders were valid, authorized, and within project scope. Further, USAFE did not request notification of construction change orders from the LBB prior to change order implementation per the ABG-75 and German law (the Vergabe- und

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	Vertragsordnung für Bauleistungen (VOB)) because this is how construction change orders were historically handled on this project to date. **(FOUO)** Though management stated they requested adherence to the ABG-75, audit notes the 2 November 2006 memorandum states, "USAFE will continue to pay invoices submitted by LBB without an accompanying ABG Form 5 document so long as LBB has verified in writing that the work was necessary, properly performed, and at a fair and reasonable price." Audit notes the ABG Form 5 document is the obligating document required for the change order. **(FOUO)** Audit reiterates Article 12, paragraph 12.3 of the ABG-75 states, "The contract amounts (Article 7.1.6) may not be committed or exceeded unless written approval of the Forces has been obtained. The "contract amounts" within the meaning of Article 12.3 and the "amounts approved" within the meaning of Article 12.5 are those amounts which the US Forces confirmed as established on part II of ABG Forms 4/5." Without an obligating document, paying invoices for amounts not validated is considered an improper payment, as outlined in Audit Results 6. Further, paragraph 12.5 states, "Any costs in excess of the amount approved by the Forces (Article 12.3) will not be borne by them unless their prior approval for these additional funds has been obtained." **(FOUO)** Considering USAFE was not aware of these construction change orders, and audit found no evidence of prior approval for them to be processed, audit concludes the costs should not be borne by the US, in accordance with the ABG-75.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 4, Condition	**(FOUO) USAFE/A7:** PMO evaluated all change orders that were submitted to USAFE. Additionally, USAFE tracked all processed change orders in a spreadsheet. The US has been unable to review and validate all contractor change orders only because LBB did not and has not provided the change order documentation in a timely manner to keep pace with construction progress. USAFE/A7CC personnel had repeatedly requested change order paperwork be submitted immediately. This was repeated and documented in the weekly

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	KMCC working group meeting minutes as early as December 2005 and also discussed in the weekly KMCC Update to USAFE/A7 since 28 March 2006. The magnitude of the problem with change order processing was first noted by USAFE on 20 July 2006 when a list was received of 395 change orders in various stages of LBB processing. Since that time, we have aggressively engaged with LBB to expedite the processing of these change orders. **(FOUO)** This issue has even been discussed with the Ministry of Finance by senior USAFE leadership. As an additional control measure, USAFE added an "anticipated" modification section to the tracking spreadsheet.
	(FOUO) AFAA: In our opinion, we determined the PMO did not effectively implement established construction change order review processes to ensure change orders were valid, authorized, and within project scope prior to payment. For instance, a review of USAFE policies and procedures revealed USAFE did not establish procedures directing project managers or other personnel to review and validate cost estimates. In addition, USAFE personnel did not review and validate all contractor invoices with modification documents to ensure requested payments were valid, authorized, and within project scope. Thus, they did not evaluate all change orders submitted. **(FOUO)** Our review of KMCC project files disclosed the Project Manager tracked only internally-generated change orders prior to the audit's discovery of missing change orders. Upon audit's request, the LBB provided a spreadsheet documenting not only the change orders requested to 20 July 2006, but also all pending change orders known at that time. Audit concludes had USAFE requested this document, they could have better tracked the change orders and potential cost growth. This would also have served as a means to track missing ABG Form 5 documents. USAFE has pursued only verbal or written notification of change orders, and has not required actual obligating documents requiring US approval.
Tab C, Construction Change	**(FOUO) USAFE/A7:** PMO procedures were developed early in construction phase to review ABG-5s and provide feedback prior to

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Orders and Cost and Schedule Growth, Audit Result 4, Cause, Bullet 1	approval. LBB did not initially provide all contractors requested change orders because it first wanted to validate them before providing to the US, as many contractor requests for increases were found to be invalid. As stated above, USAFE has adopted new procedures to rectify this for future change orders.
	(FOUO) AFAA: In our opinion, the procedures were established but not effectively implemented. Specifically, although established procedures called for PMO review of all ABG Form 5 documents prior to construction work, USAFE did not require LBB to provide documents and did not provide any evidence to prove they were aware of construction change orders prior to or after change order implementation. **(FOUO)** Though management stated they requested LBB adherence to the ABG-75, audit notes the 2 November 2006 memorandum states: "USAFE will continue to pay invoices submitted by LBB without an accompanying ABG Form 5 document so long as LBB has verified in writing that the work was necessary, properly performed, and at a fair and reasonable price." The ABG Form 5 document is the obligating document required for the change order. **(FOUO)** Audit reiterates Article 12, paragraph 12.3 of the ABG-75 states: "The contract amounts (Article 7.1.6) may not be committed or exceeded unless written approval of the Forces has been obtained. The "contract amounts" within the meaning of Article 12.3 and the "amounts approved" within the meaning of Article 12.5 are those amounts which the US Forces confirmed as established on part II of ABG Forms 4/5." Without an obligating document, paying invoices for amounts not validated is considered an improper payment, as outlined in Audit Results 6. Further, paragraph 12.5 states "Any costs in excess of the amount approved by the Forces (Article 12.3) will not be borne by them unless their prior approval for these additional funds has been obtained." **(FOUO)** Given that USAFE was not aware of these

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	construction change orders, and audit found no evidence of prior approval for them to be processed, audit concludes the new procedures proposed by management will not correct the deficiency and the costs should not be borne by the US, in accordance with the ABG-75.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 4, Cause, Bullet 2	**(FOUO) USAFE/A7:** On 20 July 2006, USAFE received the first written evidence that LBB had not been following ABG-75. Upon receipt of this evidence, USAFE aggressively pursued resolving this past deficiency and has since rectified this situation for future change orders. Previous program manager supports the present management contention that repeated requests for notification of change orders were made to LBB as well as GBB.
	(FOUO) AFAA: Refer to our response to Audit Result 4, Cause, Bullet 1, above.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 4, Cause, Bullet 3	**(FOUO) USAFE/A7:** USAFE/A7CC's previous program manager contends that the issue of timely construction change orders was addressed on several occasions with GBB, State Ministry of Finance and LBB Zentrale. LBB has promised increased staffing to process modifications more quickly, and has committed to clearing the backlog of pending contract change orders by 31 March 2007.
	(FOUO) AFAA: Audit did not identify and management did not provide any evidence to support this statement.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 4, Impact	**(FOUO) USAFE/A7:** Although USAFE has not received all outstanding change orders from LBB, every invoice is carefully reviewed in its entirety and USAFE personnel require a full explanation of any unprocessed change orders that are being billed for in accordance with USAFE/JA guidance. For more on the payment portion of this issue, refer to Audit Result 6.
	(FOUO) AFAA: Audit results do not support this statement. For example, Audit Result 6 disclosed that PMO personnel did not implement established invoice review procedures to validate contractor invoices with contract and change order specifications and

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	actual contractor work completed prior to authorizing payment. Specifically, USAFE personnel did not review and validate contractor invoices with modification documents to ensure requested payments were valid, authorized, and within project scope. • **(FOUO)** 31 United States Code Section 3528, *Responsibilities and Relief From Liability of Certifying Officials*, requires a certifying official certifying a voucher be responsible for (1) information stated in the certificate, voucher, and supporting records; (2) the computation of a certified voucher under this section and section 3325 of this title; (3) the legality of a proposed payment under the appropriation or fund involved; and (4) repaying a payment that is determined illegal, improper, or incorrect because of an inaccurate or misleading certificate, prohibited by law, or that does not represent a legal obligation under the appropriation or fund involved. Section 8137 of Public Law 103-335 requires the Secretary of Defense to match DOD disbursements to specific obligations at the responsible accounting station, prior to disbursement. **(FOUO)** If personnel do not review and validate contractor invoices with modification documents to ensure requested payments were valid, authorized, and within project scope, they are authorizing a payment for which they do not have a matching obligating document, and they may be in violation of the ABG-75 agreement, German contract law (VOB), and Section 8137 of Public Law 103-335 requiring the Secretary of Defense to match DOD disbursements to specific obligations at the responsible accounting station, prior to disbursement and could be held pecuniarily liable for improper payments made as result.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Condition	**(FOUO) USAFE/A7:** As with any construction project, cost and schedule growth negatively affect the perception of control of the project. The USAFE project management team has effectively monitored the construction project to limit cost and schedule growth.
	(FOUO) AFAA: In our opinion, the project has not been effectively monitored to limit cost and schedule growth. Refer to audit results

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	provided in Tab C of this report of audit.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Condition, Bullet 1	**(FOUO) USAFE/A7:** Construction change orders have always been tracked upon receipt of an ABG-5 document when approved by LBB. Additionally, user-requested change orders were monitored from the time it was first known that a change was required. Since September 2006, an additional tracking system was set up to track new change orders that LBB has not yet approved which we track as "anticipated."
	(FOUO) AFAA: Audit notes USAFE personnel did not track construction (externally-generated) change order amounts, description, resulting projected schedule delays, or costs prior to September 2006, as management confirms in their response above. Since only 87 of 638 (13.64 percent) total change orders (as of September 2006) were user-requested, audit concludes USAFE did not effectively monitor the construction project to limit cost growth.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Cause, Bullet 1	**(FOUO) USAFE/A7:** Although cost and schedule growth could be loosely tied back to design reviews by the need for change orders that could have potentially been avoided, this cause seems to be an overstatement for this audit result.
	(FOUO) AFAA: Audit stated the condition was that USAFE personnel did not effectively monitor the KMCC military construction project to limit cost growth. To effectively monitor cost growth, USAFE must also effectively monitor change orders, both user-requested and those that are initiated by the LBB, contractors, and construction managers. Since only 87 of 638 (13.64 percent) total change orders (as of September 2006) were user-requested, audit concludes USAFE did not effectively monitor the construction project to limit cost growth. **(FOUO)** To test this theory, we determined whether change orders were preventable. We requested USAFE/A7CCP evaluate the LBB's list of change orders and identify whether change orders were a result of engineering changes, items missing from contacts specifications, user-requested changes, miscellaneous change reasons, differing site conditions, value-engineering changes, or administrative changes.

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	(FOUO) We included in the preventable category only change orders for items completely missing from the specifications, user-requested changes, miscellaneous, and administrative changes. We did not include engineering changes, value-engineering changes, or differing site conditions. **(FOUO)** Audit agrees some changes are not preventable and believes the distribution above most accurately reflects that statement in that it accounts for unpreventable change orders and all those marked as questionable in management's change order review. Moreover, management identified these change orders as preventable. **(FOUO)** We agree line-item contracting means the US should only pay for work completed and that all line-item contracts will have some change orders. However, line-item contracting is not the cause for the preventable change orders identified in this finding – the design not being technically sound was cause for additional change orders, as identified by the change orders as a result of missing specification items. Specifically, had the original design been properly reviewed and review comments properly incorporated, the project would not have incurred many of the change orders identified.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Cause, Bullets 2 & 3	**(FOUO) USAFE/A7:** In retrospect, we agree that this could have contributed to some of the cost growth; however, the deliberate decision during acquisition strategy development to fast-track the project was driven by the RMTP and mission requirements. **(FOUO)** Approval of the use of trade contracts was agreed to at senior leader level weighing options available and under the political/legal restrictions of the LBB and GBB regarding VOB contracting requirements. LBB contracted a construction manager for the KMCC. USAFE/A7 concurs that based on this project, LBB is not set up to act as a general contractor, however, they were successful over the previous several years with the management of the RMTP program and there was no evidence at that time to suggest that they would not be capable.
	(FOUO) AFAA: There was no legal requirement to solicit the KMCC contracts as trade-wise agreements. The US leadership

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	requested the construction shell start first in August 2004, before the design completion, which resulted in a trade contract issued. This contracting method could be done either with a general contractor or through trade-wise contracts. As previously stated, audit identified several examples of design errors and subsequent change orders related to the lack of incorporation of design review comments.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Cause, Bullet 4	**(FOUO) USAFE/A7:** The use of one firm serving as both construction manager (CM) and designer of record is not uncommon and is essentially design-build contracting—a prevalent and growing method of construction delivery. A key concern with the KMCC project is that LBB provides insufficient oversight of its CM who is widely acknowledged to have performed poorly. In fact, on 26 September 2006 LBB had to relieve this firm of much of its CM agent pecuniarily responsibilities.
	(FOUO) AFAA: Audit agrees the use of one firm serving as both CM and designer of record is not uncommon and is essentially design-build contracting. Audit concluded based on this understanding that the KMCC project was a hybrid construction project based on the design-build concept, using the construction management design build methodology and competitive bidding, but without using a general contractor. This is because the contract laws in Germany require the Bauamts to contract for construction and do not allow the construction manager to act as a general contractor who both designs the project and solicits bids from subcontractors and suppliers. Thus, the construction manager has little control or authority over subcontractors because they do not have the same authority as a general contractor would normally employ. Audit did not evaluate whether LBB provided insufficient oversight of its construction manager, and audit did not determine, nor did management provide, any evidence to support CM was widely acknowledged to have performed poorly. **(FOUO)** Audit confirms that the LBB relieved the firm of their construction management duties in September 2006. The LBB hired the design contractors to perform construction management duties and this action did not allow a proper separation of duties, that would normally result in an independent review of construction costs and

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	schedule concerns, in light of the fact there was no general contractor liability or authority, as stated in the last cause.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Cause, Bullets 5 & 6	**(FOUO) USAFE/A7:** PMO responsibilities included reviewing ABG 5s to validate work and costs for reasonableness; this cause results solely from LBB not processing ABG 5s in a timely manner, which is a repeat observation. For full explanation refer to Audit Result 4.
	(FOUO) AFAA: Refer Audit Results 4 and Audit Results 6 for internal control weaknesses identified during the audit.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Cause, Bullet 7	**(FOUO) USAFE/A7:** PMO had this charter and sufficient qualified internal staff and contract personnel to accomplish cost reviews, and they continue to perform this function for all modifications.
	(FOUO) AFAA: Although the PMO had an established process to review change orders, they did not effectively implement internal controls sufficient to accomplish effective cost reviews. **(FOUO)** Further, a review of USAFE policies and procedures revealed USAFE did not establish procedures directing project managers or other personnel to review and validate cost estimates as part of the change order process. In addition, USAFE personnel did not review and validate all contractor invoices with modification documents to ensure requested payments were valid, authorized, and within project scope. **(FOUO)** A review of KMCC project files disclosed the Project Manager tracked only internally-generated change orders prior to the audit's discovery of missing change orders. Thus, they did not evaluate all change orders as claimed and will require additional corrective action. Simply continuing to perform the current process would not meet the definition of due diligence in cost reviews.
Tab C, Construction Change Orders and Cost and	**(FOUO) USAFE/A7:** LBB orchestrates weekly construction meetings with all contractors and PMO attends to maintain awareness of construction progress and pertinent schedule issues. Based on these

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Schedule Growth, Audit Result 5, Cause, Bullet 8	meetings, USAFE/A7 has demanded schedules at LBB, LBB-Zentrale, GBB, and State Ministry of Finance levels. Despite continuing pressure from USAFE at all levels, LBB has failed to date to provide a valid, approved and contractually binding construction schedule.
	(FOUO) AFAA: Audit obtained copies of the KMCC construction schedule for the Mall and VQ sections of the KMCC dated 19 and 26 July 2006, respectively. A review of the construction schedules validated the LBB-hired scheduler only listed contractor scheduled tasks by the number of days allocated to complete the projects. However, the schedules did appear to take into consideration the order of contractor tasks and how a delay in one area would affect other contractors. Numerous schedule delays are shown where the scheduler shifted the accomplishment dates from the planned beginning and ending dates to their actual dates. Audit did not find evidence to support LBB requiring contractors to meet project schedule deadlines or LBB/construction manager meetings with contractors to coordinate construction task timelines. In addition, we obtained copies of letters between the LBB and USAFE documenting schedule slippage on the KMCC Mall and VQ. **(FOUO)** This condition occurred because neither the construction schedules nor LBB policies required the construction manager to ensure contractors adhere to scheduled timelines. Further, neither LBB nor construction managers held meetings with contractors to coordinate construction task sequencing, prior to the audit. **(FOUO)** Finally, LBB personnel did not timely notify USAFE personnel of schedule changes. Audit discussed this concern with management on 26 November 2006. **(FOUO)** USAFE/A7CCP stated the most prominent cause of this concern was, "Neither LBB nor construction managers met with USAFE or contractor personnel to discuss construction task sequencing as schedule changes occurred." As a result, the KMCC project has slipped from its original beneficial occupancy dates (BODs). Moreover, schedule timeliness helps minimize resulting contractor delay claims.

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	(FOUO) Audit did not identify and management did not provide evidence to support management's statement that "LBB orchestrates weekly construction meetings with all contractors and PMO attends to maintain awareness of construction progress and pertinent schedule issues". However, audit does agree "despite continuing pressure from USAFE...LBB has failed...to provide a valid, approved and contractually binding construction schedule."
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Impact, Bullet 2	**(FOUO) USAFE/A7:** Since 2 November 2006, USAFE has been provided a single page form as prescribed by the memo from USAFE/A7 to LBB for all future change orders. PMO acknowledges and determines if the change order is required for the completion of the project and signs the form if it is.
	(FOUO) AFAA: This action was noted in Management Corrective Action C.6.
Tab C, Construction Change Orders and Cost and Schedule Growth, Audit Result 5, Impact, Bullet 3	**(FOUO) USAFE/A7:** The original schedule of 28 April 2006 and 15 September 2006 represented a very aggressive schedule.[14] In fact, the USAF completion goal for a project $20 million or more is 27 months. Based on the November 2004 groundbreaking, the USAF "Dirtkicker" goal would have been February 2007 for completion of the facility. Given that the construction value of this facility is more than eight times the basis of that "Dirtkicker" metric suggests how optimistic the original schedule was. All that said, having a contractual schedule is imperative to overall construction management and essential to maintaining cost and schedule discipline. USAFE/A7 staff continues to actively pursue a project schedule from LBB-KL and GBB, although we have yet to receive a valid schedule from which LBB can commit contractors.
	(FOUO) AFAA: In our opinion, the aggressiveness of the schedule was immaterial to the impact stated. The LBB and construction manager did not meet with USAFE or contractor personnel to discuss construction task sequencing as schedule changes occurred as a result

[14] **(FOUO)** Post award/target beneficial occupancy dates (BOD)

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	of multiple change orders.
Tab D, Contractor Payments, Background, Paragraph 1	**(FOUO) USAFE/A7:** USAFE agrees in principle that payment for goods not received is an improper payment. Excessive quantities and change orders are all validated to ensure work was 1) necessary, 2) properly performed, and 3) fairly and reasonably priced prior to processing payment in accordance with USAFE/JA staff recommendation.
	(FOUO) AFAA: Refer to Audit Results 4. In our opinion, management did not properly review and validate change orders prior to implementation. Further, audit determined in Audit Results 6 that management did not properly review and validate the associated cost estimates. **(FOUO)** The ABG-75, Part II, Section A, Article 4, paragraph 2.2 of the Implementing Instructions states,"The realization of changes under 2.1 always require a change request (ABG Form 5 Part I or 5 A) and an order of the US Forces by use of ABG Form 5 Part II." **(FOUO)** As previously stated in audit's response to management's comments on Recommendation C.3., the ABG Form 5, *Change Order Document*, is the obligating document required in order to match an invoice disbursement with the obligation, as defined in the DoD FMR. **(FOUO)** Further, the US should not be held financially liable for change orders for which they did not prior approve. Audit contends management should not make payments on invoices for which they cannot validate the invoice with an approved ABG Form 4 or 5 to confirm it is valid, authorized, and within project scope in accordance with the ABG-75, VOB, and US Code. Excessive quantities are not an exception to this rule. **(FOUO)** If management continues to make payments without proper invoice validation with the modification documents, as they propose to request LBB make a "full explanation" of the change order requirements as opposed to validating them with approved ABG 4s and 5s, they may be in violation of the ABG-75, VOB, US Code, and may be held pecuniarily liable.

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Tab D, Contractor Payments, Audit Results 6, Cause, Bullet 2	**(FOUO) USAFE/A7:** From the beginning of construction, invoices were reviewed concurrent with invoice processing in order to process payment within the allotted time. If errors were suspected, they were corrected in the subsequent partial invoice. Since 1 September 2006, invoice review is now accomplished prior to USAFE processing for payment.
	(FOUO) AFAA: This cause statement refers to the invoice validation required to be performed by KMCC construction managers, not to USAFE actions. If USAFE was, in fact, reviewing invoices, per their statement, they knowingly proceeded with improper payments in spite of identifying errors and claim to have pursued offsetting adjustments in future invoices. Audit reiterates paying invoices without proper invoice validation results in improper payments and certifying and approving officials may be held pecuniarily liable. Further, USAFE did not establish internal controls sufficient to prevent change orders resulting from design errors. Thus, contractors aware of the lack of internal controls could potentially invoice for other items, such as line-item quantity increases or potential A-E liability-related change orders. If management provides evidence of this corrective action, audit will document it appropriately.
Tab D, Contractor Payments, Audit Results 6, Cause, Bullet 3	**(FOUO) USAFE/A7:** USAFE reviews contractor invoices against pending or completed contract modifications in every instance in which such documentation is available. In the absence of such documentation, USAFE has LBB provide invoices accompanied with statements signed by both the senior project manager and project engineer certifying that each invoice has been reviewed for accuracy that the work was 1) necessary, 2) properly performed, and 3) fairly and reasonably priced, as coordinated with the USAFE/JA staff. PMO personnel check that the invoices include only work accomplished according to the contract price and quantity.
	(FOUO) AFAA: Management has agreed to review and validate invoice payments for valid and authorized line items based on a thorough review of all invoiced line items with contracted quantities and with approved ABG Form 4 and ABG Form 5 modification

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	documents. However, the ABG Form 5, *Change Order Document*, is the obligating document required in order to match an invoice disbursement with the obligation, as defined in the DoD FMR, as stated in audit's previous comments. In addition, the ABG-75, Part II, Section A, Article 4, paragraph 2.2 of the Implementing Instructions states, "The realization of changes under 2.1 always require a change request (ABG 5 Part I or 5 A) and an order of the US Forces by use of ABG Form 5 Part II." Further, the US should not be held financially liable for change orders for which they did not prior approve. **(FOUO)** Audit contends management should not make payments on invoices for which they cannot validate the invoice with an approved ABG Form 4 and/or 5 to confirm it is valid, authorized, and within project scope in accordance with the ABG-75, VOB, and US Code. This includes partial invoice payments. If management continues to make payments without proper invoice validation with the modification document, as they propose in their alternative action to request LBB make a "full explanation" of the change order requirements as opposed to validating them with approved ABG Forms 4 and/or ABG Forms 5, they may be in violation of the ABG-75, VOB, US Code, and may be held pecuniarily liable.
Tab D, Contractor Payments, Audit Results 6, Cause, Bullets 3 & 4	**(FOUO) USAFE/A7:** PMO provides a review or check of the LBB validated/certified invoice. This included a review of specifications, spot-check of quantities being billed, and ensuring work was completed. **(FOUO)** Certifying and accountable officials have been designated and working since the out-set of the project.
	(FOUO) AFAA: During the audit, we found evidence USAFE did not review invoices with both contractor and change order specifications and actual work completed. **(FOUO)** Specifically, the auditor obtained invoices, viewed contract specification folders in the on-site PMO office, and compared invoices to modification documents, contract specs, and any other supporting documentation. Audit then compared paid invoices and the associated

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	modification documents received with the invoice validation done by contracted quality assurance evaluators (QAEs) to determine if any invoice payments exceeded the amounts approved in the modification document. Audit then calculated the difference between invoices paid and the validated amounts. Specifically, one contracted QAE firm provides invoice-checking services, including reviewing specifications from the original contract and making sure the US is not over-billed on modifications. QAE personnel stated they generally stop payments if they receive the invoice prior to payment and can prove the contractor is over-billing. However, the QAE stated they were not receiving the invoices prior to payment. **(FOUO)** For example, one contractor processed a change order through LBB for €77.373.51 for building works and supplies, change order number 51, on Lot 1, Phase 3 (construction of the shell). However, in the invoice number 27, page 182, you can see the contractor invoiced for €134,112.50 for change order number 51. The construction manager "validated" €121,634.12. However, QAE personnel could only validate €77,166.15 in accordance with both the original contract specs and the mod specs. Thus, the invoice was paid for €121,634.12 instead of the €77,166.15 the QAE validated primarily because the invoice was paid prior to the QAE's review, resulting in an overpayment to the contractor of €44,467.97. **(FOUO)** This occurred because there was no established process within USAFE to report discrepancies in the invoice billings. Specifically, although USAFE had an avenue to identify the overcharging, they did not have a process in place to report this concern to LBB for resolution. However, there is a problem in the PMO change order and invoice processes where one individual receiving change orders and invoices and another providing them to the contracted QAE are not doing so in time for the QAE to perform their review. Often the invoices are paid before received and no modifications have been received for invoices. **(FOUO)** Finally, management did not properly appoint certifying and accountable officials. The USAFE/A7CCP stated the following in a 22 January 2007 e-mail to the auditor: "I've never known MILCON PMs to receive any kind of appointment letter—here or at AETC. We

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	are not technically contracting officials merely provide oversight, so there is no need for the standard COR letter." Further discussion with management disclosed that in their opinion, the certifying and approving official duties did not need to be officially assigned.
Tab E, Architect-Engineer Liability, Condition	**(FOUO) USAFE/A7:** Design errors are a fact of every construction project. Given the magnitude and complexity of this project, many more design errors have been encountered on this project than is typically the case. USAFE has and will continue to assess each possible design error and is currently classifying every change order with a root cause for future evaluation and possible execution of A-E liability. According to ABG-75, Article 17, "the Forces shall bear costs resulting from the removal of damages or deficiencies for which the (construction) contractors are not liable..." Further, Article 18 outlines "...costs, shall not be borne by the Forces if they are paid by a third party or if they are proved to be the fault of officials or employees of the German authorities or other persons engaged by them (in this case the AE-firm)." "Proved" is not something that can be instantly done and therefore USAFE/A7CC has hired an expert claims analysis consultant to assess and build "proof" for each design deficiency or error.
	(FOUO) AFAA: Audit agrees design errors will occur on typical construction projects. However, design errors can be limited by effective communication when defining facility requirements, reviewing/approving an A-E firm's concept, and during the design review process. They can also be limited by implementing internal controls such as proper design reviews and incorporating design review comments in subsequent designs. **(FOUO)** When design errors are encountered during construction, they must be properly recorded and evaluated to determine whether USAFE should forward the issue for LBB assessment of liability. Prior to the audit, USAFE did not have a policy or procedures in place to identify, refer, and track potential A-E liability concerns to the LBB, as stated in the cause section of this audit result. Until USAFE takes appropriate action to identify and report potential A-E liability concerns, they cannot support whether they believe the contractor

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	should be held liable for the potential resulting costs nor can the LBB assess liability. Audit does not recommend USAFE "prove" the liability; rather, audit recommends USAFE should identify and report concerns for LBB assessment.
Tab E, Architect-Engineer Liability, Cause, Bullet 2	**(FOUO) USAFE/A7:** Agree that LBB has not exercised sufficient oversight to ensure separation of potentially conflicting interests by the construction manager.
	(FOUO) AFAA: Audit notes the LBB is not solely responsible for the oversight in this instance. Specifically, USAFE also has responsibility to maintain internal controls sufficient to at least identify potential conflicts of interest and report them to the LBB. This could be done through the change order or invoice review processes or could be identified in daily construction site concerns.
Tab E, Architect-Engineer Liability, Impact, Bullet 1	**(FOUO) USAFE/JAI:** Under German law, the Government has 2 years from the date of contract completion in which to file a lawsuit to recover damages for breach of contract. The auditors apparently think the pursuit of damages is contemporaneous with the construction process. In fact the US has ample time in which to investigate and assess potential contractor liability and request LBB take legal action on our behalf.
	(FOUO) AFAA: In our opinion, requesting an A-E liability assessment at the time it is discovered is especially important due to the personnel turnover experienced during a construction project of this size. If A-E liability concerns are not properly investigated as soon as possible after they occur, the LBB may not be able to conduct a proper investigation into their occurrence. Audit recognizes USAFE can take and present photo evidence of the concerns to LBB; however, every opportunity should be made to allow the LBB ample time to investigate the concern as soon as possible, as the US chances of assessment of A-E firm liability increase with the ability to show LBB the errors in an on-site inspection of the error.
Tab E,	**(FOUO) USAFE/A7:** According to ABG-75 Article 17, USAFE

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Architect-Engineer Liability, Impact, Bullet 1	may be billed for this work. USAFE will then be pursuing reimbursement in accordance with Article 18.
	(FOUO) AFAA: ABG-75 Article 17 states, "The Forces shall bear the costs resulting from the removal of damages or deficiencies for which the contractor is not liable," and further states, "The approval of the Forces shall be obtained before repairs are undertaken." Audit reiterates if USAFE reported potential A-E liability concerns in a timelier manner than the two-year time frame they propose, they should not be billed for these items in accordance with Article 17.

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1. **(FOUO)** General Observations

(FOUO) In preparing this response, USAFE/A7CC consulted with key managers responsible for USAFE military construction (MILCON) execution over the last several years. The consensus of these managers is that the audit does not take into account the operational conditions under which MILCON is managed in the Federal Republic of Germany. US construction is executed within the framework of ABG-75, an agreement defining the process, roles and responsibilities of constructing facilities in this host nation. Due to the unique relationships involved in the process of delivering military construction under the ABG-75, current and past program managers familiar with MILCON execution in Germany believe the audit does not accurately reflect roles and responsibilities, and the limited control wielded by the US in the process. This response will attempt to clarify those agent/customer roles and responsibilities essential to understanding how the KMCC project arrived at its present state, and more importantly, what remedies have been put in place to rescue the project to realize a successful outcome.

(FOUO) Two general observations about the audit -- first, the report focuses on symptoms and not underlying root causes, and second, it deals with financial issues in most cases long since resolved or remedied. Paragraph 5 of this response addresses some of the issues and concerns of those charged with overseeing delivery of the KMCC, identifying root causes of the poor execution of the KMCC and opportunities to improve project efficiency and progress. This kind of constructive analysis is essential in identifying reasons for weak project execution and means for corrective action.

(FOUO) While A7CC staff agree with most findings and the desired results the auditors seek with their recommendations, these audit recommendations in most cases address:

- **(FOUO)** Procedures A7CC already has in place – either in effect since the start of construction, or put in place as management corrections during the audit
- **(FOUO)** Procedures beyond A7CC control – those which LBB controls, so that the US is in a position to request action from LBB (many recommendations have to do with procurement of design and construction, over which we have limited leverage despite our efforts to exercise appropriate influence)

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- **(FOUO)** Findings resulting from deliberate decisions made during project planning in the 2002-03 timeframe, pre-dating current project managers (e.g., fast-track design and construction, and omitting the 65 percent design review)
- **(FOUO)** Findings that do not present a complete picture in terms of the US role of construction oversight and the LBB role as construction agent (many of the detailed design error findings are errors A7 staff might have caught, but MAJCOM A7s do not have the role, or staffing, to perform detailed technical design reviews. This role belongs to the construction agent pursuant to DOD Instruction 4270.5, *Military Construction Responsibilities*, and we pay the agent to do that work.) In the instance of KMCC, LBB is our design and construction agent and many of the issues raised concern its execution of the project on our behalf.

. **(FOUO)** Construction under ABG-75

FOUO) Significant differences exist in methods and practices of construction between US and ermany. In general, German federal construction law shields contractors from much of the risk outinely borne by US construction firms; therefore, owners have less leverage and recourse than rovided for under the FAR. Leverage such as specified liquidated damages, incentives for early ompletion, performance evaluations, and others are unavailable to this project. The audit does ot acknowledge these business realities.

FOUO) The US is bound by Article 49 of the FRG Supplementary Agreement to the NATO tatus of Forces Agreement, which gives the German government the right to construct all US acilities here with the exception of certain limited categories. ABG-75 is the administrative greement which sets forth the procedures of contract performance and applies to all sending ate forces in Germany for their construction projects. The agreement is between the Federal linister for Regional Planning, Building and Urban Development and the sending state forces. ispensing with the ABG 75 or even changing the agreement requires a joint effort by all nding state forces.

. **(FOUO)** Rules of Engagement for Invoice Payments

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(FOUO) Finding the right balance between protecting US interests and ensuring construction progress remains the key project issue confronting A7C staff. Maintaining this balance involves complex financial, legal, contracting, and management considerations. In aggregate, the staff contends the present course strikes a proper balance given all elements impacting the project, including the significant cost to the US of work stoppages. The audit does not address the wider implications and context of this challenge. For example, in reviewing the "rules of engagement" policy for partial payment invoices absent complete change order documentation from LBB, A7 and JA staff evaluated these risk factors in developing invoice processing guidelines:

(FOUO) ISSUE: Should US make partial payment for contract work-in-place without complete change order documentation from LBB?

(FOUO) PRO
1. (FOUO) Keeps contractors solvent and working
2. (FOUO) Strengthens LBB's authority in new position as CM (since dismissal of former CM)
3. (FOUO) Poses minimal financial risk to US
4. (FOUO) Involves only line item estimated quantity variations
5. (FOUO) Partial payment only—not final (we cap partial payments at 95 percent of contract value)
6. (FOUO) Payment proposed only for those proposed modifications reviewed and estimated by LBB and verified by the PMO QA team
7. (FOUO) Lagging documentation not contractor's fault
8. (FOUO) Minimizes potential risk of interest payments on completed work
9. (FOUO) Demonstrates US willingness to partner with LBB to resolve financial and contractual issues

(FOUO) CON
1. (FOUO) Contrary to ABG agreement and good business practice
2. (FOUO) Irregularity sets bad precedent
3. (FOUO) Gives LBB tacit approval for "no notice" changes
4. (FOUO) Concedes one US tool to force LBB's contract admin to "keep pace" with construction progress

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5. **(FOUO)** Temporarily weakens US control of project
6. **(FOUO)** Requires the burden of increased US vigilance in overseeing the work

(FOUO) PMO and USAFE/A7CC staff review of invoices slightly changed as a result of PMO's discovery in July 2006 that contractors were invoicing for change orders that had not yet been approved. Prior to this time, the invoices were processed during a concurrent invoice review. Since that time, the invoice review is fully completed and a full explanation by LBB is required for all change orders that have not yet been approved by USAFE. Additionally, we now require a letter from LBB stating that all work in the invoice was: 1) necessary, 2) properly performed, and 3) fairly and reasonably priced. Only when these actions are complete does USAFE process the invoice for payment. If USAFE suspects any incorrect information in an invoice, they immediately notify LBB and withhold payment until the issue is resolved or adjusted on the invoice.

4. **(FOUO)** Pursuit of A-E Liability

(FOUO) The audit report findings regarding A-E liability neglect the wider issue of construction manager (CM) due diligence. As auditors are aware, since September 2006 A7CC has actively pursued a comprehensive and aggressive strategy to recover damages resulting from chronic mismanagement of the KMCC project. A-E liability is only one component of the larger issue of professional due diligence since the same firm acts as both designer and CM. This matter will be explored thoroughly by the construction claims consultant A7CC acquired 13 December 2006 under contract through AFCEE.

(FOUO) HQ USAFE/A7CC is committed to holding A-E firms responsible for the quality of their work and will aggressively pursue recovery of damages from negligence or breach of contractual duty where economically justified and in the best interests of the Government. Recovery actions will be pursued in close coordination with USAFE leadership, including JA and A7K contracting staff, employing litigation or political settlement as necessary to protect US interests. Pursuit of recovery will be conducted within the overall construct of the ABG-75 agreement and the VOB.

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(FOUO) A7CC reviews and screens each ABG 5 contract modification received from LBB for potential A-E liability. The subject is again addressed during change order technical negotiations. Since 21 September 2006, completed and pending modifications have been reviewed and categorized in the project's change order register by code into ten root causes (including among these design deficiency related to possible A-E liability), and six classes based on initial assessment of fiscal responsibility (Attachment 10). It must be noted however that 97 percent of the change cost growth on the KMCC derives from variations in estimated contract quantities, not surprising considering the MEP trades contracts alone contain over 18,000 separate line items in 10,000 pages.

(FOUO) Three conditions must be satisfied for an A-E firm to be liable for damages:
a) **(FOUO)** Did the firm make an error or omission in its design product?
b) **(FOUO)** Did the error or omission result from negligence?
c) **(FOUO)** Has the Government been harmed as a result of the error or omission?

(FOUO) LBB recognizes that its CM agent has in many regards failed to satisfactorily or properly fulfill its pecuniary responsibilities in managing delivery of the KMCC project. A comprehensive analysis of CM performance will address the full range of CM agent responsibilities and activities such as quality control, submittals processing, project scheduling, and trades coordination. A-E liability must be pursued within the wider context of this overarching effort, not on the limited basis of each individual construction modification as the audit recommends.

(FOUO) Given the magnitude and extent of this project's management problems, one may anticipate claims settlement will eventually be resolved pursuant to Article 40.2 of ABG-75 through negotiations between German Government construction authorities and senior US representatives. A7CC begins preparations of the technical basis of the case to support those future negotiations on 10 January 2007 with the 'kick-off' meeting with claims consultant and his firm. This highly qualified firm specializing in German construction contracting and claims management has been procured to pursue *comprehensive* remedy for mismanagement of this project.

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(FOUO) The following extract from a 6 September 2006 briefing and consultant contract Statement of Work outlines the scope of the consultant support to KMCC:

- (FOUO) Technical and cost analysis of contract modifications and claims
- (FOUO) Analysis of delay claims for 'hindrances', obstructions or interruption of work
- (FOUO) Analysis of schedule and other impacts of user requested changes
- (FOUO) Support negotiating claims costs and terms
- (FOUO) Documentation of project contract status and progress
- (FOUO) Preparation of arguments in defense of US actions and interests
- (FOUO) Expert witness representation in possible mediation and/or litigation
- (FOUO) Comprehensive review of LBB contracting processes and management practices

(FOUO) As our agent in executing this project, LBB's interests should be viewed as congruent with ours in pursuing recovery from damages resulting from negligent construction management. A7CC's claims consultant will work in collaboration with the entire project delivery team, including LBB, to access and analyze project documentation including proposed schedules, modifications, submittal registers, technical meeting minutes, Requests for Information, daily inspection logs, and contract correspondence. Cooperation between the US and LBB should leverage actions seeking recovery from the CM. The need for this specialized support is evidenced by the fact that we have already received notice of a potential €2.2 million delay claim from one of the trades.

(FOUO) A-E liability determination is an area within the purview of the professional engineering, contracting and legal disciplines. Financial accounting of potential liability is only a small, initial part of the process to help identify the source and extent of possible harm.

5. (FOUO) Opportunities to Improve Project Efficiency and Progress –The Way Ahead

(FOUO) Again, the focus of the audit is limited to a review of the *symptoms* of project mismanagement—it does not explore root causes of that mismanagement or offer constructive proposals to rectify problems or improve the present situation.

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(FOUO) Any constructive analysis of the deficiencies and difficulties of the KMCC project execution must include a review of the challenges faced by LBB-KL and its contracted Construction Manager. The following overarching concerns with LBB project execution have been discussed within A7 staff since at least Aug 06 as opportunities to improve project efficiency. They are provided here as examples of management approaches being explored to try to improve project delivery:

- (FOUO) Reinforce LBB's authority as Construction Manager
  - (FOUO) On-site effort not orchestrated by a project management organization empowered to control work activities
    - (FOUO) Little evidence of effective, authoritative management
  - (FOUO) Work of 28 independent sub-contractors not subordinate to an integrated, coordinated project execution plan
  - (FOUO) Inadequate on-site QC inspection contributes to damaged work and rework
    - (FOUO) Recent example is forklifts damaging raised flooring
    - (FOUO) Another key example is non-compliant kitchen exhaust ducting

- (FOUO) Immediately augment on-site technical support
  - (FOUO) Incomplete plans and conflicts between technical disciplines resulting in extensive rework
  - (FOUO) Finish trades delayed due to incomplete design information
    - (FOUO) Absence of final electrical rough-in designs continues to plague overall project progress
  - (FOUO) Magnitude of problem appears to be under-estimated by LBB

- (FOUO) Develop and adhere to a realistic/accurate project schedule
  - (FOUO) Ineffective project schedule prolongs work effort and contributes to extended overhead costs
  - (FOUO) Key project management tool remains underutilized
  - (FOUO) Complicates ability to justify or defend delay claims
  - (FOUO) Sub-contractors not bound contractually to any integrated schedule
    - (FOUO) No incentives/disincentives for schedule adherence

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- **(FOUO)** The A-E of Record and Contract Manager denies responsibility for project scheduling or schedule enforcement
- **(FOUO)** US provided feedback in August on means to expedite project schedule

- **(FOUO)** Respond faster to contractor Requests for Information (RFIs)
  - **(FOUO)** Absence of Submittals & RFI Registers to monitor status and suspense of deliverables
    - **(FOUO)** The Quality Assurance Evaluator has specific examples illustrating impacts of delays in response to sub-contractor inquiries
  - **(FOUO)** Project schedule not linked to key submittals due dates
  - **(FOUO)** Letter to LBB being prepared requesting submittal and RFI logs
    - **(FOUO)** Furnishes sample register information proposed for use
    - **(FOUO)** Asks if US needs to provide any further technical information
  - **(FOUO)** Web-site established by US to enhance project communication

6. **(FOUO)** Current Critical Project Issues:

(FOUO) KMCC's most critical issues share as their most promising solution that GBB-Mainz and the Rhineland-Palatinate Ministry of Finance become directly engaged in the project to reinforce the leadership of LBB-KL. The Kaiserslautern bauamt is simply overwhelmed by the magnitude and complexity of the KMCC project. Additional augmentation of LBB's project management staff is needed immediately to clear the sizable backlog of contract change orders. The project is jeopardized by weak project leadership, contract administration and technical direction which still lag the construction effort. This inaction delays progress and increases cost. Lack of urgency and weak Quality Control and schedule coordination pervade the job site.

(FOUO) Relieving the Construction Manager in September 2006 of much of its contractual authority for project management forced LBB in mid-construction to expand its management team to "pick up the pieces"—a demanding task under the best conditions. A 'task force' level of effort is now needed by LBB to turn things around, and get the project back on track. The central authorities (project engineer and superintendent) charged with orchestrating and directing this project do not appear to command the degree of authority needed to "make things happen". **(FOUO)** Project management is hampered by contract agreements relieving contractors of much

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of the risk they bear as the norm in US contracting. However, while most of KMCC's contractors are competent and capable craftsmen providing a good quality product, they appear to have lost confidence in the project management team's ability. This is why GBB and the State Ministry of Finance must now take responsibility to step in and rescue the project.

(FOUO) Senior USAFE staff identified at the end of CY06 the following issues critical to KMCC success:

a) **(FOUO)** Payment of invoices/availability of funds: *USAFE has been asked by GBB/LBB to provide MILCON and NAF funds for change orders on the basis of cost estimates as guided by ABG-75 procedure. To date this has been rejected by USAFE having assumed the position that funds are made available only once invoice has been negotiated with contractor. To bridge invoice payment gaps and avoid work stoppage, Rhineland-Palatinate State Ministry of Finance (SMOF) set aside in Oct 06 € 4 M and just recently another € 1.3 M.*

(FOUO) A7CC maintains that the FAR will not permit increases in contract ceilings without fully negotiated and documented contract modifications. Since this project is financed with a mix of Services, AAFES and MILCON, formal procedures are particularly critical to secure additional funding from NAF and AAFES. Prudent business practice does not allow contract amounts to be adjusted solely on the basis of estimated or projected cost.

b) **(FOUO)** Verification/approval of invoices: *SMOF is looking for avenues to reduce the time currently required to verify invoices by LBB/USAFE. Problems are often caused by time consuming research involving external contributors; determination of real-time construction status, and review procedures. Parallel USAFE/LBB steps to obtain information more expeditiously and joint verification procedures could be envisioned by SMOF.*

(FOUO) In an effort to accelerate invoice processing, effective 13 November 2006, A7CC began accepting invoices accompanied by a letter from LBB's project manager and project engineer attesting that the invoiced work meets three conditions: 1) work was necessary, 2) properly performed, and 3) at a fair and reasonable price. The US initiated invoice meetings with LBB where it was suggested that parallel LBB/A7CC review of invoices could accelerate

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the review process, and still hold that parallel reviews offer an opportunity to speed invoice processing.

c) **(FOUO)** Processing of change orders: *It is intended to process all change orders by end of March 07. By mid-January, LBB, in coordination with GBB, will present a procedure on how to realize this step and a plan how the LBB project team will be enlarged to accomplished with this task. USAFE will be asked to contribute suggestions on how to streamline the congested change order process. The goal must be to pay bills on time and USAFE is encouraged to develop a procedure that allows funds to be provided in a timely manner even when facing exhausted financial sources/reaching contract ceiling.*

(FOUO) USAFE/A7CC is poised for an increased quantity of change orders. We will continue to fully review each change order and categorize the root cause. Additionally, if additional documentation is required, we will not approve the change order until this additional documentation is received.

7. **(FOUO)** Lessons Learned from KMCC

(FOUO) In an effort to cooperate with the audit process, key lessons learned were shared with the auditors in early December 2006. These lessons were discussed with auditors because of their value and application in future USAFE projects and are presented here for review:

- **(FOUO)** Pre-design Planning and Acquisition Strategies:
  - **(FOUO)** Estimated quantity contracts are inappropriate for vertical construction
  - **(FOUO)** Trades contracts are inappropriate for complex construction
  - **(FOUO)** Construction Manager and A-E Designer must be independent (unless contracted as Design-Build project)
  - **(FOUO)** Service Agents provide valuable support to MILCON
  - **(FOUO)** Complete designs prior to awarding construction contracts
  - **(FOUO)** Project Management Plans are a vital tool to manage risk
  - **(FOUO)** Liquidated Damages provisions best leverage to force schedule adherence
- **(FOUO)** Construction Contract Administration:

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- (FOUO) Modifications need to be submitted timely and in pace with construction
- (FOUO) QA oversight staff should be resourced based on project size and complexity

8. (FOUO) Summary

(FOUO) A7CC staff cooperated fully with the auditors in the shared goal of seeking workable solutions to KMCC's vexing issues. The auditors' fresh insight and perspectives to this project's many challenges were welcomed. Every available project document was provided and staff openly communicated the project's complex issues and challenges. Despite these efforts, much of that dialog is absent from the report as it focuses on symptoms and past causes to the neglect of wider management issues related to oversight of a complex project within the framework of ABG-75. The audit focuses on problems either remedied months ago or beyond A7 control, yet it is received with sincere interest in exploring every possible avenue to best assure this project's successful delivery. In every instance, A7 staff has acted to protect the best interests of the US while maintaining project progress. Talented and dedicated people in the Project Management Office work diligently to find solutions to this project's very demanding problems—and nothing in the report contradicts this.

(FOUO) This response briefly addresses some of management's concerns regarding root causes of the poor project execution and offers some opportunities to pursue regaining schedule. Significant problems urgently confront the KMCC. Exceptional measures are required to keep contractors working and maintaining progress. The KMCC presents no clear, easy choices and little middle ground, and challenges the best professional judgment of a variety of disciplines. These are the issues USAFE leadership and A7CC project managers confront daily in ensuring this project's successful delivery in 2007.

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Chairman WAXMAN. GAO investigators also visited the K-Town Mall. We are fortunate that they can be here today to tell us what they learned. As we will hear, they saw irresponsible management, shoddy work, and millions of dollars in waste.

The Federal Government spent a record amount, over $400 billion, on Federal contracts last year. Over 40 cents of every discretionary Federal dollar now goes to a private company, but far too much of this spending is being squandered.

The report I released yesterday identified 187 contracts worth over $1 trillion that had been plagued by waste, fraud, abuse, or mismanagement since 2000. The same pattern happens over and over again. The contractors get rich, the work doesn't get done, and the taxpayers get soaked.

As the main oversight committee in the House we have an essential job to do. We need to examine what went wrong so we can hold officials accountable and enact reforms, and that is what I hope we can begin to do today by holding this important hearing.

[The prepared statement of Chairman Henry A. Waxman follows:]

Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
Hearing on Waste, Fraud, and Abuse at K-Town: How Mismanagement Has Derailed DOD's Largest Single-Facility Construction Project
June 28, 2007

Today's hearing will be the seventh hearing the Oversight Committee has held this year on waste, fraud, and abuse in the federal government. We are holding this hearing to examine what has gone wrong at the K-Town Mall, a $200 million Defense Department construction project.

On September 28, 2006, this Committee held a hearing on the Baghdad Police College. This was a U.S. project to build new barracks and classrooms to educate and train Iraqi police forces. As we learned at that hearing, the project was in shambles. I have some pictures of that project, which I would like to show.

At the hearing, we heard testimony from the Special Inspector General for Iraq Reconstruction that construction was so deficient that toilets were draining through the reinforced

concrete floors, literally raining on the cadets. Auditors told us about light fixtures so full of urine and feces that they would not operate.

The excuse from the Defense Department was that this was a war zone.

Today, we consider a different construction project. This project is not in a war zone. It's not in Iraq or Afghanistan. This project is being built on a United States military base in Germany. U.S. project officials live and work every day next to the facility. It's called the Kaiserslautern Military Community Center, also referred to as the K-Town Mall.

Yet it is also over budget, behind schedule, and falling apart.

The K-Town Mall is the Pentagon's largest single–facility construction project in the world. It will have a hotel, sports bar, slot machines, and over 800,000 square feet of retail space. But

just like the Baghdad Police College, the construction has been deficient, and U.S. oversight has been wholly inadequate. I have some pictures of this project, and the similarities are striking.

Here's one showing how the roof is leaking continually and is causing damage to the finished construction underneath. This will cost millions of dollars to replace. Here are some additional photos of the faulty construction.

And here's another picture showing how flammable sealant was used in kitchen exhaust ducts.

How could this have happened? How could construction of a modern-day facility in a Western country on a U.S. military base resemble the shoddy and makeshift practices of a war zone? That's what we're here to find out.

Certainly, there are problems with the contractor on this project, which is a German government-controlled entity called LLB. And we will hear about some of these deficiencies today.

But the bottom line is that this is a U.S. government project. We are spending over $200 million in U.S. funds to build the K-Town Mall. Yet the Air Force has failed in its responsibilities to conduct proper planning and oversight.

The project is millions of dollars over budget and has no validated cost estimate. The project was supposed to be done last year, but now there's no working completion date.

I want to introduce for the record an audit issued by the Air Force Audit Agency just last week, on June 22. This report details literally dozens of oversight defects by the U.S. government at the K-Town Mall project. Let me just read a few. The Air Force:

- "did not provide adequate oversight of the planning procedures;"

- did not "establish a process for the contractors to provide contractor qualifications for U.S. review;"

- "did not establish procedures directing project managers to review and validate cost estimates;"

- "did not properly monitor and approve contractor payments;"

- paid for "materials in excess of approved contract quantities;" and

- "did not properly appoint certifying and accountable officials."

This is a long report, over 100 pages. So I asked my staff to prepare a short fact sheet with the key auditor findings. That fact sheet is available to members, and I ask that it be included in the record.

GAO investigators also visited the K-Town Mall. We are fortunate that they can be here today to tell us what they learned.

As we will hear, they saw irresponsible management, shoddy work, and millions of dollars in waste.

The federal government spent a record amount — over $400 billion — on federal contracts last year. Over 40 cents of every discretionary federal dollar now goes to a private company. But far too much of this spending is being squandered. A report I released yesterday identified 187 contracts — worth over $1 trillion — that have been plagued by waste, fraud, abuse, or mismanagement since 2000.

The same pattern happens over and over again: The contractors get rich, the work doesn't get done, and the taxpayers get soaked.

As the main oversight committee in the House, we have an essential job to do. We need to examine what went wrong so we can hold officials accountable and enact reforms. That is what I hope we can begin to do today by holding this important hearing.

HENRY A. WAXMAN, CALIFORNIA
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JIM JORDAN, OHIO

MEMORANDUM

June 28, 2007

To: **Members of the Committee on Oversight and Government Reform**

Fr: **Majority Staff, Committee on Oversight and Government Reform**

Re: **Full Committee Hearing on Waste, Fraud and Abuse at K-Town: How Mismanagement Has Derailed DOD's Largest Single Facility Construction Project**

On Thursday, June 28, 2007, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the full Committee will hold a hearing entitled "Waste, Fraud, and Abuse at K-Town: How Mismanagement Has Derailed DOD's Largest Single Facility Construction Project." The hearing will review the preliminary findings of a Government Accountability Office investigation into the construction of the Kaiserslautern Military Community Center, a hotel and retail facility being built on the grounds of the Ramstein Air Base in Germany. This project, which is currently the Department of Defense's largest single facility construction project in the world, has been plagued by schedule delays, cost overruns, and allegations of fraud.

I. BACKGROUND

In the wake of a 1999 U.S.-German agreement to close the Rhein-Main Air Base near Frankfurt, Germany, the United States has undertaken a number of construction projects to increase the capacity of the Ramstein Air Base, located near Kaiserslautern, Germany. Ramstein AB is part of a cluster of U.S. installations in the area that are known collectively as the "Kaiserslautern Military Community," which house more than 50,000 U.S. military and civilian personnel and their families. The Kaiserslautern Military Community is often referred to as "K-Town."

The goal of the Ramstein construction campaign is to convert the base into the U.S. military's new "Gateway to Europe," the point through which U.S. military planes carrying personnel and cargo travel between the United States and other destinations, including Iraq and Afghanistan.

One of the key elements of the Ramstein upgrade plan is the "Kaiserslautern Military Community Center," a new 730,000 square foot multi-use retail, hotel, and entertainment complex adjacent to Ramstein Air Base Passenger Terminal. According to military planners, the new facility, sometimes called the "K-Town Mall," will be a "one-stop shopping center" for both U.S. personnel stationed in the area and for personnel flying through Ramstein to other destinations. The K-Town Mall design includes an eight-story, 350-room hotel/visiting quarters facility, a four-plex movie theater with stadium seating, and a large retail area. A military spokeswoman told *Stars and Stripes* in 2005 that the K-Town Mall would be "a smaller version of the Mall of America in Minnesota or the Galleria in Dallas."[1]

Military planners originally estimated that the cost of building the complex would be around $130 million. Because the K-Town Mall was planned as a multi-use facility, responsibility for financing the facility was apportioned between several different sources, including funds from the Army Air Force Exchange Service (AAFES), the Air Force Services Agency, the sale of Rhine-Main Air Base back to the German government, and congressional appropriations. Ground was officially broken on the project in December 2004. At that time, officials were projecting that the hotel portion of the complex would open in April 2006, while the mall portion would open in August 2006.[2]

Although the building construction was financed with U.S. funds and overseen by United States Air Forces in Europe (USAFE) officials, German contractors performed the actual design and construction work. This contract arrangement was dictated by an administrative agreement negotiated under the authority of the NATO Status of Forces Agreement. Under this protocol (known as the "ABG 75"), German authorities have the right to perform all major construction work undertaken by U.S. forces on German soil. The German government entity in charge of the K-Town Mall construction project is the Landesbetrieb Liegenschafts- und Baubetreuung (LBB), the real estate and public works agency for the Rheinland-Pfalz regional government. During the design and development project, it was agreed that LBB would not hire a general contractor for the project, but would directly award work to smaller German companies specializing in a particular building trade.

According to GAO and Air Force auditors, the K-Town Mall project has suffered serious management problems since the USAFE program management office stood up in early 2005. The K-Town Mall project is now more than a year overdue, tens of millions of dollars over budget, and suffers from significant structural problems, including a defective roof that will need to be replaced before the building can be occupied. Preliminary audit reports suggest that a number of factors have caused these problems, including poor contract management by the Air Force, shoddy construction by certain German contractors, as well as outright fraud by top officials involved in the project.

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[1] *K-Town Mall to Be One of Military's Largest Exchanges,* Stars and Stripes (European edition) (Aug. 11, 2005).

[2] *Ground is Broken for New Mall-Hotel Complex at Ramstein,* Stars and Stripes (European edition) (Dec. 5, 2004).

II. WITNESSES

The following witnesses have been invited to testify:

Panel One

Mr. Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations
Government Accountability Office

Mr. Terrell G. Dorn
Director
Physical Infrastructure
Government Accountability Office

Mr. Bruce A. Causseaux
Senior Level Contract and Procurement Fraud Specialist Forensic
Audits and Special Investigations
Government Accountability Office

Panel Two

Brigadier Gen. Danny K. Gardner
Director of Installations and Mission Support
United States Air Forces in Europe

Mr. Hubert Heimann
Geschäftsführer (Managing Director)
Landesbetrieb Liegenschafts- und Baubetreuung

Mr. Bassim Shebaro (Invited)
Former Engineering Branch Chief
Installations and Mission Support
United States Air Forces in Europe

Staff contacts: David Rapallo, John Williams, and Margaret Daum at 5-5420

Chairman WAXMAN. I want to recognize Representative Shays, who will deliver the opening statement on behalf of Congressman Tom Davis, the ranking member.

Mr. SHAYS. Thank you, Mr. Waxman. This is, in fact, Representative Tom Davis' statement.

Good morning. Let me first commend Chairman Waxman for holding a hearing on acquisition issues that does not involve Halliburton. We hope today's broader perspective marks the beginning of a trend.

As the chairman said, we need today to discuss the challenges facing the Department of Defense's largest ongoing facilities construction project, the Kaiserslautern Military Community Center at Ramstein Air Base in Germany. The facility was designed as a massive, multi-use complex featuring retail, hotel, and entertainment space to service American personnel stated in Germany and for others passing through Ramstein, but today the project stands unfinished after chronic delays, lax management and oversight, huge cost overruns, dangerous design flaws, vandalism, and allegations of corruption.

According to the Government Accountability Office, which brought this matter to the committee's attention, these problems go well beyond the risks inherent in foreign construction projects. This acquisition effort seems to have collapsed under the combined weight of several daunting but not altogether unique complications.

First, the project is supported by four different funding sources, each with different spending rules, currently valued at over $170 million. The acquisition requires coordination of expenditures from Air Force working capital funds, other non-appropriated accounts, and $21 million in appropriated military construction funding.

Second, the facility is being built under a riskier fast track design/build process.

Third, the project must be constructed in accordance with a NATO status of force agreement which requires the German government to manage construction using German contractors to perform the work.

Fourth, the Air Force decided not to use the U.S. Army Corps of Engineers, the Defense Department's resident construction management experts, to oversee the project.

And, finally, to top it all off, the Air Force Project Management Office was under-staffed. The result was a high-risk, high-visibility project managed by too few people.

Any one of these factors presents significant management challenges. Together, they spell disaster in the form of inadequate and unfocused high-level leadership, poor planning, poor design requirements, and an inadequate number of trained personnel overseeing the project.

The Air Force recognizes the project has serious problems in management and oversight, and it is in the process of taking steps to get control of the situation. Some of the identified challenges have been mitigated; others remain works in progress.

There is still a great deal of money committed to the project and substantial funding remains in the pipelines in Germany for other construction endeavors. We need to be sure this project is completed properly and that the future projects do not fall prey to the

same oversight mistakes that steered this project into a cost and scheduling ditch.

I hope this hearing will focus on what needs to be done to get this project back on track and what should be done to protect the integrity of future projects built under the existing status of force agreement in Germany. We need to know what has gotten better, what is still being fixed, and what is still broken, and we need to refine our understanding of the difference between interim findings that may make this complex process look bad now, and the real problems that will actually affect the cost to taxpayers in the end.

I do need to sound a note of caution, however. The GAO audit findings being presented today are only preliminary. Criminal and administrative investigations of the project are still underway. Without the final results of those efforts, we are not in a position to get the full story in this hearing. It might have been wiser to wait, but as we proceed today we should take care not to jeopardize the hard work of the Department of Justice and the Air Force in pursuing serious allegations of civil and criminal violations in connection with this project.

Investigators from the GAO are here today to provide their initial views on these issues, and we commend them for their hard work. We also value the experience and the perspectives our Air Force witnesses bring to this discussion of the critical challenges faced by this construction project.

Much is at stake in terms of U.S. tax dollars and in terms of ensuring our troops get the best possible services and accommodations while deployed overseas.

We look forward to the testimony of all the witnesses and to a frank, constructive discussion.

That is the end of his statement.

[The prepared statement of Hon. Tom Davis follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

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Statement of Rep. Tom Davis
Ranking Republican Member
Committee on Oversight and Government Reform
"Waste, Fraud and Abuse at K-Town: How Mismanagement Has Derailed DOD's Largest Single Facility Construction Project"

June 28, 2007

Good morning. Let me first commend Chairman Waxman for holding a hearing on acquisition issues that does not involve Halliburton. We hope today's broader perspective marks the beginning of a trend.

As the Chairman said, we meet today to discuss the challenges facing the Department of Defense's largest on-going facilities construction project, the Kaiserslautern Military Community Center on Ramstein Air Base in Germany. The facility was designed as a massive multi-use complex, featuring retail, hotel and entertainment space to service American personnel stationed in Germany and for others passing through Ramstein. But today the project stands unfinished after chronic delays, lax management and oversight, huge cost overruns, dangerous design flaws, vandalism, and allegations of corruption.

According to the Government Accountability Office, which brought this matter to the Committee's attention, these problems go well beyond the risks inherent in foreign construction projects. This acquisition effort seems to have collapsed under the combined weight of several daunting, but not altogether unique, complications:

- First, the project is supported by four different funding sources, each with different spending rules. Currently valued at over $170 million, the acquisition requires coordination of expenditures from Air Force working capital funds, other non-appropriated accounts and $21 million in appropriated military construction funding.

- Second, the facility is being built under a riskier "fast-track" design-build process.

- Third, the project must be constructed in accordance with a NATO Status of Forces Agreement which requires the German government to manage construction using German contractors to perform the work.

- Fourth, the Air Force decided not to use the U.S. Army Corps of Engineers - the Defense Department's resident construction management experts - to oversee the project.

- And finally, to top it all off, the Air Force Project Management Office was understaffed.

The result was a high-risk, high-visibility project managed by too few people. Any one of these factors presents significant management challenges. Together, they spelled disaster in the form of inadequate and unfocused high-level leadership, poor planning, poorly designed requirements, and an inadequate number of trained personnel overseeing the project.

The Air Force recognizes the project has serious problems in management and oversight and is in the process of taking steps to get control of the situation. Some of the identified challenges have been mitigated. Others remain works in progress. There is still a great deal of money committed to the project, and substantial funding remains in the pipelines in Germany for other construction endeavors. We need to be sure this project is completed properly and that future projects do not fall prey to the same oversight mistakes that steered this project into a cost and schedule ditch.

I hope this hearing will focus on what needs to be done to get this project back on track and what should be done to protect the integrity of future projects built under the existing Status of Forces Agreement in Germany. We need to know what's gotten better, what's still being fixed and what's still broken. And we need to refine our understanding of the difference between interim findings that may make this complex process look bad now and the real problems that will actually affect the cost to taxpayers in the end.

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Investigators from the GAO are here today to provide their initial views on these issues, and we commend them for their hard work. We also value the experience and the perspectives our Air Force witnesses bring to this discussion of the critical challenges faced by this construction project. Much is at stake, in terms of U.S. tax dollars and in terms of ensuring our troops get the best possible services and accommodations while deployed overseas. We look forward to their testimony and to a frank, constructive discussion.

Chairman WAXMAN. Thank you very much.

I want to welcome now our witnesses for this hearing, Greg Kutz, who is joined by Bruce Causseaux and Terrell Dorn from the Government Accountability Office, who will present the interim results of their investigation into deficiencies at the K-Town Mall.

We also want to welcome Brigadier General Danny Gardner, who is the Director of Installations and Mission Support for the U.S. Air Forces in Europe.

Hopefully we will get an explanation of what has been happening at the K-Town Mall.

I thank you all very much for being here. It is the practice of this committee to ask all witnesses to take an oath before they testify.

[Witnesses sworn.]

Chairman WAXMAN. The record will indicate that each of the witnesses answered in the affirmative.

Your prepared statements are going to be in the record in their entirety. We would like to ask you to proceed in any way you wish in your oral presentation to us.

Mr. Kutz.

STATEMENTS OF GREGORY D. KUTZ, MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; TERRELL G. DORN, DIRECTOR, PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE; BRUCE A. CAUSSEAUX, SENIOR LEVEL CONTRACT AND PROCUREMENT FRAUD SPECIALIST, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; AND BRIGADIER GENERAL DANNY K. GARDNER, DIRECTOR OF INSTALLATIONS AND MISSION SUPPORT, U.S. AIR FORCES IN EUROPE

STATEMENT OF GREGORY D. KUTZ

Mr. KUTZ. Mr. Chairman and members of the committee, thank you for the opportunity to discuss our initial findings relating to the KMCC project. The bottom line of our testimony today is that the KMCC project is in serious trouble. Ineffective management and oversight have resulted in a situation with no good solutions.

Our testimony has three parts: first, the current problems; second, the causes of these problems; and, third, the effects of the problems and implications for future projects in Germany.

First, it was initially estimated that the KMCC would cost about $150 million and be completed in early 2006. Today neither the Air Force nor the German construction agency, LBB, have a reliable cost estimate or completion date.

KMCC currently faces a multitude of problems that threaten the completion of this important project. For example, German contractors are leaving the constructionsite in part because they aren't getting paid. The number of workers has dwindled from hundreds to what we understand to be about 50 today. Construction flaws include significant water leaks, as you mentioned, related to the roof, which will require millions of dollars to fix.

Examples of other problems include vandalism in over 200 of the hotel rooms, turnover in key LBB personnel, and the firing of a

company that LBB hired to manage the project, and ongoing fraud investigations.

Under the causes of the problems, from the beginning KMCC was a high-risk overseas project. Key risk factors, which are also shown on the monitor, include an accelerated schedule due to the need for the 350 hotel rooms; LBB having control over contracting and management; in effect, a cost-plus percentage of cost agreement; scheduling and coordination of over 30 German trade contractors; currency exposure due to a Euro-denominated contract; and financial risks borne by the Air Force and its funding partners.

However, rather than beef up financial contract and construction oversight, the Air Force provided minimal oversight. For example, it appears that millions of dollars of invoices and alleged change orders were paid for by the Air Force with little or no supporting documentation. We refer to this as a pay-and-chase process, which is highly vulnerable to fraud, waste, and abuse.

Unfortunately, LBB failed to effectively design the project and oversee the work of the trade contractors. Ironically, LBB will receive a 5.6 percent fee on top of every dollar of construction cost overruns for this project.

Let me now turn to Terry Dorn, who will discuss the effects of the problems and implications for future projects in Germany.

STATEMENT OF TERRELL G. DORN

Mr. DORN. Mr. Chairman, failure of the Air Force and LBB to meet the project's construction schedule affects all of the funding partners. For example, Air Force estimates it is losing $10,000 per day because the hotel rooms being built by this project are not available, requiring many transiting service members from places such as Iraq and Afghanistan to stay off base in higher-cost German hotels.

AAFES, which uses non-appropriated funds, bears the heaviest burden. Not only is their proportional share of both current and future construction and possible delay costs the largest, but because they are a retail operation they also suffer from lost profits and lost opportunities. Their ability to plan future operations also suffers without a firm opening date, because they don't know when to stock the shelves and they don't know when to hire new employees.

Additionally, AAFES is returned a portion of those profits as dividends, which are used to support morale and welfare activities for our service members and their families. Because of the double hit of increased construction cost from this project and lost sales, AAFES will not be able to return as much money to morale and welfare activities as they had planned. They may also have to delay construction of two shopping centers on other military bases and delay renovation of other facilities.

Air Force officials estimate that there is at least $400 million in additional military construction and operations and maintenance projects slated for Germany over the next 5 years. Absent better controls, these projects face the same type of heightened risks associated with the Kaiserslautern construction project.

In summary, the Kaiserslautern Military Community Center project is in serious trouble and needs serious attention by Air Force and LBB to mitigate the risks. While both recognize some of

the issues and are taking some steps to address them, due to inadequate internal controls and mounds of unprocessed change requests, there is an increased risk of fraud and waste.

Due to reported design issues, the lack of a construction schedule, shoddy construction work requiring rework, work stoppages, and the large backlog of unprocessed change requests, the project's schedule and consequently its budget are at risk of large increases.

The largest share of those budget increases will be passed along by Air Force to AAFES, affecting their available capital for new projects and reducing the amount of dividends they can provide for the morale and welfare funds for our service members and their families serving overseas.

Mr. Chairman. that concludes our opening statement this morning. We are prepared to answer any questions for the committee.

[The prepared statement of the Government Accountability Office follows:]

United States Government Accountability Office

GAO

Testimony
Before the Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 10 00 a.m EDT
Thursday, June 28, 2007

MILITARY CONSTRUCTION

Observations on Mismanagement of the Kaiserslautern Military Community Center

Statement of Gregory D. Kutz, Managing Director
Forensic Audits and Special Investigations

Bruce A. Causseaux, Senior Level Specialist
Forensic Audits and Special Investigations

Terrell G. Dorn, Director
Physical Infrastructure

GAO-07-1039T

GAO
Accountability Integrity Reliability

Highlights

Highlights of GAO-07-1039T, a testimony before the Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

According to the Air Force, the Kaiserslautern Military Community Center (KMCC), an over 800,000 square-foot facility, is currently the Department of Defense's largest single-facility project under construction. It is intended to provide lodging, dining, shopping, and entertainment for thousands of U.S. military and civilian personnel and their families in the Kaiserslautern, Germany, area. Initial costs for the KMCC were estimated at about $150 million, with funding coming from a variety of appropriated and nonappropriated fund sources. The construction for the project, which began in late 2003, was originally scheduled to be completed in early 2006.

This testimony discusses GAO findings to date related to the KMCC. The testimony describes (1) current problems facing the KMCC, (2) causes for identified problems, and (3) the effect of problems identified and their implications for future projects in Germany.

To address our objectives, we interviewed officials from the U.S. Air Force, Army and Air Force Exchange Service, U.S. Army Corps of Engineers, and German government. We also conducted a site visit and reviewed relevant KMCC documents. We plan to continue our work and make recommendations to the Air Force as appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-07-1039T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Gregory Kutz at (202) 512-7455 or kutzg@gao.gov or Terrell Dorn at (202)-512-6923 or dornt@gao.gov.

June 28, 2007

MILITARY CONSTRUCTION

Observations on Mismanagement of the Kaiserslautern Military Community Center

What GAO Found

The KMCC project has encountered cost, schedule, and performance problems. Currently neither Landesbetrieb Liegenschafts- und baubetreuung's office in Kaiserslautern (LBB-Kaiserslautern), the German government construction agency in charge of the project, nor the Air Force have a reliable estimated completion date or final cost for the project.

Problems facing KMCC include construction flaws, vandalism of property, repeated work stoppages and slowdowns by contractors, and ongoing criminal investigations. Because of financial problems facing the project, the number of workers on-site has dwindled from several hundred to less than 50, which will likely further delay completion of the project. In addition, the KMCC's multimillion dollar "green" roof is experiencing water leaks, and will likely require the Air Force to spend millions of dollars for its replacement. Below is a picture of damage caused to the building interior from the roof leak.

The KMCC faced a high level of risk from its inception, which was not effectively mitigated by the Air Force. Increased risks included an overseas project controlled by LBB-Kaiserslautern with financial risks borne by the Air Force and its funding partners. Unfortunately, LBB-Kaiserslautern did not effectively manage the design and construction of the project. Rather than increase controls to mitigate project risks, the Air Force provided minimal oversight and in some cases circumvented controls to expedite the invoice payment process in an attempt to complete the project.

Because this project is funded primarily with nonappropriated funds, the likely substantial cost increases in the project will be borne by military servicemembers, civilians and their families. Further, absent better Air Force controls, future projects may experience the same types of heightened risks associated with KMCC.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our initial findings related to our audit of the Kaiserslautern Military Community Center (KMCC). The KMCC is one of many projects that were initiated at Ramstein Air Base to upgrade the capabilities of the base as a result of the consolidation of military bases in Europe. According to the Air Force, the KMCC, an 844,000-square-foot facility, is currently the Department of Defense's largest single-facility project. Funding for the project was provided from a variety of sources including nonappropriated funds from the Army and Air Force Exchange Service (AAFES) and Air Force Services Agency,[1] military construction appropriations, and Rhein Main Transition Program funds.[2] The KMCC is intended to provide lodging, dining, shopping, and entertainment for over 50,000 U.S. military and civilian personnel and their families in the Kaiserslautern, Germany, area. The KMCC won the Air Force 2006 Design Award for an outstanding design concept for its environmentally-friendly "green" roof,[3] glass domes, and facades allowing maximum light into the facility, and its amenities to the Kaiserslautern military community. Project highlights include a 350-room visiting quarters, sports bar, name brand restaurant, food court, slot machines, and numerous retail businesses. Construction on the KMCC began in November 2003 and the building was planned to be completed in early 2006. This represented an expedited schedule developed to accommodate the need for additional visiting quarters resources resulting from the closure of Rhein Main Air Base in 2005.

[1]AAFES is a joint military activity providing merchandise and services to active duty, guard and reserve members, military retirees, and their families. AAFES utilizes earnings to improve troops' quality of life and to support morale, welfare, and recreation programs. Air Force Services Agency provides combat support and community service programs that enhance the quality of life for Air Force members and their families. Air Force Service Agency programs include lodging, youth programs, and sports and fitness programs.

[2]The closure of the Rhein Main Air base is part of the Rhein Main Transition Program where the United States and Germany agreed to return the base to Germany. In return, Germany allowed the relocation of the base's key airlift capability to Ramstein and Spangdahlem Air Bases. As part of the agreement, the Federal Republic of Germany, federal states of Rheinland-Palatinate and Hessen, city of Frankfurt, and Fraport AG Frankfurt Airport Services Worldwide agreed to provide funds to upgrade the facilities at Ramstein and Spangdahlem Air Bases, including about 14 million euros for KMCC.

[3]According to a USAFE official, for KMMC, green roof refers to an environmentally engineered roof whereby soil and vegetation are placed on the roof of a structure in order to provide a reduction in energy costs, reduce water runoff, and offset the forest area cleared for a project.

The activities of U.S forces personnel in Germany are to be carried out in accordance with the provisions of the North Atlantic Treaty Organization's (NATO) Status of Forces Agreement (SOFA), the German Supplementary Agreement (SA) to the NATO SOFA, and the various administrative agreements that implement these two agreements. The KMCC, like other military projects constructed in Germany, is governed by one such agreement, the Auftragsbaugrundsaetze 1975 (ABG-75) Administrative Agreement. ABG-75 establishes specific procedures for construction of military projects, including the KMCC, in Germany. AGB-75 provides that U.S. forces are to coordinate construction planning with the German government to ensure the optimum use of German design and construction capacities. For the KMCC, the responsibility for construction resided with the Landesbetrieb Liegenschafts- und Baubetreuung office in Kaiserslautern (LBB-Kaiserslautern), a German government construction agency.

As requested, this testimony highlights the findings to date from our audit of the KMCC. Specifically, the testimony will describe (1) the current problems facing the KMCC, (2) the causes for identified problems, and (3) the effect of problems identified and their implications for future projects in Germany.

To address our objectives, we conducted interviews with officials from the U.S. Air Force, including U.S. Air Forces in Europe (USAFE) personnel responsible for the KMCC project and Air Force Services Agency. In addition, we interviewed officials from LBB-Kaiserslautern, AAFES, and the U.S. Army Corps of Engineers (USACE). We also obtained and reviewed project plans, cost estimates, and other relevant documents related to the design and construction of the KMCC. We physically inspected the KMCC and viewed the current status of the project. Our audit work was performed between May and June 2007 in accordance with generally accepted government auditing standards.

Summary

The KMCC project has encountered cost, schedule, and performance problems. Factors contributing to problems facing the KMCC include construction flaws, vandalism of property, contractor work stoppages and slowdowns resulting from delays in payments, and an ongoing fraud investigation. Originally scheduled to be completed over a year ago, continuing KMCC construction and financing problems are likely to delay its completion. In fact, problems are so severe that neither officials from LBB-Kaiserslautern nor the Air Force can now forecast the completion date of the project. Original cost estimates for the project totaled

approximately $150 million. However current cost estimates total approximately $200 million and will likely increase in the future. Cost increases have been compounded because of the significant appreciation of the euro versus the U.S. dollar since inception of the project. The KMCC is also experiencing numerous performance problems resulting from design flaws, ineffective construction management, and substandard workmanship. For example, the KMCC's multimillion dollar roof is experiencing water leaks, which according to Air Force officials will likely require its replacement at a cost of millions of dollars. In addition, the Air Force delayed payments to some contractors because contractor invoices were for contracts which had already reached their contract cost ceiling. Because of the delay in payments, contractors drastically decreased their workforce from several hundred workers per day to about 50.

Finally, project management of both LBB-Kaiserslautern and the Air Force have experienced significant changes including: (1) replacement of LBB-Kaiserslautern project managers, (2) firing of LBB-Kaiserslautern's construction management contractor, and (3) resignation of a senior Air Force civilian working on the project. In addition, several Air Force and LBB-Kaiserslautern personnel involved in the management of the KMCC are currently under investigation by Air Force Office of Special Investigations (AFOSI) and German police.

The causes for the current problems facing the KMCC stem from risks associated with overseas construction, failures by LBB-Kaiserslautern to effectively perform its construction management duties, and failures by the Air Force to institute effective controls to mitigate project risks. Overseas construction projects pose additional risk due to differences in languages, laws, construction standards, and currency fluctuations when costs are denominated in the host country's currency. Almost all U.S. military construction in Germany must be done within the framework of ABG-75. ABG-75 largely gives the German government contracting agency control over projects and contractors while financial risks are borne by, in this case, the Air Force and its funding partners. ABG-75 generally gives the German government the authority to contract and manage construction of most U.S facilities in Germany through what is called indirect contracting.[4] In addition, ABG-75 requires the U.S. government to

[4]According to ABG-75, indirect contracting means the planning, execution, and administration of construction works are performed by the German government on behalf of the U S forces.

pay the German government construction agency a percentage fee based on the cost of the contract.[5] As a result, German government construction agencies do not have an incentive to control costs because each dollar increase in the project costs results in increased fees for the German government construction agents.[6]

In addition, LBB-Kaiserslautern did not effectively manage the KMCC project. The failures included LBB-Kaiserslautern's inability to maintain and implement a valid, updated construction schedule and to effectively coordinate work between multiple contractors. LBB-Kaiserslautern, and its architect-engineer contractor JSK, also did not adequately design the project prior to construction. Because of the poor design, Air Force officials estimate that millions of dollars of changes and rework were necessary as of June 2007. For example, the Air Force noted in the design review phase that KMCC's kitchen exhaust ducts as designed did not meet U S fire safety standards. However, because the Air Force design comment was not incorporated by LBB-Kaiserslautern, hundreds of thousands of dollars of rework on the KMCC's exhaust ducts will be necessary. In addition, LBB-Kaiserslautern acknowledged that it was vastly understaffed to effectively manage a project the size of the KMCC. This understaffing resulted in LBB-Kaiserslautern being unable to process the large number of change orders that arose from the project. According to Air Force officials, this resulted in work related to more than 400 contract changes being billed to the Air Force without supporting documentation.[7]

Despite the high risks surrounding the KMCC, Air Force officials failed to institute effective management oversight and controls in order to mitigate the high risk from the project. Had LBB-Kaiserslautern done an effective job of managing the project, the lack of Air Force controls would have been mitigated Unfortunately, as stated above, LBB-Kaiserslautern did not

[5]Thus, the total cost for the KMCC is the cost of the contracts that the German government construction agent negotiated with contractors for constructing the building plus the fee for the German government construction agent.

[6]LBB-Kaiserslautern for the KMCC is reimbursed 5 6 percent of the total cost of the project as its fee for managing the construction on behalf of the U S forces.

[7]The 400 contract changes refer to changes in the project that were approved by LBB-Kaiserslautern, but have not been submitted to the Air Force The extent of documentation provided to the Air Force justifying the need for the changes has been limited to a one-line description Although requested, LBB-Kaiserslautern did not provide any additional documentation to us to substantiate the existence or justification for these changes

manage the project effectively and therefore increased the importance of effective Air Force controls. Normally the Air Force hires USACE to oversee projects in Germany to provide assurance that construction, procurement, and financial controls are in place and U.S. interests are protected. However, for the KMCC, the Air Force elected not to use USACE,[8] and subsequently did not institute sufficient controls of their own to mitigate the project risks. The Air Force did not have sufficient staffing to oversee the project, given its complexity. According to Air Force officials, they initially had about 8 personnel on the project but have recently increased staff to 17 personnel. However, the Air Force still does not have experts, such as contracting officers or certifying officials, on-site to provide assurance that all requirements of the contract are met. As a result, the Air Force did not properly review many invoices prior to payment—tasks that a contracting officer or certifying official would be expected to perform. In addition, because of internal demands to complete the project on an expedited basis to accommodate needs rising from the closure of Rhein Main Air Base, the Air Force instituted processes that circumvent its main controls for monitoring costs associated with the project. Although ABG-75 allows all U.S. forces the right to reject invoices for which the contract or change order were not previously approved, Air Force project management instructed its staff to approve invoices that included items listed on certain change orders that had not been submitted to or approved by the Air Force. In addition, the Air Force instructed its staff to approve invoices where quantity limitations specified in the contracts were exceeded as long as LBB-Kaiserslautern provided a form letter stating the price was fair and the work was necessary. Therefore, despite risks associated with the KMCC, the Air Force elected to reduce controls instead of increasing their oversight of the project.

Cost increases and schedule delays will most significantly affect AAFES and the Air Force Services Agency, the primary funding sources for the project. For example, according to an AAFES official, recent estimates by AAFES, the largest contributor to the KMCC, forecast its portion of the total KMCC cost will end up doubling its original cost estimate. As a result, the reduction in AAFES return on investment from the KMCC caused by escalating costs may reduce profits and thus may diminish future funding of morale, welfare, and recreational activities for U.S. service members. In

[8] Air Force officials stated that they did not use USACE because of the limited amount of military construction funds associated with the KMCC project and additional costs associated with using USACE

addition, as a result of the higher KMCC costs, AAFES and the Air Force Services Agency are also likely to have less funding for their other planned capital projects, such as the construction or renovation of their stores. Also, because of the delay in the completion of the visiting quarters portion of the KMCC, which was needed to accommodate the additional quarters requirements arising from the closure of Rhein Main Air Base, service members in transit to and from other locations, such as Iraq and Afghanistan, may also be forced to stay off-base, at additional cost to the government. Finally, Air Force officials estimate there is at least $400 million in additional operations and maintenance projects and military construction projects planned in Germany over the next 5 fiscal years. Absent better Air Force controls, these projects may experience the same types of heightened risks associated with KMCC.

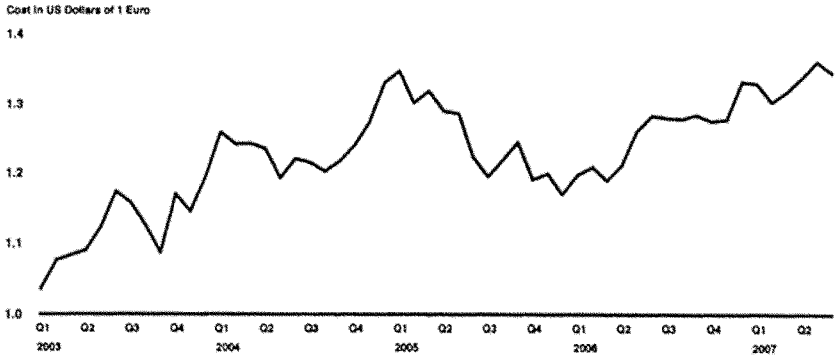
KMCC Currently Experiencing Substantial Cost, Schedule, and Performance Problems

The KMCC currently faces significant cost, schedule, and performance problems, and it is unclear as to when the project will be completed and at what cost. Despite being originally scheduled to open in early 2006, neither LBB-Kaiserslautern nor the Air Force can estimate a completion date for the project because of the widespread construction management problems. In addition, estimated costs associated with the KMCC have already exceeded original estimates and will continue to grow. LBB-Kaiserslautern mismanagement has caused numerous problems with the KMCC. Examples include poor designs, substandard workmanship on key building components, and a significant reduction in the number of workers on-site. Furthermore, there may be fraud within the project, which is supported by the fact that there are ongoing criminal and civil investigations by AFOSI and German police.

The latest official design schedule completed by LBB-Kaiserslautern and provided to the Air Force in September 2006 indicated that the KMCC would be completed by April 2007. However, during our visit to the KMCC in May 2007, LBB-Kaiserslautern and Air Force officials stated that key milestone dates from the most recent design schedule had obviously slipped. In fact, neither LBB-Kaiserslautern nor Air Force officials could provide a new estimated project completion date during our audit of the project. Also, both LBB-Kaiserslautern and the Air Force provided us current cost estimates of about $200 million, which have already exceeded the original estimate of about $150 million. We found that these cost estimates did not include substantial costs related to the expected roof

repair and replacement discussed later, as well as hindrance claims associated with the project.[8] Furthermore, the Air Force contract with LBB-Kaiserslautern is denominated in euros and therefore the U.S. cost equivalent varies with the exchange rate. For example, the original cost estimate of about $150 million was developed in 2003 when 1 dollar was able to purchase significantly more in euros than 1 dollar can currently purchase. Figure 1 below shows the trend in the strengthening of the euro against the U.S. dollar over the past several years.

Figure 1: Currency Exchange Rates for Euros since 2003



Source: Federal Reserve.

The schedule delays associated with the KMCC have compounded cost problems because of the appreciation of the euro versus the U.S. dollar. Given the substantial costs associated with repairs to the roof, schedule delays, and potential hindrance claims by contractors, assuming currency rates remain higher than they were for the original project budget, the appreciation of euros versus the U.S. dollar compounds the effect of cost overruns on this project.

[8]Hindrance claims refer to claims against the United States for additional costs contractors incurred due to interruption of contractor work.

Since the start of construction in 2003, the KMCC has experienced numerous problems including poor design, substandard workmanship, poor coordination of the different contractors, and a reduction of workers on the site. Some of the more notable problems associated with this project include the following.

Roof: The roof is experiencing water leaks causing considerable damage to the walls and the floors of the complex. According to Air Force officials, since the contractor responsible for roof construction went bankrupt, KMCC funding sources from the United States (AAFES, Air Force Services Agency, and Military Construction funds) will likely be used to pay the estimated millions of dollars in costs required to repair or replace the entire roof along with any internal damage. Figure 2 shows some damage in the KMCC resulting from the leak in its roof.

Figure 2: KMCC Damage from Leaks in Roof

Source: USAFE

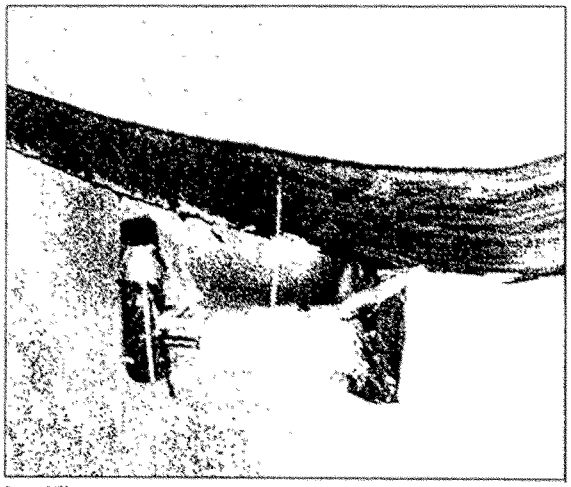
- **Exhaust ducts:** The kitchen exhaust ducts installed in the KMCC do not comply with fire code standards established by the National Fire Protection Association.[18] According to Air Force officials, it will take several months to make the exhaust ducts compliant with the fire codes at a cost of hundreds of thousands of dollars.

- **Bathroom faucets:** Design plans called for some of the bathroom faucets in the KMCC to be automatic where water would turn on when a motion sensor indicated the presence of a person. However faucets and walls were installed prior to the electrical contractor installing wires needed to power the automated faucets.

- **Vandalism:** In April 2006, vandalism occurred in over 200 rooms inside the KMCC. The cost to repair damage caused by the vandalism is estimated to be over $1 million. To make matters worse, as shown in figure 3, due to poor project coordination, a German contractor installed light fixtures on top of the vandalized walls. These lights will need to be removed to enable wall repairs to be made and then reinstalled.

[18]National Fire Protection Association 96: Standards for Ventilation Control and Fire Protection of Commercial Cooking Operations

Figure 3: Light Fixture Installed on Top of Vandalized Wall



Source USAFE

- **Reduction of construction workers:** In the past several months, the KMCC has faced a drastic reduction of the number of workers on-site LBB-Kaiserslautern officials attributed this decrease to slow payment for services and reduced payment amounts from the Air Force due to increased scrutiny of invoices by the Air Force. The Air Force has delayed the payments to certain contractors because the total amount of charges billed to the Air Force has already risen to the contract cost ceiling for the specific contractor Therefore, the Air Force has been unable to pay those contractors for work performed without a contract change order to increase the contract ceiling As a result, many of the contractors either reduced the number of workers or have quit working altogether on the project. Prior to September 2006, the number of workers on the site was normally several hundred Currently, the number of workers on the site is routinely less than 50.

In addition to the construction problems faced by the KMCC, there have been a number of personnel who have been removed or have resigned from the project. In the past year, project management officials from LBB-Kaiserslautern have been replaced Also, JSK, the firm hired by LBB-Kaiserslautern to manage the KMCC, was fired Finally, a senior Air Force civilian in charge of the project resigned from the position and left the Air Force in 2006. On top of those personnel changes, both the AFOSI and the German Police have ongoing investigations into the project. The investigations span a variety of issues, both criminal and civil, including the investigations of Air Force project management officials as well as German government officials. In the past year, both Air Force and LBB-Kaiserslautern offices have been searched and documentation seized by both AFOSI and German police in relation to these investigations.

KMCC Problems Caused by Overseas Construction Risks, LBB-Kaiserslautern Management Deficiencies, and Lack of Air Force Controls

Current problems facing the KMCC have been caused by the additional risks associated with overseas construction, project management deficiencies by LBB-Kaiserslautern, and the Air Force's lack of effective controls to mitigate project risks. Guidelines set forth in ABG-75 add risk to the contract management process for U.S. forces construction in Germany. In addition, during the design and construction of the KMCC, the German government construction agent, LBB-Kaiserslautern, did not effectively carry out its project design and construction management duties Finally, the Air Force failed to recognize risks associated with the KMCC and develop control procedures to minimize project risks. Because the most significant control that the United States can exercise over construction projects in Germany is financial control, the Air Force should have increased the project oversight controls to identify any invalid, unsupported, or inaccurate costs before money was spent. Instead, the Air Force did not have basic oversight and in some cases has circumvented controls in order to expedite payments.

Overseas Construction Risks

The KMCC presented increased risk from the beginning because U S. forces are not in direct control of construction projects in Germany. Under the terms of ABG-75, most U S. military construction projects are required to be executed by German government construction agencies, in this case LBB-Kaiserslautern, in accordance with German laws. This includes all contractual authority for design, bid tender and award, project execution, construction supervision, and inspection for all military projects within Germany. As such, the German government construction agency contracts directly with the design and construction companies responsible for a given project As a result, the United States is required to work through

this indirect contracting method, and does not have any direct legal relationship with the contractors for construction projects that are to be built on their behalf.

According to Air Force officials, because ABG-75 gives the German government such broad powers in the construction of military projects, the United States has limited influence on how construction projects are built. For example, Air Force officials stated that they were initially resistant to use a trade lots[11] acquisition strategy for the construction of the KMCC because of the complexity involved with coordinating and managing the contractors associated with this strategy. Air Force officials stated that they relented to German government demands for trade lots after it was pointed out that the method of contracting was clearly within the German government's prerogative under ABG-75. ABG-75 stipulates that the U.S. government pay German government construction agencies (e.g., LBB-Kaiserslautern) between 5 and 7 percent of the project cost for administering the contract regardless of the total project costs with no incentives for early completion. As a result, no incentive exists to minimize costs or encourage early completion.

Despite additional risks associated with ABG-75, U.S. forces do have some leverage in managing construction projects in Germany. Specifically, under ABG-75, the United States is granted the authority to approve designs and provide prior consent to any modifications to the construction contract (also known as "change orders") that affect the scope, quality, or cost of the project. Any excess costs must be approved in advance by U.S. forces, and the forces are not liable for costs proved to be the fault of German officials or contractors. Thus, U.S. forces do have the "power of the purse" which can be used to pay only for costs within the scope of the contract. According to Air Force officials, the Air Force has the ability to cut off funding for its projects. However, since the projects are needed for base operations, such a step would only be used as a last resort.

Finally, general risks associated with overseas construction projects add to an already risky situation. Increased complexities of overseas projects include differences in languages, culture, construction laws, safety regulations, and exposure to changes in currency exchange rates. Changes

[11]The use of trade lot contracts refers to the practice of contracting directly with individual companies for specific sections of work on a larger project instead of contracting with one general contractor who then subcontracts out the specific tasks.

in currency exchange rates can pose a significant risk when project costs must be paid in the host country's currency, especially when projects take substantially longer to complete than originally planned. Despite risks associated with overseas construction, the Air Force did not institute sufficient controls to manage the project.

LBB-Kaiserslautern Did Not Effectively Perform Required Duties for the KMCC

During the design and construction of the KMCC, LBB-Kaiserslautern did not effectively carry out its project design and construction management duties. LBB-Kaiserslautern's deficiencies in these areas have contributed to additional costs, schedule delays, and increased financial risk to the U.S. government for the KMCC project.

Flawed Project Design and Implementation

The design of the KMCC was inadequate and resulted in numerous instances of rework costing millions of dollars to fix. LBB-Kaiserslautern hired an architect-engineer firm, JSK, to draft plans for the KMCC, and subsequently contracted with JSK to be the construction manager. According to Air Force and AAFES officials, numerous design flaws were identified by the Air Force in the initial design review of the KMCC and were communicated to both LBB-Kaiserslautern and JSK. However, according to these U.S. officials, neither LBB-Kaiserslautern nor JSK incorporated many of their comments into the final design, which later resulted in additional work and costs. Air Force officials stated that, as of June 2007, they have identified millions of dollars of additional work required because of identifiable design flaws, which the Air Force plans to pay for in order to keep construction work moving forward.

The following are some examples of design and construction flaws for the KMCC project

- **Exhaust ducts:** During review of the initial KMCC design, Air Force identified and commented to LBB-Kaiserslautern and JSK that the exhaust ducts used in the restaurant kitchens did not meet U.S. fire safety standards. However, LBB-Kaiserslautern and JSK failed to ensure the change was addressed by contractors responsible for duct construction. As a result, the exhaust ducts installed at the KMCC were not compliant with U S. fire safety standards. In addition, when we toured the KMCC, an Air Force official showed us the material used to seal the exhaust ducts. According to the official, this material was flammable and, as such, posed a safety risk when hot gasses are vented through the exhaust ducts. Because of the poor design of the exhaust ducts, the Air Force has recently approved a change order for hundreds of thousands of dollars to

fix the problem. Figure 4 below is a picture of the flammable sealant used in the kitchen exhaust ducts.

Figure 4: Flammable Sealant Inappropriately Used in Kitchen Exhaust Ducts

Source USAFE

- **Retail space ceiling:** The design of the ceiling in the AAFES retail area was not adequate to support light fixtures The design detailed an open-grid suspended ceiling (not fitted with tiles) with light fixtures fitted into some of the openings However, during installation, workers discovered that the ceiling grid was not strong enough to support the light fixtures Ceiling tiles stabilize the grid to keep it from shifting, so omitting the tiles weakened the grid to the point where the light fixtures could not be supported As a result of this design error, a contract change was necessary in order to provide additional steel supports for the ceiling grid.

- **Escalator/escalator pit:** Poor design and construction coordination caused problems with installation of the building's escalator The escalator pit was initially built as part of the contract to construct the building's concrete floor A subsequent contract was issued for installation of the escalator itself. However, the contract specifications for the escalator installation did not sufficiently detail the size and location of the escalator

pit, and the escalator provided by the contractor did not fit in the previously-built pit. As a result, rework was necessary to build a new pit in the proper location.

Ineffective Project Management

LBB-Kaiserslautern did not effectively manage the KMCC project. Instead of using a general contractor who would be contractually responsible to build the project, LBB-Kaiserslautern attempted to execute the project by managing more than 30 separate trade lot contracts by itself. Each trade lot contractor was only responsible for its section of work, and no one party, other than LBB-Kaiserslautern, was responsible for the overall completion of the project. In addition, the LBB-Kaiserslautern's decision to use trade lot contracts also meant that LBB-Kaiserslautern would be required to properly coordinate the effort of all the contractors, adequately staff the project, and appropriately monitor construction schedule and costs, so that work could progress As described below, LBB-Kaiserslautern did not carry out its requirements in the following areas:

- **Poor project coordination:** LBB-Kaiserslautern did not effectively coordinate the work of the more than 30 construction contractors on-site. This resulted in inefficiencies in construction as well as damage to finished work. For example, one contractor responsible for installing a tile floor was forced to delay work while the contractor responsible for installing the ceiling finished work over the area where the floor was to be installed. In another case, the contractor responsible for laying the paving stones outside the building was allowed to finish its work before major exterior construction was completed This resulted in damage to the paving stones when heavy cranes were subsequently used on top of the stones to install exterior bracing to the building

- **Inadequate staffing:** In our interviews, LBB-Kaiserslautern officials told us that their office was understaffed. LBB-Kaiserslautern officials stated that this lack of staffing hindered LBB-Kaiserslautern's ability to provide assurance that the project design was adequate and improve contractor coordination discussed previously In part, as a result of the above listed design and coordination problems, numerous contract change orders were necessary. Again, the lack of staffing hindered LBB-Kaiserslautern's ability

to process necessary change orders as required by ABG-75.[12] According to Air Force officials, there are hundreds of change orders that LBB-Kaiserslautern has approved, yet has not submitted documentation to the United States for approval. Many of these change orders also had corresponding invoices submitted and certified by LBB-Kaiserslautern that the Air Force subsequently paid LBB-Kaiserslautern was only able to provide us a listing of the change orders involved. This was far less than the detailed specifications required for review by the Air Force prior to the approval of the change and payment.

Air Force officials also stated that this failure to process change orders was a major problem because this processing serves as the basis for increasing the obligation authority for the contract. In addition, LBB-Kaiserslautern officials stated they had approved the work for most of these change orders and thus the contractors performed the work and were expecting payment. According to Air Force officials, in some cases when the Air Force refused to make payment on the unapproved changes, contractors halted work and sent notices to the LBB-Kaiserslautern that they would be liable for any costs associated with delays in payment. In many cases, the Air Force chose to reduce controls and make payments on these items despite not having appropriate change order documents in an attempt to keep the work on the project progressing

The lack of staff also hindered LBB-Kaiserslautern's ability to sufficiently monitor the quality of the contractors work. For example, as stated previously, the KMCC roof is leaking substantially because LBB-Kaiserslautern did not properly monitor the contractor's work. Because of this, the Air Force is facing potentially millions of dollars in additional costs to replace the poorly built roof.

- **Unreliable construction schedule and cost estimates:** LBB-Kaiserslautern is responsible for providing the Air Force with up-to-date detailed construction schedules and cost estimates According to Air Force officials, the latest official construction schedule provided by LBB-Kaiserslautern was in September 2006 and showed a completion date of

[12]During normal construction work done under the ABG-75 agreement, contractors perform work as specified in the original contract. When changes to the original contract are necessary, U S. forces are to be given advance notice of any change and must give their approval before work can begin Thus notice and approval process would be accomplished by LBB-Kaiserslautern through development of a contract change order document which specifies the details of the change, cost, and other related information Once documents are approved by the U S forces, work can be initiated

March 2007 for the visiting quarters and April 2007 for the mall portion of the KMCC. During our visit in May 2007, LBB-Kaiserslautern officials stated that they do not have a current construction schedule or completion date established for the project. Despite the lack of an estimated completion date, LBB-Kaiserslautern officials had developed an estimate of the total KMCC cost at completion. This estimate currently projects that costs will be higher than original estimates of approximately $150 million. According to LBB-Kaiserslautern officials, this cost estimate does not include certain expected costs, which we consider significant. For example, as stated earlier, the roof on the facility is continually leaking and likely will need to be replaced. Air Force and AAFES officials estimate that the cost to replace the roof will be in the millions of dollars. In addition to roof estimates, there are additional costs associated with hindrance claims that were not included in the cost estimate. In fact, in May of 2007, LBB-Kaiserslautern officials stated they received a single claim for several million dollars, which has not been substantiated, from just one of the more than 30 contractors. Finally, LBB-Kaiserslautern cost estimates do not include adjustments for future cost increases on existing contracts. Although past experience on this project has shown that many of the contract amounts have increased due to change orders or quantity increases, LBB-Kaiserslautern did not include any estimates for these expected future increases

Air Force Did Not Appropriately Minimize Risks

The Air Force did not incorporate sufficient controls to minimize the significant project risks involved with the KMCC. Control deficiencies included inadequate staffing, poor policies, and a lack of effective control processes in place. By not utilizing controls that were available to them through the ABG-75 agreement, the Air Force has given up any leverage it had on keeping project costs within budget. These control weaknesses contributed to schedule and performance problems without a sufficient reaction from the Air Force. In addition, after problems were identified, the Air Force did not take appropriate corrective actions.

Air Force Lacked Necessary Staffing and Expertise for Adequate Oversight

Air Force officials did not have adequate staff with appropriate expertise needed to oversee the KMCC. In 2002, the Air Force elected not to use the USACE as the servicing agent for the KMCC project. According to the Air Force officials, they were not required to use the USACE on this project because only a small percentage of the KMCC funds were based on appropriated military construction funding However, in foregoing USACE oversight, the Air Force did not establish adequate staffing or contracting and construction management expertise needed for a project as complex as the KMCC. According to Air Force officials, at the inception of the

project, there were approximately eight full time personnel assigned to the KMCC from the Air Force. In addition, the limited number of Air Force staff did not have adequate expertise in the areas of contracting or construction management As of May 2007, no contracting officers or certifying officials have been assigned to the KMCC. [13] These experts are trained and certified to obligate and spend funds on behalf of the U.S. government and would typically be found in any military construction-funded project.[14]

As a result of the lack of staffing with adequate contracting and construction management expertise, many invoices came into the Air Force office, overwhelming the ability of the staff to adequately review invoices prior to payment. According to Air Force officials, no invoices were disputed prior to September 2006 However, after September 2006 when significant problems with the KMCC were recognized, some staffing improvements were made. For example, the Air Force increased the number of personnel to approximately 17 full time personnel currently on site, because it became apparent that they did not have sufficient personnel to conduct adequate reviews of invoices. Since the increase in staff, the Air Force has been able to review invoices more thoroughly, and according to Air Force officials, the percentage of recent invoices disputed increased to 75 percent.

Air Force Policies and Control Procedures were Inadequate

The Air Force did not have adequate policies and control procedures in place for the management of the KMCC. At the beginning of the project, project management officers lacked a standard operating procedure to follow. According to Air Force officials, the only written process in place was a simple one-page process flow chart to delineate how the entire process was supposed to work. Since the recognition of numerous problems associated with the KMCC, the Air Force has instituted additional control procedures, such as increased invoice reviews, but has not formalized those procedures into a written operating procedure.

We were unable to determine if there were any specific procedures in place prior to September 2006. However, the project schedule slippage and

[13]For example, a German national employed by the Air Force has been obligating and expensing millions of dollars spent on the KMCC. This official is neither a contracting officer nor a certifying official but rather what the Air Force calls their ABG-75 specialist.

[14]According to a USACE official, the USACE makes it a standard practice to have a contracting officer involved in all of their projects

lack of disputes of invoices by the Air Force indicates that the controls in place were not fully effective. When we asked the Air Force officials about control procedures in place prior to September 2006, several officials, who were working on the project during the time in question, stated they were unable to answer questions based on advice from their legal counsel. The same officials who declined to answer questions stated that the project was under investigation by AFOSI. In addition, a senior Air Force civilian on the project prior to September 2006 had resigned and was therefore unable to answer questions. Without written procedures or explanations from Air Force staff, we could not determine what controls, if any, existed prior to September 2006.

In September 2006, Air Force officials recognized that significant problems faced the project. One problem specifically recognized was that numerous payments were made on invoices for work that had been billed on the 400 contract changes, which lacked documentation and had not been previously approved by the Air Force. Upon this recognition, the Air Force attempted to institute controls going forward. For example, the Air Force instituted a closer review of invoices to identify items that were billed but were not approved by the United States through change orders. However, under pressure to keep the project moving forward to completion, the Air Force subsequently relinquished much of this control by expediting the payment of invoices upon receipt from LBB-Kaiserslautern including charges for unapproved work. Examples of the relaxing of these controls include:

- paying invoices submitted after September 2006 on work billed to the Air Force related to the 400 contract changes which had not been submitted by LBB-Kaiserslautern, and
- approving invoices even though the line item quantities greatly exceed contracted amounts.

The Air Force stated the decision to relax the controls was made so that construction proceeded as expeditiously as possible on the KMCC.[12] Despite the removal of these controls, the number of workers on-site has still decreased significantly. In addition, Air Force officials stated that they viewed these payments on unapproved work as "partial payments" of

[12]The Air Force continues to look for ways to relax controls to expedite payment. For example, the Air Force is studying whether to approve change orders based on contractor's initial offer instead of negotiated amount, as is typically required

expenses, and that any disputes in payments could be recouped upon project completion. However, we have reported in the past that such "pay and chase" strategies are not effective and increase risks substantially to recover the unapproved amounts. The Air Force was unable to provide any examples were the United States had successfully recouped overpayments in German courts.

KMCC Problems May Adversely Affect Military Members and Future Construction Projects

The substantial schedule and cost overruns of the KMCC may affect military personnel and have major implications for future projects in Germany. The effects of these cost increases are likely to be shouldered by our men and women in the military. AAFES, the largest financial contributor to the KMCC, has stated that cost overruns have reduced the return of investment (e.g , the amount of profit they plan to receive from the project). As a result, AAFES and Air Force Services Agency funding of morale, welfare, and recreational activities for U.S. military members may be reduced. In addition, the escalation in costs may also affect the ability of AAFES and the Air Force Services Agency to finance future capital projects from its nonappropriated funds. Further, because of the delay in the completion of the visiting quarters portion of the KMCC, service members on travel to other locations, including Iraq and Afghanistan, may have to stay off-base. In addition to the inconvenience that this places on service members, the Department of Defense—and thus taxpayers—must fund the additional cost of any required temporary lodging off-base, which the Air Force estimates to be approximately $10,000 per day or $300,000 per month.

In addition to the effect on military members and their families, the current Air Force project management weaknesses may have implications for future Air Force construction in Germany. The Air Force planned construction within the Federal Republic of Germany for the next 5 fiscal years totals more than $400 million. These construction projects include small operations and maintenance projects (such as school renovations and road repairs) and major military construction projects (such as a $50 million clinic and a $50 million base exchange and commissary). Absent better Air Force controls, these projects may experience the same types of heightened risks associated with KMCC.

Concluding Comments

Although one of the major problems with KMCC related to ineffective project management by LBB-Kaiserslautern, the Air Force did not effectively institute oversight to mitigate the high-risk nature of the entire project. By the time the Air Force started making an attempt at oversight,

the project was already several months past the original construction deadline of early 2006. With mounting problems including contractors walking off the job, the Air Force faces the dilemma of instituting controls far too late in the process and further extending the completion of the project versus paying whatever it costs to get the job done as quickly as possible. The likely substantial cost overruns and potential years of schedule slippage will negatively affect morale, welfare, and recreation programs for DOD service members, civilians, and their families for years. The Air Force needs to seriously consider substantial changes in oversight management capabilities for the hundreds of millions of dollars of planned construction projects planned in Germany over the next several years.

Mr. Chairman and Members of the committee, this concludes our statement. We would be pleased to answer any questions that you or other members of the committee may have at this time.

GAO Contacts

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Appendix I: Scope and Methodology

To assess the current problems facing Kaiserslautern Military Community Center (KMCC), we interviewed agency officials from the Air Force at Ramstein Air Force Base in Germany. We physically inspected the KMCC facility with an Air Force project manager and documented construction problems. We also reviewed financial records and statements in the form of contracts, change orders, and invoices to the extent that they were available.

To examine the effect the Auftragsbaugrundsaetze 1975 (ABG-75) had on the management of the KMCC project, we reviewed the ABG-75 agreement, which outlines construction requirements for U.S. forces stationed in Germany. In addition, we conducted interviews with officials from the Air Force, Landesbetrieb Liegenschafts- und Baubetreuung (LBB) the German government construction agency, and the U.S. Army Corps of Engineers.

In order to determine the management weaknesses of LBB and the Air Force, we interviewed officials from both organizations, conducted interviews with other organizations affected by the KMCC project including the Air Force Office of Special Investigations (AFOSI), Air Force Audit Agency, Air Force Services Agency, and the Army and Air Force Exchange Service. We also reviewed applicable Department of Defense Financial Management Regulations as well as the National Fire Protection Association standards.

To assess the effect that control weaknesses found in the KMCC project could have on future the Air Force projects in Germany, we obtained information from the Air Force on future construction plans in Germany. We also interviewed Air Force officials to determine what changes in processes had been made that would affect future construction projects.

We performed our audit work from May 2007 through June 2007. Audit work was conducted in accordance with generally accepted government auditing standards.

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Chairman WAXMAN. Mr. Causseaux, you are here to answer questions?

Mr. CAUSSEAUX. Yes, sir.

Chairman WAXMAN. OK. Thank you.

General Gardner.

STATEMENT OF BRIGADIER GENERAL DANNY K. GARDNER

General GARDNER. Good morning, Chairman Waxman and distinguished members of the committee. It is an honor for me to be here today.

Mr. Chairman, I have a brief opening statement, but my written statement presents the facts of this situation to the best of my knowledge.

In opening, I would like to state that the Kaiserslautern Military Community Center project [KMCC], remains a cornerstone requirement for U.S. Enduring Presence in the European Theater. It will help provide quality of life transit capability to America's finest going to, coming from, or supporting any EUCOM or CENTCOM area of responsibility.

This project is governed by the ABG–75 administrative agreement, a bilateral agreement between the United States and the Federal Republic of Germany. This agreement details the roles, responsibilities, and procedures of all parties in the acquisition of U.S. facilities projects in Germany.

As you are all aware, this project is experiencing management, technical, and fiscal issues which are significantly delaying its completion.

Mr. Chairman, if you will indulge me for a moment, I would like to explain the contractual relationships of the parties involved in construction in the Federal Republic of Germany in terms of a football team, something we can all relate to. This is not to suggest, Mr. Chairman, that this is a game, but the analogy will serve to better illustrate the roles and responsibilities of the various parties.

In my analogy, the players are the contractors. The quarterback is the construction manager, JSK. The coach is our German construction agent, LBB Kaiserslautern. The owners and investors are the German and U.S. Government, respectively. Our quarterback, or our construction manager, is our key player. JSK is responsible for orchestrating the plays while working the field.

Our coach, LBB Kaiserslautern, developed a strategy to be successful on the field and responsible for evaluating and adjusting performance of the quarterback and players. The owners and investors provide resources for the coach to hire players, develop strategy, and succeed in the field. The owners and investors can be somewhat involved in the pre-game strategy, but in Germany once the game begins or contracts are awarded the success of the team lies with the coach, the quarterback, and the players.

In the case of KMCC, we have experienced several weaknesses, and in some cases complete failure in our quarterback, JSK, and our coach, LBB Kaiserslautern. These weaknesses and failures have brought us to where we are today. The owners and U.S. officials are working hand-in-hand to determine solutions to the challenges our team is facing.

It is my belief that the challenges surrounding the KMCC project are deeply rooted in an irreversible decision by our German construction agent to use an acquisition methodology known as trade lots. Although the decision was well intended, it was ill fated. Simply defined, trade lots dispense with the use of single general contractor normally fiscally responsible for all aspects of single contract. Instead, trade lots award numerous contracts to individual trades, such as electrical, mechanical, and architectural, to finish this.

This method was touted as offering two strategic advantages. First, it would better serve the local economy surrounding Ramstein Air Base by allowing smaller, local firms to bid and perform on numerous smaller contracts. Second, this method of contracting would afford the opportunity to fast track construction.

Early trades such as site work, foundation, structural work could therefore be designed and constructed while subsequent trades continued with design efforts. Barring a very costly full termination and re-solicitation, this decision cannot be undone.

With few exceptions, most of the project challenges can be linked to the weaknesses of our construction agent to properly develop and manage the execution of this project. One manifestation was an exceptional number of construction change orders due to design errors and omissions. This led to the agent's inability to orchestrate the schedule and maintain quality control on more than 35 different contracts across seven projects and four funding sources. Further, they were not structured or resourced to process this large number of change orders in a manner that would keep construction on time and within budget.

The resulting haste in change order processing then led to accountability issues. In December 2005 I began to see indications that the project was not going as smoothly as we had hoped, specifically in regards to scheduling work. We began engaging with our agent to find ways to influence changes on the constructionsite.

In September 2006 LBB replaced JSK and assumed the role of a general contractor. Simultaneously, we ramped up our oversight to a level not required by our ABG–75. Though some effective corrections have been made, there are still many challenges ahead.

We have learned many lessons from this project that we have applied to other projects across USAFE.

Returning to my football analogy, great effort has been exerted by USAFE and our German partners to turn this team around. Our commander and vice commander, as well as our embassy staff, have personally engaged with senior German officials to find solutions in order to complete this project as quickly as possible and within United States and German laws governing construction.

These efforts have led to additional changes within the leadership of the project and promise to bring fresh game plan to the players on the field.

It is my belief that our current strategy represents the most attractive course of action. We must continue construction to avoid extensive delay costs and to bring the facilities to a point where they can generate income and provide vital mission support.

Mr. Chairman, we appreciate your genuine concern in this effort and I respectfully request the committee's support as we work

through the remaining challenges to complete this project as quickly as possible and bring this badly needed mission support facility online.

Thank you. I look forward to your questions.

[The prepared statement of General Gardner follows:]

PRESENTATION TO THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: KAISERSLAUTERN MILITARY COMMUNITY CENTER PROJECT

STATEMENT OF: BRIGADIER GENERAL DANNY K. GARDNER, USAF
DIRECTOR, INSTALLATIONS AND MISSION SUPPORT
UNITED STATES AIR FORCES IN EUROPE

JUNE 28, 2007

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

The Kaiserslautern Military Community Center (KMCC), currently under construction at Ramstein Air Base, Germany, is a vital quality of life project for our people serving in Europe and for those transiting the airlift hub at Ramstein Air Base. When complete, it will serve as a modern, multi-use community center providing retail, lodging, dining, banking, entertainment and theaters under one roof. Strategically located across from the Ramstein Passenger Terminal, it will offer a variety of food selections, services, and products to transient guests, outlying military communities and the 55,000 American personnel and family members in the Kaiserslautern Military Community.

With the closure of Rhein Main Air Base in December 2005, Ramstein Air Base became the primary gateway for U.S. military personnel arriving in or transiting Europe. The $182 million project is currently the largest single facility construction project in the U.S. Department of Defense. Construction began with preliminary site clearing in November 2003 and a groundbreaking in the summer of 2004. The facility is scheduled to open in two phases with the Visiting Quarters opening first, followed by the AAFES shopping center. The KMCC project is presently 77% complete, but is currently 18 months late based on the original December 2005 need date for the Visitors Quarters.

The Auftragsbaugrundsaetze 1975 (ABG-75) Administrative Agreement is a bilateral agreement between the United States Forces and the Federal Republic of Germany (FRG), applicable to all U.S. Forces construction in Germany. The U.S. is bound by Article 49 of the FRG Supplementary Agreement to the NATO Status of Forces Agreement (SOFA), which gives the German government the right to carry out all construction works for all sending state forces in Germany, with limited exceptions. The agreement is between the Federal Minister for

Regional Planning, Building and Urban Development and the sending state government. Dispensing or changing the SOFA agreement requires a joint effort by all sending state forces.

In accordance with ABG-75, German authorities plan, enter construction contracts, and administer construction on behalf of U.S. Forces and according to the ABG-75 article 4.1, "in their own name and on their own responsibility." U.S. personnel coordinate with German state construction authorities to design, contract for, and perform the construction management of a project in accordance with the ABG-75.

Significant differences exist in methods and practices of construction between U.S. and Germany. In general, German federal construction law shields contractors from much of the risk routinely borne by U.S. construction firms; therefore, owners have less leverage and recourse than provided for under the Federal Acquisition Regulations used in stateside construction.

The trend over the past several years has been that construction in Germany is usually completed at a cost that is less than the Congressionally authorized and appropriated amount. Of the 35 MILCON projects in Germany since the year 2000, 75% have been completed under the congressionally authorized and appropriated amount and 100% completed within the U.S. Air Forces approval authority. The quality of construction in Germany has also been generally good over the past several years and our main recurring concern has been schedule.

According to ABG-75, the decision as to the method of contracting is clearly within the German government's rights, so the U.S. has little influence over acquisition strategies. In order to promote work for smaller contractors in the local community surrounding Ramstein, the Oberfinanzdirektion Koblenz Geschäftsbereich Bundesbau (GBB), Landesbetrieb Liegenschafts- und Baubetreuung's (LBB) parent organization for financial matters, recommended that "trade-based contracts" (trade lots) be used vice a general contractor.

One of USAFE's major interests was to get the project started in order to be completed by December 2005, replacing contingency lodging located on the former Rhein-Main Air Base. A "fast track" delivery method was required to allow contracts to be awarded as designs for specific trades were completed.

At the outset of the project, U.S. oversight was staffed based on reasonable confidence in our service agent (LBB-KL) and the expectation that it would competently perform its construction agent duties. U.S. project internal controls were also based on this expectation as well as past positive construction experience dealing with LBB.

In September 2006, when project indicators (financial and schedule) began slipping, HQ USAFE project team oversight staff expanded from 8 personnel to 17. HQ USAFE procured claims analyst support in December 2006 to provide expertise in German construction contracting, evaluate and document controversial billings, and to prepare a comprehensive defense to protect the U.S. from future claims for extended overhead due to schedule delays.

When USAFE learned of further irregularities, communication was expanded with LBB and users. USAFE senior staff met monthly with various German State ministers in an effort to overcome ABG-75/LBB obstacles and create ways to move the project forward. Very senior members of USAFE and the German government have been devoting a great deal of their attention to construction management issues on this project.

This project suffers from three fundamental management problems: 1) absence of a general contractor, 2) inadequate quality control, and 3) ineffective contract management.

Trade-lot contracts were employed on the KMCC project rather than a general contractor. The LBB-Kaiserslautern office is responsible for the project's delivery; LBB in turn contracted with the Architectural/Engineering (A-E) design firm JSK Internatinale Architekten und

Ingenieure GmbH (JSK) to carry out design and on-site construction management responsibilities. Although the trade lot acquisition strategy expedited contract awards, it contributed significantly to the complexity of post-award contract management shifting "general contractor" responsibilities to LBB and JSK.

No integrated, comprehensive, contractual schedule existed, from either JSK or LBB, for all contractors to follow. This fundamental project management tool was never effectively produced, coordinated, managed or adhered to by LBB, thus work progress was regularly hindered by conflicting activities of individual trades. LBB dismissed JSK in September 2006 for failing to properly fulfill its responsibilities for completing designs, scheduling, and coordinating the work of the contractors. LBB has since assumed the role of general contractor.

LBB is responsible for enforcing quality practices on contractors to include compliance with contract specifications and industry standards. The most prominent example of poor enforcement of quality and enforcement of contract specification is the deficient roof that now requires nearly complete replacement.

Ineffective contract management is an issue that became apparent in the summer of 2006 when LBB presented the U.S. a list of 549 change orders requiring contract action. Most of the work contained in the list had been performed at the direction of LBB or JSK, and the U.S. had no prior knowledge the work had been directed. Based on this problem, we have repeatedly asked that LBB/GBB find a streamlined way to eliminate the change order backlog. Failure to execute timely contract actions during the course of construction hampered the U.S.'s ability to pay invoices for work performed in good faith by the contractors.

Invoice processing procedures were strengthened to include clearly defined "Rules of Engagement" coordinated by the HQ USAFE staff. The U.S. has been presented large numbers

of invoices that included work directed by LBB and JSK, but never documented on an ABG-5. To a great extent, withholding payment is the U.S.'s only real control over construction processes, but it is a double-edged sword that refusing to pay invoices causes work to slow down.

LBB, as service agent, has the responsibility to certify all partial invoices that are submitted to USAFE for payment. USAFE's responsibility is to exercise due diligence to validate the certified, partial payment invoices from LBB, and provide funding. Evidence of Air Force close scrutiny of partial invoice documentation is that from October 2006 to May 2007, of the 71 partial invoices processed, 54 (76%) were found to contain irregularities of some kind, were disputed for payment, and returned to LBB.

In the area of financial controls, the ABG-75 is the first line of defense in protecting U.S. resources and interests. The second line of defense is the construction agent, LBB, and the agent's effectiveness in controlling contractor quality and cost. The third line of defense is the Air Force's management controls.

Claims on this project fall into two categories: A-E liability claims LBB will make against the project's Architect/Engineer firm on behalf of the U.S., and hindrance claims contractors make against LBB which eventually may be assessed to the U.S. Given the magnitude and extent of this project's management problems, we anticipate claims settlement will in time be resolved pursuant to Article 40.2 of ABG-75 through negotiations between German Government construction authorities and senior U.S. representatives. In December 2006, USAFE procured the support of a highly qualified firm specializing in German construction contracting and claims management.

LBB is responsible for holding A-E firms responsible for the quality of their work and on behalf of U.S. interests will pursue recovery of damages. To date, LBB and USAFE have identified 132 change orders valued at €6 million deemed A-E liability related to design errors. The U.S. continues to scrutinize each change order for potential A-E liability upon receipt from LBB and again during technical negotiations.

Late delivery of design information and mis-coordination of the work are the two most prevalent and significant causes of hindrance claims contractors will make against LBB. LBB recognizes that its construction management agent (JSK) in many regards failed to satisfactorily or properly fulfill its responsibilities in managing delivery of the KMCC project.

Key lessons from the project have been widely shared with auditors and GAO reviewers because of their value and application in future USAFE projects. LBB needs to more effectively plan and perform its construction management responsibilities and have back-up plans when key responsibilities are contracted, as with JSK on this project. All aspects of pre-design planning and acquisition strategies need to be developed, and LBB should obtain U.S. concurrence on acquisition strategies despite absence of ABG-75 language making this a requirement. Specifically:

a) a general contractor (vice trade contracts) should be used on every U.S. project to keep centralized control, responsibility, and liability;
b) construction manager and A-E designer must be independent (unless contracted as a design-build project);
c) designs should be completed prior to awarding construction contracts;
d) project management plans (including quality control plan) are vital to control the work and manage risk;

e) modifications need to be submitted timely and in pace with construction;

f) require annual training for personnel on the ABG-75 Agreement;

g) and, properly train and appoint Departmental Accountable Officials.

USAFE and LBB will continue to make adjustments to management to ensure the right leadership is in place. The LBB project leadership staff (three personnel) was replaced in April 2007. The new team is currently working to familiarize themselves with the project issues and developing strategies to solve the problems discussed above. A key task for this new team is to develop a realistic construction schedule which can be enforced.

USAFE and LBB will continue to attack the backlog of change orders to provide relief in making invoice payments. This problem represents the principal stress on cash flow requirements to the contractors. Focus on this process and execution of contract changes is critical to work progress. USAFE and LBB will continue to partner with presidents of contracted firms. Direct conversations with key contractors has yielded increased workforce in the past and avoided contractor walk-offs. USAFE will continue forensic evaluation of change orders in preparation for pending claims defense and funds recovery. USAFE and LBB are evaluating options to alter existing contracts with contractors on site.

This statement briefly addresses USAFE's concerns regarding root causes of the poor project execution and USAFE's view regarding what will be required to bring the project to completion. Significant problems urgently confront the KMCC. The KMCC presents few clear, easy choices and little middle ground, and challenges the best professional judgment of a variety of disciplines. These are the issues USAFE leadership and project managers confront daily in completing this project.

Chairman WAXMAN. Thank you very much for your testimony.

We are going to proceed now, without objection, with questions in the regular order, 5 minutes each Member. I am going to start.

General Gardner, on page 3 of your written statement you say that the K-Town Mall project was put on a fast track. I would like to ask you about this.

According to your testimony, the Air Force had a major interest in completing the project by 2005. Why was this project so important?

General GARDNER. Sir, we have a Rhein Main transition program where we were closing our base in Frankfort, Rhein Main Air Base, and the objective was to close that base, transfer the missions from Rhein Main and duplicate those missions to the extent that we could at Ramstein and at Spangdahlem. The closure of that base was to happen in December 2005. It did happen in December 2005. And the opening of the facilities, the VQ area, the visiting quarters area of that facility was to open simultaneously with that.

But I also point out to you, Mr. Chairman, that the December 2005 date was a desired date by USAFE for the facilities. It was never a contractual date that was set up by our contracting agent.

Chairman WAXMAN. The Air Force audit also referred to this pressure. On page 3 the audit states, "The senior management emphasis was on expediting design and schedule, rather than ensuring personnel conducted appropriate design reviews." What I don't understand is how a project that was so important could go so off course.

Mr. Kutz, how would you answer this question? How did we end up with a $200 million white elephant when we were supposed to have an urgently needed facility for our troops?

Mr. KUTZ. Well, our testimony talks about three parts to that. There are inherent risks involved with overseas contracting. There is the limitations based upon the agreement with the German government. You have currency risks. Then, with respect to the actual German agency, LBB, they failed to provide effective oversight and management of the design and implementation. The third part of this is Air Force not having effective and proactive controls in place and oversight to identify and deal with the problems earlier, and we see it as all three being a combination of the perfect storm, if you will, creating this situation.

Chairman WAXMAN. Was one of the factors the pressure to cut corners in order to get the job done quickly? If this were the case, this approach certainly produced the exact opposite result. What do you think about that?

Mr. KUTZ. I do believe that a lot of the oversight was relaxed, in part because they wanted to get it done, and so there was a tendency to want to pay the bill, and, as we mentioned in our statement, even if there was no support for the invoices or change orders. That was because of the schedule-driven project.

Chairman WAXMAN. General Gardner, did any official involved in this project ever object to the proceeding on this risky fast track approach?

General GARDNER. There were some communications between the partners on the fast track approach, but in the end, in order to get the facility open in December 2005, all parties agreed that

the fast track was an acceptable manner, with some stipulations that were identified in the long run.

Chairman WAXMAN. We have a memo. We will make it available to you. This was sent in September 2004 to the civil engineer and the Director of Services for the U.S. Air Forces in Europe. This memo was sent by the two other key stakeholders in this project, the Army and Air Force Exchange Services and the Air Force Services Agency. In this memo they warn that the fast track process was eliminating "the time needed to adequately review and resolve critical design issues."

Have you ever seen this memo before?

General GARDNER. Yes, sir, I have seen it.

Chairman WAXMAN. Let me read the next sentence. "This accelerated process has contributed to critical design process omissions, design coordination problems, and schedule complications that may cause cost increases and project delays."

General, this memo was written in 2004, well before the majority of the construction had taken place. Can you tell us why the Air Force disregarded the objections of these key officials and proceeded with this approach, despite these warnings?

General GARDNER. Yes, sir. This was before my time, but let me try to give you what I think happened based upon what I have been able to research.

The individuals involved in this, we did actually go through a process of looking at it, analyzing it, and determined that the risk was—we knew that there was a risk involved. We would not have the idea it would be as risky as it has turned out, but we did know there would be a risk, and that all parties, again, involved agreed that the fast track method was an appropriate method to start this particular project.

Chairman WAXMAN. Mr. Kutz, what is your view of the memo and the way it proceeded?

Mr. KUTZ. My staff had seen this memo before, and, again, I think it just showed that, I guess, the incentive was to get it done quickly rather than to get it done with the all controls and additional caution. You know that high-pressure schedules are oftentimes a problem that causes failure in a project.

Chairman WAXMAN. Thank you.

Mr. Davis.

Mr. DAVIS OF VIRGINIA. Thank you, Mr. Waxman, for holding this hearing. This is a kind of microcosm of what goes wrong in contracting.

Mr. Kutz, your statement here weaves a pretty woeful tale. You say the German government entity charged with managing the project performed poorly, as did many of the German contractors. You don't spare the Department of Defense, either, stated that the Air Force oversight was grossly inadequate for such a large, high-risk program. Did anyone or any entity perform well here?

Mr. KUTZ. I suppose some of trade contractors did because, again, I understand German trade contractors do good work generally and there is more of a history with German construction that I am not as well aware of, but certainly I am sure some of them did good work. I think it was more the oversight, the fast track,

the design had flaws, and, of course, Air Force did not provide any oversight.

Mr. DAVIS OF VIRGINIA. Is this a problem throughout the Air Force in the way they oversee these, or is this just one isolated case where the contracting officer, or whoever was responsible, just fell asleep?

Mr. KUTZ. I can't speak beyond this.

Mr. CAUSSEAUX. No. We have no indication that this is indicative of systemic problems, but, again, we only looked at this project so we can only speak for this particular one at this time.

Mr. DAVIS OF VIRGINIA. How much do you think American taxpayers are out on this? How much did we lose?

Mr. KUTZ. Only a fraction of this is coming from the MILCON appropriations. Most of this is not appropriated money.

Mr. DAVIS OF VIRGINIA. Coming from where?

Mr. KUTZ. Soldier morale programs at the end of the day.

Mr. DAVIS OF VIRGINIA. So how much was lost when you put all that through?

Mr. KUTZ. At the end of the day I don't think anybody knows. I mean, there is no estimate of the cost of the project right now, and the original estimate, Mr. Davis, was $150 million. There is no estimate today.

Mr. DAVIS OF VIRGINIA. Let me ask you this: did anybody get fired over this?

Mr. KUTZ. I would defer to Air Force on that.

Mr. DAVIS OF VIRGINIA. Anybody fired?

General GARDNER. No, sir. Not to my knowledge anyone has been fired. But I would like to say, if I could——

Mr. DAVIS OF VIRGINIA. Anybody promoted?

General GARDNER. Sir, could I set the record straight on the money?

Mr. DAVIS OF VIRGINIA. Sure.

General GARDNER. We are within our budget authority on this project. We still have $55 million that we haven't spent on this project. The prognosis, even with the repairs of the roof, which is substantial, even with the prognosis we will be under our project program amount.

Mr. DAVIS OF VIRGINIA. But you admit this wasn't very well handled, don't you? Or are you going to defend it?

General GARDNER. I am not defending our contracting agent. No, sir, I am not.

The other thing, though, I will tell you——

Mr. DAVIS OF VIRGINIA. Did the contracting agent do their job in this case or did they fall down?

General GARDNER. The contracting agency obviously fell in this case.

Mr. DAVIS OF VIRGINIA. Was anybody reprimanded for this?

General GARDNER. Sir, they have been——

Mr. DAVIS OF VIRGINIA. Was anybody demoted or fired?

General GARDNER. Sir, there have been people. I am sorry. I thought you were talking about the U.S. side being fired. No one on the U.S. side has been fired that I am aware of. On the contracting agent's side, yes, sir. JSK, which was a contracting agent for the LBB, was totally removed from the project. Four individuals

have also been fired. Senior management onsite have been removed from the site, as well, per my assistants.

Mr. DAVIS OF VIRGINIA. But from the government side, the people overseeing it, no heads rolled? Nothing?

General GARDNER. The individual, the contracting agent is a German organization, so yes, government organizations have——

Mr. DAVIS OF VIRGINIA. On the German side.

General GARDNER. Yes.

Mr. DAVIS OF VIRGINIA. But I am saying——

General GARDNER. Not on the U.S. side.

Mr. DAVIS OF VIRGINIA. Right.

Mr. Kutz, you point out that the Air Force provided minimal oversight, and in some cases actually circumvented payment processes. A major reason behind this seems to have been a Air Force's desire to complete the project on schedule; is that correct?

Mr. KUTZ. Yes.

Mr. DAVIS OF VIRGINIA. Was the key element behind this mess an unreasonably ambitious schedule for project completion?

Mr. KUTZ. That was certainly one of the key elements. Again, I think there were a multitude of factors that contributed to this, including some that aren't under the control, like the currency exchange. The Euro dollar has gone up by 30 percent since the beginning of the project, so that is outside of anyone's control.

Mr. DAVIS OF VIRGINIA. Right, and probably you could argue that wasn't even foreseeable.

To your knowledge, nobody on the American side of this thing, though, was reprimanded, demoted?

Mr. KUTZ. No, none that we were aware of. I think the Air Force would know better, but we are not aware of any.

Mr. DAVIS OF VIRGINIA. Do you think the problems were caused by the complexity of the various funding streams, which included both, as we noted, appropriated and non-appropriated funds, as well as some money from the German government?

Mr. KUTZ. Yes, that contributed.

Mr. DAVIS OF VIRGINIA. Do you think the fact that a majority of the funds here were not DOD appropriated funds was a cause of some of the lax oversight?

Mr. KUTZ. That was one of the reasons they didn't engage the Corps of Engineers. Apparently, in most projects like this the Corps of Engineers would be engaged to provide oversight, at least certain elements of financial and construction oversight. Because it was not appropriated, in part, that was not done in this case.

Mr. DAVIS OF VIRGINIA. My time is up. Thanks.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. Cummings.

Mr. CUMMINGS. I am confused. Mr. Kutz, you said from the very beginning there was no good solutions to this problem. General Gardner tells us that apparently he has a plan that this thing is going to come in under budget. I mean, do you agree with that?

Mr. KUTZ. No. Not at all.

Mr. CUMMINGS. Why not?

Mr. KUTZ. The project is already 18 months behind schedule and there is no estimate for cost and schedule. I am not sure how you can say you are going to be under budget. There is going to be sig-

nificant litigation, claims responding. There is re-work, and there are replacement of the roof, not just to fix the leaks. They are going to have to tear out the roof, put a new roof in. I think it is very ambitious to say this is going to be within any budget at this point.

Mr. CUMMINGS. General, I am under the impression from your testimony that you believe the German agency and the German contractors are to blame for the problems with the project. I don't see one sentence in this testimony that acknowledges any fault on the part of the Air Force. Is that correct? You don't believe the Air Force did anything wrong here? I understand nobody has been demoted or dismissed.

General GARDNER. Sir, with the advantage of 20/20 hindsight, there are things that we could have done better or would do differently, and those things are what we call lessons learned that we have already instituted across USAFE in project management.

But overall, again, we have trust in our contracting agent, which is LBB in this case, in accordance with international agreements, and in accordance with international agreements they are authorized or expected to build these facilities with their own right and under their own responsibilities, so we follow. We sit on the sideline once the game gets started, as I was pointing to earlier.

Mr. CUMMINGS. But—there is a big but here—we hold the money; is that right?

General GARDNER. That is correct.

Mr. CUMMINGS. We hold the money.

General GARDNER. That is correct, sir.

Mr. CUMMINGS. And so, because we hold the money, I assume there are certain controls that we should have; is that correct?

General GARDNER. We have that, sir. The oversight that was alluded to earlier, we have a program management office onsite. The program management office is the ones that identified the leak problems, for example, on the roof, and they are the ones that have identified the kitchen duct problem.

Mr. CUMMINGS. Are you telling this committee this morning that it is adequate, this oversight is adequate or has been adequate?

General GARDNER. The oversight, again in hindsight, we could have maybe have increased the number of people in the program office, but——

Mr. CUMMINGS. Let's talk about it. You don't seem to want to admit that there are some major problems here with the Air Force, but I would like to ask about when the Air Force first became aware of the problems with construction and finances and the scheduling. On page 3 of your written testimony you state that the project indicators, both financial and schedule, began slipping in September 2006; is that correct?

General GARDNER. No. The schedule had already started skipping [sic] before September 2006.

Mr. CUMMINGS. I am sorry. And is——

General GARDNER. But that is when we began to realize that there were more issues than just schedule slippage, because that is when we realized that we had a—well, actually it was before that when we had a number of change orders that our contracting agent had approved.

Mr. CUMMINGS. I would hope so, Brigadier General, because the hotel was supposed to be done by December 2005; is that correct?

General GARDNER. That is right. Yes, sir.

Mr. CUMMINGS. Yet you seem to be asserting that the Air Force had no idea there was anything wrong until after the date this project was supposed to be 100 percent complete. Can you explain that statement?

General GARDNER. The project was scheduled to be completed, the hotel was completed contractually April 2006. I began to realize that we were having some major issues with schedules in——

Mr. CUMMINGS. You just got slipped a note. I want to make sure we are accurate here. Why don't you read your note.

General GARDNER. VQ was scheduled to open in April 2006.

Mr. CUMMINGS. OK. Let me ask you this, then, General. There was a press story running in Bloomberg News yesterday in which you were quoted. In it you made this statement, "There had been an environment of trust between the U.S. forces and LBB until about 18 months ago, when significant coordination and scheduling problems on LBB's part became apparent." Eighteen months ago was December 2005, so according to your statement in Bloomberg yesterday, the Air Force became aware of the significant coordinating and scheduling problems in 2005, a year before the date you assert in your testimony today. Which statement is accurate? Did the Air Force become aware of these problems in September 2006 or were there indicators in 2005?

General GARDNER. As I stated in my verbal testimony, I became aware of significant problems with scheduling in December 2005. In the beginning of January 2006 is when I began to have a series of meetings with our contracting agent in order to determine what is the magnitude of these problems.

Mr. CUMMINGS. And so why do you take action then?

General GARDNER. We did take action.

Mr. CUMMINGS. What did you do?

General GARDNER. We worked with our contracting agent to determine why are we behind schedule and began to take action as to how we were going to get back on schedule.

Chairman WAXMAN. The gentleman's time has expired.

Mr. Shays.

Mr. SHAYS. Thank you.

General Gardner, I want to be fair to you, and I know this committee does, as well. Sometimes when people testify they don't do as well as they should, but this is almost bizarre to me, and so I want you to stop and maybe explain to us. Maybe we are thinking of something different than you are thinking.

When was this facility supposed to be complete?

General GARDNER. The VQ was scheduled to be completed in April 2004. That is when we were to get BOD.

Mr. SHAYS. April of——

General GARDNER. I am sorry, April 2006.

Mr. SHAYS. Let me say something to you. You do not need to speak quickly.

General GARDNER. April 2006.

Mr. SHAYS. April 2006. And what you are saying to us is in December 2005 you began to be aware that there were some chal-

lenges in completing the project. It seems to me if it is supposed to be done just 5 months later, for you to be aware of it so late is stunning. Explain to me why you would be aware so late that there were delays.

General GARDNER. Because we were being told by our contracting agent that everything was on schedule.

Mr. SHAYS. Well, being told by your contractor and having people there seeing that the contractor must be smoking something—in other words, did you not have anyone who was following this project and watching it and checking out to make sure that at least the contractor was saying things correctly?

General GARDNER. Sir, that is exactly what we were doing. That is, again, the reason we had a series of meetings with them.

Mr. SHAYS. No, you weren't doing it, because you should have known before December 2005. Clearly you should have known.

The other thing that just leaves me uncomfortable, and it is an impression that you wanted to leave with us but it doesn't make sense to me. I mean, when we read the document from GAO, this looks like a disaster of a project that is going to have significant cost overruns, and you are trying to give us the impression that you are under-budgeted. The way I think you are doing it is by not adding in the cost that will be needed just to get us up to a certain state of correction before you complete the project.

For instance, the claims, what are the kinds of claims against this building right now? In other words, if you don't pay a contractor, you have money in the bank, but that is money that is allocated somewhere. I mean, are you trying to give us the impression that you have unallocated dollars that will make you feel comfortable and Air Force comfortable that you are going to be under budget?

General GARDNER. Sir, our prognosis, based upon our contracting agent, as well as the other government officials that looked at this, we agree that at this particular point in time we are under the budget. That is to include the repairs that have been identified in this committee this far. It does not include, however, the unknowns. We don't know what claims are out there yet as far as what the Germans would refer to as hindrance. We don't know what those may be and how that will account in here. But many of those claims costs, we are working with our German counterparts in order to recover some of those claims.

Mr. SHAYS. Well, I became the general contractor of my house when my contractor left me a few years ago, and I would never feel comfortable saying that we are going to be under cost, because the fact is you have problems with your contractor because you are over cost. Rarely do you have problems with a contractor when you are under cost.

Mr. Kutz, walk me through. And I want you to be candid on how you are reacting to General Gardner's response to us.

Mr. KUTZ. It is just optimistic. I mean, I just don't see facts behind it from what we can see.

Let me give you an example. There are tens of millions of dollars of change orders in the pipeline that have not been reviewed. There is no support for most of those, or many of those. Some of them

have been paid for, some of them haven't, and that is based on our own——

Mr. SHAYS. You have one change order, you have added cost and the change order they can charge you top dollar because it is a change order. How many change orders are there?

Mr. KUTZ. I don't know today, but as of February there were 500 or 600 that were in the pipeline, according to their consultant.

Mr. SHAYS. 500 or 600 change orders?

Mr. KUTZ. That is what we understand, yes.

Mr. SHAYS. Yes. OK. Mr. Dorn.

Mr. DORN. I would like to comment first to add to what Greg said. If you don't know the cost of the change orders and the cost of the claims that still haven't come in yet, there is no way you can know that you are going to be under budget under your programmed amount. Being under the programmed amount doesn't mean that there hasn't been any waste; it just means that your programmed amount was a lot higher than your initial contract.

Mr. SHAYS. Well, my time has run out, but basically two issues right now. You are going to have claims and you are going to have change orders and, third, you are going to have repairs. Those three things are going to increase your cost, so you are going to have to find where did you save money in your project.

At any rate, thank you, Mr. Chairman.

Chairman WAXMAN. Thank you very much.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. I want to thank you for calling this hearing.

Following up pretty much the same line of questioning, Mr. Kutz, I want to try and understand exactly how much this project is going to ultimately cost. I am looking at the Air Force audit report, and it says that in 2003 the K-Town Mall project would cost $132 million. Is that correct?

Mr. KUTZ. That could be one of the early numbers. There are a number of numbers of what it was going to originally cost. Our best guess was 150, from what we could tell.

Mr. DAVIS OF ILLINOIS. Then by January 2006 the audit says that the cost of the project had risen to about $180 million, and by September 2006 the estimate was $201.6 million. Now, I understand that some of that increase was because of the change in the value of the Euro, but a lot of that increase was for increased contractor cost; is that not correct?

Mr. KUTZ. That could be rework and other types of things, or just changes in quantity and other types of prices of materials.

Mr. DAVIS OF ILLINOIS. General Gardner, do you agree with the Air Force auditors that the latest estimate for the cost of this project is approximately $200 million?

General GARDNER. I am glad you asked me that question, Mr. Congressman. If I could clear the record, the current amount is the PA amount. The program amounts for this project is $181,997. The cost prognosis, including all the repairs, all of the change orders, the 776 change orders, including all those, we are looking at roughly $174 million.

I will tell you, however, that does not include the claims that we were referring to here. We have not gotten around to the claims.

There is Article 18 of the ABG–75 says that the U.S. Air Force or U.S. Government will not be held, cannot be held responsible for faults caused by the German government or their representatives that they hire. Article 40 of ABG–75 says those discrepancies and disputes will be handled at the ministerial level. That is what we are in the process of doing. We are trying to work those disputes that were referred to, the claims that we are talking about, at the ministerial level. We have no idea what those numbers are going to be just yet.

But I just wanted to make sure that the record is straight. These are prognoses from everybody who has looked at this other than our GAO and audit agency, is $174 million is where we are at the present time based on our best prognosis.

Mr. DAVIS OF ILLINOIS. Now, are you getting any money for the project from the German government?

General GARDNER. There is a small amount. For the claims, no, but there is a small portion of this, about $11 million, that we get through a Rhein Main transition program which is paid for by the partners. This money is used to pay for 200 of the rooms in the VQ area, at least portions of the VQ area.

Mr. DAVIS OF ILLINOIS. Mr. Kutz, in your testimony you say that even $200 million is an estimate that is too low. Do you still——

Mr. KUTZ. We don't really have an estimate, but it is hard to believe there could be a valid estimate when there is no schedule completion date. I mean, no one has. Maybe the General has a new schedule completion date that he would like to go on record with, because I just don't know how you can make an estimate of cost when you don't know when it will be done.

Mr. DAVIS OF ILLINOIS. General, let me ask you, is there a time for reassessing the ultimate cost of the project where you can come in with an amount that probably would get agreed to by the GAO or auditors who would look at it?

General GARDNER. We are constantly looking at funding because, contrary to what some might believe, we are good stewards of American dollars. We are constantly looking at our expenses, where do we need to make adjustments, and so forth.

As we speak today, I can't predict what is going to happen into the future, but as we sit today the prognosis is just as I have just read it to you. That is where we are. And the $200 million that you have seen floating around is a figure that we use when we take people around visiting, this is a $200 million project. It is not a $200 million project. It is really about a $181 million project, but we have used the $200 million as a kind of a round figure for our tourists.

Mr. DAVIS OF ILLINOIS. Could it be that you really don't know what the cost of the project is going to be?

General GARDNER. Ultimately, including the claims and the unknowns, no, we do not know.

Mr. DAVIS OF ILLINOIS. Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. I want to thank you for holding this hearing. It is always refreshing when we can have a

totally bipartisan hearing, one in which we are looking at the kind of mistakes that are endemic in our large bureaucracy.

I don't claim to be an expert on contracting. The biggest building I ever built was 200,000 square feet. But it will tell you that, given a budget of $200 a square foot, given the ability—General Gardner, let's start it off. Were you there at the start of the project?

General GARDNER. No, sir, I was not.

Mr. ISSA. OK. Where were you at the start of the project?

General GARDNER. I was on another assignment in Brussels.

Mr. ISSA. What were you doing?

General GARDNER. I was the Deputy U.S. military representative to NATO.

Mr. ISSA. OK. So you weren't in contracting? It wasn't a skill set you brought here today except what you have learned on the job?

General GARDNER. That is correct, sir.

Mr. ISSA. Isn't that one of the problems of the U.S. military is, with the exception of the Corps of Engineers, for the most part putting on that uniform doesn't give you the qualifications, graduating from the Air Force Academy with an engineering degree in aeronautical engineering doesn't make you a general contractor? Isn't that generally one of the problems of men and women in uniform?

General GARDNER. Sir, I can't comment to that.

Mr. ISSA. OK. We will take that as a yes.

Did anyone ever consider doing a PPV type project, in fact, having a partnership? You know, Paris Hilton is in the news, but Baron Hilton built a lot of hotels with 350 rooms and he came in on time and under budget. Was this ever considered in the contracting?

Mr. Kutz, did you see anything in the record that said that at the time the Germans and the Americans were figuring it out they considered the idea that they would go to somebody skilled in producing hotels? Mr. Dorn. Anybody? Because I will tell you I don't believe for a minute that you are going to do better the next time unless you start off with a different attitude on how we approach the project to begin with.

Go ahead, sir.

Mr. CAUSSEAUX. The U.S. Forces are obliged, under the ABG–75 agreement, to contract through using essentially an indirect process where a German agent—in this case LBB—represents the American interest. That does not mitigate the U.S. obligation to provide general oversight of that venture.

Mr. ISSA. So you get to be in the airplane, but you don't get to touch the controls, but you get to complain about the altitude and direction?

Mr. CAUSSEAUX. The German government——

Mr. ISSA. I am not a football guy. I am going to have to do this in Air Force terms.

Mr. CAUSSEAUX. Well, in all deference to the General, while——

Mr. ISSA. This is a fly by wire with no connections. [Laughter.]

Mr. CAUSSEAUX. With all respect to the General, I agree with his analogy that this is not a game; what I don't agree necessarily, however, is that the German government was an owner. I believe the United States is the owner. It is our money. We have a vested interest.

The fact that this was a fast track process, there was a decision made not to engage a general contractor, driven, I believe, primarily by the fact that it was a fast track. The Air Force opted not to have the Corps of Engineers engaged. There were designers. The design was incomplete. And there were multiple funding sources collectively and, given the size and order of magnitude of the project, made this a high-risk project.

The Air Force needed to have adequate oversight and they did not.

Mr. ISSA. OK. You know, did any of you see anywhere in the contract history somebody looking at what it would cost to buy Euros at the front end of the project, since this was clearly known as a Euro-denominated project? Does anybody think for a minute that they simply write checks for fuel around the world and they don't hedge it in any way, shape, or form?

Mr. KUTZ. I don't believe the Federal Government hedges, but any business would have hedged this kind of a project. There is no question about that.

Mr. ISSA. You mean the Federal Government just calls up every day and says what it is going to cost us for fuel?

Mr. KUTZ. I believe that is correct.

Mr. ISSA. There is no contracting ahead, no forcing the vendor to hedge?

Mr. KUTZ. I am pretty sure that is the case.

Mr. ISSA. OK. So for this committee, we should understand that all that talk about world class private sector type thinking is just bull; that, in fact, that is not going on; that what would normally go on—Southwest Airlines doesn't have a problem when they are dealing in buying fuel. They are going to have to buy at variable prices. They hedge it. They set a contract.

You didn't do that. You didn't fix the contract cost or exposure, you didn't deal with the German government and say, Because we don't control this we are going to put a cap on meeting the performance. We will pay for change orders but we are not going to pay for the basic question of whether you build this right. Is that true that the basic contract the day it was signed was flawed and that the Air Force doesn't know how to write a contract that protects the interest of the American people? Is that true?

Mr. CAUSSEAUX. Again, this was not a contract——

Mr. ISSA. Yes or no. I don't have much time. Please.

Mr. CAUSSEAUX. No.

Mr. ISSA. OK. Let's go through a couple more.

I heard you say that you need more people, General Gardner. How much do those people cost and how are they scored? You need more people to do oversight, but I understand from the testimony that you don't really have control, so you can look at it and you can complain, but you can't get there. And don't answer that because I think it answers itself.

I am looking at pictures from just a couple of weeks ago. Now, again, I haven't done a project of this size, but this is not within 3 months of completion today, even if it wasn't damaged. So I ask you, General Gardner, tell me why 3 months before the project was to be done was the first time you knew it wasn't 3 months of completion, because this is a recent picture. This means that today it

is not within 3 months. Could you answer that for us, please, if the chairman will allow?

General GARDNER. Yes. The picture you are looking at is the mall portion of the complex. The VQ, itself, is in January of——

Mr. ISSA. Wait a second. Just correct, if I can, this section here, this is the hotel. This high-rise section is not a mall.

Chairman WAXMAN. Your time has expired——

Mr. ISSA. Would the ranking member give me some of his time?

Chairman WAXMAN [continuing]. But I want to give him the opportunity to answer the question.

General GARDNER. In December 2005 the hotel was still on schedule for BOD at the end of April. The hotel is different from the mall complex there. The mall complex we knew would be about 4 to 6 months later.

Chairman WAXMAN. Thank you very much, Mr. Issa.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

I am curious when the General indicates that nobody on the Air Force side has been held accountable and no one has been disciplined or fired on that. We talked about the extraordinary number of change orders, many of which the Air Force didn't even know about.

Mr. Kutz, in your report you mentioned that there were only eight offices in the U.S. project management office, none of whom, I understand, were warranted contract officers; is that right?

Mr. KUTZ. That is correct.

Mr. TIERNEY. You then mentioned that the director of the office may have been responsible for some of the decisions that led to the situation today, correct?

Mr. KUTZ. Correct.

Mr. TIERNEY. And in retrospect, when they were offered the help of the Army Corps of Engineers, the people who have expertise on that, that was rejected?

Mr. KUTZ. That was rejected. Yes.

Mr. TIERNEY. Do you know if the director of the program management office played any role in recommending against seeking the additional contracting resources from the Army Corps of Engineers?

Mr. KUTZ. I don't know.

Mr. CAUSSEAUX. My understanding was that the Air Force requested or decided not to engage the Army Corps of Engineers from a cost factor and because there had been indications that they had some difficulties dealing with the Corps of Engineers, and because this project is largely funded by non-appropriated funds versus MILCON or appropriated funds, it was not required that the Corps of Engineers be engaged. But they did have that option.

Mr. TIERNEY. OK. And do we know what role the director of the program management office played in all those decisions?

Mr. CAUSSEAUX. I do not.

Mr. TIERNEY. I just want to explore the idea of this official that I would think that in that position that he had he had some responsibility in those decisions. When I look at page 11, Mr. Kutz, of your testimony, you say he left his position and left the Air Force in 2006; is that right?

Mr. KUTZ. That is correct.

Mr. TIERNEY. Do you know why he left and what the circumstances were around his departure?

Mr. KUTZ. For another job with the contractor in Dubai, I believe.

Mr. TIERNEY. I understand the Air Force is involved in a criminal investigation in this matter?

Mr. KUTZ. Of this individual, yes.

Mr. TIERNEY. So I think we have to be a little delicate how we discuss it, but your testimony says that the Air Force officers have been searched and documents have now been seized; is that correct?

Mr. KUTZ. Correct.

Mr. TIERNEY. General Gardner, do you know where this official is today?

General GARDNER. I believe he is somewhere in the Middle East, sir.

Mr. TIERNEY. Do you know where he is specifically in the Middle East?

General GARDNER. I believe he is in Dubai, but I am not sure.

Mr. TIERNEY. He is in Dubai? And I guess committee staff had the opportunity to track him down. They were interested in having him here today to testify. Do you happen to know what company he is working for in Dubai, General?

General GARDNER. I believe he is working with Jacobs.

Mr. TIERNEY. And, in fact, isn't that the same company that the Air Force hired to help oversee this project?

General GARDNER. We do have two employees from Jacobs that work with our quality control assurance guys.

Mr. TIERNEY. Well, this is serious stuff and I think we ought to let the Air Force and the investigators carry on their own investigation on that, but we push fast track schedule, we hire minimal oversight staff, reject the help of experienced agencies. It just seems to me like a recipe for disaster on that, and I would expect that somebody is going to take responsibility. I don't see a lot of responsibility acknowledged in your testimony, General.

But just on the point of missing change orders, the 427 change orders I think is something of a stunning number for a project on this.

Mr. Kutz, just so we understand that process, the Government has approved the overall scope of the work on the project, and if the contractor thinks a change is needed it submits a change order, then the U.S. Government has to approve that change order before the work can be done, and certainly before any bills are paid; is that right?

Mr. KUTZ. Actually, LBB would submit the change order. They would work on those with the contractors that they had effectively subcontracted with.

Mr. TIERNEY. OK.

Mr. KUTZ. And then they would submit that to the Air Force.

Mr. TIERNEY. And then the Air Force decides whether or not to approve it and to pay it?

Mr. KUTZ. Correct, although in many cases they paid before they got the change order.

Mr. TIERNEY. Well, if they did that, that is not normal course of business, right?

Mr. KUTZ. No, not at all.

Mr. TIERNEY. All right. I was going to say you caught me up there for a second. Because in general you submit it, it gets approved, only if it is approved it gets paid.

Mr. KUTZ. Well, keep in mind some of the change orders really aren't change orders. They are like one line that says something was done. They are still waiting for hundreds of supporting change orders for work that was supposed to have been done.

Mr. TIERNEY. So the documentation was supposed to accompany it; it never did show up or hasn't shown up to this date on it?

Mr. KUTZ. Correct.

Mr. TIERNEY. OK. I am looking through your report here. You found in a lot of cases the Air Force didn't even know about some of these change orders before they were paid.

Mr. KUTZ. That is correct.

Mr. TIERNEY. At all.

Mr. KUTZ. Yes, because a large number of them came in, we understand, in the summer of 2006. Some of those dated back into 2005.

Mr. TIERNEY. OK. Tell us a little bit about what kind of documentation would really usually accompany a change order request.

General GARDNER. The change orders, they can vary in size, but they are normally about this size.

Mr. TIERNEY. It is hard to believe that somebody would miss that or not realize that it hadn't shown up at some point.

Chairman WAXMAN. The gentleman's time is up, but you may answer that question.

Mr. TIERNEY. It really wasn't a question. Thank you, Mr. Chairman. I guess I am just so stunned that over 400 of these fairly significant items here were just missed somewhere along the line.

I yield back. Thank you.

Chairman WAXMAN. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

I just want to see if I can come a little closer to an understanding about the cost of all this, because I think Mr. Kutz said he couldn't give an estimate of what the cost would end up being.

We have a fact sheet given to us by the committee that says, as a result of these deficiencies, that auditors estimated that costs for the K-Town Mall have increased from $131.3 million to at least $201.6 million. Although the project was originally scheduled to be operational by the end of 2005, the auditors reported it is only 65 percent finished and has no determined completion date.

Is that all correct and accurate?

Mr. KUTZ. That is the Air Force Audit Agency's report, I believe. We have not done sufficient work to have our own estimate.

Mr. DUNCAN. And you said that only a small fraction, you said, of the money was coming from the MILCON program?

Mr. KUTZ. That is correct.

Mr. DUNCAN. And I think I read someplace else where $21 million had come from that program?

Mr. KUTZ. Something along those lines, yes. U.S. dollars.

Mr. DUNCAN. But then you said some of the rest of it or all of the rest of it or something was from soldier morale programs? What was the term you used?

Mr. KUTZ. Army/Air Force Exchange was the largest funding partner, and then Air Force Services is the second largest. Between the two of them, it is 75 or 80 percent. To the extent that there are issues with this program, it will impact soldier morale programs.

Mr. DUNCAN. So the largest funds were coming from the Army and Air Force Exchange Program, which is subsidized by the taxpayers?

Mr. KUTZ. Most of that comes from profits from——

Mr. CAUSSEAUX. Revenue generated from the exchanges.

Mr. KUTZ [continuing]. Operating exchange programs.

Mr. DUNCAN. Well, you know, I think what disturbs so many people is that when we hear about these cost overruns in almost every department of the Federal Government, but particularly in the Defense Department, nobody really seems to care because it is not coming out of their own pockets. I mean, you care when you are sitting here in front of the congressional committees and testifying because you don't like being here, but really, as several Members have pointed out, nothing seems to ever happen to anybody. As the term is, nobody seems to ever be held accountable and nobody seems embarrassed, nobody ever seems ashamed, nobody ever seems to—you know, we hold these hearings, but then we just have these things happen over and over and over again.

And then what we hear, whenever we find a program in the Federal Government that is messed up, they always say one of two things or both. They always say they were under-funded, they need more people, or they need more money—you know, they need more money so they can lose even more—or their technology was out of date, their computers were out of date. You hear that over and over again. Yet, the technology owned by the Federal departments and agencies is far better and far more expensive and far advanced over what the private sector has. But when things like this happen in the private sector, things happen.

Anyway, thank you. Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you, Mr. Duncan.

Ms. Watson.

Ms. WATSON. I want to thank all of you gentlemen and the chairman for being here, but I think we are gagging at a gnat and swallowing an elephant. I have sat in this committee and I have heard and spoken of $9 billion missing in Iraq and moneys that were to be used for contracts and to be handed out to the workers and so on, and no one can explain. We even had the Ambassador who was there during that time said it was only Iraqi money.

I am very, very familiar with this area of Germany. In fact, I worked for the Air Force and I was in France and spent my weekends over in Germany, so I am familiar with this area and I think it is commendable that we are building this mall. However, I am very, very upset about taxpayers' money disappearing. This is not even a war zone, not even a war zone, but I am talking about in theater, and taxpayers' money disappearing without the oversight, without the management, and so on.

So, Mr. Kutz, I thank you for the work you do, but this is exemplary of a bigger, bigger problem that we are using this money without the proper management, oversight, and without people who have the expertise in place.

You know, I don't have really any problem with this because, you know, we are trying to service the civilians and the military in a foreign country, and I am all for that, but what I have the problem with is the mismanagement of our moneys and the fact that currently tax cuts, where are we going to get the pool of money to really provide the construction and the needs and whatever domestically and in theater and in other places?

So none of you have to respond, but I am frustrated, because when we talk about real dollars on projects that really would be meaningful in terms of outcomes, we don't get the answers.

I want you to continue to give your reports. I want you to give us strong recommendations as to how we can look at the overall system of management accountability.

We are the committee that looks at fraud, waste, and abuse, but we need to have some over-arching principles, and we need to have answers why they are not being followed.

Thank you so very much. I give back my time, Mr. Chairman.

Chairman WAXMAN. Thank you very much, Ms. Watson.

Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. I appreciate your holding this hearing. I appreciate our witnesses being here today. I apologize for coming in late from another commitment as this issue was addressed.

When I look at the problems that are clearly identified with this project, it is kind of two-fold. One is the waste of those tax dollars and other dollars related to the operation of our facilities that support our men and women in uniform and their families, the exchanges and the projects that can be built, or in this case maybe not done because of the loss of money on this project.

I see a double hit, that loss of money and the fact that the quality of life for our men and women who are courageously serving us along with their families and those who either pass through Germany or are there has not yet been improved because this project is far from completion.

In my numerous visits overseas I have come through Ramstein a number of times and have seen this project underway, and the fact that we are now a year past when it was supposed to have been done, that is a year of lost quality of life improvements for our men and women in uniform and their families, and no date certain yet of when it will be done, so it is both a dollar issue and a quality of life.

What I wanted to focus on specifically is my understanding from the audit that was done that there are recommendations, and specifically that—and, General, if you could address this—that there were recommendations from the auditors that would address internal controls relating to some of the change orders, as well as to the process for reviewing the invoices submitted and when the work was done, that recommendations were made, but those in charge of the project refused to accept those recommendations and act on

them and said, No, we think we are doing what we need to do, even though the evidence tells us otherwise.

I guess it is two-fold. One is, to the best of your knowledge, who made those decisions not to accept the recommendations of the auditors? And any basis for why they did not accept that, given the information we know today of the wrongs that were being committed?

General GARDNER. We are in the process of trying to figure out how do we get this project completed. We have contractors that have walked off the site because we haven't paid them. Our guys have refused to pay them because change orders have not been completed. We know now that these change orders that we are talking about, the work was done, the work was needed, and we will eventually pay for those change orders. We know that.

What we did was set up a process to try to get money to the contractors to get them back to work so that we could finish up the project. For every day that these contractors are off the site they are actually charging us money, so we are incurring hindrance costs, delays, and all types of other types of costs as a result of contractors not being at work.

So what we have done is tried to find ways within the law. This has all been coordinated with our legal staff, coordinated with our FM staff, and that was the process that we have used. So I feel comfortable with what we have done with that.

Mr. PLATTS. You are addressing where change orders were reviewed and were accurately fulfilled and payment, but my understanding is there is significant evidence of improper oversight, of perhaps—I think one number is $13 million that could not be accounted for, expenditures, and at least $13.7 million in construction change orders that the auditors reported that the Air Force was not able to validate. Is that an inaccurate statement?

General GARDNER. I don't know the exact part that you are reading from, but it is true that in the summer timeframe of last year we received a register of modifications—the number was 549—of change orders that our agent had approved or someone had approved that we were not aware of. There were 549 of them.

We have since gone back out on the site and worked with our organization or the German contracting agent to verify that the work had been done on these.

The process to do a change order, according to the ABG–75, should take 30 days. Some cases, because the way you go through the process of the change order, verifying, negotiating the prices, checking the prices and so forth, especially when you have a change order this size—17,000 line items in this document here—it takes a while. That is what has happened, is that we have been trying to figure out a way. We know the work has been done. We can verify that. But we do not have a means to pay the contractor, get them onsite, so they are walking off. So we are in this catch–22.

Mr. PLATTS. Mr. Chairman, could I do a followup here, if I may?

Chairman WAXMAN. Yes.

Mr. PLATTS. Thank you. I want to followup quickly with our GAO officials.

General, one, I appreciate your efforts and your staff in trying to get this project back and for your and your fellow men and women in uniform's service. We want you to be successful getting this project back and success for the benefit of the taxpayers and for the families and our men and women in uniform.

General GARDNER. Thank you.

Mr. PLATTS. I do want to followup on that issue of the auditors' recommendation. In your review, are there still significant recommendations of the auditors to prevent further problems that are not yet being implemented and accepted and pursued by those overseeing the project?

Mr. KUTZ. We don't know that. Our work is still ongoing.

I would say this: this is the situation. There is no real good solution necessarily. Just as important as this project is really the hundreds of millions of additional projects that are going to be happening, and at the front end—now you are not the front end any more. You are now at the back end of this, trying to deal with a real kind of a mess. For the projects going forward, it would be more important to deal with the front end so we don't have these kinds of discussions.

Granted, you could still have problems, but you have a better chance of preventing at the front end. Now you are really in a situation of having, in many cases, to pay, regardless of whether you are going to get the money back, for rework or other types of problems here.

So the only thing I would just comment on is the General said that the work has been done, and I expect hopefully most of it has, but I am not sure how he can conclusively state that where there are change orders with—supposed change orders. I said alleged in my opening statement—with no support. Again, I trust that most of it has been done, but also some of the people that are involved in this process are under investigation for fraud. So to the extent of saying that the work has been done, you don't know for sure.

General GARDNER. I beg to differ with you, but we do know.

Mr. PLATTS. I think your point that the work not being done up front. And, General, I understand that was prior to your time——

General GARDNER. Right.

Mr. PLATTS [continuing]. In your position, this change order with thousands of line items. If there had been a more thorough vetting and oversight up front we probably wouldn't have that type document. You are always going to have change orders, but probably not to this degree maybe if it was better laid out and overseen from the beginning. I think that is part of your point.

Thank you, Mr. Chairman, for the time.

Chairman WAXMAN. Thank you, Mr. Platts.

As we conclude this hearing, General, I want to make it very crystal clear why this committee is so concerned with the failure of the Air Force. It doesn't matter who the contractor is, whether it is an Iraqi contractor or German contractor or an American contractor. As I understand, there are special rules for international agreements, but you are the U.S. Government. You hold the money, and with it you hold the responsibility to ensure that it is not wasted.

Your written testimony says you are the third line of defense in protecting U.S. interests and resources. I disagree. You write the checks. You are the first line of defense for the American taxpayers. When you compare your testimony here today with this 112-page audit, you get a completely different picture. This Air Force audit report details at least 30 critical failures, not by contractors but by Air Force officials who were supposed to oversee this project, and these are fundamental, core responsibilities that have been disregarded.

I don't have any further questions for you, but I just want you to take that back and understand that is why Congress is concerned. It is not just for you to point fingers; it is to make sure these kinds of things never happen again.

Thank you very much. That concludes our hearing today. We stand adjourned.

[Whereupon, at 11:30 a.m., the committee was adjourned.]

WASTE, FRAUD AND ABUSE AT K-TOWN: ONE YEAR LATER

WEDNESDAY, JUNE 25, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Henry A. Waxman (chairman of the committee) presiding.

Present: Representatives Waxman, Cummings, Kucinich, Tierney, Watson, Sarbanes, Davis of Virginia, Shays, Platts, Duncan, and Sali.

Staff present: Phil Barnett, staff director and chief counsel; Kristin Amerling, general counsel; Karen Lightfoot, communications director and senior policy advisor; David Rapallo, chief investigative counsel; John Williams, deputy chief investigative counsel; Margaret Daum, counsel; Earley Green, chief clerk; Jen Berenholz, deputy clerk; Caren Auchman and Ella Hoffman, press assistants; Lawrence Halloran, minority staff director; Steve Castor, minority counsel; Ali Ahmad, minority deputy press secretary; Patrick Lyden, minority parliamentarian and member services coordinator; Emile Monette, minority professional staff director; and John Ohly, minority professional staff member.

Chairman WAXMAN. The committee will please come to order.

On June 28, 2007, almost exactly a year ago today, this committee held an oversight hearing on the Defense Department's single largest construction project in the world, a massive 840,000 square foot mall being built in Germany called the Kaiserslautern Military Community Center, also referred to as the K-Town Mall. This facility will have an 8-story, 350-room hotel. It will have a movie theater with stadium seating and large retail areas. A military spokeswoman called the K-Town Mall a smaller version of the Mall of America in Minnesota.

Last year, GAO testified that this project was in "serious trouble." They told us it was millions of dollars over budget, had no validated cost estimate, and had no working completion date. GAO told us about the mall's defective and continuously leaking roof, which was going to cost millions of dollars to repair, and GAO told us about serious construction mistakes, like kitchen exhaust ducts sealed with flammable insulation.

We also obtained a report from the Air Force Audit Agency detailing 35 different deficiencies in the Air Force's management of this project, and we were informed of several ongoing criminal investigations of U.S. officials involved in this project, including one

official who fled to Dubai instead of agreeing to testify before this committee.

During last year's hearing, officials from the Air Force essentially told us not to worry. They said that despite problems identified by GAO and the auditors, the project was under control. They promised that even if the project came in late, it would still be under budget.

Part of good congressional oversight is sustained congressional oversight. So today we are having our second hearing on the K-Town Mall. Today we will hear from the GAO team that has been tracking this project closely. Unfortunately, their testimony will sound like the movie Groundhog Day. The project has gone further over budget and has been further delayed. Here is what today's GAO report says: "With few visible changes, no reliable construction completion date, rising repair costs and continuing construction quality problems, the KMCC will continue to be a high-risk project."

What is most troubling about this year's report is that new problems are compounding the old ones. In addition to the faulty roof and the dangerous kitchen exhaust ducts, GAO has now identified long cracks in the concrete foundation of the building. Nobody yet knows the full extent of this damage, how long it will take to repair, or how much these repairs will cost.

Another new concern that GAO raises is that the Air Force is not counting millions of dollars of costs in its budget estimates. These include costs to design portions of the mall, cost to rework deficiencies like the roof and the foundation, and costs to assign additional Air Force personnel to this project.

GAO has also raised serious questions about $38 million in German funds that have been provided for the project. Although the Air Force believes this is a grant from the German Government, the Germans believe apparently that it is only a loan and they expect to be repaid.

Finally, GAO reports that the criminal investigations of U.S. officials involved with this project "have matured significantly" since our last hearing and that several officials are being investigated for dereliction of duty and bribery.

Here is the bottom line. This facility was supposed to cost $120 million and be open by 2006. But today, GAO projects that the project will cost well over $200 million and may not be open for business until sometime in 2009. Even at that point, GAO predicts, "it will likely take years before all issues related to this project, including litigation and potential construction quality problems, are resolved."

As a result, 50,000 servicemen and women who live and work on or near Ramstein Air Base lack modern facilities. Soldiers traveling to and from Iraq and Afghanistan are deprived of promised amenities. And service members around the world have reduced funding for morale, welfare and recreation.

At yesterday's hearing on Afghan ammunition contracts, I said that over the last 8 years there has been a complete breakdown in the procurement process. Today's hearing is more evidence of a pervasive dysfunction in Federal contracting. And this hearing is particularly frustrating because the glaring problems that we identi-

fied a year ago have not been fixed. We need accountability for problems like the ones that we have found at the K-Town Mall, and those responsible ought to face appropriate consequences.

We urgently need a new approach that welcomes oversight and demonstrates a commitment to fixing problems and protecting taxpayers from waste, fraud and abuse.

I look forward to working with all of my colleagues to make this goal a reality, and I want to recognize Mr. Davis.

[The prepared statement of Chairman Henry A. Waxman follows:]

Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
Waste, Fraud, and Abuse at K-Town: One Year Later
June 25, 2008

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> With few visible changes, no reliable construction completion date, rising repair costs, and continuing construction quality problems, the KMCC will continue to be a high-risk project.

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I don't think I'll ever understand why the Bush Administration hasn't demanded accountability for problems like the ones we've found at the K-Town Mall. Those responsible never seem to face any consequences and nothing seems to change.

But it has to change. We urgently need a new approach that welcomes oversight and demonstrates a White House commitment to fixing problems and protecting taxpayers from waste, fraud, and abuse.

Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman. Good morning and thank you for returning to the subject of the Air Force's major construction project in Germany dubbed the K-Town Mall where I had the opportunity to visit a few months ago. This building has become such a lingering and costly mess, I think perhaps we should start calling it the Capitol Visitor Center NATO annex.

A year ago we heard testimony on significant problems plaguing the massive, multi-purpose complex designed to feature retail, hotel and entertainment space for use by American personnel stationed in Germany and for others passing through Ramstein en route to and from other parts of the world. At that hearing, the GAO witnesses said mismanagement and lack of oversight had resulted in significant cost overruns, schedule delays and construction deficiencies. While any foreign construction effort is bound to involve unusual complexities and risks, those in charge of this development seem to have fallen into all of those inherent traps, and then they kept digging. Predictable difficulties were compounded by inadequate and unfocused high-level leadership early on, poor planning, badly designed requirements and an inadequate number of trained personnel overseeing the project.

Now, that was last year. GAO went back to K-Town earlier this year and the new observations they bring us today don't describe a clear path out of this expensive international morass. Steps by the Air Force to augment oversight staff and strengthen internal controls have helped to gain some measure of control over the project, but those measures aren't enough to untangle the knot formed by—and we need to understand this—multiple funding sources, vaguely worded international agreements, and the need to navigate diplomatic process to resolve complex disputes involving German contractors and U.S. dollars.

To break the logjam that stalled the project for so long, the German Government provided 25 million euro, or almost $39 million, to get construction workers back on the job. While all parties recognize the influx of money was necessary to get the project going and the status of that funding is not altogether clear, GAO has characterized it as a loan. The Air Force claims money—the United States won't have to pay back the money. The bilateral agreement between the United States and the German Governments calls the money prefinancing. No one is quite sure what it means. I hope this hearing will shed some additional light on that. But this lingering confusion about key issues doesn't bode well for completing construction by the end of this year, a forecast both the Air Force and the GAO already consider highly unlikely.

In any case, we have a great deal of money invested in the project and substantial funds remain at risk. We need to be sure this project is completed properly and that future projects don't fall prey to the same oversight lapses and mistakes that steered this project into the ditch and kept it there.

I hope this hearing will focus on what needs to be done to get this project back on track and the hard lessons that the Air Force and others need to learn to ensure the integrity of any future agreements governed by the terms of the current status of force agreement in Germany. And I think that is what is critical, is that you have international agreements here that have made this far

more complex than ordinary—being just a government contracts problem.

Investigators from the GAO are here today to provide their views on this issue. We commend them for their hard work. We also value the experience and the perspectives that the Air Force witnesses bring to this discussion. Much is at stake in terms of the U.S. tax dollars and in terms of providing our troops with the best possible overseas accommodations while deployed overseas. We look forward to today's testimony and to a frank and constructive discussion.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Tom Davis follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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Statement of Rep. Tom Davis
Ranking Republican Member
Committee on Oversight and Government Reform
"Waste, Fraud, and Abuse at K-Town: One Year Later"
June 25, 2008

Good morning. Thank you Mr. Chairman for returning to the subject of the Air Force's major construction project in Germany, dubbed the "K-Town Mall." This building has become such a lingering, costly mess I think perhaps we should start calling it the Capitol Visitor Center's NATO Annex.

A year ago, we heard testimony on significant problems plaguing the massive multi-use complex designed to feature retail, hotel and entertainment space for use by American personnel stationed in Germany and for others passing through Ramstein en route to and from other parts of the world. At that hearing, Government Accountability Office (GAO) witnesses said mismanagement and lack of oversight had resulted in significant cost overruns, schedule delays, and construction deficiencies. While any foreign construction effort is bound to involve unusual complexities and risks, those in charge of this development seem to have fallen into all those inherent traps … and kept digging. Predictable difficulties were compounded by inadequate and unfocused high-level leadership, poor planning, badly designed requirements, and an inadequate number of trained personnel overseeing the project.

GAO went back to K-Town earlier this year, and the new observations they bring us today don't describe a clear path out of this expensive international morass. Steps by the Air Force to augment oversight staff and strengthen internal controls helped regain some measure of control over the project. But those measures may not be enough to untangle the knot formed by multiple funding sources, vaguely worded international agreements, and the need to navigate diplomatic processes to resolve complex disputes involving German contractors and U.S. dollars.

To break the logjam that stalled the project for so long, the German government provided €25 million (or almost $39 million) to get construction workers back on the job. While all parties recognize the influx of money was necessary to get the project going again, the status of that funding is not altogether clear. GAO characterizes it as a "loan." But the Air Force claims the U.S. will not have to pay back any of the money. The bilateral agreement between the U.S. and German governments calls the money "pre-financing." But no one seems to know exactly what that means. Such lingering confusion about key issues doesn't bode well for completing construction by the end of this year, a forecast both the Air Force and GAO already consider highly unlikely.

In any case, we have a great deal of money invested in the project, and substantial funding remains at risk. We need to be sure this project is completed properly and that future projects do not fall prey to the same oversight lapses and mistakes that steered this project into a ditch and kept it there. I hope this hearing will focus on what needs to be done to get this project back on track and the hard lessons the Air Force and others need to learn to ensure the integrity of any future projects governed by the terms of the current Status of Forces Agreement in Germany.

Investigators from the GAO are here today to provide their views on these issues, and we commend them for their hard work. We also value the experience and the perspectives Air Force witnesses bring to this discussion. Much is at stake, in terms of U.S. tax dollars and in terms of providing our troops the best possible services and accommodations while deployed overseas. We look forward to today's testimony and to a frank, constructive discussion.

Chairman WAXMAN. Thank you, Mr. Davis. We are pleased to welcome the following witnesses to our hearing today. Judith Garber is Deputy Assistant Secretary of the European and Eurasian Affairs Bureau at the Department of State. Major General Mark E. Rogers is the Vice Commander of the U.S. Air Forces in Europe. Greg Kutz is the Managing Director of the Office of Forensic Audits and Special Investigations at the Government Accountability Office. Bruce A. Causseaux is a Senior Level Contract and Procurement Fraud Specialist in the Office of Forensic Audits and the Special Investigations at GAO. And Terrell G. Dorn is the Director of Physical Infrastructure at GAO.

The committee also requested testimony from Hubert Heimann, the managing director of LBB, the German Government office that supervises the KMCC construction project. Mr. Heimann wrote the committee a letter stating that he would not be able to participate in today's hearing. I ask unanimous consent that Mr. Heimann's letter be placed in the hearing record. And without objection, that will be the order.

[The information referred to follows:]

For The Record

Landesbetrieb Liegenschafts- und Baubetreuung
Geschäftsleitung

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L B B

Congress of the United States
House of Representatives
Committee on Oversight
And Government Reform
Herrn Henry A. Waxman
2157 Rayburn House Office Building
Washington, DC 20515-6143
USA

Aktenzeichen:	Durchwahl:	Datum:
LBB-Hei/Wü	- 10	23. Juni 2008

Sitzung des Commitee on Oversight and Government Reform am 25. Juni 2008 in Washington

Sehr geehrter Herr Waxman,

am 18. Juni 2008 erhielt ich per E-Mail Ihre Einladung zur Sitzung des Committee on Oversight und Government Reform am 25. Juni 2008 in Washington.

Leider muss ich Ihnen mitteilen, dass es mir nicht gelungen ist, die für eine derartige Teilnahme erforderlichen Abstimmungsprozesse auf Bundes- und Landesebene sowie Aussagegenehmigungen meiner vorgesetzten Dienststelle so kurzfristig zu erhalten. Aus diesem Grunde bitte ich um Ihr Verständnis, dass es mir nicht möglich ist, an der Sitzung am 25. Juni 2008 in Washington teilzunehmen.

Mit freundlichem Gruß

Hubert Heimann
Geschäftsführer

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Staatssekretär
Dr. Rüdiger Messal
Geschäftsleitung:
Hubert Heimann

RheinlandPfalz

Chairman WAXMAN. We welcome all of our panelists, witnesses today. We welcome all of you today to testify. It is the policy of this committee that all witnesses testify under oath. I'd like to ask you if you would, please, rise and raise your right hands.

[Witnesses sworn.]

Chairman WAXMAN. The record will indicate that each of the witnesses answered in the affirmative. Your prepared statements will be made part of the record in full. We would like to ask you, if you would, to limit your oral presentation to 5 minutes. And we will have a clock. It will be green. At the last minute it will turn yellow. And then after the 5 minutes is up, it will turn red. And when you see the red light, we would like to ask you to conclude.

Ms. Garber, why don't we start with you? There is a button on the base of the mic. Be sure to press it and pull the mic close enough to you.

STATEMENT OF JUDITH GARBER, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. GARBER. I'm pleased to be here today and I'll be ready to answer any questions. I do not have an oral statement.

Chairman WAXMAN. You don't have a statement?

Ms. GARBER. No.

Chairman WAXMAN. OK. General Rogers.

STATEMENT OF MAJOR GENERAL MARC E. ROGERS, USAF, VICE COMMANDER, U.S. AIR FORCES IN EUROPE

General ROGERS. Thank you, Mr. Chairman. Members of the committee, the U.S. Air Forces in Europe appreciates the opportunity to appear today and update you on the KMCC. This facility is important to ensure that future retail goods, services, morale and recreation activities and mission-related lodging facilities are available to our military members and their families who live in the Kaiserslautern military community. These services are all currently available to our forces, but the quality of service is hampered by early cold war era facilities. They are old, dispersed, have high maintenance costs, frustrating parking deficiencies and space limitations.

I first became engaged on the KMCC in December 2006 when I chaired the KMCC Oversight Council for the first time as the new Vice Commander of the USAFE. By that time, the project was months late, quality defects had been identified and arguments were ongoing between the USAFE Project Office and LBB, the construction agent, because USAFE was not paying invoices and contractors were continuing to walk off the site due to nonpayment.

Additionally, I was briefed on a draft audit by the Air Force Audit Agency that USAFE personnel had improperly paid invoices and that the Air Force Office of Special Investigations was investigating two personnel for possible wrongdoing. The Commander of USAFE at that time directed me to take charge of an effort to do three things: Investigate the reason for the delays and failures in KMCC; find out who is accountable for any failures, mismanagement or wrongdoing and; three, lead an effort with our German partners to find a strategic solution to completing the KMCC.

I found that USAFE personnel had indeed improperly paid invoices. According to the GAO, those funds have been recovered. Investigations continue; and once complete, responsible individuals will be held accountable.

I also found that Air Force internal controls found the initial wrongdoing, properly identified quality defects, and preserved our taxpayer money. And I found many previous decisions by USAFE leaders were fortuitous and positioned us to keep costs under control and enforce quality performance.

We stood up a task force and have been conducting root cause analysis on about 35 different potential causes for delays and failures. This analysis is complex and continues; however, many conclusions have already proven useful in working with our German partners for solutions.

Some work has continued over the past years—past year, and I brought a few photos to show there are bright spots in the progress. So if you'll put up the first photo.

Just so we all know, Mr. Chairman, what we're talking about, is there is an image of the KMCC. The tall portion, of course, is the hotel portion and all of the green area you see is the green roof over the mall portion. It is a very complex and, as you said, huge facility, reputed to be DOD's largest single facility project in the world.

Next slide, please. There is an image of the front entry to the mall.

Next. That is an image of the hotel portion as it stands today.

Next, please. That is an image inside the hotel lobby.

Next. That is one of the rooms in the hotel that has been outfitted with furniture. All of the rooms are essentially complete. There are 27 rooms that have finishes to be done and we've outfitted one with furniture for visitors who want to see what this is going to look like.

Next. That is the Ramstein tickets and tours office, one of the morale welfare and recreation offices in the building.

Next. This is the mall concourse showing the entryways to some of the vendor shops.

Next. And that photo is 90 degrees out, but it is office space in the building.

Next. I think that is the last slide. So there has been some progress over the past year, although minimal because contractors were essentially trying to not be in default of a contract. German leadership has worked hard to pick up the management and administrative train wreck of the KMCC and get construction on track and, due to their personal leadership, both Federal and state level, is now picking up more steam with more workers onsite and contractors have signed up to a new schedule.

We want to thank our German counterparts for demonstrating commitment to our great partnership by standing up to responsibilities under the international agreement, stepping out with strong leadership, and I'm convinced the German Government wants to get this facility finished as much as we do.

There has been numerous rumors surrounding the cost and quality, extended delays on this project in the past year. And since the committee's hearing, we have strengthened the management, cor-

rected all the discrepancies and the GAO has not found any new ones. We are frustrated and disappointed, but we're doing everything we can, sir, to get this done.

That concludes my opening statement. And as you mentioned, I have a written statement for the record. We appreciate your interest, sir. Thank you.

[The prepared statement of General Rogers follows:]

PRESENTATION TO THE COMMITTEE ON OVERSIGHT AND

GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: KAISERSLAUTERN MILITARY COMMUNITY CENTER PROJECT

STATEMENT OF: MAJOR GENERAL MARC E. ROGERS, USAF
VICE COMMANDER
UNITED STATES AIR FORCES IN EUROPE

JUNE 25, 2008

NOT FOR PUBLICATION UNTIL RELEASED

BY THE COMMITTEE ON OVERSIGHT AND

GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

The Kaiserslautern Military Community Center (KMCC), under construction at Ramstein Air Base, Germany, is an important quality of life project for our service members and their families serving in Europe and those transiting the airlift hub at Ramstein Air Base. When complete, it will serve as a modern, multi-use community center providing shopping, lodging, dining, banking, and morale activities under one roof. Located across from the Ramstein passenger terminal, it will offer a variety of food selections, services, and retail products to transient guests, outlying military communities and the over 50,000 American personnel and family members in the Kaiserslautern Military Community. The KMCC is a top priority of the United States Air Forces in Europe (USAFE).

Article 49 of the Supplementary Agreement to the NATO Status of Forces Agreement (SOFA) provides the German government authority to carry out construction for all sending state forces in Germany, with limited exceptions. Article 49 is implemented by the Auftragsbaugrundsaetze 1975 Administrative Agreement (known as ABG-75), a bilateral agreement between the U.S. Forces and the Federal Republic of Germany (FRG).

In accordance with ABG-75 indirect procedure, German authorities plan, enter construction contracts, and administer construction in accordance with Article 4.1, "in their own name and on their own responsibility" on behalf of U.S. Forces. As such, USAFE does not advertise, solicit, award, or administer KMCC construction contracts and has no authority over KMCC construction contractors. The FRG uses Oberfinanzdirektion Koblenz Geschäftsbereich Bundesbau (GBB), who directs a regional state entity, Landesbetrieb Liegenschafts-und Baubetreuung (LBB), to manage and execute such construction. For the KMCC the LBB office responsible is Kaiserslautern (LBB-KL).

When last examined by this Committee, the KMCC was 77% complete and 18 months behind schedule. At that time, USAFE reported that LBB-KL had failed in fundamental areas and that the project suffered from: 1) absence of a general contractor, 2) inadequate quality control, and 3) ineffective contract management. In the past year, these management failures have been validated by German and US authorities and additional LBB-KL failures have been identified, such as inadequate accounting and administrative processes, schedule deficiencies, failure to manage contractors and to comply with responsibilities under ABG-75. These failures prevented both GBB and USAFE decision makers from having an accurate picture of the KMCC situation.

Since the Committee's hearing last June, USAFE has improved its oversight and management of the KMCC. USAFE created a Resident Director's Office (RDO) led by a Colonel, and now has 29 personnel involved with this project, up from 17 at this time last year. Specific personnel responsibilities and procedures are now more stringently outlined. The RDO is located on-site and its constant presence has been critical to influencing LBB-KL to improve transparency and to comply with ABG-75. In addition, USAFE trained and appointed certifying officers and accountable officials to ensure that payments are properly authorized.

Despite all USAFE's efforts, the KMCC remains incomplete and delivery is further delayed. USAFE concluded that regardless of our oversight, the project could not progress without significant changes in LBB-KL's performance.

The State government conceded that their agent (LBB-KL) was overwhelmed and responsible for the failures at the KMCC. Repeated attempts to resolve LBB-KL management failures at the appropriate State government level had little result. In July 2007, USAFE obtained support from the US Embassy in Berlin to elevate our concerns to the federal level. With

Ambassador Timken's direct involvement, USAFE/CV appealed at the FRG Deputy Secretary level for 1) direct engagement by the German Federal authorities, 2) improved federal oversight, and 3) solutions to complete the project. The German government officials have responded with strong leadership, funding initiatives, management accountability initiatives, and commitment to complete the project.

The FRG backed up its commitment and responsibilities by making available up to €25 million in pre-financing to ensure liquidity of the project while LBB-KL corrects management deficiencies, invoice inaccuracies, resolves failures with the roof and restaurant exhaust ducts, pays hindrance claims, and to pay for backlogged change orders not approved by USAFE. This pre-financing flows between German government agencies and to German-hired contractors. None of this money flows through USAFE and USAFE has neither verbally nor in writing further obligated the U.S. Government with respect to these funds. While the FRG does expect to recover this pre-financing, it does not expect to do so directly from the U.S. Government.

At USAFE's urging, Germany has continued to augment and improve LBB-KL management and its capacity. While slow to reach full capability, we have seen improvements in management, quality control, and billing procedures.

To simplify the invoicing process and help ensure completion of the project, the FRG requested we implement a new payment method under ABG-75 that is more in line with routine construction. USAFE signed a Technical Agreement with GBB and LBB-KL on 12 June 2008 to implement this payment method. This Technical Agreement acknowledges that FRG pre-financing is to be used as indicated earlier and commits the FRG to completing the KMCC without US funding beyond the congressionally authorized amount. As further protection, it allows us to withhold 10% of the remaining funding to be paid at completion to ensure quality of

the final product. In addition, it mandates joint monthly site inspections to assess quality and construction progress. Successful inspections will lead to payment for validated progress. This Technical Agreement also established the requirement for a mutually agreed progress schedule.

The KMCC construction forecast is currently below the congressionally authorized construction amount. According to LBB-KL, the current projected construction cost is $162.9 million. Table 1 below contains a summary of construction and other costs as portrayed by the GAO.

Cost Component	Cost Estimate (in millions of dollars)	
Project Construction Costs (as of 31 Mar 08)		**162.9**
Construction Costs Paid	121.7	
Construction Costs to Complete the Project	41.2	
Other Costs		**40.7**
Secondary Services	5.7	
MILCON Foreign Currency Fluctuation	8.6	
Design Costs	8.4	
Furniture & Equipment	16.3	
Air Force Staffing to Manage KMCC	1.7	
Total U.S. Costs		**203.6**
Pre-financed Costs (not US costs)		
Contractor Hindrance Claims	To be determined	
Additional Roof Repair	10.8	
Additional Kitchen Duct Repair	1.2	
Repairs to Cracking Concrete	To be determined	
Duroplex Vandalism Repair	0.4	
Total Pre-financed Costs		**>12.4**
Total Costs		**>216.0**

Table 1

The KMCC project has required significant extra effort to achieve progress to date. USAFE has been able to influence cost and quality but unable to control the schedule. There are several lessons learned.

1. Transparency is essential to successful financial controls and cost accounting. Transparency under ABG-75 is only possible if LBB has proper accounting and financial management mechanisms in place allowing USAFE to accurately monitor costs.
2. USAFE can influence cost and quality on projects under ABG-75, but does not control schedule. LBB controls the schedule.
3. The only control USAFE has for construction projects in Germany is money. If we use that control, the projects will likely halt or delay progress.
4. Validation of LBB capabilities at the beginning of a project is essential. Do not proceed unless US side is comfortable with the LBB capability to execute the design and construction strategy.
5. For projects in Germany involving multiple funding sources, use Congressional authority to combine agency funds to simplify invoicing, payment, and accounting procedures.
6. Do not hesitate to elevate and obtain political support at the FRG level.
7. For construction projects in Germany, insist on a general contractor.

USAFE acknowledges the support of Ambassador Timken and the US Embassy staff in Berlin for their hard work and commitment. He was quick to understand the potential damage that could be done to our bilateral relationship by failures with the KMCC project. His personal intervention led to FRG action that is putting this project back on track.

The Committee's interest in and scrutiny of the KMCC project has been acknowledged by FRG officials and provided additional credibility to USAFE concerns as we appealed for FRG intervention.

USAFE is tremendously impressed by and appreciative of the dedication of German officials in support of the US Forces. Senior government officials of the FRG and the State of Rhineland-Palatinate demonstrated outstanding leadership, commitment, and partnership in providing solutions to the KMCC project. USAFE has no doubt these officials are committed to completion of KMCC as soon as possible.

Chairman WAXMAN. Thank you very much, General Rogers. Mr. Kutz, why don't we hear from you next and your colleagues? Just a minute.

Mr. KUTZ. Mr. Dorn can start and I'll finish.

STATEMENTS OF TERRELL G. DORN, DIRECTOR, PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE; GREGORY D. KUTZ MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; AND BRUCE A. CAUSSEAUX, SENIOR LEVEL CONTRACT AND PROCUREMENT FRAUD SPECIALIST, FORENSIC, GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF TERRELL G. DORN

Mr. DORN. Thank you, Mr. Chairman, Mr. Davis, members of the committee.

Construction projects can be broken down into three fundamental areas: Cost, schedule and quality. Optimization of those three areas is the goal of good project management. But in the case of KMCC, none of the three went Air Force's way. There have been serious quality issues, escalating and still uncertain project costs, and a schedule that is likely to deliver the project at least 3 years late. This morning I will cover the construction quality and schedule issues, and then Mr. Kutz will discuss the cost issues.

A year ago, the serious KMCC quality issues we discussed included a defective roof and kitchen exhaust duct work that did not comply with U.S. Fire Code standards. Both needed to be ripped out and replaced. Schedule-wise, no one knew when the project would be finished, and in fact the contractors had all but abandoned the site. Project management and internal controls were inadequate and there were allegations of fraud. Since then, there has been a lot of progress in some areas and almost none in others.

First the good news. Since the committee's last oversight hearing, the Air Force has made great progress in addressing internal controls and has quadrupled the size of its KMCC Project Management Office with particular focus on staff training and acquisition management, construction management and financial management. In addition, General Rogers, assisted by State Department, met with high-level German officials to cooperatively work out the details necessary to improve oversight of the project by LBB, who is the German Government's construction agent in Rheinland-Pfalz. They also laid the groundwork for the German Government to pay its contractors and to get them back to work.

Now the not-so-good news. The new internal controls and the new processes and the new Project Management Office have hardly been tested because insignificant progress has been made in construction over the last 12 months. Our review of the latest construction schedule furnished to Air Force by LBB was not encouraging. The schedules for the mall portion and the hotel portion of the project were not integrated to show how they might affect each other. It was also not clear from the schedule what contractor resources, such as crew sizes, were necessary to keep the project on time.

The project's critical path, which is supposed to show what tasks need to be completed by certain dates to keep the project on schedule, was not clear. However, it was clear from the schedule that some tasks were already late. Given those issues, finishing all construction and fire alarm testing in the mall and hotel by the end of the January 2009 is very unlikely. And given that AAFES may need as many as 4 months to take the building from the Air Force's definition of complete to the day the first customer buys a pair of shoes, it is foreseeable that we may be waiting at least 1 year from today before the buildings are fully occupied.

Here are a few slides to better illustrate the lack of construction progress over the last year. This first slide is a side-by-side comparison of the food court area just inside the mall's entrance. On the left 2007 and on the right 2008.

This next slide shows a similar lack of progress in the mall's name-brand restaurant. If progress can be defined as ripping out defective work, then some progress has been made on the kitchen exhaust duct work and the roof. Demolishing and replacing the KMCC's roof began this spring, but the work is extensive, must be done in sections, and will not be completed for some time.

In addition, we have identified that the KMCC project was not an isolated failure. Several other projects constructed more or less concurrently for the Air Force by LBB Kaiserslautern also experienced significant cost, schedule and quality issues.

On this slide, you will see a logistics distribution facility designed to be an open bay and to not have interior columns. It now has 43 temporary columns running down the center of the building to keep the roof from collapsing. A forklift operator running into one of those columns and collapsing a portion of the roof was the nightmare scenario of one official we interviewed.

This last photo is from our return visit to Ramstein in March of this year. It shows large pond that formed next to a runway extension that was built by LBB as part of the Rheinland transition program. The pond not only attracted waterfowl, which is something you don't want around an airfield, but also repeatedly shorted out the runway lights, causing the possible diversion of aircraft to other bases.

Clearly LBB's recent track record of construction for the Air Force indicates that increased oversight to protect U.S. tax dollars is required now and in the foreseeable future.

And now Mr. Kutz will highlight the KMCC's cost issues.

STATEMENT OF GREGORY D. KUTZ

Mr. KUTZ. Given the problems Mr. Dorn just described, you might be wondering what the total cost of this project will be. Unfortunately, because certain costs have not been tracked by the Air Force, nobody will ever fully know. If you could put the pie chart up for us.

This pie chart on the monitor shows the elements of total cost, including that red slice that is referred to as unknown costs. The amounts shown are estimates by the Air Force and the German construction agency of the total U.S. dollar cost at completion. The biggest piece of the pie or the black piece there is construction costs. This $163 million represents primarily charges for trade con-

tractor work. Other costs shown relate to foreign currency, rework design and other contracted services and furniture and equipment. When added up, the total estimate for this amount or these amounts here is $214 million. The unknown or the red piece there represents millions of dollars of contingencies and other costs that are not tracked as part of the KMCC.

For example, the cost of Air Force staff overseeing the project are not captured. Other unknown include hindrance claims and estimates of cost to repair the new cracks in the floor. In addition to the $214 million estimate and the unknowns there are other real costs resulting from the problems and delays. For example, for every month of delay, it is estimated that $500,000 of profits are lost from operation of the shopping mall and the restaurants. In total, if the project opens 3 years late, which is the best case scenario, these lost profits and additional costs will approach $20 million.

As the chairman mentioned, last year the Air Force testified that KMCC was under budget. Many of the members of the committee expressed concern and wondered how that could possibly be true. Last week, Air Force officials briefed your staffs and told you the same thing. Let me clarify some of the facts related to this representation.

For this project, what you have is a 35 percent increase in the euro-dollar exchange rate, at least 3 years of delay, over $10 million of rework and millions of dollars of improper payments. Further, funding partner records reveals substantial cost overruns. For example, the largest funding source for KMCC is the Army and Air Force Exchange Service. According to their records, their piece of the construction pie you see alone is $24 million, or 45 percent over budget. Their worst case estimate is a $59 million, or 110 percent cost overrun.

Clearly, KMCC will cost substantially more than the Air Force and its funding partners envisioned at the beginning of this project. Their budget number they are speaking about, it represents the congressionally authorized spending limits for the construction piece of the pie.

Last year I testified that KMCC was from the beginning a high risk overseas project with minimal Air Force oversight. As Mr. Dorn mentioned, Air Force has since your hearing last year substantially increased its oversight. Improvements include more and better trained staff, standardized procedures and enhanced disbursement controls. We believe these improved controls reduce the risk of fraudulent and improper payments.

In conclusion, the people most impacted by the problems at KMCC are military members and their families. The tens of millions of dollars of cost overruns and lost profits have reduced the money that is available for morale, welfare and recreation programs worldwide. We are encouraged that the Air Force has beefed up its oversight of this project. Given the problems with other large projects at Ramstein, we believe they should provide this enhanced oversight for all future projects.

Mr. Chairman, this ends our statement. We look forward to your questions.

Chairman WAXMAN. Thank you very much. Mr. Causseaux you are here to answer questions?

Mr. CAUSSEAUX. They took care of it.

[The prepared statement of Messrs. Kutz, Dorn, and Causseaux follows:]

United States Government Accountability Office

GAO

Testimony

Before the Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
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MILITARY CONSTRUCTION

Kaiserslautern Military Community Center Project Continues to Experience Problems

Statement of Gregory D. Kutz, Managing Director
Forensic Audits and Special Investigations

Bruce A. Causseaux, Senior Level Specialist
Forensic Audits and Special Investigations

Terrell G. Dorn, Director
Physical Infrastructure

GAO-08-923T

June 25, 2008

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-08-923T, a testimony before the Committee on Oversight and Government Reform, House of Representatives

MILITARY CONSTRUCTION

Kaiserslautern Military Community Center Project Continues to Experience Problems

Why GAO Did This Study

The Kaiserslautern Military Community Center (KMCC) is one of many projects initiated at Ramstein Air Base to upgrade capabilities of the base as a result of the consolidation of military bases in Europe. The KMCC is intended to provide lodging, dining, shopping, and entertainment for thousands of U.S. military and civilian personnel and their families in the area. Construction on the project, which began in late 2003, was originally scheduled to be completed in early 2006. On June 28, 2007, GAO testified that construction deficiencies and mismanagement had drawn into question when the project would be completed and at what cost.

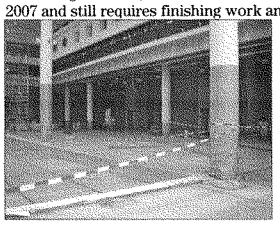
This testimony discusses updated findings related to the KMCC project. The testimony describes (1) the current status of the KMCC construction project, (2) whether oversight and internal control improvements have been made by the Air Force since GAO's last testimony, and (3) if other projects recently completed in the KMCC area have experienced problems similar to those affecting the KMCC.

To address the objectives, GAO interviewed officials from the U.S. Air Force, Army and Air Force Exchange Service (AAFES), Air Force Services Agency, U.S. Army Corps of Engineers, Department of State, and German government. GAO also conducted site visits and reviewed project plans, cost estimates, completion analyses, and other relevant KMCC documents.

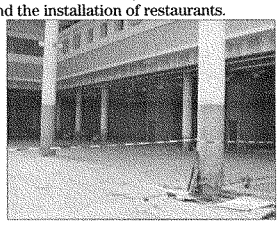
To view the full product, including the scope and methodology, click on GAO-08-923T. For more information, contact Gregory Kutz at (202) 512-6722 or kutzg@gao.gov or Terrell Dorn at (202) 512-6923 or dornt@gao.gov.

What GAO Found

Approximately 1 year after GAO's June 2007 testimony and over 2 years after the KMCC's originally scheduled construction completion date, the project continues to experience significant cost and schedule uncertainty along with construction quality problems and ongoing criminal investigations. Limited progress has been made on KMCC construction, and there are still no accurate estimates of how much the total project will cost or when it will be completed. Major construction deficiencies GAO reported in 2007 are just now beginning to be corrected. The photos below show that other than floor tiles being installed, the food court area remains essentially the same as in 2007 and still requires finishing work and the installation of restaurants.



May 2007



May 2008

Source GAO

In addition, the Air Force does not track the total cost of the KMCC. Specifically, tens of millions of dollars related to design, foreign currency fluctuation, rework, personnel, and furniture and equipment costs are not included in the Air Force's cost estimates. Contingencies to fund items such as repairs to cracking concrete are also not included in the Air Force's estimates. After including all estimated costs, the total cost of the project will likely exceed $200 million. Project delays have also resulted in additional costs to the U.S. government and lost profit for project funding partners. For example, AAFES estimates that it is losing $500,000 of profit for each month that the exchange facility is not open.

Although these problems exist, the Air Force has made significant improvements in its oversight and control over the project. For example, the Air Force established standardized policies and procedures for reviewing change orders and invoices. Improvements in controls over payments and change orders have minimized future risks of paying for unapproved work or fraudulent billings for work not performed.

Cost, schedule, and construction deficiencies affected other projects built by German government construction agents in the KMCC area. For example, underground electrical ducts at Ramstein Air Base flood with water causing runway lights to malfunction. A freight terminal on the air base was also built with structural deficiencies that resulted in its temporary evacuation.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our findings on the current status of the Kaiserslautern Military Community Center (KMCC) construction project. This testimony is a 1-year update to our testimony before this committee in June 2007,[1] which detailed the problems facing the project. In June 2007, we testified that the KMCC was experiencing cost, schedule, and construction quality problems that raised questions about when the project would be completed and at what cost. At the time of our testimony, there were few workers on-site, the building's roof was leaking, and German police and Air Force Office of Special Investigations (AFOSI) agents were seizing documents as part of ongoing criminal investigations. In addition, the projected total cost of the project had increased substantially because of delays, rework, and the appreciation of the euro versus the U.S. dollar. Our 2007 testimony also detailed construction management failures by the Landesbetrieb Liegenschafts-und Baubetreuung's office in Kaiserslautern (LBB-Kaiserslautern), the German construction agent charged with managing the project for the U.S. forces. In addition, our testimony detailed control weaknesses within the Air Force that contributed to the problems for the project. This testimony provides an update on the status of the KMCC project and its problems, and makes an assessment of whether other construction projects in the area have experienced similar problems.

As we previously reported, the KMCC, an 844,000 square foot facility, is one of many projects that were initiated at Ramstein Air Base to upgrade capabilities of the base as a result of the consolidation of military bases in Europe. It is intended to provide lodging, dining, shopping, and entertainment for over 50,000 U.S. military and civilian personnel and their families in the Kaiserslautern, Germany, area. Project highlights include a 350-room visiting quarters, sports bar, name-brand restaurant, food court, and numerous retail businesses. Funding for the KMCC was provided from a variety of sources including nonappropriated funds from the Army and Air Force Exchange Service (AAFES) and the Air Force Services Agency

[1]GAO, *Military Construction: Observations on Mismanagement of the Kaiserslautern Military Community Center*, GAO-07-1039T (Washington, D.C.: June 28, 2007).

(AFSVA),[2] military construction appropriations, and the Rhein Main Transition Program (RMTP) funds.[3] Construction on the KMCC began in November 2003 and was planned to be completed in early 2006.

In addition, we previously reported that the activities of U.S. forces personnel in Germany are to be carried out in accordance with the provisions of the North Atlantic Treaty Organization's Status of Forces Agreement and various implementing agreements. The KMCC, like other military construction projects in Germany, is governed by one such agreement, the Auftragsbaugrundsaetze 1975 (ABG-75) Administrative Agreement. ABG-75 provides that U.S. forces are to coordinate construction planning with the German government to ensure the optimum use of German design and construction capacities. For the KMCC, the responsibility for construction resided with LBB-Kaiserslautern, a German government construction agency.

As requested, this testimony updates our findings on the status of the project and problems affecting the KMCC. Specifically, the testimony will describe (1) the current status of the KMCC construction project, including projected costs, projected construction completion dates, and status of ongoing investigations; (2) whether oversight and internal control improvements have been made by the Air Force since our last testimony; and (3) whether other projects recently completed in the KMCC area have experienced problems similar to those affecting the KMCC.

To address our objectives, we conducted interviews with Air Force personnel responsible for the KMCC project. In addition, we interviewed officials from LBB-Kaiserslautern, AAFES, AFSVA, and the U.S. Army Corps of Engineers. We also interviewed officials from the Department of

[2]AAFES is a joint military activity providing merchandise and services to active duty, guard and reserve members, military retirees, and their families. AAFES uses earnings to improve troops' quality of life and to support morale, welfare, and recreation programs. AFSVA provides combat support and community service programs that enhance the quality of life for Air Force members and their families. AFSVA programs include lodging, youth programs, and sports and fitness programs.

[3]The closure of the Rhein Main Air Base is part of the RMTP where the United States and Germany agreed to return the base to Germany. In return, Germany allowed the relocation of the base's key airlift capability to Ramstein and Spangdahlem Air Bases. As part of the agreement, the Federal Republic of Germany, federal states of Rheinland-Palatinate and Hessen, city of Frankfurt, and Fraport AG Frankfurt Airport Services Worldwide agreed to provide funds to upgrade the facilities at Ramstein and Spangdahlem Air Bases, including about 14 million euros for the KMCC.

State and officials from the Federal Republic of Germany's construction division. We obtained and reviewed project plans, cost completion analyses, and other relevant documents related to the design and construction of the KMCC. We also compiled Air Force and LBB-Kaiserslautern cost estimates for the various cost elements associated with the KMCC. We physically inspected the KMCC and other recently completed facilities on Ramstein Air Base. See appendix I for more details on our scope and methodology.

Because of ongoing investigations, we were not able to fully explore and discuss the details of fraud investigations with AFOSI and the German police, which limited the scope of our audit work.

We conducted this performance audit from November 2007 through June 2008 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.

Summary

Approximately 1 year after our initial testimony and over 2 years after the KMCC's originally scheduled construction completion date, the project continues to experience significant cost and schedule uncertainty along with construction quality problems and ongoing criminal investigations. Since our testimony in June 2007, limited progress has been made on KMCC construction, and there are still no accurate estimates of how much the total project will cost or when it will be completed. Delays in reaching completion agreements with major contractors have contributed to the lack of progress over the last year. In addition, major construction deficiencies, such as the leaking roof and improperly installed kitchen exhaust ducts, which we discussed during our initial testimony, are just now beginning to be corrected. For example, in February 2008, a $2.7 million[4] contract was awarded for the first of four phases of repair work on the leaking roof, and in May 2008, a $1.2 million contract was awarded

[4]For all contract and cost amounts accounted for in euros, we converted costs into U.S. dollars at the specific conversion rate estimated by Air Force officials for that specific cost element. In cases where the Air Force did not have a specific conversion rate set for a cost element, we converted the cost at a rate of .66 euros per dollar, which was the most recent conversion rate used by the Air Force for planning purposes.

for the second phase of roof repairs. However, long cracks in concrete floors have been identified since our June 2007 testimony, which raise new concerns about construction quality and could result in additional time and cost to repair. While the number of workers on-site has increased in recent months, it is unclear whether the number and type of workers are sufficient to complete construction by LBB-Kaiserslautern's current projected date of January 2009. This projected date only represents construction completion; however, the facility will not be open to the public for about 4 months following construction completion. Finally, criminal and civil investigations continue to surround the project and indictments are expected, according to AFOSI agents.

There are no accurate estimates of how much the total KMCC project will cost because the Air Force does not track all project costs. While the Air Force actively tracks what it considers to be core construction-related costs, tens of millions of dollars of other project costs are not included in Air Force cost estimates. Specifically, costs that are not included in the estimates are design costs, foreign currency fluctuation costs, costs for roof repair and other rework, personnel costs, and costs for furniture and equipment. Foreign currency fluctuation costs are of particular concern because of the significant appreciation of the euro versus the U.S. dollar since inception of the project. In total, the euro has appreciated 35 percent against the U.S. dollar since construction began on the KMCC in November 2003. In addition, contingencies to fund items such as potential hindrance claims[5] and repairs to floor cracks are not included in the estimated construction costs for completion. When taking into account all estimated costs, the total cost of the project will likely exceed $200 million. This figure was derived by consolidating numerous Air Force cost estimates captured in different accounts, such as military construction funds, non-appropriated funds, and operations and maintenance funds. Project delays have also resulted in additional costs to the U.S. government and lost profit for AAFES and AFSVA. For example, AAFES, responsible for management of the new exchange, estimates that it is losing $500,000 of profit for each month that the exchange facility is not open. In addition, the Air Force also estimates that the U.S. government is paying an additional $90,000 each month when personnel traveling at the government's expense must stay off base because the hotel portion of the KMCC remains unfinished.

[5]Hindrance claims refer to claims against the United States for additional costs contractors incurred because of interruptions of contractor work.

Although problems exist with the project, the Air Force has made significant improvements in its oversight and internal controls. In June 2007, we reported that Air Force officials did not have adequate or appropriately qualified personnel assigned to the project and did not have effective oversight policies and controls in place. In the last year, the Air Force created the Resident Director's Office (RDO), which centralized management of the KMCC project and established standardized policies and procedures for reviewing invoices and change orders. According to the Air Force, the RDO has 29 personnel, which is a significant increase over the 8 oversight personnel initially assigned to the KMCC project. To minimize future risks of paying for unapproved work or fraudulent billings, the Air Force has also standardized its invoice and change order review processes. Finally, at various times in 2007 and 2008, senior Air Force officials engaged officials from the Department of State and the Federal Republic of Germany in an effort to identify options for generating progress on the project.

Other projects recently completed in the KMCC area have also experienced problems similar to those affecting the KMCC. According to the Air Force, several recent projects built by LBB-Kaiserslautern associated with the RMTP on Ramstein Air Base have experienced significant cost and schedule growth as well as construction deficiencies. For example, the lights on the new south runway built on Ramstein Air Base are affected by a construction defect that allows groundwater to collect in the underground ducts and manholes that contain electrical components used to control the lights. The Air Force has repeatedly lost the capability to operate certain lights as a result of power outages caused by water intrusion to the lighting system and, when power outages occur, has been forced to divert aircraft to other air bases during periods of low visibility. The south runway also suffers from poor water drainage, in general, which at times causes large ponds to form between the south runway and adjacent taxiways. These ponds attract large waterfowl, which pose a safety risk to aircraft using the runway. Another reported example of construction deficiencies is illustrated by the newly constructed freight terminal, which must rely on additional support columns as a precaution to prevent the building's roofs from collapsing. Because of structural integrity issues, 41 additional columns were installed in the freight terminal to provide additional support to the roof.

Progress on the KMCC Has Been Slow, Quality Problems Persist, and Project Costs Are Unknown

Approximately 1 year after our initial testimony and over 2 years after the KMCC's originally scheduled construction completion date, the project continues to experience significant cost and schedule uncertainty along with construction quality problems and ongoing criminal investigations. Since our testimony in June of 2007, limited progress has been made on KMCC construction, and estimates of how much the total project will cost or when it will be completed are uncertain. Total project costs are uncertain because the Air Force does not track all costs associated with the project. Specifically, tens of millions of dollars related to design, foreign currency fluctuation, rework, personnel, and furniture and equipment costs are not included in the Air Force's cost to date or estimate for construction completion of the project. Contingencies to fund items such as potential hindrance claims are also not included in the estimated costs for construction completion.[6] When including all estimated costs, the total cost of the project will likely exceed $200 million.

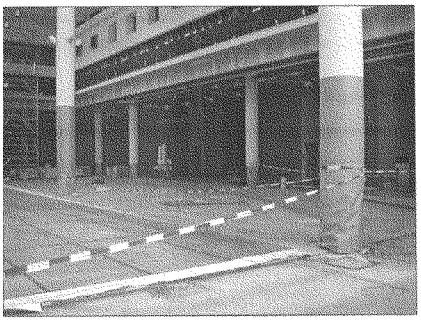
Limited Progress Has Been Made

Over the past year, limited progress has been made on constructing the KMCC, and the project's construction completion date is uncertain. Figures 1 and 2 show comparisons of the project when we visited in 2007 and during our last visit in May 2008. The comparison of the KMCC food court area shows that other than some wall finishes and floor tiles being installed, the area remains essentially the same and still requires finishing work and the installation of the food court restaurants. Overall, relatively few contractor employees were on-site from the time of our initial site visit in May 2007 through early 2008, as LBB-Kaiserslautern experienced repeated delays in reaching agreements with major contractors to return to work. While LBB-Kaiserslautern reached completion agreements with its major contractors in March 2008, and the number of workers on-site has increased since that time, it is not clear if the number and type of workers are sufficient to sustain production and meet LBB-Kaiserslautern's new estimated construction completion date of January 2009. This projected date represents construction completion; however, the facility will not be open to the public for about 4 months following

[6]The German government has loaned the project 25 million euros since our 2007 testimony to finance rework and repairs, prepay invoices, and settle contractor hindrance claims. German officials stated to us that complete reimbursement for this loan from the United States is expected. However, the Air Force contends that it will not pay for any expenses related to rework or repairs to deficient construction. For transparency purposes, we consider that all expenses funded by proceeds from the loan are part of the total project cost regardless of which party is ultimately responsible for financing each specific cost.

construction completion. Moreover, because LBB-Kaiserslautern has not met earlier construction schedules and the estimated construction completion date has continued to slip, we are concerned about LBB-Kaiserslautern's ability to manage actions needed to achieve the January 2009 estimated construction completion date.

Figure 1: Comparison of the KMCC Food Court Area



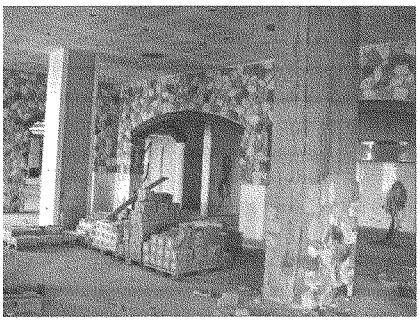
May 2007

May 2008

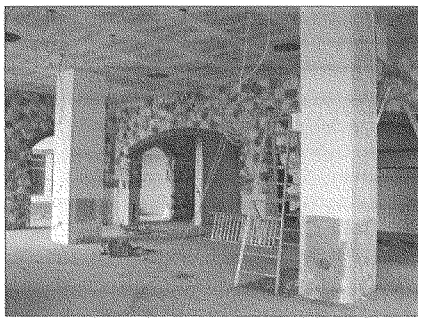
Source GAO

The comparison of the KMCC name-brand restaurant shows that the restaurant still requires painting, wiring, and other finishing work similar to that needed in 2007.

Figure 2: Comparison of the KMCC Name-Brand Restaurant



May 2007

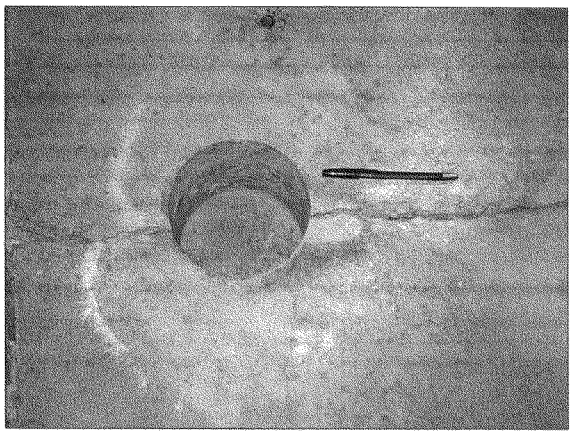


May 2008

Source GAO.

In addition, major construction deficiency problems, such as the leaking roof and improperly installed kitchen exhaust ducts, which we discussed in our 2007 testimony, are just now being repaired. For example, contracts were recently awarded for the first two of four phases of repair work on the leaking roof, and most of the deficient ductwork has been removed. However, additional problems, such as several long cracks in the concrete floor of the AAFES store, have been identified by the Air Force since our last testimony. LBB-Kaiserslautern has retained an expert consultant to investigate the floor cracks, and the consultant's report recommends that joints be cut into the floor to control further cracking. The actual scope of the floor repair work and associated cost and schedule impacts are not known at this time. Figure 3 shows an example of these cracks. The pen in the photograph is provided for scale.

Figure 3: Example of Floor Cracks in the KMCC



Source: GAO

Final Costs of the KMCC Project Are Still Unknown

Because the Air Force does not track the total cost of the KMCC project, there are no accurate estimates of how much the total KMCC project will cost. Cost estimates provided by the Air Force primarily include core construction-related costs and do not account for millions of dollars in other costs related to the KMCC project. When all project-related costs are taken into account, the total cost for the project will likely exceed $200 million.[7] This figure was derived by consolidating numerous Air Force cost estimates captured in different accounts, such as military construction funds (MILCON), non-appropriated funds, and operations and maintenance funds. According to Air Force officials, approximately $121 million has been spent on core construction-related costs for the KMCC as

[7]Estimates for each independent cost element were developed by the Air Force and German government officials; however, our review of these estimates in aggregate resulted in confidence that the overall project cost will likely exceed $200 million.

of March 31, 2008. In addition, Air Force officials estimate that an additional $41 million in construction-related costs are required to complete the project. However, this estimate only relates to those costs that the Air Force tracks for reporting purposes. Not included in the Air Force's estimate are design costs, costs of rework to repair known construction deficiencies, foreign currency fluctuation costs, costs for furniture and equipment, some costs for secondary services,[8] and costs for the numerous Air Force personnel reassigned from other projects in order to help manage the KMCC construction project. For example, the Air Force cost estimate does not fully reflect the effect of the weakening dollar compared to the euro because payments from MILCON funded project components to cover losses due to foreign currency fluctuation are drawn from a separate account that the Air Force does not track as part of this project. Table 1 shows the Air Force cost estimate for core construction-related expenses along with additional costs associated with the project. As the table shows, an accurate estimate on the total cost of the project is not possible because of a number of unknown expenses, such as the Air Force's liability for contractor hindrance claims.

[8]Secondary services, also called soft costs, include work performed by construction inspectors who are responsible for ensuring that installed work meets the terms of the contract and checking that invoices correctly reflect the work performed. Secondary services also include consulting and logistical support services.

Table 1: KMCC Estimated Project Costs

Cost Component (dollars in millions)	Air Force/ LBB-Kaiserslautern cost estimate
Air Force estimated construction costs	
Construction costs paid[a, b]	121.7
Construction costs to complete the project[a, b]	41.2
Project costs not included in Air Force construction cost estimates	
Additional roof repair costs	10.8
Additional kitchen duct repair costs	1.2
Secondary services	5.7
MILCON foreign currency fluctuation costs	8.6
Design costs[b]	8.4
Furniture and equipment[b]	16.3
Total quantifiable costs	213.9
Unquantifiable costs	
Contractor hindrance claims	Unknown
Repairs to cracking concrete	Unknown
Air Force staffing to manage the KMCC	Unknown
Total project cost	**Unknown**

Source: Air Force (for all quantifiable project costs)

[a]Construction costs include costs for construction contracts; certain secondary services; contingency costs; and supervision, inspection, and overhead provided by LBB-Kaiserslautern.
[b]Cost component was included in original project documents submitted to Congress disclosing appropriated and nonappropriated funds estimates.

Additional clarification on selected project costs not included in the Air Force's construction cost estimate is provided below.

- **Construction deficiency repairs.** Deficient construction has been identified on major building components, including the roof and kitchen exhaust ducts. LBB-Kaiserslautern is taking steps to contract for repairs to correct these deficiencies.

  - **Roof damage.** Significant sections of the roof require repair or replacement. The current plan is to complete repairs to the roof in four phases. The first phase of repairs is expected to cost $2.7 million and is included in the Air Force's construction cost estimate, which according to the Air Force is being paid for primarily with funds withheld from

the original roof contractor. Costs for repair phases two through four are estimated by the Air Force to cost about $10.8 million and are not included in its construction cost estimate. U.S. government funds remaining from the original roof contract are being used to fund the majority of phase one repairs; therefore, the phase one repair cost is reflected in the Air Force's construction cost estimate. Funds for repair phases two through four are initially being funded by the German government, and the Air Force excludes these costs in its construction costs to complete the project.

- **Kitchen exhaust ducts.** The kitchen exhaust ducts installed in the KMCC do not comply with U.S. National Fire Protection Association standards specified by the Air Force. LBB-Kaiserslautern has completed the design for repairs to the exhaust ducts and is negotiating with its contractor a final price for their installation. The estimated installation cost is approximately $1.8 million. In early 2007, the Air Force agreed to pay for $600,000 of the rework and has included that amount in its construction cost estimate, but has not included the rest of the repair cost as part its construction cost estimate.

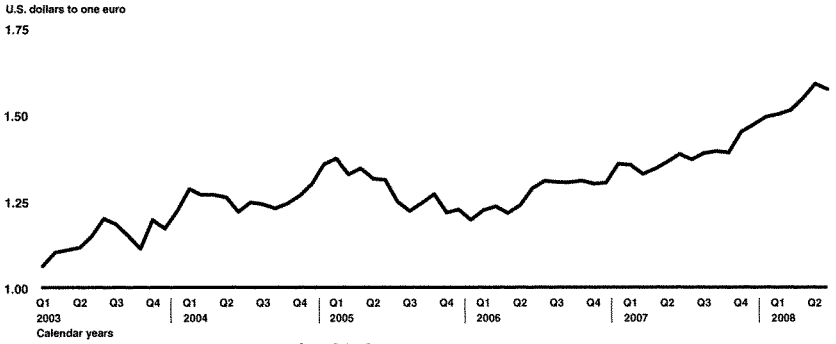
- **Secondary services.** As the project has progressed, the Air Force has retained several contractor personnel to provide construction inspection, engineering, consulting, and other secondary services. For example, since January 2005 the Air Force has contracted for construction inspectors who are responsible for, among other things, ensuring that installed work meets the terms of the contract and checking that invoices correctly reflect the work performed. The cost for most of these secondary services is not included in the Air Force's construction cost estimate. Air Force officials indicated that some of the Air Force's technical consultants were also supporting other projects, but that the majority of their work involved support on the KMCC. Since the majority of work performed under these secondary services contracts relates to the KMCC project, we have included the cost of these contracts in the Air Force's estimate.

Foreign currency fluctuation. Since the start of the project in 2003, the euro has appreciated 35 percent relative to the U.S. dollar. Because KMCC contractors are paid in euros but KMCC project funds are budgeted in dollars, the Air Force is susceptible to paying more when the dollar loses value. In addition, this risk has been magnified by the 2-year delay in completion of the project. Since the June 2007 testimony alone, the euro has appreciated by 15 percent, from $1.35 to $1.55. As a result of the devaluation of the dollar, nonappropriated fund payers (AAFES and AFSVA) have paid about $31.9 million in foreign currency fluctuation expenses, and appropriated MILCON funds have paid $8.6 million since

the project's inception. The Air Force includes nonappropriated fund foreign currency fluctuation costs in its construction cost estimates. However, because MILCON foreign currency fluctuation costs are paid from a separate account, the effect of foreign currency fluctuation is not reflected in the Air Force's construction cost estimate.[9] Therefore we have included in the estimate based on the Air Force's reported numbers the actual foreign currency fluctuation costs paid to date associated with MILCON funds. In addition, the Air Force also did not include an allowance for future foreign currency fluctuation costs associated with MILCON funding. Based on the trend of the strengthening euro, these foreign currency fluctuation costs will only increase as MILCON expenses increase. Figure 4 shows the trend in the strengthening of the euro against the U.S. dollar over the past several years.

[9]Costs associated with foreign currency fluctuation for appropriated MILCON funds are paid from a central MILCON foreign currency fluctuation account and are not charged directly to projects.

Figure 4: Currency Exchange Rates for Euros since 2003



Source Federal Reserve

In addition to the estimated expenses listed above, there are still a number of significant costs associated with project completion that have not been estimated. These items include potential hindrance claims, repair of cracking concrete, and Air Force personnel costs for staff needed to manage the KMCC's construction. Depending on the resolution of these unknown costs, the total cost of the KMCC project could increase substantially before completion.

- **Hindrance claims.** As a result of delays to the project, the Air Force expects that contractors will submit claims for additional costs incurred from being hindered in their performance. As of June 1, 2008, LBB-Kaiserslautern had forwarded change order requests for contractor hindrances totaling $8.2 million (5.4 million euros) to the Air Force. However, the Air Force has denied the requests because it contends that they are not substantiated. In anticipation of contractors making formal hindrance claims—that must meet a prescribed legal standard and would be adjudicated through the German courts—the Air Force has retained a consultant[10] to evaluate the history of the

[10]The cost of this claims consultant is included in the secondary services cost estimate.

project and prepare the Air Force's claims defense strategy.[11] At this time, the Air Force's potential exposure to claims is unknown.

- **Concrete cracking.** Long cracks have been identified by the Air Force at various locations on concrete floors of the KMCC subsequent to our 2007 site visit. A German court appointed an expert consultant to determine the severity of the cracks and identify their causes. The consultant's report, issued in March 2008, indicates that joints will need to be cut into the floor to keep additional cracks from occurring. LBB-Kaiserslautern subsequently initiated design work to detail the scope of the repairs. The Air Force expects that LBB-Kaiserslautern will award a contract for the repairs in July 2008. At this time, the cost of repairs is unknown. (See fig. 3 for an example of these cracks).

- **Air Force personnel costs for staff managing the KMCC.** According to the Air Force, a team of 29 military, civilian, and contractor personnel manage the KMCC construction project. They are responsible for financial management, claims management, design and construction management, and stakeholder operations. This team comprises 6 military officers and enlisted personnel, 10 civil service employees, and 13 contracted employees. The cost of the salaies and benefits for military and civil service employees who have been reassigned from other projects to assist in managing the KMCC project since its inception in 2003 is a real cost of the project but is not included in the Air Force's overall cost estimate. This cost is difficult to quantify because the military and civilian personnel occasionally work on other projects, and it is not clear how their time is apportioned among projects.

Federal Republic of Germany funds. The extent to which project cost increases will be borne by the Air Force and its funding partners is unknown because of uncertainties regarding the $37.9 million (25 million euros) committed by the German government for the project. The German government allocated $15.2 million (10 million euros) to pay contractors' invoices against change orders that had not yet been approved by the Air Force. According to the Air Force, only $8.6 million (5.7 million euros) were actually expended by LBB-Kaiserslautern prior to the funds expiring at the end of calendar year 2007. According to the German officials, this initial $8.6 million amounts to a loan, and the Air Force stated that it will

[11]The consultant is also investigating if there are areas where the Air Force may be able to recover costs for problems caused by designer or contractor errors.

reimburse this amount when it approves the change orders and makes payment against the associated invoices. The additional $22.7 million (15 million euros) are planned to be used by LBB-Kaiserslautern to fund contracts for rework items, such as roof repairs and kitchen exhaust duct replacement, and may also be used to settle contractor hindrance claims. In discussions with us, German officials characterized the $22.7 million (15 million euros) as a loan as well and said that they expected full repayment of funds. However, Air Force officials contended that they will only pay for valid work under the original KMCC contract and will not pay for rework. In light of these opposing views, for transparency purposes, all expenses paid from the German funds are incorporated into the total project cost regardless of which party is ultimately responsible for financing them.

Delayed Completion Has Caused Opportunity Costs to Grow

As a result of the delayed KMCC project completion, AFSVA and AAFES, two major funding sources for the project, have experienced negative financial effects. Both AFSVA and AAFES invested in the project with the expectation of returns being generated in early 2006, the project's original construction completion date. However, the delayed completion has resulted in lost profits and in turn reduced the amount of funds AAFES and AFSVA can provide to military communities for morale, welfare, and recreation. For example, AAFES estimates that every month the KMCC's opening is delayed, AAFES loses approximately $500,000 in net profits from stores such as the base exchange and food court restaurants. In total, AAFES estimates it will have lost more than $14 million in net profits by the time construction is estimated to be completed in January 2009. Also, the unavailability of the 350 hotel rooms to be completed in the KMCC Visitors Quarters results in the U.S. government paying more for lodging on the local economy. According to an Air Force estimate, on average each month that the opening of the hotel is delayed results in the U.S. government paying an additional $90,000 for off-base lodging of displaced personnel[12] traveling at the government's expense. Estimated increases in off-base housing costs will total $2.9 million dollars if construction is completed in January 2009.

[12]Displaced personnel include military and civilian personnel in temporary duty status from the Air Force and other agencies, as well as contractors who are eligible for military lodging.

Criminal and Civil Investigations Continue to Surround the KMCC and Other Projects

In our June 2007 testimony, we reported that several Air Force and LBB-Kaiserslautern personnel involved in management of the KMCC and other RMTP projects were under investigation by AFOSI and German police for a variety of issues, both criminal and civil. AFOSI officials stated that the cases have matured significantly since that time; however, formal indictments have not yet been made. Because the investigations are still active, AFOSI is limited as to the information it can disclose. However officials did state that investigations involve U.S. military and civilian employees, employees of LBB-Kaiserslautern, and KMCC trade contractors. These individuals are being investigated for offenses such as dereliction of duty and bribery.

The Air Force Has Improved Controls over the KMCC Project

The Air Force has made significant improvements in its oversight and internal controls over the KMCC project. As stated in the June 2007 testimony, the Air Force had failed to institute effective management oversight and internal controls in order to mitigate the high risk of the project. Specifically, the Air Force lacked standardized policies, did not have sufficient staffing to oversee the project, was not thoroughly reviewing invoices, and was approving change orders and payments on the project without proper documentation. In the last year, the Air Force created the RDO, which centralized management oversight of the KMCC project and brought together appropriate personnel specializing in financial management, claims management, design and construction management, and stakeholder operations. The Air Force has also standardized its invoice and change order review processes to minimize future risks of paying for unapproved work. The Air Force trained and appointed certifying officers and accountable officials for the KMCC project to ensure that personnel authorizing payments are aware of their fiduciary responsibilities. Finally, during 2007, senior officials within the Air Force engaged officials from the Department of State and the Federal Republic of Germany in an effort to encourage progress on the project.

Establishment of the RDO and Improvements in Invoice and Change Order Reviews

In August 2007, the Air Force established the RDO to centralize control over all aspects of the KMCC project. According to the Air Force, the RDO has 29 personnel, which is a significant increase from the 8 oversight personnel initially assigned to the KMCC project. These 29 personnel are 6 military officers and enlisted personnel, 10 civil service employees,[13] and

[13]As previously discussed, salary and benefit costs for the military and civil service employees are not included in the overall project costs.

13 contracted employees. The RDO is divided into four branches: financial controls, ABG-75 administration, engineering, and operations/quality assurance. The Air Force also standardized policies and procedures for the four RDO branches, which are documented in an official operating instruction manual for the KMCC project. The documented policies were a measurable improvement from the one-page flowchart used during our last visit in 2007. As part of the establishment of the RDO, the Air Force also appointed and trained 9 certifying officers and accountable officials. Certifying officers are responsible for certifying vouchers for payment. Accountable officials provide source information to a certifying officer to support a decision to certify a voucher for payment or to disburse funds. Appointment and training of these types of officials are key to ensuring that appropriate controls are in place over payments made by the Air Force. The RDO also includes 6 quality assurance engineers and technicians responsible for performing technical reviews of designs and conducting daily surveillance of the work site.

Since creating the RDO, the Air Force has also improved its review process for invoices. During our initial visit last year, we reported how Air Force management instructed its staff to certify for payment invoices with items included in unapproved change orders and items that exceeded quantity limitations specified in contracts. The Air Force has since revised its policy and now rejects invoices for quantities in excess of contracted amounts and also rejects invoices with items included in unapproved change orders. For example, if the Air Force receives an invoice that contains charges for items contained in unapproved project change orders, the Air Force will reject the invoice and refuse payment until LBB-Kaiserslautern submits an invoice that only lists items that have been approved by the Air Force. In addition, the Air Force has gone back on prior invoices and recouped amounts previously paid in excess of contracted quantities.

Involvement of Senior Air Force Officials

Beyond improvements over internal controls and the establishment of the RDO, senior Air Force, Department of State, and German government officials have also increased oversight of the project. Beginning in August 2007, the U.S. Air Forces in Europe Vice Commander, the U.S. Ambassador to Germany, and the heads of the German Ministry of Construction and the German Ministry of Finance started meeting regularly to discuss problems facing the KMCC. These repeated meetings between U.S. and German officials prompted the German government to provide $37.9 million (25 million euros) to the project for backlogged change orders and repair work. According to the Air Force, German support is essential for a

successful completion of the KMCC project. The Air Force's expectation is that by maintaining strong relationships among senior officials, it will ensure that those running the KMCC project are able to better organize, prioritize, and execute the project. Unfortunately, this joint effort has not yet expedited KMCC construction to an acceptable pace according to Air Force officials.

Other Recent U.S. Projects on Ramstein Air Base Have Experienced Similar Problems

Other projects recently completed in the KMCC area managed by LBB-Kaiserslautern have experienced problems similar to those affecting the KMCC. Air Force officials report that several recent projects on Ramstein Air Base experienced cost and schedule growth, including projects that were delivered by LBB-Kaiserslautern months after the planned delivery dates. In addition, several projects were delivered with construction flaws that have caused flights to be diverted and have affected the processing of freight shipments. According to the Air Force, it has experienced fewer problems with less sophisticated projects, such as the construction of more than 1,000 new military family housing units in the KMCC area and the construction of an indoor pool on Ramstein Air Base, that were managed by LBB-Kaiserslautern. However, construction of these projects is not comparable to the scope and complexity of constructing the KMCC building, runways, and other operational facilities.

Cost and Schedule Growth of Other Projects

Numerous recent projects associated with the RMTP built on Ramstein Air Base by LBB-Kaiserslautern have experienced significant cost growth, according to the Air Force. Several of these projects have also not received final bills from LBB-Kaiserslautern despite being turned over to the United States more than a year ago. Therefore, the final costs of the projects are still unknown. In addition, many of the same group of projects managed by LBB-Kaiserslautern also experienced significant schedule growth according to the Air Force, including projects that were delivered months after their scheduled completion dates.

Construction Deficiencies of Other Recently Completed Projects

Construction deficiencies experienced on several of the RMTP projects built by LBB-Kaiserslautern add to the concerns associated with cost and schedule growth. Specifically, there have been several projects where faulty construction has resulted in safety concerns, building evacuations, and potentially reduced useful lives of facilities. Below are examples of such problems.

- **South runway.** This runway was recently built on Ramstein Air Base in order to upgrade the base's capabilities in support of overseas missions, including those in Iraq and Afghanistan. However, the runway lights are adversely affected by a construction defect that allows groundwater to collect in the underground ducts and manholes that contain electrical components used to control the lights. The intrusion of water has damaged electrical components resulting in power outages to the lights. These lights are crucial for operations because they allow aircraft to land during times of extremely limited visibility. According to the Air Force, because of the lighting failures, aircraft could not land during periods of limited visibility from November through December 2007 and flights were diverted to other bases in Europe. Portable lights have been used to temporarily resolve the problem. Additionally, water is pumped from the manholes as an ongoing maintenance activity that according to Air Force officials, has cost about $65,000 to date. Finally, during rainy periods, several large ponds developed between the south runway and adjacent runways and taxiways because of poor water drainage. These ponds, which were several acres in total area during our visit in March 2008, have attracted large waterfowl, which pose a safety hazard to aircraft using the runway. Figure 5 shows one of these large ponds. Studies and court actions are currently under way to resolve these issues.

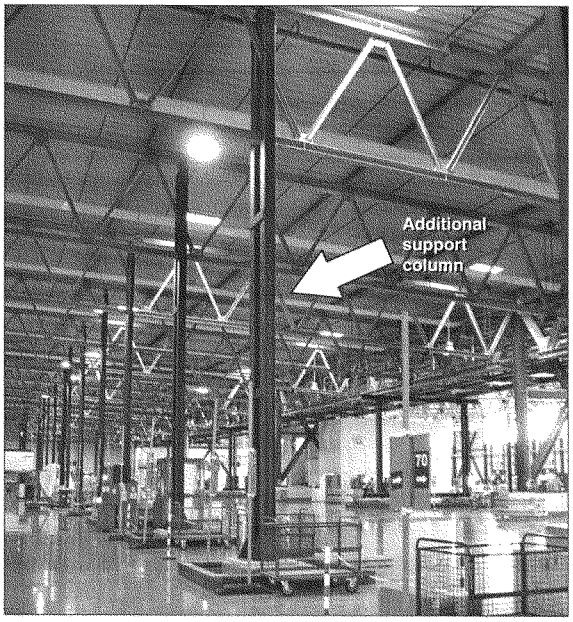
Figure 5: Example of Large Pond Next to Ramstein's South Runway

Source GAO

- **Freight terminal.** This large 100,000 square foot material handling facility was constructed to assist in processing freight shipments to and from overseas locations. However, deficiencies with the structural steel that frames the freight terminal required evacuation of the building until additional support columns could be installed. According to the Air Force, because of material fabrication issues, insufficient welds, and undersized connections, the steel structure that supports the freight terminal building was determined to be at risk of collapsing. As an interim safety measure, 41 additional support columns were installed to bolster the structural integrity of the facility. According to the Air Force, these additional supports effectively reduce the open area in the center of the facility and affect freight processing operations. For example, forklifts are restricted in maneuvering and cannot access certain areas. Figure 6 shows an example of the additional support columns installed within the freight terminal building. A permanent resolution will be determined by legal proceedings that are currently ongoing in the German courts. In addition, officials were concerned that a building attached to the freight terminal was also structurally deficient as a result of potentially insufficient welds

on the structural steel. Because of these concerns, the building was evacuated from July through September 2007 while additional support columns were installed. An inspection completed in March 2008 confirmed that the structural steel was, in fact, installed correctly and that the building is not at risk of collapsing. The attached building is currently being used as intended.

Figure 6: Example of Additional Support Column Installed in the Freight Terminal



Source GAO

- **Hot cargo pad.** A large concrete area intended to be used for loading live munitions onto aircraft destined for overseas locations such as Iraq and Afghanistan was recently built near the Ramstein Air Base runway. However, when building the concrete pad, contractors did not install dowels between adjacent concrete slabs as is typically done in this type of construction. Because the dowels were not installed, Air Force officials stated that differential settling of the concrete slabs could result in damage to the cargo pad and reduce its useful life. The Air Force is currently

negotiating with LBB-Kaiserslautern to determine what, if any, actions will be taken to address this issue. While this does not represent a safety risk, the reduced life span of the cargo pad could result in the Air Force spending money for repair or replacement earlier than would normally be expected.

Concluding Comments

Although the Air Force has made measurable improvements in its oversight and control of the KMCC since our last testimony, the project remains at risk because of schedule and cost uncertainties. With few visible changes, no reliable construction completion date, rising repair costs, and continuing construction quality problems, the KMCC will continue to be a high-risk project. Even after the KMCC is completed and open, it will likely take years before all issues related to this project, including litigation and potential construction quality problems, are resolved.

Mr. Chairman and Members of the Committee, this concludes our statement. We would be pleased to answer any questions that you or other members of the committee may have at this time.

GAO Contacts

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Appendix I: Scope and Methodology

To determine the current status of the Kaiserslautern Military Community Center (KMCC) construction project, including projected costs, cost completion analyses, projected construction completion dates, and status of ongoing investigations, we interviewed officials from the Air Force at Ramstein Air Base in Germany, the Army and Air Force Exchange Service (AAFES), the Air Force Services Agency (AFSVA), the U.S. Army Corps of Engineers (USACE), the Air Force Audit Agency, the Air Force Office of Special Investigations (AFOSI), and the Department of State. In addition, we interviewed officials from Landesbetrieb Liegenschafts-und Baubetreuung office in Kaiserslautern (LBB-Kaiserslautern), the German government construction agency; the Federal Republic of Germany's construction division; and the German police. We physically inspected the KMCC facility with an Air Force project manager and observed construction deficiencies. We also reviewed financial records and statements in the form of contracts, change orders, and invoices to the extent that they were available. We also compiled Air Force and LBB-Kaiserslautern cost estimates for the various cost elements associated with the KMCC project.

To determine whether oversight and internal control improvements have been made by the Air Force since our last testimony, we interviewed Air Force officials from the KMCC Resident Director's Office. We also interviewed officials from LBB-Kaiserslautern, AAFES, AFSVA, AFOSI and the Air Force Audit Agency. We obtained and reviewed project management plans, standardized policies and procedures, cost estimates, training materials for certifying officers and accountable officials, and other relevant documents related to project management.

To determine if other projects recently completed in the KMCC area have experienced problems similar to those affecting the KMCC, we interviewed Air Force officials regarding their construction projects in Germany. We also conducted interviews with other organizations, including USACE, AFOSI, LBB-Kaiserslautern, and the Air Force Center for Engineering and the Environment to understand the cost, schedule, and construction flaws experienced by other military construction projects in the KMCC area and how they may affect the viability of future construction projects. We also reviewed available technical expert reports documenting construction deficiencies associated with these projects.

Because of ongoing investigations, we were not able to fully explore and discuss the details of fraud investigations with AFOSI and the German police, which limited the scope of our audit.

We conducted this performance audit from November 2007 through June 2008 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.

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Chairman WAXMAN. Without objection, we'll proceed for 10 minutes on each side, 10 minutes controlled by the majority and then 10 minutes controlled by the minority, and I will start off the questions.

Mr. Kutz, when you testified before us last year, you identified several severe construction deficiencies at this K-Town Mall. One of these was the roof. And as you said last year, this roof had major defects and leaked continually. As a result, the water was damaging other aspects of the construction; is that right?

Mr. KUTZ. Correct.

Chairman WAXMAN. Now, last year you couldn't tell us how much it was going to cost to fix this roof, but in your report today you have a number. You say it is going to cost $10.8 million; is that right?

Mr. KUTZ. That is an Air Force estimate, yes.

Chairman WAXMAN. That is a major setback. The original cost estimate for the whole project was $131 million and now it is going to cost more than 8 percent of that just to repair the roof. Is it possible that this number could go up?

Mr. KUTZ. Yes, it is. Because as I mentioned, the exchange rate we are talking with for the euro—you know they're being built in euros. Since your hearing last year, it has gone up 16 percent and certainly materials have gone up and other costs have gone up. So it is possible that it will come in higher. That is yet to be determined. They are in the first and second phases of a multi-phase roof replacement.

Chairman WAXMAN. Last year, you gave us your testimony and this year you found even more problems. Your report describes major cracks in the concrete. And I think we have a picture of an example of that. Can you tell us more about these cracks? Where else did you find them?

Mr. DORN. These cracks were in the floor. And what you are looking at is probably defective concrete. The Germans working with the Air Force have a consultant, who—a proof engineer they call them in Germany who is investigating to see why that concrete is that way. It was probably a bad mix or too much water or not enough water. At this point, I would say it is not structural because it is on the floor. It is like a topping slab over the existing slab. But it could affect whatever floor finishes go in over top of that.

Chairman WAXMAN. Does this raise new concerns about construction quality?

Mr. DORN. Absolutely, Mr. Chairman. I would recommend that the—in this relative lull in construction, that the Air Force and their consultants go over that facility with a fine toothed comb looking for other quality control issues.

Chairman WAXMAN. Some of these defects we heard about last year, some of these are new. Are you worried that there might be other defects that aren't readily visible? In other words, defects that you wouldn't see just by walking around?

Mr. DORN. That's correct. I do expect that they will find latent defects.

Chairman WAXMAN. General, how much is it going to cost to repair the concrete?

General ROGERS. Sir, I don't know. That is in the German courts and Germany is fixing the cracks.

Chairman WAXMAN. I understand that contractors make mistakes, but these are serious flaws. The Air Force should have people inspecting the architectural plans before the designs are approved and they should have people overseeing construction, before things are installed incorrectly, but that didn't happen here.

I would like to ask a few questions about when the K-Town mall project will be completed. General, as I understand it, the Air Force broke ground on this project in the summer of 2004. At that time, the plan was for the hotel to open in December 2005 and the mall to open July 2006; isn't that right?

General ROGERS. That sounds right, sir.

Chairman WAXMAN. But this deadline was missed, so the next deadline the Air Force set was April 2007; isn't that right?

General ROGERS. Sir, the Air Force did not set those deadlines. 2005 in December was the mission due date. But when the German construction agent told us that couldn't be met, they established April. We accepted that because we don't control their schedule really. Later slippages were the same way. They basically do this work since we have no contracts with the construction workers company. So every time they give us a slippage, it is a slippage. We can complain, but it is up to them to respond and fix schedules.

Chairman WAXMAN. Mr. Kutz, according to your report, the current plan is for the project to be turned over in January 2009. Is that your estimate?

Mr. KUTZ. No. We really don't have an estimate. We haven't seen a legitimate estimate. As Mr. Dorn mentioned in his opening statement, middle to late 2009 is probably the best case scenario where you'll actually see people shopping and staying at the hotel. But there is no estimate right now that we're comfortable has legitimate support behind it.

Chairman WAXMAN. Is that an estimate of the completion of the project?

Mr. KUTZ. The General is going to have to answer that. We don't really know if there is a legitimate estimate. I don't think there is a legitimate—that may be the last date that they've thrown out there, is January 2009. But that isn't even really when they are going to have people in. That was when the keys kind of get turned over. You would have to add several months to that to do the final finishing and to get the restaurants ready and the hotels ready. So that would be plus 3 or 4 months and that would be certainly the best case scenario.

Chairman WAXMAN. Well, General, let me understand this. The project was supposed to take 2 years, 2004 to 2006. Now the best case scenario is that it will take at least 5 years, 2004 to 2009. Is that the situation, best case?

General ROGERS. That's about right, sir.

Chairman WAXMAN. Mr. Kutz, in your written testimony you raise concerns that the project may not be finished even by this newest projected completion date. And you just indicated some of these a minute ago. We just don't know for sure then when this project is going to be completed.

Mr. KUTZ. That's correct, Mr. Chairman.

Chairman WAXMAN. Is that correct, General?

General ROGERS. Yes, sir. I would say that the January 2009 completion date given to us by the construction agent probably has more fidelity than any we have seen in over 2 years. But whether or not the construction agent is able to actually pull that off, I don't know. I do have more faith in it than in the past, but probably wouldn't bet on it being complete by then. Maybe in a few months delay.

Chairman WAXMAN. We also want to explore the total cost of this project. We seem to have a disagreement among the panelists about how much the K-Town Mall will actually cost. General Rogers, you state in your testimony that your budget estimate is $162.9 million, which is below the amount authorized by Congress. But, Mr. Kutz, in your report you conclude that tens of millions of dollars of other project costs are not included in the Air Force cost estimates. So let us just walk through these.

General, construction costs paid out so far are $121.7 million and you estimated it will take about $41.2 million more to complete construction. That is how you got to your number of $162.9; isn't that right?

General ROGERS. Yes, sir.

Chairman WAXMAN. Mr. Kutz, you say this excludes other costs. For example, it doesn't count $16.3 million for furniture and equipment; is that right?

Mr. KUTZ. That's correct.

Chairman WAXMAN. And, General, why don't you count the cost of the furniture? Are you going to get that furniture for free?

General ROGERS. Oh, no, sir. That was planned all along, but it was never reported in the same channels. And questions in the past have not been about such things as furniture. They have been about construction. But the Air Force has tracked these costs all along for secondary services, furniture and equipment, any other kinds of costs that are normal in standing up a facility. And we don't report those numbers routinely in any construction project, although we have them budgeted and we know what they'll cost. In September 2005, we submitted a new 1391, which is the form that comes over to Congress to get approval for a total cost of a facility. That was approved by Congress in January 2006. And we said at that time that total costs for construction and furniture equipment, secondary services, design, the entire bit would be a $210 million ceiling.

Chairman WAXMAN. Mr. Kutz, does that explain what appears to be the discrepancies in your testimony?

Mr. KUTZ. Yeah. I think last year it was confusing, too, because the Air Force representative simply focused on a construction piece. But that is not the project. The project does include, as you mentioned, furniture and equipment. There are additional foreign currency translation charges that have gone against certain other appropriations and there is other things like rework, design—those are really costs of the project. So you have to look at this in a more holistic approach. And when you look at the whole thing, you're talking about over $200 million.

Chairman WAXMAN. And when you look at the whole thing, that includes fixing the kitchen ducts for $1.2 million at the cost of cur-

rency fluctuation because of these delays for another $8.6 million. And when you add all these up, you get an estimate of $213.9 million. That is 63 percent more than the original cost estimate of $131.1 million; isn't that right?

Mr. KUTZ. About, yes, that's about correct.

Chairman WAXMAN. You've also estimated how much the Air Force pays to house officials in other hotels while this facility is still being built. On page 16 of your testimony you say this amount will be $2.9 million by January 2009, the best case estimate for completion date. You also estimate the amount of revenue lost from retail sales to be another $14 million. So if you include these amounts, by my calculations, you're up to more than $230. And that doesn't even include other costs like all of the additional Air Force staff assigned to this contract or the cost to fix the cracks in the concrete foundation; is that correct?

Mr. KUTZ. Yeah, those are related costs. Certainly they are a little bit different in their nature. But, yes, they are resulting from the problems and delays we are talking about. And they do—much of that impacts soldier morale, welfare, recreation programs, as we both mentioned in the opening there.

Chairman WAXMAN. General Rogers, I don't understand how you can continue to tell this committee that the project is under budget. It seems that you're deliberately excluding millions of dollars worth of costs just so that we get this somewhat misleading statement. And I think the taxpayers deserve more of a clear explanation if—could you respond to that?

General ROGERS. Yes, sir. There is no deliberate shading here, sir. Those kind of costs to send these people off base, for example, exist today. They existed in the past. What is lost here is an opportunity cost to save that money because it is not open. The cost today to send people off base is not nearly what it was, say, a couple of years ago. For the first 4 months of this year, for example, the cost to send people off base to lodging was about $1,200 a month. It surged in May and—yeah, April/May because of an exercise we had, but it is back to normal now.

Chairman WAXMAN. Well, when you take all of those costs into consideration—you said we would incur them anyway—do you agree with the estimate of all of them combined, $230 million?

General ROGERS. Yes, sir. But it is not the same as—it is not the issue we're talking about here. We're talking about the controllable parts of construction and other management controls we can have. A lot of these costs are things that you would include in the cost of doing business of opening any facility. We don't include the cost of the roof rework, the hindrance claims, concrete repair, etc., because we are under no liability to pay those.

Currency fluctuation is a major portion of this problem. Since this project began, we've experienced a total of $47 million of expenses due to currency fluctuation alone. And as you know, we can't control that. If the project was delivered on time top quality in 2006, we would have paid out $32 million in foreign currency fluctuation. The delays so far have been worth $15 million of additional foreign currency fluctuation costs. Those parts—this is the equivalent of buy low, sell high. We set these contracts when the dollar was at its strongest in Europe and at the same time con-

struction contracts could be had for a minimum. Today in Germany, there is what I would call a Katrina effect. Contracts are very high, materials are up and it is difficult to bring anything in very cheaply today. It is one reason the construction manager has had such a difficulty in getting contractors back to work because there are much more lucrative contracts out there to be had and they are tied to this one settled back in 2004.

Chairman WAXMAN. Thank you very much. We're going to have other questions. I'm sure other Members will ask questions.

Mr. Davis.

Mr. DAVIS OF VIRGINIA. General Rogers, let me just understand. Basically the fact that the euro has risen so much against the dollar accounts for an important part of the cost rise?

General ROGERS. Very important part, sir.

Mr. DAVIS OF VIRGINIA. You have no control over that. Now, how about in hiring the construction contractors? That wasn't the Air Force, was it?

General ROGERS. No, sir. We do business with the German Government under the international agreement known as ABG–75.

Mr. DAVIS OF VIRGINIA. Let me ask Ms. Garber. It looks like a huge part of this problem was that the construction—the contractors in this case were German contractors hired by the German Government and our only job was to approve the work and pay. Is that a fair understanding or am I missing something?

Ms. GARBER. ABG–75 provides a framework for these military construction activities to take place.

Mr. DAVIS OF VIRGINIA. Can you speak into the microphone?

Ms. GARBER. ABG–75 provides a framework for these military construction contracts to take place.

Mr. DAVIS OF VIRGINIA. I understand that. And it is my understanding that framework, correct, that basically the hiring of the contractors, the German Government does that, we basically approve the work and pay the government, who then pays the contractors. Isn't that the way it works?

Ms. GARBER. Article 49 of the U.S.——

Mr. DAVIS OF VIRGINIA. Just yes or no. I don't need to get into all of the article. Is that a correct understanding?

Ms. GARBER. The supplemental provides that the military construction for the benefit of foreign forces stationed in Germany should be carried out by German authorities. That is correct.

Mr. DAVIS OF VIRGINIA. So a lot of this problem just goes back to the German Government, who they hired and—is that fair to say? Let me ask GAO.

Mr. CAUSSEAUX. That's——

Mr. DAVIS OF VIRGINIA. I understand that there was some work at one point—this is before General Rogers got into it. There was some work that was approved and accepted that probably shouldn't have been accepted.

Mr. CAUSSEAUX. That's true, sir. As far as the U.S. influence or control over the process, the United States can request a contracting approach. In this case, the United States did not opt for or did not go for a general contractor approach. So the Germans went with what they call trade lots. It is essentially 40 small business or trade-lot contractors, individuals and then they attempted the—

LBB attempted to manage that. That was a significant problem for them. They were effectively overwhelmed.

Mr. DAVIS OF VIRGINIA. And some of these contractors walked off the job, didn't they?

Mr. CAUSSEAUX. They walked off the job because they weren't getting paid.

Mr. DAVIS OF VIRGINIA. They weren't getting paid because they weren't doing good work.

Mr. CAUSSEAUX. It wasn't—I don't believe that was necessarily the case. It was that the invoices that they were—ultimately when they were providing their invoices and they were coming through—because the change orders had not been approved—this is when the Air Force stepped in and said we're not going to pay any invoices for unapproved change orders. When that occurred, the funding stopped, the contractors walked off the job. That is certainly a control that the United States had. The question——

Mr. DAVIS OF VIRGINIA. And if they had paid these contractors and with unapproved change orders, they would probably be up before this committee trying to answer why you paid unapproved change orders.

Mr. CAUSSEAUX. Absolutely. And there were improper payments that had been made at a—up until a certain point and then it was finally discovered. But the question is whether or not the United States had the ability or the authority to inject greater oversight and control in the process from the beginning. And the answer to that under the ABG–75 is clearly yes.

Mr. DAVIS OF VIRGINIA. But that horse is long since out of the barn. I mean, that's—we are where we are today.

Mr. CAUSSEAUX. That's correct.

Mr. DAVIS OF VIRGINIA. So, you know, we are where we are. I don't know—I mean, it should be a lesson learned for the Air Force and State and everybody else in terms of future projects, in terms of what can go wrong. I guess the question is today, as we look at this today, and we see where we are in trying to get this completed as rapidly as possible, given all of the other factors, the fact that construction costs are high, that you still have a rising euro against the dollar, that we don't have direct control under the contractual arrangement that we have, what is the fastest way to get this thing wrapped up as quickly as we can at the best costs? And is the Air Force doing a satisfactory job on that? That is the question.

Mr. CAUSSEAUX. I think certainly the Air Force has instituted effective controls at this point. As Mr. Dorn indicated——

Mr. DAVIS OF VIRGINIA. So they are doing a satisfactory job at this point?

Mr. CAUSSEAUX. That's correct. But the question is those controls have not really been tested yet because there hasn't been sufficient progress. But have they—do they have adequate infrastructure and oversight in place——

Mr. DAVIS OF VIRGINIA. From your perspective of looking forward, are they doing everything they can do?

Mr. CAUSSEAUX. It appears so, yes. And I think the Air Force in terms of—is to be commended for the actions in terms of engaging the German Government and getting them to put forth funds to stem the process and get it going.

Mr. DAVIS OF VIRGINIA. Yeah. I mean, the German Government can't feel too good about this project. I'm not going to ask you to comment in terms of what they feel. But just looking at this, I'm sure it is a source of embarrassment to them, which is probably why they kicked in some money at this point to get it going.

What is the status of those dollars that the German Government put in? Do they expect to get that back at this point? Do they just kind of add it to the cost? Can anybody on the record—Ms. Garber, I'll start with you as far as the State Department. Any idea what this—the money they kicked in, what is the status of that? What do we expect to get back? Would that be an added reimbursement for us? If it is an added reimbursement, do we have to do it under the euro as it rises? Can you give me a feel for that?

Ms. GARBER. The State Department was not involved in that particular piece. I think the Air Force is the best place to answer that question.

Mr. DAVIS OF VIRGINIA. So you don't have the answer to that, OK. General Rogers.

General ROGERS. Sir, when we went to the Germans and laid out failures of their agents, we asked them for solutions to this problem. They agreed with us that the real problem is lack of flow of money. If you don't keep the money flowing, construction doesn't proceed.

Mr. DAVIS OF VIRGINIA. Contractors don't work for free, in other words?

General ROGERS. Yes, sir.

Mr. DAVIS OF VIRGINIA. They aren't liquid enough to carry any costs and——

General ROGERS. Yes, sir. This money that has been injected by the Germans is prefinancing, was their solution to that problem to sustain liquidity in the project.

Mr. DAVIS OF VIRGINIA. Now, did we sign a note for that, that they advance this and we sign a note and we pay them later?

General ROGERS. No, sir. We never signed any paperwork. We didn't get any of the money. We have no control over the money.

Mr. DAVIS OF VIRGINIA. So they went ahead and paid their own contractors ahead of time with no understanding from us that we'd reimburse them as far as you know?

General ROGERS. Yes, sir. And they—you know, we really don't know exactly what they're doing with the money. There are contractors involved. There are previous costs involved. And we are staying out of it because under advisement by our legal staff, if we stick our finger in it, we could create liability. So we've stayed out of that completely.

Mr. DAVIS OF VIRGINIA. What do you see the—how do you see this moving forward at this point? There are still—as we saw from the pictures that were put up there, there has been no progress in some areas over the last year.

General ROGERS. True.

Mr. DAVIS OF VIRGINIA. We have a plan now that—GAO has testified that you have controls in place that they are satisfied with at least to date. They haven't been tested and we all understand that, but at least you have them in place. They've given you good marks for moving ahead. How do you see this progressing on a

timeline or getting contractors back in there working? Can you walk us through what we can expect from——

General ROGERS. Yes, sir. The real test on whether we are making good progress is to have the worker count adequate to meet the construction schedule they have created.

Mr. DAVIS OF VIRGINIA. Have enough workers to get the job done?

General ROGERS. Yes, sir. We have not seen that yet. The German authority——

Mr. DAVIS OF VIRGINIA. You don't control that either, do you?

General ROGERS. No, sir. The German authorities are doing what they can with the contractors. But as I mentioned about the constructing environment in Germany, they have some challenges in dealing with these contractors. To put it bluntly, they are holding the cards with the government. The measures the government is taking are to be commended, but not all the problems are solved yet. We have seen work progress on the roof. We have seen kitchen ducting removed. But we understand there are additional details they are having difficulty working out with the contractors.

Mr. DAVIS OF VIRGINIA. So the big variable, the big delta here in terms of being able to get this thing done on time and cutting our losses is getting the workers there to perform to standards in a timely manner?

General ROGERS. And yes, sir.

Mr. DAVIS OF VIRGINIA. And that is something we don't control. Does everybody agree with that?

Mr. DORN. I would agree with that.

Mr. DAVIS OF VIRGINIA. And is there anything else we can do to make this happen? Obviously don't go this route in the future when you're constructing this type of building because this is one case of, you know, if it can go wrong, it will go wrong. But is there anything else we could be doing at this point, except for maybe a phone call from the President to Ms. Merkel or something like that? I mean, what else can you do at this point to get the contractors?

Mr. CAUSSEAUX. Short of writing a blank check to bring more workers in and pay them more than they are contracted to do, no, I don't think so.

Mr. DAVIS OF VIRGINIA. OK. So we still have the unresolved issue of trying to get the contractors in in a timely manner to get this thing done, and that is the variable that nobody controls here. You think we are doing everything we can. It goes back, then, to the initial agreement that is before anybody was here on this panel, was here in terms of the contractual vehicle that would handle this where we allowed the German Government to basically hire the contractors to make this go and things started going bad from there. We made a mistake along the way at one point evidently in accepting some work that wasn't acceptable, but that is not the major part of the problem. Is that fair to say?

Mr. CAUSSEAUX. I think that is fair to say, but I think the agreement itself also has provisions that the United States did not take full advantage of in terms of its risk mitigation. There are opportunities that the United States has to inject itself into the process for

oversight control, checking and checks and balances and that type of thing.

Mr. DAVIS OF VIRGINIA. But we're doing that now?

Mr. CAUSSEAUX. Yes, sir.

Mr. DAVIS OF VIRGINIA. OK. Thank you very much.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. Can I pick up right where you just left off? What—because that is the—the suggestion is that we are now at a place where we are sort of being held hostage by these German contractors and so forth. But like you said, it didn't have to come to that. And I'm curious as to—well, first of all, how typical or atypical is it for this kind of situation to arise where work stops and then a third party enters the scene apparently without objection and starts funding the project that we are supposed to have control or oversight on and then creating expectations of some kind of disposition of that outlay of funds down the line, which apparently is not totally resolved yet. This strikes me as out of the ordinary. Am I correct in that?

Mr. CAUSSEAUX. That is our understanding, yes. It is I believe the first time the Germans have engaged in this type of a prefinancing loan, however you want to—whatever semantic term you want to——

Mr. SARBANES. Well, even just going beyond the Germans, on a project of this kind you wouldn't expect to see that kind of situation arise, right?

Mr. CAUSSEAUX. No, I don't believe so.

Mr. SARBANES. OK. And you suggested that it is because we didn't take advantage of earlier warning signs, things we could have done presumably before it got to a stage where the contractors felt they had to walk off—well, before it got to a stage where we had to do a stop work——

Mr. CAUSSEAUX. Correct.

Mr. SARBANES [continuing]. Order and then force these contractors in effect to walk off the job because they weren't getting paid and then invite the third party, German Government, to come into the situation. What are some of the things—what are some of the earlier stages that we could have taken advantage of to avoid that?

Mr. CAUSSEAUX. Well, at the very outset of the arrangement or the agreement, the United States has the ability to inject itself in terms of reviewing the construction, onsite quality control, oversight of the process, the invoices, all the change orders. The fact that there were such a huge backlog of change orders and that the invoices were being paid associated with those before the change orders had been approved suggests that, you know, the government—the United States was not, you know, adequately monitoring the process at that time. That all caught up when the surge of change orders hit and it was finally realized, you know, holy cow, we're paying for stuff that we haven't approved of yet. So then it was we are not going to process any further payments. That obviously created the dilemma. So injecting the adequate amount of oversight resources up front would have mitigated that risk.

Mr. SARBANES. How fast based on your—when you do reviews of these kinds of projects and other instances as well and have a gen-

eral sense of how a contract proceeds over time and when—where the trigger mechanisms are. So—I mean, how fast if you have an efficient oversight and monitoring role in place, how fast should you be able to detect things that you need to weigh in on? I mean, this project started when—what was the start time when this project——

General ROGERS. Fall of 2004.

Mr. SARBANES. So on a project of this size and complexity, you know, granted—if you have a good oversight function in place, how quickly could you expect to know? I mean, 2 months out, 3 months out, 6 months out? I mean, here we are 4 years out. We looked at this last year. So say 3 years out. But, I mean, a good oversight operation should be able to judge whether things are going in the right direction or not how quickly?

Mr. DORN. A couple of months, Mr. Sarbanes.

Mr. SARBANES. A couple of months. A couple of months you're going to know if you've got——

Mr. DORN. That's correct. Construction is normally 30 days in arrears. So—but if you're out there every day, you're going to see what is going on. One of the things that they didn't do early, and I'll be brief, is they didn't have a schedule that they could trust. The Germans are giving them Excel spreadsheets instead of network schedule that showed what resources were needed. So they didn't have the tools necessary to even know how many people were going to be on the site. And they don't have that tool today. They still couldn't tell you how many people need to be on the site today to make sure you're on schedule.

Mr. SARBANES. So tracing back to—I mean, if I were interested in knowing exactly how the oversight role broke down, where does that path lead? Was it that there should have been 10 people overseeing this and there was only one, that there should have been somebody with more experience and background doing this sort of thing, and there wasn't anyone? What was the breakdown in terms of the failure to do the early oversight? Specific.

Mr. DORN. It's—again, it gets to back to what Mr. Causseaux said. In the beginning we had the option to insist on one general contractor, for example, and instead we had over 20 general contractors effectively; and trying to manage that many contractors is——

Mr. SARBANES. I'm out of time, but it sounds like, right out of the gate, the structure of this was such that it was going to lead to confusion, missed oversight, and all the rest of it; and here we are.

Mr. DORN. Made it a high-risk job, as Mr. Causseaux said.

Chairman WAXMAN. Thank you, Mr. Sarbanes.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Thank you, folks, for coming in to testify.

Mr. Kutz, particularly, I want to thank GAO for helping us understand what went wrong with this particular project. But in your report you also warned that there may be some construction problems that were also discovered in other places when you were looking at the installation in Germany.

First, you showed us a picture of a runway at Ramstein Air Base. I think there's a photo on the screen there. Your report says this runway was built to help support an increase in U.S. mission to Iraq and Afghanistan. You said that the runway's lights don't work when it gets wet. And you said a construction defect allows groundwater to damage lights and cause power outages. As a result, the base actually has to divert aircraft to other bases in Europe.

Am I understanding that correctly?

Mr KUTZ. Yes, that is correct.

Mr. TIERNEY. And now they're forced to use portable lights, and they have to pump water from the manholes on an ongoing basis?

Mr. KUTZ. Yes.

Mr. TIERNEY. I don't understand how this could have happened. Should there not have been some oversight that identified the contractor who installed these lights and some required repairs by them?

Mr. KUTZ. Yes. It was the same LBB agency, I believe, that is overseeing the KMCC, which is why we looked at them. We looked to see if there were other similar types of issues in that immediate area that LBB Kaiserslautern was involved with.

And so we see the same kinds of things we saw with KMCC on a little bit smaller projects, but still important projects.

Mr. TIERNEY. So no one inspected the work before it was accepted by the U.S. Government?

Mr. KUTZ. We don't know that.

Mr. TIERNEY. Does anybody on the panel know that?

General ROGERS. Say again the question, sir.

Mr. TIERNEY. Did not somebody inspect the work before it was accepted by the government?

General ROGERS. Yes, sir. Some of these projects were managed by another government agency. LBB as the German construction agent, a German government organization, accepts from contractors on behalf of the forces. So when LBB accepted it, there was the first breakdown.

Mr. TIERNEY. Back to Mr. Kutz's report, it says, When it rains, ponds that are as big as acres across develop between the runways because of poor drainage. So I think you're saying that again we accepted that particular situation of the construction without its ever being properly graded.

Mr. KUTZ. Yes. And that is the picture you see. That was in March of this year.

Mr. TIERNEY. What's going on with the runway now?

Mr. KUTZ. These guys were there last month, Mr. Dorn and Bruce.

Mr. TIERNEY. Mr. Dorn, what's happening now?

Mr. Dorn. As of last month, they've started grading operations to fill in those low spots, but they're still having trouble; and we watched them pump water out of the manholes.

Mr. TIERNEY. So was that same company that was responsible brought back to do the repairs, or is some additional or new company in there doing the work?

Mr. DORN. I'm not aware of that. The Air Force probably is.

General ROGERS. Those are items that we identified to the Germans as unacceptable. The construction agent and the German Government is working with the contractors to repair these deficiencies.

In the meantime, it's true that they impact certain capabilities out there. We've got measures in place to ensure safety and mission are not impacted more than necessary, but we're holding their feet to fire to make sure we get good results on this one.

Mr. TIERNEY. So we're not paying additional to have that done; they're coming back under the original contract and completing that. Is there any penalty involved?

General ROGERS. So far, we haven't paid anything. They haven't told us we're going to pay anything. Because we have identified most—in fact, all of the known ones that were shown here we identified prior to when it was accepted. Because you can accept the runway for usage while other pieces can be repaired later, a punch list.

Mr. TIERNEY. So it was accepted for use, but not accepted in terms of all responsibility; and they own the problem of fixing it and the cost of doing that?

General ROGERS. Yes, sir.

Mr. TIERNEY. Ms. Garber, is that generally the recourse that the U.S. Government has from the German Government or the German contractors when a situation like this arises?

Ms. GARBER. I think the Air Force is the best place to answer that question. The State Department generally does not get involved in the technical construction issues and questions.

Mr. TIERNEY. And it never gets to a diplomatic level of concern?

Ms. GARBER. In this particular case, because there were problems with the LBB agent, the embassy did play a facilitative role in trying to arrange meetings to facilitate and support, to help bring the parties to agreement at the Federal level. So in that sense, yes, but generally it was handled by the Air Force directly.

Mr. TIERNEY. Mr. Kutz, could you tell us what you found when you went to the warehouse in terms of the structure there and deficiencies in the steel frame?

Mr. KUTZ. Well, there were the beams that were inserted. I guess that is the picture there. And there was originally issues where this had to be evacuated because there was concern that the roof would cave in. So, again, Mr. Dorn and Mr. Causseaux saw that last month; and I believe that is a recent picture.

Mr. TIERNEY. So the building can't be used to capacity. In some areas, I think you said, a forklift couldn't get into it anymore, correct?

Mr. CAUSSEAUX. That's correct.

Mr. TIERNEY. So what's happening with that?

Mr. CAUSSEAUX. They have work-arounds.

Mr. TIERNEY. And now we are just going to have a building that is not up to the capacity originally designed?

Mr. CAUSSEAUX. It's essentially a huge basketball court with pillars in it, and it's a little difficult to play basketball in that scenario. But they have forklifts moving equipment and other things around, and in some cases they can't get to certain locations easily so they have to use either hand facilities or work-arounds. But as

Mr. Dorn alluded, one of the officers that we spoke with there said one of the things that he worries about significantly is a forklift backing into one of those pillars and the pillar falling or affecting the structure of the roof.

Mr. DORN. They are using that facility. There are operations, but they are degraded by the interior columns.

Mr. TIERNEY. So have we accepted that? Are we paying for it? Are we going to pay in full? Is somebody going to assist on that? What's going on?

General ROGERS. That facility was accepted about 3 years ago by another government agency, and the Germans notified us of the defects in the building because they weren't visible to us. It has to do with the defective metal that was used in multiple government facilities throughout Germany, some German Government projects, some U.S. Army projects; and in conjunction with that, they found some defective welds in this one.

It is now in the hands of German courts, and we're standing by for the German officials to tell us what their solution is.

Mr. TIERNEY. They'll tell us what our recourse is?

General ROGERS. Yes, sir.

And this is, of course, dragged out with the court process over there.

Mr. TIERNEY. I see my time is up, Mr. Chairman. Thank you.

Ms. WATSON. I just want to followup the questioning of my colleague, Mr. Tierney.

The committee staff received a briefing on June 30th from the Air Force Office of Special Investigations. And at this briefing, Air Force investigators gave us some additional information, and they said we could share it with certain limitations.

They told us that they believed that two Air Force officers and two Air Force civilians and a fifth individual, who was a contract employee, falsely certified almost $8 million in payments to German contractors. So this is a question for General Rogers.

Are you familiar with this investigation and these allegations?

General ROGERS. Yes, ma'am, I am.

Ms. WATSON. And let me ask you this. Have you reprimanded or removed any of the Air Force personnel that were involved in the payments?

General ROGERS. I would put it this way, ma'am. One of them self-removed. The others, the investigations are not complete yet, but when they are complete and if it's warranted, we will take appropriate action and hold them accountable.

To date, it appears that it's more process foul and lack of training versus intentional——

Ms. WATSON. Criminal activity?

General ROGERS. Yes, ma'am.

Not absolving them of responsibility to know, but the individual who self-eliminated also happened to run that office, who had an interest in them not necessarily knowing exactly how to do this job.

Ms. WATSON. Because the case is being investigated now. I think they're in court.

If there are criminal activities, it will be adjudicated there? Is that what you're saying?

General ROGERS. Yes, ma'am.

A civilian employee, it would go through the civilian process, the Department of Justice. Military ones do the Universal Code of Military Justice.

Ms. WATSON. It seems like there has been very poor conduct by U.S. officials, so this question is to Mr. Kutz.

Program managers have an obligation to protect the taxpayers' funds, don't they?

Mr. KUTZ. That's correct, yes.

Ms. WATSON. And do you think a government supervisor needs to prove beyond a reasonable doubt that someone engaged in criminal activity before taking any administrative action?

Mr. KUTZ. We don't believe that because we come across it. We refer hundreds of thousands of cases to agencies for criminal investigation and administrative action because, as you're probably well aware, criminal virtually never happens, but administrative should happen when someone does things.

So that's our view. And if it's proven, if someone is still being investigated, then that is one thing. But if you know that they did a poor job in their work, they should be reprimanded. Their ratings should reflect that, their performance ratings and things like that.

And you're talking here about individuals who were rubber-stamping, if you will, the bills that came in versus other individuals who are under investigation for fraud. There are other cases of fraud.

Ms. WATSON. Well, when we see the pictures that were up on the screen and the shoddy kind of construction, and we look away or we wait for somebody to maybe give us a clue that things are not right, it just is very troubling.

We're the oversight committee, and we're here to protect the general public, the taxpayers' dollars, protect Americans; and when we have these kinds of projects that seem to be not worthy of who we are, it's very troubling.

And we have all of you out there, and I appreciate your coming here today and being willing to testify. We need to get to the truth, and we need to remove those people who are demonstrating very poor judgment and poor, shall I say, conduct—maybe because they expect a fiduciary reward in the end. That is always our concern.

So I yield back my time, Mr. Chairman, and thank you very much, witnesses.

Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you, Ms. Watson.

I want to ask a few questions.

Mr. Kutz, last year, you testified before us on this project and you told us that the Air Force's program office had lost control of project finances and was paying invoices for work they weren't sure was done.

At last year's hearing, the witness for the Air Force was Brigadier General Danny Gardner, who was in charge of the project at that time. He acknowledged some problems with the project, but he basically said the Air Force had addressed these problems.

Mr. Kutz, if I recall correctly, you didn't agree with those assertions; is that correct?

Mr. KUTZ. That's correct.

Chairman WAXMAN. It doesn't seem the Air Force believed them either, because after our hearing the Commander of Air Forces in Europe, General Hobbins, formed a high-level task force to troubleshoot the project; and by the following month, July 2007, it presented its findings to top Air Force officials supporting GAO's findings. Here is what the Air Force's own internal review stated, "Air Force did not properly monitor or approve contractor payments. Air Force did not have adequate policies and controls in place. And Air Force did not have sufficient staffing to oversee complex project."

General Rogers, you're here in the Air Force seat today. Do you agree that the Air Force did not adequately oversee this project, and do you agree with GAO's findings in that regard?

General ROGERS. Sir, as I mentioned earlier, I have been investigating this thing for 18 months, and I probably know more about it than anybody.

What I found is—of course, I participated in this piece of it. The task force was directed by General Hobbins even prior to the hearing. We just had logistic difficulties getting stood up quick enough.

The internal findings that you speak of by the Air Force, the source for that was members from here in the Air Staff in the Pentagon. Those members were there for 2 weeks and had a short look. Their opinion, I do not agree with. Initially I did, but now I know better.

As it turns out, the main crux of the problem was transparency from our construction agent. As an example, to know about change orders, the construction agent has to tell you they're there, because we're not in their offices. In terms of controls, we have to know something is not quite right to ramp it up.

Initially, the Air Force knew that this project was going to be more complex. And because we had tried to get a general contractor—actually written an official letter to the Germans and couldn't get it supported by the Minister of Defense of Germany, who also wrote letters saying, you have to put a general contractor on this—we lost that fight, and LBB did not put a general contractor on it.

So based on that, the Air Force doubled its normal oversight team size to eight in the beginning.

Chairman WAXMAN. But you disagree with the Air Force's own findings?

General ROGERS. Sir, those—you can't classify those as the Air Force's own findings. Those were members of the team who generated their briefing when they came back here, and they had far less information.

So I don't. There are pieces of it that have some credibility, but you can't count those as the findings.

Chairman WAXMAN. This was at the request of General Hobbins, they put together this inquiry?

General ROGERS. He directed me to lead it, sir.

Chairman WAXMAN. On the chart, the type of findings, it says, these are the findings pursuant to an internal Air Force review.

General ROGERS. Yes, sir.

We're talking two different things here. This is not the task force; this is the Air Force Audit Agency findings.

Chairman WAXMAN. I see. And there are findings and you agree with those findings?

General ROGERS. We agreed with those when the audit agency came up with them. What I now know is that when an audit agency looks at a project in Europe, they can only look at the U.S. side. That is like looking at the tip of an iceberg and judging the whole iceberg.

Chairman WAXMAN. GAO created some findings as well. Do you disagree with their findings?

General ROGERS. Depends which ones you're talking about sir.

Chairman WAXMAN. With regard to the work of the Air Force and their having sufficient staffing to oversee the complex, to properly monitor and approve the contractor payments, and adequate policies and controls in place, address those as well.

General ROGERS. Here is what happened. If the question on any given day through the process of building this facility, what do you know at the time?

In this project LBB hired another firm to act as a surrogate general contractor because they were directed not to have a general contractor. That general contractor served and failed miserably and did not inform LBB of all the situation on the site. The LBB subsequently did not inform the Air Force. So the story——

Chairman WAXMAN. Does the Air Force have any responsibility or is it all the contractor's fault?

General ROGERS. Sir, I will tell you that the Air Force has responsibility. We execute the responsibility based on what we know at the time.

As I look back at those times, the question becomes, what was reasonable at the time based on what you knew. I have reams of facts that show that the efforts made by Air Force people at the time seemed reasonable. Now that I have more information from the surrogate GC, the general contractor, and from LBB, what their internal memo said at the time, I realize the situation the Air Force people were trying to manage was completely different from reality.

Chairman WAXMAN. Let me ask Mr. Kutz. It seems to me that we don't have an acknowledgement from General Rogers to what the findings were from the internal audit of the Air Force, that there were some mistakes by the Air Force.

Do you agree that those findings were incorrect and General Rogers is correct?

Mr. KUTZ. We would agree with the Air Force Audit Agency's findings. And last year you asked, I think, General Gardner, when they first became aware that there were real problems. He told you December 2005, a couple of months before the project was supposed to be done.

How could you say you didn't have Air Force oversight problems when you became aware of the problems a couple of months before the ribbon-cutting ceremony? It doesn't make any sense, Mr. Chairman.

Chairman WAXMAN. Well, General Rogers, what has passed is past. But it seems to me it's important to have some acknowledgement of the problems that existed and how they came to be the responsibility of the Air Force.

It sounds like the Air Force is in denial mode, and that is not very comforting. If you deny what happened in the past, I fear you

might be likely—not you yourself, but the Air Force—might be likely to make some of the mistakes again.

General ROGERS. Sir, I'm not in a denial mode. I acknowledge what happened in the past. My job is to figure out why it happened.

I do now understand why the Air Force Audit Agency and GAO could come up with these findings, that we also would agree with—there were inadequate controls, etc. The issue is, why did it happen.

For example, Mr. Kutz says, why did we learn in December 2005 that this facility is going to be late when it's only a couple of months from delivery. The delivery date being promised in December 2005 by the construction agent and showed to the KMCC council with all of the stakeholders, German Government officials, AFE services, everybody at the table, was April or May 2006.

At that time, there was 16 weeks of construction work remaining, and if you look at the clock, you would say, Well, there is the building, it is standing, looks right, 16 weeks from now—they're telling us 16 weeks, it's going to open in 16 weeks. You don't have a reason to question that, and when you go out and look at the site, you can correspond work to invoices you are getting.

So as you can see, the issue here was one of transparency.

My finding is that once this construction project broke ground, there was a difference in the rate of information that flowed from the surrogate general contractor to LBB, and from LBB to the Air Force. And as you went through time, that lag in situation awareness continually grew to the point that even in November or December 2005, I now have internal memos from LBB showing that project was not going to be delivered until—the hotel portion until July or August. Yet the entire council, which is where they're reporting out the status to the oversight, to all the stakeholders, that council was briefed, this will be here in May.

Chairman WAXMAN. Let me ask Mr. Kutz the last question I have.

If we hold a hearing next year at this time, are we going to find that we've learned some lessons and they're going to correct the situation, or do you think that there is a denial going on, and it's as troubling to you as it appears to be to me.

Mr. KUTZ. It's too late for KMCC. It is what it is at this point. It's a mess. There is a lot of issues and a lot out of our control at this point.

The real question is for new projects going forward, at the very beginning, before we start spending the money, will we have the people in place, will we make sure that a general contractor whatever makes sense here, we'll make sure we're not schedule driven, driven based upon milestones, etc. That is the real test here.

I think KMCC, it's really too late.

Hopefully, there are lessons learned going forward, and at the very beginning of the project they will learn from what has happened here and, hopefully, not repeat the same situation.

Mr. DAVIS OF VIRGINIA. Do you want to ask any questions Mr. Duncan?

Mr. DUNCAN. Well, very briefly. Thank you, Mr. Chairman.

I was sitting here reading this memo that the staff provided us, and it says, "Unfortunately, this recent report from GAO is not good. Little work has been completed in the year that has passed since the first hearing, and while the U.S. Air Force and the German Government have recently reached an agreement on a plan to complete the project by January 2009, neither the Air Force nor GAO has confidence that completion date will be met. The project is now more than 2 years overdue and the building will suffer from significant structural problems, including a defective roof that is in the process of being replaced."

If neither the Air Force nor the GAO has confidence that the completion date of January 2009 will be met, General Rogers, when is the completion date? When is this going to be completed?

General ROGERS. Sir, we count on our German construction agent to give us the schedule, in terms of—you know, they figure out how long it's going to take and level of effort. And they have offered January—not offered; they have told us that January 2009 is when they expect to turn it over.

We see indications that do not—while they're performing better than in the past, it's not like we should count on January 2009. But as I mentioned earlier, I at least have a little more confidence in this schedule in only slipping a few months versus years because contractors have at least signed up to this schedule. And it's the first hard schedule, after years of begging, that LBB has given us since November 2004.

Mr. DUNCAN. And in this memo also says that "Total cost to complete the project is unclear. The Air Force contends it will spend $162 million, but the GAO estimates the cost to complete the project will be over $200 million."

What do you say about that? Where is the disagreement between the Air Force and the GAO?

General ROGERS. The Air Force and the GAO are really saying the same thing here, sir. The $163 alludes to pure construction costs. That one should be about $7 to $7.5 million, under the agency approved amount for construction. The other costs that take over $200 million include furniture and equipment, secondary services, design fees that are not included in construction that are normal in any construction project; and just about all of those would have been spent even if we completed it on time.

Last year, the discussion seemed to be all about the construction costs being out of control, so those other costs weren't really brought up. The Air Force tracks them carefully, which is why we're able to provide them to the GAO when they ask. But we're basically saying the same thing.

Mr. DUNCAN. But do you have somebody now who is in charge of this, who has major construction experience?

General ROGERS. Yes, sir. We had to delay a little bit last year to stand up and consolidate the management office, because our colonel was deployed to Iraq. We got him back, and as soon as he came back, he plowed into this and he is doing a great job.

Mr. DUNCAN. Thank you very much. I yield back.

Mr. SHAYS. I'm not going to take the full 5 minutes because I wasn't here. But could we have it clarified for the record why there

was no general contractor, a U.S. general contractor, overseeing this?

General ROGERS. Yes, sir, I can.

During investigation of this project, I found letters from previous vice commanders of USAFE, and meeting minutes, where USAFE officially and repeatedly asked for a general contractor.

Additionally, the Minister of Defense in Germany wrote letters to German Government agencies saying, you're going to need a general contractor or this thing is going to go afoul. However, there were other German bureaus and political interests who insisted on trade lot contracts because they, like us, have rules and laws that ensure that small business has opportunities, etc.

And in those initial days, when told we wouldn't get a general contractor, the people overseeing the project accepted it in the sense that there were only about four trade lots envisioned at the time. But nobody had a clue that it was going to grow to over 42.

Mr. SHAYS. Just a question: We had a project manager on this project? Someone?

General ROGERS. Yes, sir.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. DAVIS OF VIRGINIA. Let me sum up.

We just don't want to be here next year going through the same thing. And I guess the real variable here is Germans and the contractors and how they act. And we have the controls in at the Air Force, I understand. So the real question is, are the German contractors going to show up? Are they going to be able to do the job? Are they going to show in the numbers that we need to get this thing done?

Am I missing some something, or is that the essence of where we are right now?

Mr. KUTZ. Yes. And I think the other thing that has been discussed here, too, is whether that German amount is a loan or a grant or whatever the case may be, because that will have to be sorted out later as to who will pay for what.

But with respect to physical progress, getting it done, we agree with that.

Mr. DAVIS OF VIRGINIA. Just tell me, we're not going to use this procedure again. General?

General ROGERS. Sir, under ABG 75, we're obligated to use a German construction agent which in that region is LBB. What we intend to do is——

Mr. DAVIS OF VIRGINIA. Is this is State Department agreement or a military agreement?

I'll ask Ms. Garber.

Ms. GARBER. It's an agreement between the forces and the Germans.

Mr. DAVIS OF VIRGINIA. Does that agreement have a 10-year timeframe? Is that just part of the agreement for our bases being there?

General ROGERS. Yes, sir. The Germans conclude agreements like this with all forces, all nations. It will be changed if the forces at some point decide to renegotiate.

Mr. DAVIS OF VIRGINIA. But we did note we did have other options with this?

Mr. CAUSSEAUX. There are clearly provisions in the ABG 75 for the United States to—in some cases to demand, insist and request; and the option for using a general contractor, I think the United States could have insisted on the use of a general contractor.

Mr. DAVIS OF VIRGINIA. My question is, we have learned from this so that next time we will handle it differently, within the confines of that agreement.

General ROGERS. Yes, sir. As a matter of fact, the Germans agree because this didn't work for them either, and it's now costing. Believe me, the impact on them is more than us.

Mr. DAVIS OF VIRGINIA. Good. Thank you very much.

Chairman WAXMAN. Well, I thank you all for advising us where we stand with this project, and I appreciate your being here today.

That concludes our business, and the committee stands adjourned.

[Whereupon, at 11:34 a.m., the committee was adjourned.]

[The prepared statement of Hon. Diane E. Watson follows:]

Opening Statement
Congresswoman Diane E. Watson
Committee on Oversight & Government Reform
Hearing: "Waste, Fraud and Abuse at K-Town: One Year Later"
June 25, 2008

Mr. Chairman, thank you for holding today's follow-up hearing on the Kaiserslautern Military Community Center (KMCC), also known as the K-Town Mall. Almost a year ago today, this committee held a hearing to examine the allegations of fraud and abuse at the construction site located at Ramstein Airbase in Germany.

From the initial hearing the committee learned that mismanagement and lack of oversight resulted in construction deficiencies such as a leaky roof that needed to be reconstructed at the cost of about 10 million dollars.

We also learned the unrealistic accelerated building schedule was unpromising to the actual number of workers on site. According to a GAO site visit conducted in May 2007, they observed only about 50 workers on site, far less than the number needed to complete construction on time.

Two months after last years hearing an Air Force task force that was establish to examine the problems at K-Town found that the GAO study accurately portrayed the Air Force's failure to manage and oversee the project.

In recent developments, the United States and Germany reached an agreement that spelled out a plan to finally complete the K-Town project.

Mr. Chairman, I thank the panelist for cooperating with the committee, and I look forward to hearing the GAO's findings on the progress of the K-Town project.

I hope now the K-Town Mall is moving in the direction of opening as scheduled. I believe the completion of the project is scheduled around the end of this year, with the opening of the shopping center and hotel sometime in the early New Year. Hopefully, my colleagues on the committee may be interested in visiting the site after its completion, so we can see first hand the development and progress of this enormous project.

Mr. Chairman, thank you and I yield back the remainder of my time.

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