

**TRANSFORMING WARTIME CONTRACTING:  
RECOMMENDATIONS OF THE COMMISSION  
ON WARTIME CONTRACTING**

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**HEARING**

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SEPTEMBER 21, 2011

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Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



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## **TRANSFORMING WARTIME CONTRACTING: RECOMMENDATIONS OF THE COMMISSION ON WARTIME CONTRACTING**

**WEDNESDAY, SEPTEMBER 21, 2011**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Levin, Carper, McCaskill, Tester, Collins, and Coburn.

### **OPENING STATEMENT OF CHAIRMAN LIEBERMAN**

Chairman LIEBERMAN. Good afternoon. The hearing will come to order.

Let me start by welcoming the members of the Commission on Wartime Contracting (CWC) in Iraq and Afghanistan and, of course, our colleagues, Senator McCaskill and Senator Webb.

I am going to put my whole statement in the record<sup>1</sup> and just draw briefly from it in deference to Senator Collins, who has an Appropriations meeting she has to go to, and to our two colleagues.

The Commission on Wartime Contracting was created by legislation sponsored by Senator Claire McCaskill and Senator Jim Webb to investigate our reconstruction efforts in Iraq and Afghanistan. Last month, the Commission issued its final—and I would say to me very disturbing—report because it says that at least \$31 billion, and maybe as much as \$60 billion, have been squandered in waste, fraud, and abuse in Iraq and Afghanistan over the past 10 years. And those are obviously \$31 to \$60 billion taxpayer dollars.

I supported the wars in Iraq and Afghanistan. I still do. I support the aggressive rebuilding efforts in both of those nations, and I still do. And, of course, I believe that the ultimate waste of money and of the service and sacrifice made by our men and women in uniform would be to walk away and let Iraq and Afghanistan fall back into the hands of dictators and/or Islamist fanatics.

But that is not only an excuse, but even more reason why I am so upset by the findings of the Commission, which are basically how sloppy and irresponsible so much of the spending was. Some of the examples particularly drove up my blood pressure, and I did not have medication nearby so it was particularly harmful.

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<sup>1</sup>The prepared statement of Senator Lieberman appears in the Appendix on page 49.

U.S. tax payers paid \$300 million to build a power plant in Kabul, Afghanistan, that would supply the city with electricity around the clock, and the whole idea here was—build it, they will come, spur economic development. But the Afghan Government could not afford the fuel to run the plant and instead contracted to buy electricity from Uzbekistan at a fraction of the price, and the power plant built with 300 million American dollars is now just an expensive backup generator.

Another one that I thought was particularly outrageous was that \$40 million of our money went to build a prison in Diyala Province in Iraq that the Iraqis said they did not want and ultimately refused to take possession of. The project was not only never completed; it was abandoned with \$1.2 million worth of materials left at the site. So the Commission report tells us.

Much of the waste identified by the Commission stems from a lack of competition, which, of course, should be the cornerstone of government contracting.

I will say finally that perhaps my greatest frustration reading the Commission's report is a general one, which is that the underlying problems it identifies are not problems of first instance for us. In various ways we have seen these kinds of problems for years. And, in fact, at different times Congress has enacted reforms legislatively that were suppose to address these problems. And yet here comes this Commission report showing that billions of dollars nonetheless were wasted.

So my response to the report is to thank the Commissioners who we will hear from next for their extraordinary work, and also to see if we can together find a way not—because we are too experienced, unfortunately—to believe we can stop all waste and fraud forever, but we can sure do a better job than we are doing now, and I hope together we can find some ways based on this report to help make that happen.

Senator Collins.

#### OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Let me join the Chairman in thanking the Commission members for their report and the two authors of the legislation that established the Commission. Along with Senator McCaskill and Senator Webb, I testified at the very first hearing of the Commission on Wartime Contracting. At that time I noted that there are four categories of problems that lead to contingency contracting failures: First, unclear and evolving contract requirements; second, poor management, including an inadequate number of skilled contracting personnel; third, an unstable security environment; and, fourth, a lack of commitment by the host government officials to the reconstruction of their own country.

Unfortunately, the Commission has documented all of these problems and more in our Nation's wartime contracting efforts. It is especially troubling that our operations in Iraq and Afghanistan have been plagued by such a high level of waste, fraud, and abuse.

Some of the examples are almost too astonishing to believe. For example, a July 2011 report by the Special Inspector General found that a Department of Defense (DOD) contractor was charging \$900

for a control switch that was worth a mere \$7. In some cases, the inspector general (IG) found contractors overbilling the government with markups ranging from 2,300 percent to more than 12,000 percent. Now, I think we all understand that when you are contracting in this environment, there is going to be some kind of premium, but this was absurd.

One solution to this problem is the establishment of a professional acquisition cadre. That is why I authored an amendment to the fiscal year 2009 defense authorization bill to create a contingency contracting corps. This year, I have introduced two bills designed to further strengthen the government's acquisition workforce: The Federal Acquisition Institute Act and the Federal Acquisition Workforce Improvement Act.

I want to emphasize a point that was raised by one of the Commissioners at a recent briefing about the report. Congress should either enhance and improve the acquisition workforce to handle these types of massive contingency operations, or we should rethink whether or not we want to run these massive operations. We simply cannot justify doing major contracting without the necessary supporting workforce, as the findings of the Commission's report highlight today.

This is a point that I think often gets lost in the discussion of contingency contracting. The billions spent for development and big infrastructure contracting were "invested" in order to support counterinsurgency efforts by winning hearts and minds of the population and by establishing security. But with so many disappointing results, Congress should ask: Are we fulfilling our obligations to the American taxpayers who are footing the bill for these projects?

And should we really be surprised at the problems arising from attempts to run major development programs and embark on large infrastructure construction while we are in the middle of a war zone?

The past 10 years have taught us that we need to spend more time focusing on these broader questions before we get into another contingency operation if we hope to avoid repeating the mistakes of the past.

As I stated at the very first Commission hearing, "How well we execute wartime contracting helps to determine how well we build the peace." In my view, we can—and must—do better.

Again, I want to thank the Chairman for convening this hearing and apologize to our witnesses that I do have to leave shortly for an Appropriations markup. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins. We understand very well.

Thanks to Senator McCaskill and Senator Webb for being here. It actually was the problems with wartime contracting which were part of the reason why we created an ad hoc Subcommittee on Contracting Oversight of this Committee to oversee Federal contracting and why I asked Senator McCaskill to be the Chair of it, and she has done a great job. Senator Collins was Ranking Member on it for a while, followed by Senator Brown, and now Senator Portman, but you have remained right there at the helm with great effect for the Committee and for the country. So I thank you for that, and I look forward to your testimony and then Senator Webb's.

**TESTIMONY OF HON. CLAIRE MCCASKILL,<sup>1</sup> A U.S. SENATOR  
FROM THE STATE OF MISSOURI**

Senator MCCASKILL. Thank you very much, Mr. Chairman. I want to thank both you and the Ranking Member for all the work you have done to improve contracting practices. You have been at this for much longer than either Senator Webb or I have been in the Senate, and I want to acknowledge your work; particularly Senator Collins deserves a great deal of recognition for all of her work in terms of acquisition personnel.

It is so easy for us just to gloss over as we try to make the Federal Government smaller. It is so easy for us just to say, well, everything needs to be smaller. Well, no, it does not. There are a few areas that cannot be smaller. Senator Coburn and I talked this morning about the importance of fully funding the Government Accountability Office (GAO), our eyes and ears in terms of waste and fraud throughout government, and clearly the acquisition personnel, the atrophying of that workforce has been a major contributor to the problems that we are seeing.

More than 4 years ago, Senator Webb and I began to advocate for the creation of the Wartime Contracting Commission. At the time I was inspired by Missouri's own Harry Truman, who, as a Senator, headed a committee that investigated and uncovered millions of dollars of war profiteering, fraud, and wasteful spending in World War II. Senator Webb and I agreed that what we needed was a new investigatory body to honor the Truman Committee to protect our tax dollars and bring better accountability to the way we do business while at war.

We use the cliché saying, "They would spin in their grave," or "They would turn over in their grave." Harry Truman has been spinning for some time now, and he would be astounded at what this Commission found. It is shocking that the Commission has, in fact, validated in many ways our worst concerns about the way contracting was ongoing in contingency. It is disgusting to think that nearly a third of the billions and billions we spent on contracting was wasted or used for fraud. Frankly, I really believe that estimate is very conservative. And it does not even begin to include the money wasted on projects that cannot be sustained, very similar to the Kabul power plant that you referenced in your opening statement, Mr. Chairman.

I would like to take the opportunity to add just one more anecdote that confirms how serious the problem is.

Shortly after I came to the Senate, I took a trip to Kuwait and Iraq on contracting oversight. I asked not to see what most Senators saw when they went to theater, but I just wanted to focus on the way that we were overseeing contracts. I particularly wanted to hone in on the logistical support contract (LOGCAP), that had been the subject already of a lot of negative headlines about the way we had done business. It was a massive cost-plus contract, non-competitive, that was supposed to provide all of the logistical support for our men and women that were serving us in Iraq.

I sat in a small room in a building on the outskirts of Baghdad. While many people in the room had lots of rank and were military,

<sup>1</sup> The prepared statement of Senator McCaskill appears in the Appendix on page 54.

one woman, who was a civilian, clearly, was the knowledgeable one about the LOGCAP contract. It was an awkward set of questions and answers because clearly I was asking very tough questions. I could not for the life of me understand how this thing had gotten so out of control

The moment I will never forget as long as I live is when I began to feel—when you are pounding a witness on the stand as a prosecutor, sometimes you need to let up. Sometimes I did not. But, I knew I needed to give this woman a break because all these men and women were sitting in the room, and she was really being called on the carpet for the way that this contract had been overseen. So she had a bar graph and the requisite PowerPoint that is required in every military briefing. There was a bar graph that showed the expenditures on the LOGCAP contract, and it had started out at a number I cannot recall now, but in the billions, and the next year it had dropped \$2 or \$3 billion, and then it had kind of leveled out. So I am trying to throw her a bone.

And I say, “You have left out of your presentation how you did get the costs down the second year.” As God is my witness, she looked at me across the table, and she said, “I have no idea. It was a fluke.” At that moment I knew that this was something that had gone terrible bad in terms of contracting oversight.

The Commission’s report and recommendations go to the heart of how we got into this mess, how we got to a place in Iraq where we were spending billions without a clue as to where it was going. I applaud the Commission for their thorough, comprehensive, and bipartisan review and for the tremendous contribution that they have made to our understanding of these problems.

We must know why we are contracting, who we contract with, and what we are paying for a particular service or function. It is not complicated. Believe it or not, those three simple tests were not met in most instances of contracting in Iraq. It is shameful that, despite the great work of the Commission and the community of auditors and inspectors general who have reviewed these contracts, that we do not know—and may never know—these simple things about the contracts that have been awarded in Iraq and Afghanistan.

The Commission has offered a strong road map to improve accountability. I am encouraged to find that the Commission has recommended that the government increase its suspension and debarment, require consent of foreign contractors to the jurisdiction of the United States of America, and to improve contractor performance data, which are all issues on which we have held hearings and introduced legislation.

I do believe the issue of sustainability is crucial at this point. While we know that the strategy against counterinsurgency involves something beyond conventional warfare, I do not think that we have quite figured out, as an important culture of leadership in our military, as we lead forces in terms of counterinsurgency, that contracting oversight has to be part of the equation, including sustainability. We cannot build things for countries that they cannot afford to operate. We cannot build things for countries in a security environment that they are just going to be blown up after we have

used countless billions of dollars of America's hard-earned taxpayer money.

Because the Commission's recommendations will require fundamental changes to the way government operates, I am planning to introduce comprehensive legislation this year. I am working closely with Senator Webb on this legislation and look forward to working with the Members of this Committee as well.

As one of the generals said to me when I was in Iraq: "You know, so much of what we are seeing on this trip in terms of mistakes were also made in Bosnia. And, by the way, we did a 'Lessons Learned' after Bosnia, except there is one problem: We did not learn them."

They forgot to learn the lesson. If the Commission's report becomes one more report sitting on someone's bookshelf, then we have failed as a Congress and we have failed our military and the people of this great Nation.

This is our chance to tell the American people that the government can spend their money wisely, hold people accountable who are entrusted with contracting in contingencies, and make sure that the men and women in the military and civilian agencies get what they need to do their job. We cannot waste billions through fraud, abuse, and mismanagement. We cannot fail to plan and then outsource gaps in war planning to be "done on the cheap." We cannot repeat these mistakes again.

Thank you so much for the opportunity to testify today. I do want to commend my colleague Senator Webb. This would not have gotten through the Senate, frankly, without the cooperation of the Chairman and the Ranking Member and the hard work of Senator Webb. I think we have something really good here if we do not take our eye off the ball. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator McCaskill, for that excellent testimony. I was struck by your reference to President Truman, wherever he may be today. I know you are keeping that spirit alive. It struck me that if we could go and interview him about this Commission report and then release the transcript, we would have to delete several expletives.

Senator MCCASKILL. In fact, I am really need to say for Harry Truman, "This makes me goddamned mad." [Laughter.]

Chairman LIEBERMAN. I knew you would not let me down. Senator Webb, thanks for being here.

#### **TESTIMONY OF HON. JIM WEBB,<sup>1</sup> A U.S. SENATOR FROM THE STATE OF VIRGINIA**

Senator WEBB. Thank you, Mr. Chairman and Senator Collins. And special thanks to Senator Collins for her continuous involvement with this Commission as it went through the hearings process, and other Members of the Committee.

The purpose of this hearing is to allow the Commission members to testify before you and to allow you to have an interchange with them, so I would like to first say I have a longer written statement, which I would ask be entered into the record, and I would just like to summarize some of my comments from that at this time.

<sup>1</sup> The prepared statement of Senator Webb appears in the Appendix on page 57.



Chairman LIEBERMAN. Without objection.

Senator WEBB. I would like to express my thanks to the Commission members, particularly the Co-Chairs Michael Thibault and Former Congressman Chris Shays. A number of their fellow Commissioners and professional staff are here today. They did an exemplary job.

We talk in the Senate and in the Congress about presidential commissions, and sometimes with a great deal of skepticism, but I think this Commission demonstrates the way that these commissions should work. It was bipartisan, it was independent, it was high energy. It was composed of highly qualified people who were brought in for a specific period of time, and it is going to be sunsetted in a very short period of time, having brought these observations and recommendations before the Senate.

When I came to the Senate in 2007, one of the eye-openers for me as a member of the Senate Foreign Relations Committee was a hearing in which the Department of State was testifying about \$32 billion in funding for programs for Iraq reconstruction projects. I asked the government witness to provide the committee a list of the contracts that had been let, the amount of the contracts, a description of what the contracts were supposed to do, and what the results were. They could not provide us that list. We went back and forth for months, and they were not able to provide us that kind of information.

As someone who spent 5 years in the Pentagon—one as a Marine and four as a defense executive when I was on the Defense Resources Board for 4 years—it was very clear to me that something was fundamentally wrong with the way that contracts for infrastructure reconstruction, wartime support, and security programs were being put into place in Iraq and Afghanistan after September 11, 2001.

Most of the companies who undertook these contracts were good companies, and I think this Commission was very careful to mention that in its report. And they were doing a great deal of good work. But there were also a series of major structural, procedural, and leadership deficiencies in terms of the way that the wartime contracting processes were supposed to be undertaken. You could look at the dynamics of what was going on—particularly in Iraq at that time—and know it was not out of the question to say that even then billions of dollars were being exposed to waste, fraud, and abuse for a wide variety of reasons.

After many discussions with Senator McCaskill, who has great technical experience that she brought with her to the Senate, and who had expressed similar concerns, as you just heard, we introduced legislation that led to the establishment of this Commission. We had to give on some areas that we believed in strongly, such as retroactive accountability for some of the abuses that had taken place. We did not get that provision. We were not able to empower the Commission with subpoena authority. But following close consultation with members of both parties, we were successful in having this legislation enacted that put the Commission into place, and we achieved a consensus that the Commission would be independent, bipartisan, energetic, and that it would come to us with

the types of recommendations that might prevent the recurrence of these systemic problems and abuses in the future.

I commend the people on this Commission for the intensive effort that they have put into satisfying this statutory mandate. They went to extraordinary lengths here in the United States, as well as in Iraq and Afghanistan—25 public hearings with full transparency. Today's final report was preceded by two interim reports and five special reports, and I wanted to come here and express my appreciation personally for all the work that they have put into this effort.

Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Webb, for taking the time to be here and for your excellent remarks. We thank both of you for being here.

I think we will move on right now to the members of the Commission, so I would call the members of the Commission to the witness table at this time.

I gather that, unfortunately, Michael Thibault, Co-Chair of the Commission, cannot be here. He is, as you all know, former Deputy Director of the Defense Contract Audit Agency and worked very hard on the report. I am delighted that Mr. Thibault's Co-Chair is here today, my dear friend and former colleague from Connecticut in the House of Representatives, Chris Shays, who served during his time as a senior member of the House Oversight and Government Reform, Financial Services, and Homeland Security Committees, and had a particular interest in this kind of matter, which is to say protecting taxpayer dollars.

We also have with us Clark Ervin, Robert Henke, Katherine Schinasi, Charles Tiefer, and Dov Zakheim, who is no stranger to us because of his time as Comptroller in the Department of Defense.

Ms. Schinasi, I gather you have been voted the spokesperson.

Ms. SCHINASI. Yes, that is correct.

Chairman LIEBERMAN. We thank you, and thank you all for the extraordinary work you have done here, and I join my colleagues, the creators of the Commission, Senators McCaskill and Webb, in thanking you for your hard work and really an excellent report that gives us a road map forward. It is all yours.

**TESTIMONY OF HON. CHRISTOPHER SHAYS,<sup>1</sup> CO-CHAIR, ACCOMPANIED BY HON. CLARK KENT ERVIN, HON. ROBERT J. HENKE, KATHERINE SCHINASI, CHARLES TIEFER, AND HON. DOV S. ZAKHEIM, COMMISSIONERS, COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN**

Ms. SCHINASI. Thank you, Chairman Lieberman and Members of the Committee, for inviting us today, to give us an opportunity to talk about the work that we have done. As you mentioned, I am Katherine Schinasi, a member of the Commission, and I am presenting this statement on behalf of the Commission's Co-Chairs, Christopher Shays, and my fellow Commissioners Clark Kent Ervin, Robert Henke, Charles Tiefer, and Dov Zakheim, who are

<sup>1</sup>The joint prepared statement of the Commission on Wartime Contracting in Iraq and Afghanistan appears in the Appendix on page 63.

here today; and Grant Green, who unfortunately could not be with us.

If I may, I would like to summarize my statement and submit the full statement for the record, as well as a copy of our final Commission report.<sup>1</sup>

Chairman LIEBERMAN. Without objection, thank you.

Ms. SCHINASI. Thank you.

It is fitting that this Committee should be the first to hold a hearing on our final report as Senate rules give you the unique authority to inquire into "the efficiency, economy, and effectiveness of all agencies and departments of the government," including the organization of Congress and the Executive Branch. The solutions to contingency contracting problems that we have reported require such a coordinated whole-of-government approach.

We also believe the need for change is urgent, and let me give you several reasons why.

First, reforms can still save money in Iraq and Afghanistan, avoid unintended consequences, and improve the outcomes there because ironically, even as the U.S. draws down its troops in Iraq, the State Department is poised to hire thousands of new contractors there.

Second, new contingencies, in whatever form they take, will occur. One has only to remember how quickly U.S. involvement in Libya arose to recognize that the odds are in favor of some type of future operations. And the agencies have acknowledged that they cannot mount and sustain large operations without contract support.

Third, although the U.S. Government has officially considered contractors to be part of the "total force" available for contingency operations for at least the last 20 years, the Federal Government went into Afghanistan and Iraq unprepared to manage and oversee the thousands of contracts and contractors that they relied upon there. Even though some improvements have been made by the agencies involved, a decade later the government remains unable to answer that it is getting value for the contract dollars spent and unable to provide fully effective interagency planning, coordination, management, and oversight of contingency contracting.

The wasted dollars are significant. As you pointed out in your opening statement, the Commission estimates that at least \$31 billion and possibly as much as \$60 billion of the \$206 billion to be spent on contracts and grants in Iraq and Afghanistan have been wasted, and many billions more will likely turn into waste if the host governments cannot or will not sustain U.S.-funded programs and projects. We believe that failure to enact powerful reforms now will simply ensure that new cycles of waste and fraud will accompany the response to the next contingency. And we also believe that these reforms could have wider benefits.

In our work on Iraq and Afghanistan, we found problems similar to those in peacetime contracting environments and in other contingencies. This Committee, in particular, will recognize many of the problems we discovered are similar to those that were con-

<sup>1</sup>The Final Report of the Commission on Wartime Contracting appears in the Appendix on page 183.

tained in your 2006 report on Hurricane Katrina, and some of those are poor planning, limited or no competition, weak management of performance, and insufficient recovery of overbillings and unsupported costs.

The wartime environment brings additional complications which we address in our recommendations, for example, limited legal jurisdiction over foreign contractors and limited deployability of Federal-civilian oversight personnel into theater.

If I had to give you just one bottom line, it would be that the wasteful contract outcomes in Iraq and Afghanistan demonstrate that our government has not recognized that its dependence on private contractors, especially for services, is important enough to effectively plan for and execute those acquisitions.

The Commission has concluded that the problems, however, are multi-faceted and need to be attached on many levels. The first is holding contractors accountable. Federal statutes and regulations provide ways to protect the government against bad contractors and impose accountability on them, including suspension and debarment from obtaining future contracts, as well as civil and criminal penalties for misconduct. Unfortunately, we found that these mechanisms are often not vigorously applied and enforced. And incentives to constrain waste are often not in place.

The Commission's research has shown, for example, that inadequate business systems create extra work and deny the government of insight and knowledge on costs that we are being charged for the work done. Fraud may go unprosecuted, recommendations for suspension and debarment go unimplemented, and past performance reviews often go unrecorded.

One important check on contractor overcharges is the Defense Contract Audit Agency (DCAA). Currently, DCAA has a backlog of nearly \$600 billion, which by some accounts could reach \$1 trillion by 2015 if not addressed. The DCAA has reported a 5:1 return on the investment—that is, for every \$1 invested in DCAA, the government recovers \$5—and we would say that is a pretty important investment to keep in mind when we are thinking about how to fix these problems.

The government has also been remiss in promoting competition. Although exigent circumstances may require sole-source or limited competition awards in early phases of a conflict, a decade into an operation the multi-billion-dollar tasks orders that are being written with no break-out or recompetition of the base contract just defies belief.

Our report contains recommendations to bolster competition, improve recording and use of past performance data, expand U.S. civil jurisdiction as part of contract awards, require official approval of significant subcontracting overseas.

The second level we would attack is holding the government itself more accountable both for the decision to use a contractor in the first place and for the subsequent results.

Even when the government has sufficient policies in place, effective practices, which range from planning and requirements definition to providing adequate oversight of performance and coordinating interagency activities, are lacking. The Departments of Defense and State, and the United States Agency for International

Development (USAID), the three principal agencies involved in Iraq and Afghanistan operations, have all made improvements. But much work remains to be done.

We have recommended developing, for example, deployable acquisition cadres, elevating the position of agency senior acquisition officers, and creating a new contingency contracting directorate at the Pentagon's Joint Staff, where the broad range of contracting activities is currently treated as a subset of logistics. Contracting has gotten to be much more than just a subset of logistics.

Considering this Committee's broad and interdepartmental mandate, I would call special attention to two recommendations embodying a whole-of-government approach that will improve efficiency and effectiveness in contracting.

The first is to establish a dual-hatted position for an official to serve both in the Office of Management and Budget (OMB) and participate in National Security Council (NSC) deliberations. Such a position would promote better visibility, coordination, budget guidance, and strategic direction for contingency contracting. Currently, national security decisions are not informed by resource implications generally, and that is particularly troubling and distortive in this context because contractors are considered to be a free resource.

The second recommendation of an interagency nature is to create a permanent IG with a small but deployable and expandable staff that can provide interdepartmental oversight from the outset of a contingency. The Special IGs have done some important work, but they have been hampered by their limited jurisdictions and their costly startups.

Finally, our Commission closes its doors in just 9 days. Our organization disappears, but the problems it has chronicled will not. Action, and in some cases appropriations, will be required to implement these reforms. Sustained attention will be essential to ensure that compliance extends to institutionalizing reforms and changing organizational cultures. That is really the gist of it—institutionalizing these reforms and changing the cultures. That is why our final recommendation includes periodic reporting to the Congress on the pace and the results of reform initiatives.

In closing, I believe that the Commission's work has demonstrated that contracting reform is an essential, not a luxury good.

Whatever form it takes, there will be a next contingency, and contractors will take part. Planning now and putting the necessary structures in place will greatly increase the likelihood of having better options and making better choices.

That concludes our formal statement. My colleagues and I would be happy to take your questions.

Chairman LIEBERMAN. Thanks very much for that excellent beginning. We will do 7-minute rounds of questioning.

I wanted to ask you whether the contracting process in your view improved over the years of our involvement in Afghanistan and Iraq. In other words, based on some of the things that are implicit in your report, but certainly in other IG reports and our own observations, you could say, I suppose, or argue that some of the early waste resulted from basically the lack of planning and the rush to

do it, and also the rapidly shifting governance structure during reconstruction. But I wondered, in your investigation did you find any dividing lines between different stages of the wars and reconstruction? Obviously, I am looking to see whether there was improvement—we talked about lessons learned from Bosnia. Did we learn any lessons in Afghanistan that we applied in Iraq, or in Iraq that we applied as Afghanistan went on longer?

I do not have a particular choice of Commission members, so I will leave it to you all to decide who feels best able to answer each questions.

Mr. SHAYS. Let me just jump in for this first one to thank you, Mr. Chairman and the Members, for allowing the full Commission to attend because each of us is more than qualified to answer any of your questions. I think the simple answer is yes, there was a noticeable improvement. But contracting became the default option, and we just did too much too quickly. And when you have an emergency supplemental, it is not part of the regular budget. It is almost like a free thing to draw money on. So we just drew too fast, and then we did not change. After the first year, you have a time where you say you cannot keep doing it the way you were doing it, and we kept doing it the way we were doing it.

Chairman LIEBERMAN. And if you had to give a reason why—why did we keep doing it the way we were doing it, even though people right there must have known it was not really working as well?

Mr. SHAYS. It is an easy option to just keep relying on contractors, and when you have a contractor who is performing, even if they are very expensive, you just want to keep going the way you are going.

Chairman LIEBERMAN. Because they are doing the job?

Mr. SHAYS. They are doing their job, but at an extraordinarily cost.

Chairman LIEBERMAN. Very high.

Mr. SHAYS. Just quickly, having 15 people maintain electricity on a base when only three are being used and they end up having so much free time that they decide to build themselves a clubhouse, they are working 12-hour days and only three are working, and we did that for years.

Chairman LIEBERMAN. And nobody blew the whistle. I mean, it was pretty obvious that was happening.

Let me pick up on the phrase you used because you warn about the use of contractors as the default option in Iraq and Afghanistan because, I presume, the government felt it lacked the capability in people they had working for them to perform many of these jobs.

Use of private security contractors and use of contractors to oversee other contractors are two examples of what you referred to as the “default option,” and I agree. What are some of the other responsibility categories or functional categories that, in your opinion, have too often been placed in the hands of contractors in the work that you did? Ms. Schinasi.

Ms. SCHINASI. I would look next at training, frankly.

Chairman LIEBERMAN. Training.

Ms. SCHINASI. Yes, because that is a function we almost totally outsourced to private companies.

Chairman LIEBERMAN. Mr. Zakheim.

Mr. ZAKHEIM. I would add, Senator, if you look at USAID in particular, that is an agency that years ago did its own work, frankly. It has become a contract management agency, and Rajiv Shah, the Director, admits it and is trying to change it. But over the last decade, they have essentially farmed out everything, including sometimes managing the contracts.

Chairman LIEBERMAN. Yes, that is right. Hire contractors and then hire more contractors to watch the other contractors.

We talked about this this morning on a bill we did a markup of on the Department of Homeland Security, and, of course, this is not only in the war zones that this happens, although the financial implications in the war zones was so high.

Now, I am going to ask you, because you had some hands-on experience in the Department of Defense, what can we do to stop this? I presume what you are saying is you think we are overusing private contractors to fulfill government functions.

Mr. ZAKHEIM. I think we are all saying that, yes, sir.

Chairman LIEBERMAN. So how do we draw the line? When do we decide that something really should be done by a full-time Federal employee?

Mr. ZAKHEIM. Well, the standard answer is if it is "inherently governmental," that is to say, it is something that the government should be doing. What we write in our report—and we all felt very strongly about this—is that is not really the right measure in a war zone, and the reason is it may be that there are some tasks like, say, involving private security that in theory a contractor could do, but in practice maybe it involves security issues or contractors that might fire too quickly if they feel they are being attacked, or are susceptible to bribery or corruption. We have a photograph in our report of an invoice that an Afghan insurgent group actually handed to a subcontractor, essentially saying if you want protection, here is the number to call.

So there are going to be circumstances where the theory of inherently governmental does not fit, and so we felt that the measure should be risk. What are we risking here? And there will be cases where it clearly is not in the interest of the government to have a private entity taking on risks.

Chairman LIEBERMAN. So what are the risks? In other words, how do you define risk in this case?

Mr. ZAKHEIM. Well, you could define risk, for example, if it is a very serious combat zone and you run the risk that maybe the contractor will be attacked or, alternatively, will attack first because they think they are being attacked.

Chairman LIEBERMAN. Right. So a final question because my time is running out. You have been inside. This seems like maybe a question that a Senator should not be asking, but I am interested in your answer. Why are we using so many private contractors to fulfill governmental responsibilities? Not only here in the area that you covered but we recently heard testimony about the number of people working for the Department of Homeland Security under contract. It is just about as many as the regular employees of the Department. It is really stunning.

Mr. ZAKHEIM. Well, one of the reasons, frankly, is—and we allude to that in some of our reports—training. Our civilians just are

not trained. You can get a degree and then go into government and never have to take another course again. Well, if you want to keep up with things, you hire somebody else to do it for you because you cannot do it yourself. So that is one reason.

Another reason is that we cut back—it was not so much that we had too many contractors in some circumstances. We had nobody to manage and oversee them, and that was because in the 1990s we cut back very seriously on just those kinds of people.

So it varies with the circumstances. In some cases we had just people doing jobs that the government should have been doing. In other cases it was we did not have the government people to oversee those doing the jobs.

Mr. SHAYS. Senator, could I just make sure that we are clear?

Chairman LIEBERMAN. Yes, Congressman.

Mr. SHAYS. Literally half of the personnel in theater are contractors, and there is a tremendous imbalance with the number of civil servants that are there. And we did not really address that the way we might have liked to have. But you have defense contractors and civil servants down here, and we seemed to have to pay the civil servants a lot of money to want to go into theater. And I just want to make sure that we are also clear that when we talk about inherently governmental, if it clearly is inherently governmental, the government should do it. But when we say it is not inherently governmental, the government still maybe should be doing it.

Chairman LIEBERMAN. Got you. My time is up. Obviously, we will come back—I am sure my colleagues will—and ask you if the contractors are cheaper, which is one of the arguments that is made for contracting as well.

As is the custom of our Committee, Senators are to be called in order of appearance: Senators McCaskill, Tester, Coburn, Levin, and Carper. Senator McCaskill.

Senator MCCASKILL. Well, I do not know where to start. There are so many things I would like to talk about with all of you.

First of all, let me once again say thank you. I am not sure that America understands the kind of expertise that I have sitting in front of me, and all of you brought to this work unique backgrounds that made the combination of your efforts so powerful. And I will tell you, I will not rest as long as I am here until we get this work done. So I do not want you to think that the time you have spent and the effort you have made—and I will tell you, I am proud that you are shutting down in 9 days, because one of the arguments against the legislation was—in fact, I think Dr. Coburn has made this argument a few times—that we start these kinds of things and they never end. So I think you have done great work—I get that. [Laughter.]

I get that, Dr. Coburn. We have not stopped as many of them as we should, but I am very proud of the work the Commission has done.

I want to talk about something that I mentioned and you mentioned in your report, but I think it is something we need to flesh out for this Committee, and that is, contractors being subject to the jurisdiction of the United States of America. A heart-breaking incident in Iraq that, I am sure you all are aware of where the negligence of one of our contractors, killed one of our soldiers, and in



trying to find justice for that family, the contractor avoided the jurisdiction of the United States. And the most insulting thing about it was that company then got another contract with our government. After they had used the fact that they were not subject to the jurisdiction of our country as a way to avoid justice for this man's family, we then decided we should sign up again with them.

By the way, they are now accused of also doing business with Iran, so there are also some sanctions that need to be put in place as it relates to that.

But one of you please talk about the importance of anybody who wants to do business with the United States, and what are the arguments on the other side, and why has the military been so reluctant to embrace this requirement.

Mr. ERVIN. May I start that, Senator?

Mr. SHAYS. Go for it.

Mr. ERVIN. As you know, one of the huge issues that we have dealt with during the course of the Commission in particular is the lack of visibility with regard to subcontractors, and this lack of being subjected to the U.S. jurisdiction is particularly acute for subcontractors. And it is our recommendation that as a condition for being awarded the subcontract by the prime contractors, that subcontractors in particular subject themselves by virtue of the contract to U.S. jurisdiction.

You asked for the contrary argument, and, quite frankly, I cannot think of one. This is American taxpayer money, and, therefore, the American taxpayer has a right to demand this level of accountability.

Mr. TIEFER. Senator, if I can expand on that answer—and I do want to mention, the bill that you mentioned, which has been nicknamed “the Rocky Baragona bill”—

Senator McCASKILL. Right.

Mr. TIEFER [continuing]. Shined a light into what is a complicated area to figure out how to deal with, so it was helpful to us.

Let me mention two examples. One is Tamimi Global Company, the other is First Kuwaiti Trading and Contracting, and what our hearings found and our missions was complete irresponsibility, that is, lack of responsibility by foreign contractors, and especially subcontractors, as Commissioner Ervin said.

Tamimi came before a hearing of ours. We asked them for records, and they basically laughed in our face. They said: Go away. We are not going to give you any records. We were not required to give them to DCAA. We are not required to give them to you on a subject called “tainted subcontracts.”

First Kuwaiti, which owed the government \$124 million, according to the State Department IG, is not paying. But it is continuing to get contracts from them.

The argument that was put on the other side is that if you require foreign contractors to submit to U.S. jurisdiction, some will not want to compete for U.S. contracts, and you will, therefore, lose competition. I leave it to yourself to estimate if that is a likely prospect.

Senator McCASKILL. Well, at a minimum, should we be thinking about legislation that says to the U.S. Government, if someone has

done business with us and owes us money and they are a foreign contractor, then that should equal suspension and debarment?

Mr. TIEFER. Commissioner Shays is something of a pioneer in strengthening the suspension and debarment tool, and that would be a good use of it, yes.

Senator MCCASKILL. Thank you so much, Congressman Shays, for taking this assignment. A lot of people were vying for your talents at the moment you decided to step up and help us here, and I am really so glad you did. Tell me why you think—it has been beyond frustrating to me—that not only are these guys not doing the work under a contract, they are then getting performance bonuses instead of suspension or debarment?

Mr. SHAYS. Well, the real expert is right here in the Commission. The one area we backed off a little bit was automatic suspensions. We do think that in the end there are other factors that need to come in play. But it is very clear that contractors do not think they pay a penalty, and one way they do not think they pay a penalty is that they are not going to get replaced because the process takes so long, so they are going to still be around for a year, and it is one of the reasons that we recommend that there should be a special cadre of government people—now I am talking civil servants—who can come in and guard an embassy, can guard a facility, do something that contractors were doing, get them out right away and just bring in government people to replace them. I think that would do wonders, and that is one of our recommendations.

Senator MCCASKILL. So it almost goes under the category we can screw up because they are stuck with us and they cannot really do anything because we are in a contingency and they cannot leave this function bare and they have no back-up.

Mr. SHAYS. You got it.

Ms. SCHINASI. Exactly.

Senator MCCASKILL. And so if we could convince the military—we have redundancies of systems in almost everything in national security, but we have no redundancy systems in contracting. And I think you have hit the nail on the head, that this has not been a priority for the military, and we would never think of not having a redundancy in some of the core military functions that relate to the mission, and contracting has become one of those.

Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator McCaskill. Senator Tester.

#### **OPENING STATEMENT OF SENATOR TESTER**

Senator TESTER. Thank you, Mr. Chairman, and I want to thank Senator McCaskill and Senator Webb for testifying before. This is a critical issue. I have not decided whether I need more blood pressure medicine or a bottle of brown liquor to take care of this problem.

Mr. SHAYS. Both.

Senator TESTER. Yes, you are probably right.

Mr. SHAYS. Not at the same time, though.

Senator TESTER. The issue of private contracting, I cannot help to think, did not come out of the whole privatization of government from a decade or so ago, and we can see where that has got us.

It is unfortunate Senator Webb is not still here. Being a student of history, I wanted to ask him about when wars started to be fought for profit. I do not know that it has been an occurrence throughout our history, but maybe it has. But I will say one thing. It is long past the time where we need to start to bring accountability and change the way contractors do business for this country.

I can tell you this: In the private sector, if I have a contractor that owes me money, he is not getting another contract. I mean, that is just the way it is. And I cannot believe—and I do not know what happened to the system that would allow justification for somebody to tell you that you are not getting any information and that is the way it is, and that we are still doing business with that person. It is incredible.

I believe it was your outcome, Ms. Schinasi, that talked about an emergency supplemental being looked at as free money. I mean, how does this happen? These are government/taxpayer dollars, borrowed or otherwise in this particular case. How do we get to a point where people within the government, military or otherwise, look at any dollars as free? Can you give me any insight into that?

Ms. SCHINASI. The lack of discipline in the supplemental allowed a lot of what Senator McCaskill was just talking about to occur, and that is, we do not need to have any discipline in our requirements process because we can always get more money.

The corollary to that is the contractors were also considered to be a free resource, so we never had to factor into our planning—

Senator TESTER. And were they considered a free resource because they were off budget or what?

Ms. SCHINASI. They were off budget, and the government itself is constrained by what is called full-time equivalents (FTEs), so the number of government employees is capped. So you can keep putting missions on. In many cases these were new missions that the agencies were taking on. They did not have anybody to do it, so let us just go hire a contractor. And, by the way, we do not have to count that anywhere, either the money we spend or the people that we hire.

Senator TESTER. I think it was Senator McCaskill who said one-third of the money that was spent was wasted. Is that for the whole war effort?

Mr. SHAYS. The figure is between \$30 and \$60 billion. The argument we would make, many of us, is that it is closer to \$60 billion. But even if it was \$30 billion, we are talking out of \$206 billion.

Senator TESTER. So retroactive accountability, you did not have the ability to look back. But yet I heard Ms. Schinasi or one of you say that things got better, to the Chairman's question, as time moved forward. Do you think if we looked back the waste was even higher than what it is over the period that you looked at?

Mr. ZAKHEIM. I would not say that, Senator. I think there was an improvement, there is no doubt, one of the reasons being when I was in the Department—and it was at the beginning of the Iraq war—we let contracts that are called “undefinitized.” That is a fancy word meaning you do not have the specifics. And, of course, we improved on that with time.

But in other areas we did not, and the fundamental problem is what my co-chairman just talked about. We did not have the people

to go out there, partly because they did not want to go out there. I can tell horror stories about that one.

And so you had a situation where it was contractors by default. If you do not have your civil servants ready to go to the theater—and you cannot force them to go. Military people go. Foreign Service people go. Civil servants—some do, some do not.

I will give you an example of that. We were out in Afghanistan, and we were talking to people from the Agriculture Department. It turned out that the Agriculture Department could not fill its allotment of people to go to Afghanistan. And we are not talking about thousands. We are talking about dozens. They still could not fill the allotment. And those who went came from the Foreign Agricultural Service, most of whom had never seen a farm in their life. So that is an example.

Senator TESTER. Great. OK.

Ms. Schinasi, in your testimony you talked about the fact that the waste and fraud—waste, in particular—may even be higher if the host governments cannot—were you able to do any projections on that? Quite frankly, when I was in Afghanistan, they did not look like they were rolling in dough. And so when that turns around and the troops can pull out, I do not anticipate these projects will go forward. Did you guys do any projections on how much money that might be?

Ms. SCHINASI. We do not have comprehensive numbers on that. I can tell you that the Special IG for Afghanistan Reconstruction came before us and said the entire \$11 billion that we are spending on the Afghan National Police Program is at risk. That is just one program and one number. But that is clearly—we issued a special report on sustainability because we were so concerned not only that projects had already been started that could not be sustained, but that we were thinking about starting new projects that could not be sustained.

Mr. SHAYS. Senator, could I make a point?

Senator TESTER. Yes, go ahead.

Mr. SHAYS. We started out—and Robert Henke was making this point to us, and it really got us focused on this. He said, “Well, it is clear we have got to oversee contractors better, and we are not doing a proper job.”

Senator TESTER. Right.

Mr. SHAYS. And then we began, “Well, if we cannot oversee contractors better, then maybe we should not be trying to do too many contracts.”

Senator TESTER. Right.

Mr. SHAYS. And it even got to the point, as we have been working on this, that we think we are trying to just do too much. We are just trying to do too much.

Senator TESTER. Right.

Mr. SHAYS. The gross domestic product of Afghanistan was hovering around \$1 billion. We have about \$24 billion in the economy now. We have totally distorted the marketplace.

Senator TESTER. Yes.

Mr. SHAYS. And one little quick point. We were doing a wonderful agricultural program that is the culture and the people. And

then we had to spend money by the end of the budget year, and we came in with \$300 million to try to redo this program.

Senator TESTER. What do we do about this? I mean, you guys have some recommendations about holding contractors accountable, about making sure government promotes competition. But when we are putting people involved in agriculture—and that is something that I am involved in—that do not know jack about agriculture and expect to teach people who need to learn about agriculture to support themselves, and they have no way, no chance of being able to communicate any kind of information because they do not have it in their head to start out with. Who makes the calls on that? Is this the head of the State Department? Is this the head of our military? Not to quote Harry Truman, but where does the buck stop on all this stuff? I mean, we can de-fund it all. I am not sure that is the right method to use. But maybe it is.

Mr. SHAYS. Well, let me just quickly say we recommend some key positions. To have the National Security Council decide to do things and not consider cost, that is why we want a dual-hatted position, someone at OMB there. We recommend—and, to Senator Levin, this is obviously very controversial, but we think there needs to be a J10. We think we have so many contractors part of the military effort, and there is really no coordination at the Joint Chiefs of Staff to deal with that issue.

Senator TESTER. I mean, isn't it incumbent upon the Joint Chiefs to be able to consider costs when they are doing their job? Now, I understand it is the protection of the country, but the head of the Department of Agriculture could say, "It is my job to make sure we have food security so I am going to spend every dollar I have got."

Ms. SCHINASI. We would say yes.

Senator TESTER. Yes, I understand that, but isn't it incumbent on the people who are there not to have a cop sitting in a room making sure that they are following the rules?

Mr. ZAKHEIM. Well, we recommend that somebody at the Assistant Secretary level in all of the key agencies, including USAID, which would be the place which, together with the Agriculture Department, would worry about the kinds of programs you were talking about, somebody specifically in charge of contingency contracting issues. If you do not get the leadership at the top—

Senator TESTER. That is exactly right.

Mr. ZAKHEIM [continuing]. That is not going to follow.

Senator TESTER. I just want to thank you guys for all your work. I very much appreciate it. And I am with Senator McCaskill, and probably everybody who sits at this table. We have a big problem. We have to deal with it. We are talking about cutting programs that people actually need to pay for this kind of garbage.

Thank you very much.

Chairman LIEBERMAN. Hear, hear. Thanks, Senator Tester. Senator Coburn.

#### OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Gosh, for the first time in my life, I am going to be calm compared to the previous questioner. [Laughter.]

Chairman LIEBERMAN. Oh, no, you are just beginning, Senator Coburn.

Senator COBURN. First of all, I would like to offer my sincere thanks for your efforts. I have been on commissions, and oftentimes the amount of effort that goes into that is not fully appreciated and the amount of time that is spent. So I offer you my thanks for it.

I have a couple of questions. Are we going to have a second round, Mr. Chairman?

Chairman LIEBERMAN. If you would like.

Senator COBURN. I want to talk about a couple of things. I am a big fan of IGs. I think generally they do a super job. In Afghanistan it has been a disaster. And I am worried about one of your recommendations, and that is to have this new IG, simply because in lots of other areas where we have the Special IG for Iraq, we actual got some good data out of there. A lot of what you know we learned through Stuart Bowen and a lot of his efforts. But I am worried about creating another one when we are not managing in Afghanistan the ones we have. And so it is fraught with some difficulty because we are not holding somebody to accountability and we have not. Our last IG, in my opinion, was incompetent there—not the one that took General Arnold Fields place, but General Fields' actions did not measure up at all at any level of a standard of that. So I worry about that.

I would like for you to really comment on why you made that recommendation and how that contrasts with holding the institutions that we have, Special IG for Afghanistan, Special IG for Iraq, and what was done. Then I am going to share with you my observations, having been three times to Afghanistan and what I saw change, especially in the last 2 years, especially since Rajiv Shah came on.

Ms. SCHINASI. Right.

Senator COBURN. Because there is a big difference with effective management. So would you comment on that recommendation?

Mr. ERVIN. May I start with that, Senator? I was the Inspector General at the State Department at the beginning of the Bush Administration, as you may know, and I was the first Inspector General at the Department of Homeland Security, so I was among the Commissioners who most focused on that recommendation. And I am speaking for myself, I think I speak for the Commission when I say I agree with what you say about the Special Inspector General for Iraq Reconstruction (SIGIR). I think Stuart Bowen, with whom I served in the Bush Administration and beforehand in Texas State government, has done an exemplary job and has set the bar very high for the kind of accountability that we should all demand with regard to these war theaters.

I also agree with you that, to put it charitably, the Special Inspector General for Afghanistan Reconstruction (SIGAR), by way of contrast, has been slow off the mark. There is no question about it. But it seems to me the contrast between the two proves our point, namely, knowing that we are going to be involved, whether we like it or not or whether we admit it or not, in contingencies going forward, that we have at the inception of contingencies someone who is adequately trained, adequately staffed, and we are talking about, as you know, an expandable office that would not have a huge staff permanently but, rather, would be able to scale up and scale down as circumstances require.

Of course, under our recommendation, both SIGIR and SIGAR would go away, so it is not as if there would be a third Inspector General. It is just there would be a standing one that would work in concert with the statutory Inspectors General and with GAO.

And I guess the final thing I would say about it is this recommendation is not intended to in any way denigrate from the work of the statutory Inspectors General. But as you know, they are each limited in that they are limited to the jurisdiction of the agency, and the Special IGs, while they have agency-wide jurisdiction, are limited temporally and with regard to a subject matter.

Senator COBURN. All right. Thank you. One of my observations when you go into theater as a Member of Congress is you get the brief, and all the different groups are there. My first trip there, about 80 percent of them could not answer the questions, the people sitting at the table—I am talking about people who were responsible for the areas. And that changed a little bit the second time. But the third time I went back, that guy actually knew what he was talking about and knew what they were doing, and they were deployed. And they happened to be Oklahoma National Guard guys because they were farmers from Oklahoma that are part of the Guard that actually are farmers. There just was not enough of them, and they were not there long enough—continuity in what we do is important as well.

But I specifically want to compliment the head of the USAID, and the point I would make is something that we ought to be demanding because the problems you are describing did not just happen over there. It happens every day here. We know it. You talk about contracting problems. My friend the Chairman here knows we have big contracting problems on military projects that have nothing to do with our efforts in Afghanistan or Iraq. But the difference is the Administrator of USAID demands metrics now, and it is known going in: If you cannot give me metrics, we are not going to continue the program.

So one thing that I did not see in your recommendation was in the contracting to actually have a metric requirement of performance on everything we contract for, then that would have presumed that you know what you are buying. So if you cannot establish and have a metric for it, you do not know what you are buying, you ought not be buying it.

And so I would like your comments on that because I see a big difference. I have been a big critic of USAID for 6 years, and I want to tell you, I am in love with the Director because what I see him doing is effective management that makes U.S. taxpayer dollars go further and much more effective.

Mr. SHAYS. Senator, when we met with him privately, it was one of the most impressive meetings. When he came and testified before us, after OMB decides what he can say and what some of his staff decide what he can say publicly, it is not as helpful. And one of the things that would be wonderful is to have the candidness that he presented to us in meetings that you may have with him, if we in government just were a little more candid. It is not the fault of anyone in government now that contracting is bad. It goes way back. And people are trying to improve it, but we just need

to be honest with each other and admit that we have a long ways to go.

Mr. ZAKHEIM. Let me deal with the metrics issue, Senator. What Rajiv Shah is getting right is not metrics. I mean, DOD will throw zillions of metrics at you. I used to. The issue is the right metrics. And Shah understands and his people understand that there are metrics and metrics.

So it is not a matter of saying we need metrics. Everybody who is on a contract will throw metrics at you. It is understanding what are the right ones. And what it is doing is fundamentally changing the culture of the place.

Senator COBURN. I can give you a lot of contracts in Afghanistan that had no metrics on them.

Mr. ZAKHEIM. That is even worse, of course. But he is changing the culture so that they think the right way about these things. And one of the things that one of our colleagues, Grant Green, who could not manage to get here today, has constantly emphasized is we have to change the culture, whether it is in DOD, the commanders in the field, USAID, State Department, what have you, about the way they think about contracting.

Senator COBURN. All right. I am out of time. Thank you.

Chairman LIEBERMAN. Thanks, Senator Coburn. Senator Levin.

#### OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you very much, Mr. Chairman. Let me thank, first of all, Senators McCaskill and Webb for their efforts to bring this Commission into existence. Their leadership on this is critically important. Senator McCaskill came to this body determined that she was going to focus on oversight. She has done exactly that. It has been invaluable to us. Your work is very important. I commend you on it, your willingness to serve.

One of the things you point out is the overreliance on private security contractors in Iraq and Afghanistan. That is not a new point. That is a point which has been very dramatically present for some time.

Last September, the Senate Armed Services Committee released a report based on a year-long investigation of the role and the oversight of private security contractors in Afghanistan, and we concluded that the proliferation of private security personnel in Afghanistan is inconsistent with our strategy; that Afghan warlords and strongmen acting as force providers to private security contractors have acted against U.S. interests and against Afghan interests; that widespread failures to adequately vet, train, and supervise armed security personnel pose grave risks to U.S. and coalition troops, as well as to Afghan civilians.

Now, I assume that the Commission is familiar with that report. First of all, I am wondering whether you agree with the conclusion of that report; but, second, before I ask you questions about what legislation you are recommending following your report, I am interested as to your reaction to what legislation we have recently adopted, what recommendations we have recently made to see where that falls short; and then I am going to ask you about what additional legislation, if any.



But, first of all, are you familiar with those recommendations? If so, do you agree with those recommendations that I have just read?

Mr. TIEFER. Senator, I am familiar with that report. The Commission is familiar with the report. I want to say our own report, in fact, passed the ball along, and further investigations have been going more and more deeply into it. We noted that our private security in Afghanistan appears to be a major source of payoffs to the Taliban. Our report has the first official statement that it is the second largest source of money for the Taliban.

Senator LEVIN. After drugs.

Mr. TIEFER. After drugs, that is right.

Senator LEVIN. That is similar to our finding. But here is what followed our report. The Department of Defense established a number of task forces, directed that remedial action be taken, and so the question is: Have those task forces been effective? Are they operative? General David Petraeus himself told me about the importance of this issue to him. Now, he is kind of the most recent father of our counterinsurgency strategy, and I just am wondering: Are you familiar with those task forces? Are they effective? Are they operative?

Mr. TIEFER. Well, one of them, according to public sources, came up with the figure of \$360 million being paid to the Taliban, so they are at least grappling with the issue.

Senator LEVIN. Did you have a chance to interview those folks?

Mr. TIEFER. I interviewed a group of analysts who sort of worked for them or with them, and there is one useful thing that is being done, although it is not considered to be enough to get control of the problem. There is a type of vetting using intelligence information which is at least going to keep the bad guys from being direct contractors to us. But that is obviously only a portion of the problem.

Senator LEVIN. All right. Mr. Zakheim.

Mr. ZAKHEIM. We were briefed in Afghanistan about this. Some of it we cannot discuss here. I was with Co-Chairman Shays out there, and I think they are clearly getting their arms around the problem. Getting your arms around the problem is not necessarily solving it, and a lot of this is still clearly going on, and it is going to take some work because, again, a lot of it has to do with what you heard earlier: Visibility into subcontracts.

Senator LEVIN. I agree with that—very much, as a matter of fact.

In the fiscal year 2008 defense authorization bill act, we had a section called Section 862, and what this required was government-wide regulations to be issued on the selection, training, equipping, and conduct of contractor personnel performing private security functions in Iraq and Afghanistan. So that was in the fiscal year 2008 authorization bill, and I am wondering whether you can tell us whether the Federal agencies have complied with the requirements of Section 862.

Mr. SHAYS. I cannot. Mr. Henke.

Mr. HENKE. They have issued the guidance and the instructions, and it has been out for public comment. The issue, though, as you are well aware, is that there is a big difference between what the policy says and what is being executed nine levels below in the field.

Also, notably, I believe that Section 862 makes it up to the chief of mission in the State Department in the country whether they are following those regulations, and because of a technicality in the law, I believe that the State Department would have a different view as to whether that applies to them.

Senator LEVIN. Can you give us a recommendation or have you given us a recommendation on that section as to any need to strengthen it? Is that one of your recommendations?

Mr. HENKE. It is not specifically in the report. We can certainly discuss that with you and your staff.

Senator LEVIN. Do you still have enough days left to do that?

Mr. HENKE. Yes.

Senator LEVIN. That would be helpful for you to do that.

Mr. HENKE. Senator, one of the things from the defense authorization bill, you required a new definition of the term "inherently governmental," and 2 weeks ago, OMB published their new definition. Long story short, it lists now for the first time the security function under an illustrative list of what functions are determined to be inherently governmental.

Senator LEVIN. That is long overdue. I think I have time maybe for one more question before my time is up. We had a provision in the 2007 defense authorization bill, which became an act, which required the Department of Defense to assign a senior executive to lead program management and contingency contracting efforts during military operations to identify "a deployable cadre of experts with the appropriate tools and authority" to staff the efforts to take specific steps to plan, train, and prepare for such contingency contracting. And I am wondering whether or not the Department of Defense has implemented the requirements of that section.

Mr. SHAYS. You have some of us here. I do not know.

Ms. SCHINASI. I would just say we found the lack of program management to be a continuing problem.

Mr. ZAKHEIM. The way the Department has done it is it has some individuals who have responsibility for this in general in policymaking in the Office of the Secretary of Defense.

Senator LEVIN. Yes, but—

Mr. ZAKHEIM. That is very different.

Senator LEVIN. They had to designate specific people under—

Mr. ZAKHEIM. We did not find somebody who was so designated, which is why we made the recommendation that you need somebody, and it has to be somebody at the Assistant Secretary level. We think it has to be somebody Senate-confirmed.

Senator LEVIN. All right. Did you happen to ask the Department of Defense why they have not complied with Section 2333 of the 2007 act? Did that question get asked, do you know?

Mr. HENKE. They have taken a number of steps. We believe in totality they are not enough.

Senator LEVIN. Well, we will ask it. That is for sure. Thank you.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you. Thanks, Senator Levin.

Senator Carper has gone. Let us do a second round of 6 minutes, just to encourage us to know it is the second round.

At the end of my first round of questions, I raised the question of if contractors are cheaper because presumably that is one reason

why contractors are called on to do these jobs. In fact, the Commission in its final report asked the question and offers the following answer: "It depends. And because it depends on a whole range of factors, many of them under direct government control, consideration of cost cannot be the driving factor in determining whether to contract or what to contract."

Mr. SHAYS. Senator, they are cheaper if you use them efficiently.

Chairman LIEBERMAN. Yes.

Mr. SHAYS. They are cheaper if you use three when you only need three. They are not cheaper when you hire 15 to do the work of three. They are cheaper when you do not have a contingency and, therefore, you do not need civil servants to be on the payroll. So they can be much cheaper, and it is one reason why we use them. And they can provide outstanding work.

Chairman LIEBERMAN. Right.

Mr. SHAYS. You just have to make sure you use them when you need them and you do not use too many of them; and then when you do not need them, you no longer have them.

Chairman LIEBERMAN. So the key here, to say the obvious is how you manage them.

Mr. ZAKHEIM. It is more than that, Senator.

Chairman LIEBERMAN. Do you want to take issue with the Chairman?

Mr. ZAKHEIM. Not in the least. [Laughter.]

I never did, so I will not now.

Mr. SHAYS. I eat the crumbs off his table.

Mr. ZAKHEIM. All right. No, what I was going to say was point out that, in addition to that, there is another factor, and it is one we talked about earlier. One of the reasons that they are cheaper is we use local nationals. Obviously, a local national is going to be cheaper.

Chairman LIEBERMAN. Right.

Mr. ZAKHEIM. But then that is where so much of the corruption problems come in, plus very often we have found—and we reported on this—that these people are exploited. This is the abuse side of the equation. We have talked about waste, we have talked about fraud. This is the abuse side. So it is both what my esteemed co-chairman said—

Chairman LIEBERMAN. You mean exploited by us?

Mr. ZAKHEIM. Exploited by their own contractors, by the people who hire them. And so those guys will be paid next to nothing, and, of course, contractors are cheaper. So it is both the circumstances of the environment in which they work, which is what my co-chairman talked about, and the nature of the contracts themselves and the people who are doing them.

Chairman LIEBERMAN. So part of this, Congressman, if I understand what you are saying, is really how these people are managed. I know it is making a complicated matter simple, but part of what you are saying is they can be cheaper if they are well managed.

Mr. SHAYS. Absolutely. And what is really important is that we have experienced people who know how to oversee contractors even when we are not using them so that when we then need to use them, we know how to use them well.

Chairman LIEBERMAN. So let me get to that. I mentioned in my opening statement about how some of this is *deja vu* all over again and how do we stop it. You probably know this. In 2007, this Committee reported a contracting reform bill. One of its provisions, which ended up being passed into law in 2008 as part of the Armed Services Committee bill, the National Defense Authorization Act, required the Administrator for the General Services Administration to establish a Contingency Contracting Corps whose members would be acquisition professionals from across the government who would be ready to deploy in a contingency, such as Iraq or Afghanistan, or a major disaster such as Hurricane Katrina.

It is an interesting history here, which is that this Contingency Contracting Corps nominally has been stood up, but they have only got nine volunteers there now. And now you have come along—and I welcome it, of course—in your Recommendation 2 and said that the agency head should develop deployable cadres for acquisition management and contractor oversight.

So talk to me a little about this because this is one of the great lessons of Hurricane Katrina and why we have been doing so much better in responding to natural disasters since then—although, we admit, Hurricane Katrina was catastrophic, but we have had some pretty serious ones—because the Federal Emergency Management Agency particularly and the Department of Homeland Security generally have developed contingency plans, both people and plans.

So how do we do this with regard to this particular matter? Because these are contingencies, as compared to the ongoing contracting, let us say, in the Department of Homeland Security.

Ms. SCHINASI. Right. We explored this issue in one of our hearings because our thought was this sounds like a good solution to some of the problems that we were identifying, and the Executive Branch witness came back and said, “Well, it really is not appropriate for an overseas contingency, and this really is not going to answer the question. And we had the State Department’s Office of the Coordinator of Stabilization and Reconstruction representative there, which was also to be a deployable civilian-based cadre that could actually go over and do the work, not just the acquisition workforce to supervise, but to do the work. The other agencies involved are not forced to put anyone up, and do not.

Chairman LIEBERMAN. Mr. Henke, did you want to add to that?

Mr. HENKE. Yes, sir, if I might. We had a great example of that issue. The fundamental principle is if you are going to have contractors carrying out parts of your foreign policy where it is appropriate, you had better have vigorous government oversight. An example: The military establishes a Joint Contracting Command in Iraq and Afghanistan. That is a good step forward. It is about 400 people with a brigadier general in charge of it. General Petraeus comes in and realizes he wants more contracting oversight, so he goes back to the services and says, “Army, Navy, Air Force, send me more contracting officers.” They say, “We are tapped out. We do not have enough. We have deployed them six times, and we cannot break the force.” So one, they failed on getting more military volunteers, or not enough.

Two, they ask for civilian volunteers. They cannot find enough. They wound up staffing up the Contracting Command with contractors to provide oversight of the contracting. Just crazy.

Chairman LIEBERMAN. It is crazy and unacceptable. So I am just going to continue finally on this line of questioning. So let us go forward 2, 3, 4 years. Just as all of us want, we have wound down our involvement in Iraq and Afghanistan. Maybe there is a continuing mutual defense strategic framework agreement with both, but we do not have too many people there. And then some other contingency, some other crisis occurs, and we are required to deploy troops and all that they need to support them.

So what do we want in place at that time to make sure in that new contingency, wherever it is, we do not make the same horrific mistakes and waste of money as we have repeatedly in previous contingencies.

Mr. ERVIN. May I start that, Mr. Chairman?

Chairman LIEBERMAN. Yes, sir.

Mr. ERVIN. This whole issue of having a deployable cadre of acquisition professionals is important, no question about it, but it is only part of the equation. My colleague, Ms. Schinasi, began to mention this, and we have said it explicitly, but equally important, it is critical that the government have a choice, and that means that there needs to be at least a small and expandable organic capacity on the part of these three agencies to perform missions themselves so the next time there is a contingency the government has a choice between going with contractors and going in-house, and the determination can be made whether it is more effective to do it either way, whether it is cheaper to do it either way.

As we said at the inception, right now the government does not have an option. Contractors are the default option because they are the only option.

Chairman LIEBERMAN. Is this something we need to legislate on, to mandate? Or is this something that you are going to talk to the Executive Branch about putting into effect?

Mr. SHAYS. You need both. But first, in the Quadrennial Review, they have to not pay lip service to contingency contracting. It was hardly mentioned. The greater expenditure is not on things anymore. It is on services. And we have to get people to wake up to that. You need a J10. So in the military, they treat contracting seriously. You need to key management people, the assistant directors, deputies, to be in all the different departments thinking about contingency. You need to have a cadre of people who can oversee contractors, and you need a cadre of people that can go in to do the work of contractors.

If you do those things and have real competition, we will not have the same problems that we have had.

Chairman LIEBERMAN. My time is up. I hear you that we should be working on a legislative package to implement what you are about, and I can assure you that Senator McCaskill and her Subcommittee, when you go out of business in 7 or 9 days, will try to take up the oversight of what you have started.

Senator McCaskill, you are next and then Senator Coburn.

Senator McCASKILL. Thank you, Mr. Chairman. I think also the place we have to keep this is up, I do not think we can underesti-

mate this—and I think most of the Commission members will agree with me—is the culture of contracting.

Mr. SHAYS. All of us do.

Senator McCASKILL. I honestly believe that at the War College, contracting has to be one of the core competencies. I honestly believe that our flag officers—it is anecdotal, but this is true. It actually happened. A general said to me on one of my contracting oversight trips, “I wanted three kinds of ice cream in the mess hall yesterday, and I did not care what it cost.” They see their mission as a military mission, and contracting is not something that the military leaders have seen as part of their mission. Probably when most of them were trained and they envisioned what they would be doing later in their careers, they did not realize to what extent the military would be relying on contracting.

And so I think we have to spend some time questioning in the Armed Services Committee—Senator Webb, Senator Collins, Senator Lieberman, Senator Levin, and myself, are all members of the Armed Services Committee. And if we do not continue to pound the leadership of the military about contracting, we are going to expect more of the same.

Let me ask you a couple of things. First let me ask you, it seems to me on this corps of—by the way, to follow up on your question, OMB is supposed to be standing up this Contingency Corps—that is what our legislation directs—and they have fallen down in terms of doing that. But I am wondering about is: Should we be looking at the Guard and Reserve in this regard? Here we talk about we need citizens that can be deployed when necessary. We have a lot of men and women who are serving in our Reserves and serving in our National Guard that have core competencies as it relates to contracting and oversight. Should we not be trying to work with the Guard and Reserve to try to identify certain units of the Guard and Reserve that recruit, retain, and maintain a level of competency in terms of being deployable during contingencies as members of the Guard and Reserve? Because these are folks, I mean, some of them may work as accountants in their jobs that they serve in as civilians. It is a civilian corps that can wear the uniform and have that kind of stick in a contingency that maybe would bring more respect to this kind of work. Any thoughts on that?

Ms. SCHINASI. Some of the success stories that we heard in theater of interagency collaboration on projects and how things worked really well together often had a Guard or Reserve member as part of that, and it was because of the domestic experience, if you will, which they brought, that made the project successful. But it was almost by happenstance. There was no planning for it. There was no identification, as you said, of what are the skills that we need from our National Guard to bring into the agricultural project in Afghanistan. But where that did happen, we heard many examples of successful projects on a small level.

Mr. ZAKHEIM. It is also important that the same approach—and you cannot use the Guard in the same way—is taking place at the State Department and USAID, and we heard about USAID.

Senator McCASKILL. Right.

Mr. ZAKHEIM. But, as you see, the State Department is going to be taking over a lot of the contracting, and what we cannot afford to let happen is for DOD to clean up its act, as it were, but the other agencies do not.

One of the concerns that I personally have and we have discussed is, and this goes to Chairman Lieberman's question as well: You have to get those people to go out there. It is not enough to rely on volunteers. If you are going to rely on volunteers, you are going to always have a problem.

Senator MCCASKILL. Right. Let me switch, because what you brought up relates to this, and that is sustainability. As we transition back to the State Department from the Defense Department, we have really created some precedents in these contingencies that are unprecedented in our military history, and one of them is this notion that we now have the military with a reconstruction fund. That has never happened before in the history of America, and for the first time this year in the defense budget, there is an Afghanistan reconstruction fund. I am not talking about Commander's Emergency Response Program (CERP) funds. It is like CERP has morphed into the military is going to build things, and that is where this whole sustainability piece comes in. If the military is making the decision about when to build things, I believe that is why power plants like Kabul happen. I need specific recommendations that we could put in legislation. What should the requirements be around sustainability? What kind of processes should we force in place they are claiming now they are doing sustainability analysis. I do not know if you all found any evidence of that. We have looked and can find no evidence of real analysis on sustainability. And if the military says they have it somewhere, they can get it to my office anytime they would like. But I do not believe sustainability analysis is going on in earnest in most of these decisions that are being made.

Mr. SHAYS. Totally agree.

Senator MCCASKILL. I really need guidance on: Should we be passing it off to the military in these contingencies to build things, ever, and then pass it back to USAID? And don't we lose some of the oversight and sustainability as we do those kinds of things? And how do we get at this issue that counterinsurgency means we build health centers, we build power plants, we build highways, even if the security and the sustainability around those issues are completely unlikely to ever have to be able to occur?

Ms. SCHINASI. Senator McCaskill, we deal with that in our report in two ways.

The first is to talk about pushing development, traditional development projects and the USAID on a counterinsurgency timeline. It just has not worked. So I think your concerns are appropriate in terms of who is it that should be doing projects and what is their mind-set in terms of a time frame for that.

The second is we have made recommendations—although we do not have metrics about sustainability—in one of our special reports that is contained in the back of this report that says cancel the projects if you cannot demonstrate that they are going to be sustainable. And, again, you would have to come up with Senator

Coburn's metrics about how are you going to do that. But if you cannot demonstrate that, cancel them.

Senator MCCASKILL. Should we put something in the law that says you cannot go forward with a project until there is some kind of written documentation about a sustainability analysis? This is going to drive these guys crazy because, of course, they are saying, well, the whole beauty of the counterinsurgency is how quickly we can move. I mean, I watched the CERP thing. I started asking questions about CERP in 2007, and I have watched every year how it has gotten bigger. We started out with breaking windows and storefronts, and that is the first year. Well, we are going to fix the broken windows. Well, the next year, well, we are going to add a wing on a hospital. The next year, we are building highways. Now we have a \$400 million fund.

Mr. SHAYS. One of the challenges is nobody wants to take ownership.

Senator MCCASKILL. Right.

Mr. SHAYS. And that is one of the reasons why we think we need to see that structure in place in the military, USAID, and the State Department, as well.

Mr. ZAKHEIM. There is an element at USAID that we discussed with Rajiv Shah that is really underrepresented, and it is a small office called Office of Transition Initiatives. Actually, it is fascinating. The entire office has, I think, only six government personnel. Everybody else is an individual consultant, contractor, or whatever they want to call them. Those are the only people that are really geared to the kinds of things you are talking about. This is my personal view. I think what they ought to do is create something akin to Special Operations Forces—that is to say, you have a career path. You can go all the way to the top. You will get your budget money. You will not compete with the dominant culture, which is long-term development, but you will have people who now have a prospect of moving up the ladder and, therefore, will stay.

What we found in Afghanistan was really remarkable. Young people, actually young women, were going out into these danger zones, but then we are told, well, you will do this for 3 years, but then you cannot come into USAID because your contract is up. So the people who really knew what was going on were the people who were going to leave. That is weird.

Senator MCCASKILL. That is very weird. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you. Senator Coburn.

Senator COBURN. Thank you. I think Commissioner Zakheim mentioned culture changes. Well, the Senator from Missouri and myself have demanded a culture change in DCAA. And I do not know if we have received it, and I do not know if you have done any more follow-up hearings on it. But we had a change in the top. But what we found was no true audit experience in DCAA. In other words, they did not have any formally trained auditors. It was a culture that you rose within the agency, but you never had any outside training, you never had any outside experience in terms of auditing, in terms of what you have recommended.



Any other things that you would recommend for DCAA? And where are they now? And what kind of job are they doing in terms of what your observations were in your study?

Mr. SHAYS. Well, it is too bad my co-chairman is not here because he would love to speak on this issue. The one thing that we did mention is if you have a \$600 million backlog of bills paid but not audited, think of the records that people have to keep, and we pay them to keep those records. We pay tens of millions of dollars for people to keep records that we then are going to audit 6 or 7 years later. So one thing is they need more people. They need, as Senator McCaskill points out and you point out, well-trained people. They clearly need more people to get at this backlog.

Senator COBURN. All right. One other question, and then I will end, Mr. Chairman. I was on Louis Berger Group's rear end for the incompetency, 3 or 4 years ago. Did you find out why somebody can get fined \$70 million and still continue to contract?

Mr. SHAYS. Go for it, Mr. Tiefer.

Mr. TIEFER. Yes, we looked into that a little.

Senator COBURN. Can you give a plausible, common-sense explanation so that the average American can understand when somebody has actually cheated us and been fined that we would continue to use that contractor when they have demonstrated that they are not competent, one, and two is that they actually over-billed us?

Mr. TIEFER. Well, I would say the answer in a few words is very good criminal defense lawyers for the company, that is how they are able to do it. Louis Berger's criminal defense lawyers worked out with USAID that they promised that they would be good and they would have a monitor who would look them over and make sure they were improving, and in return USAID would agree that they would not get one day of suspension.

You might say, why would USAID make this deal? They love what they call their development partners. They love them too much to let go of them. They did not want merely to do without Berger for a day. They did not want to do without contracting new contracts with Berger for one day. And so a crucial opportunity to send the signal was flubbed.

We had hearings where we questioned USAID. I think two different hearings we raised this issue, and they stood by it, and the technique that was worked out with those criminal defense lawyers, the type of plea agreement that was done unfortunately looks like it is going to be a model for the future.

Senator COBURN. So why would we as the Congress not hold whoever made that decision at USAID accountable for the American people?

Mr. SHAYS. I think at the very least you want to call them in for a hearing and question them quite extensively. That is how you would hold them accountable.

Mr. ZAKHEIM. By the way, the former Finance Minister of Afghanistan, who still advises the president and is in charge of a variety of things there, goes absolutely ballistic when you mention Louis Berger, precisely for that reason. So it not only is a matter of cheating American taxpayers, it is a matter of undermining our credibility with the government we have to work with over there.

Senator COBURN. Did you see any other examples similar to that with other contractors that we could learn from, or who should have been disbarred or at least suspended that were not?

Mr. ZAKHEIM. That was the extreme example because they—

Senator COBURN. That is the five-star.

Mr. ZAKHEIM. Louis Berger is the biggest defrauder in the contingency area. Nobody got up to the numbers for criminal fraud that they did.

Having said that, what we found is that there is great difficulty bringing suspension and debarment cases against companies for what happens in Afghanistan because it is hard to get witnesses together, people rotate out. There are people from other countries who are part of the allied effort who you cannot possibly get a hold of and so forth. And so what we did is we put some recommendations for making it possible just in contingencies to have it easier to do suspensions and debarments.

The need for this was shown even more recently than our report, the test case to see whether you could do a successful suspension and debarment through the normal full-scale hearing in the United States. The Wardak Risk Group ended up virtually in a win by the company. So you do have to make it easier to do these proceedings, or they will not happen.

Senator COBURN. So that would be a recommendation that we should be doing.

Mr. ZAKHEIM. Yes, it is. It is one of the written recommendations in the report.

Senator COBURN. All right. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Coburn.

Thanks very much to the Commission members. Congressman Shays, do you have a final word?

Mr. SHAYS. If you would allow me to thank personally Senator McCaskill and Senator Webb on behalf of the full Committee, and Senator Collins, and to you, Senator Lieberman, because you have shown tremendous interest through the course of our nearly 2½-plus years. I would say that all of us would tell you it was a privilege to have this opportunity, and we really appreciate your interest. It is nice to be on this side and be on the friendly side of you, Senator McCaskill. [Laughter.]

Chairman LIEBERMAN. That is very gracious of you. Thank you, Congressman Shays. Thank you for your service. I recall that at the beginning Senator McCaskill said that your services were being sought by many, and she was very glad that you agreed to take on this co-chairmanship. Knowing that the Commission expires in a week or so, I just hope you can find some way to continue to keep busy and perhaps stay involved in public service. [Laughter.]

Mr. SHAYS. Thank you, Senator.

Chairman LIEBERMAN. I thank all the members of the Commission very much for your public service.

We will call now on the representatives of the Defense Department and the State Department.

The witnesses are Hon. Patrick Kennedy, Under Secretary for Management at the Department of State, and Richard Ginman, the Director for Defense Procurement and Acquisition Policy at the Department of Defense.

Thanks to both of you for being here and listening to the testimony. Obviously, we are interested in your reaction to the Commission's report and what your respective departments intend to do about it. Obviously, if you disagree with any parts of it, we would welcome that as well. Thank you for your public service, too.

Mr. Kennedy, I guess we will begin with you.

**TESTIMONY OF HON. PATRICK F. KENNEDY,<sup>1</sup> UNDER  
SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF STATE**

Mr. KENNEDY. Thank you very much, Mr. Chairman and Senator McCaskill. I have a longer statement that I would ask be made part of the record, and I will synopsise it to leave more time for questions.

Chairman LIEBERMAN. Without objection.

Mr. KENNEDY. Thank you for inviting me today to discuss the Commission on Wartime Contracting's final report and the steps the State Department has taken, and continues to take, to improve contingency contracting.

The State Department has been working with the Commission since 2008, gaining valuable insight. Our ongoing dialogue has been very beneficial in improving our contracting functions. We fully agree that contracting is a critical function that must have full Department support.

State has increased oversight and made numerous improvements to our contracting program. We mandated up-front planning for contract administration and major programs. We increased the number of contracting officer representatives assigned in the field in Iraq and Afghanistan. On major acquisitions, the State Department has increased the competition and the number of awardees. The State Department has actively engaged with the Office of Federal Procurement Policy on preparing the policy letter on inherently governmental performance. The State Department is working with the Department's Inspector General to strengthen the suspension and debarment process, and State and USAID place considerable emphasis on sustainability as part of the planning and execution of all our programs and projects. My written testimony provides details on these improvements in the context of the CWC's recommendations, so I will only highlight these few.

The State Department appreciates the Commission's list of risk factors when deciding whether to contract in contingency situations. We consider these factors when evaluating whether to use contractor support. In Iraq and Afghanistan, we primarily contract to provide life support, security services, and aviation support, which allows us to carry out our core diplomatic and consular missions. We do not believe that these support contracts have resulted in a loss of our organic capability.

The State Department has a long history of using contract guards for protection of our facilities and personnel overseas. Private security contractors are also critical to our capability to carry out U.S. foreign policy under dangerous and uncertain security conditions. Maintaining this capability is particularly important when the Department is expanding its mission in locations that are

<sup>1</sup> The prepared statement of Mr. Kennedy appears in the Appendix on page 71.

emerging from periods of intense conflict, as in Iraq and Afghanistan.

We have sought to reduce risks through robust oversight of our security. Contractors are overseen and contractually managed by direct hire State Department personnel. We have instituted cultural training and behavioral standards, and when private security contractors have acted inappropriately or not performed as required, we have taken serious corrective action.

The Baghdad and Kabul guard forces, like other guards, serve as our first line of defense for facilities and staff, but they differ from our typical guards in other locations in the world. They have higher recruiting, screening, and training requirements; a higher percentage of American and third-country national personnel; and possess specialized weapons and equipment to counter the extreme threats in those countries.

The recent terrorist attacks in Kabul illustrate the critical need for a robust security program, including properly equipped and trained contract security personnel who are operationally overseen by direct hire members of State's Diplomatic Security Service and act in concert with host nation security forces. During the Kabul embassy attack, the embassy's security elements acted swiftly to protect embassy staff and Afghan visitors, moved them to safe locations, assumed defensive positions, and took defensive actions as directed by the Chief of Mission.

Increased oversight of security contractors is an area where CWC's recommendations have been particularly helpful. We have instituted operational measures and direct oversight of security contractors by the Bureau of Diplomatic Security (DS). Their actions for management oversight and operational control of security contractors include, among others: DS special agents at each post in Iraq and Afghanistan serving as managers for the Static Guard and Personal Protective Security programs; DS special agents at each post serve as contracting officer's representatives for the direct management and oversight of the Worldwide Protective Services contract; video recording and tracking systems in vehicles enhance oversight and contractor accountability; and all radio transmissions are recorded in Iraq.

State experiences, obviously, as you well know, Senators, continuous contingency requirements around the world, and our U.S. Government contracting staff is experienced with these situations. The Commission recommends a deployable cadre of acquisition professionals so that the U.S. Government will not rely on contractors for acquisition management oversight. The State Department does not use contractors for these functions. Only U.S. Government staff provide contracting management and oversight. We use contractor staff only for administrative support in those areas. When contingency contracting is needed, the State Department deploys experienced contracting personnel from Washington or our regional offices and surges other resources to specific contingency operations.

Through internal funding mechanisms, a 1-percent fee that we charge ourselves on each contract, the Department is able to draw upon its own resources, and we have hired 102 additional staff over the past several years. State centralizes procurement operations in the Office of Acquisitions Management in Washington and its sub-

ordinate regional procurement offices around the world, staffed by government employees. We have found this to be an effective model in contingency operations not only in Iraq and Afghanistan but also in Haiti after the earthquake and Japan after the earthquake and tsunami.

The State Department does not see a separate contingency contracting cadre as efficient as it would not avail itself of the experience we already have on hand and have developed. The Assistant Secretary of Administration has a professional acquisition staff that can handle up to \$9 billion in contracting a year. The Department continues to take steps to improve and elevate the status of its contracting program.

In 2010, Secretary Hillary Clinton issued the Quadrennial Diplomacy and Development Review (QDDR), which promotes American civilian power to advance our national interests and be a better partner with DOD. The QDDR calls for a new bureau to deal with conflict prevention and stabilization, which will assess needs for contingency resources.

One of the QDDR's key outcomes is working smarter to deliver resources better, including managing contracting to achieve our mission more efficiently and effectively. As we have begun to implement the QDDR, we have created a Contracting Officer Representative Award, and a first awardee has already been selected.

In April, we provided guidance on critical work elements to be included in performance appraisals for both contracting officer representatives and government technical monitors. And, in addition, we require that for every service contract with expenditures exceeding \$25 million a year, the Assistant Secretary of the relevant bureau certify that appropriate resources have been identified to manage the contract.

State will continue to improve our contracting oversight and management because we know that there is more to be done. We believe our current organizational structure is the most effective way to do that, and we currently have a senior officer whose nomination is pending before the U.S. Senate to be the Assistant Secretary of State for Administration, and we look forward to her quick confirmation.

Thank you again for inviting me to discuss this report, Senators, and I look forward to your questions. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Mr. Kennedy. That was very interesting testimony. I look forward to the questioning.

Mr. Ginman, thanks for being here. Please proceed.

**TESTIMONY OF RICHARD T. GINMAN,<sup>1</sup> DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY, U.S. DEPARTMENT OF DEFENSE**

Mr. GINMAN. Chairman Lieberman and Senator McCaskill, good afternoon. I welcome this opportunity to report to you on the Department's assessment of the Commission on Wartime Contracting final report. I commend the Commission on the work it has done to identify problems in wartime contracting and in recommending solutions to those problems. I have read all of the Commission's re-

<sup>1</sup> The prepared statement of Mr. Ginman appears in the Appendix on page 90.

ports and believe they have identified many real and important problems.

Like the Commission, the Department is dedicated to solving the issues behind each of the DOD-specific recommendations in its final report, and we agree in principle with the issues they raise. In today's opening statement, I will provide you an overview of the Department's preliminary reaction to the 11 DOD-specific recommendations. There are nine that we embrace.

First, using risk factors in deciding whether to contract in contingencies, which is their Recommendation 1;

Developing deployable cadres for acquisition management and contract oversight, their Recommendation 2;

Phasing out the use of private security contractors for certain functions and improving interagency coordination and guidance for using security contractors in contingency operations, their Recommendations 3 and 4;

Taking actions to mitigate the threat of additional waste from unsustainability, their Recommendation 5;

Setting and meeting annual increases in competition goals for contingency contracts, their Recommendation 10;

Improving contractor performance data and use, 11;

Strengthening enforcement tools, 12;

And, finally, providing the adequate staffing and resources and establishing procedures to protect their interests, 13.

While we agree with the concern raised with two other DOD-specific recommendations, we envision a different approach to addressing the challenge. The Commission raises a concern with institutionalizing acquisition as a core function. This is embodied in the Commission's two recommendations to elevate the positions and expand authority to civilian officials, and to elevate the positions and expand authority of the military officials at the Joint Staff combatant commanders in the military services. Respectively, they are Recommendations 6 and 7.

From DOD's perspective, for true cultural change we need all of the leaders in planning for and management of contractors, both on and off the battlefield, to be knowledgeable. We do not believe consolidation in a single organization is the answer.

I would like to highlight a few of the DOD-specific recommendations, in particular the Commission's Recommendation 2, to develop a deployable cadre for acquisition management and contracting oversight. We support this recommendation to grow a trained, experienced, and deployable workforce, and the Department is taking steps to implement it. The Under Secretary of Defense for Acquisition, Technology, and Logistics is working with both the military services and the defense agencies to support these enduring requirements for contingency operations. Thanks to Congress, the Department has 10 new additional general and flag officer billets. The Department has filled nine of those. These military leaders will ensure continued attention to the need for a deployable acquisition personnel.

Further, the Army established the Expeditionary Contracting Command following a recommendation in 2007 from what has been called the "Gansler Commission," and that organization is led today by Brigadier General Joe Bass.

Finally, the Department has some concerns with details within the 11 DOD-specific recommendations. The Department raised its concerns with the Commission when these same recommendations appeared in the second interim report. In these areas, we have a professional difference of opinion on the best way to proceed. While we support Recommendation 12 to strengthen enforcement tools, we do not believe this should include publishing a suspension and debarment official's rationale to not suspend or debar in the government-wide past performance database. In the second interim report, the Commission included such a recommendation. I believe that it is inappropriate to include information when the suspension and debarment found no grounds to either suspend or debar. I do believe that if it was based on poor performance, that should be adequately defined and supported within the past performance databases.

I might add the Department has increased the use of suspension and debarments. Army suspension and debarment actions have increased 52 percent from 342 in 2007 to 519 so far in 2011. We have consistently advocated the policy that debarring and suspending officials need discretion to treat each case on its own merits.

As further evidence of the commitment to strengthen enforcement tools, the Department has strongly supported two Senate bills in this area: One would expand the government's access to records in an overseas environment, and the other provides authority for DOD to avoid a contract or a subcontract if its funds directly or indirectly support the enemy.

In closing, we are still in the process of fully assessing all of the recommendations, particularly those that did not appear in a previous report. Recommendation 5 to take actions to mitigate the threat of additional waste from unsustainability does fall in this category. We believe this to be a significant recommendation since it is very forward looking.

We agree with the Commission that any fraud or waste is unacceptable and are analyzing the proposed way forward to address that challenge. The Department is determined to identify, correct, and prevent contracting efforts not in consonance with U.S. objectives in both Iraq and Afghanistan and that are wasteful of U.S. taxpayer dollars. These areas were a specific concern to the Commission, and we will continue to carry the torch to ensure improvements in the way forward for addressing contracting challenges in Iraq and Afghanistan.

This concludes my remarks, and I would ask that my longer statement be entered in the record.

Chairman LIEBERMAN. Without objection, and I thank you, Mr. Ginman.

We will do a 7-minute round of questions.

Just so I am clear myself, do I understand that the way you look at the report, 11 of the recommendations are related to DOD and you accept 9 of them?

Mr. GINMAN. Well, we accept all 11 and believe that two—6 and 7—that go expressly to elevating the positions, both the civilian positions and the military positions, we believe there is an alternative approach. From my perspective, I think military leaders in J2, J3, J1, J4, J7, all of whom are engaged in employing contractors on the

battlefield, need to be knowledgeable and experienced, and creating a J10 organization that allows it to be deflected so it is not part of their responsibility I do not think is appropriate.

I think Mr. Zakheim mentioned a cultural change, and I know that Senator McCaskill mentioned the training, particularly at the senior level. I would say that we need training not only at the senior level at the National Defense University; we need it at the junior officer level, the mid-grade level, and the senior level. Since contractors are going to be a presence in our future conflicts, we need all of the people that are engaged in that to be knowledgeable, understand it, and do it. So it is not that we do not——

Chairman LIEBERMAN. I agree.

Mr. Kennedy, let me ask you if you would apply the same metric to the report. Do you accept all the recommendations related to the State Department?

Mr. KENNEDY. We accept the predicate that there never should be a case when a dollar of taxpayer money should not be appropriately managed. We believe that the predicates they have outlined addressed to the State Department should be met. We believe, however, sir, that we are meeting some of those already. The volumetric difference between the size of the State Department and how it deploys in contingency operations versus the size of the Department of Defense means that we would implement the predicate of the Commission's recommendations, but might do it in a better and more efficient way given our own size and our own thrust.

Chairman LIEBERMAN. Let me ask you a short question that could probably lead to long answers, but try to limit them, if you can.

Looking back at the areas covered by the Commission, contracting in Iraq and Afghanistan, would you say that we used contractors too much or the right amount? Mr. Ginman, do you want to start?

Mr. GINMAN. I think that is a very difficult question to answer. The Chairman of the Joint Chiefs, 2 years ago, raised a concern that we were, in fact, overrelying on contractors.

He kicked off a study to look at expressly where we were overreliant on contractors and had gone too far. When that was finished, Secretary Robert Gates, in January 2011, issued a letter to the services, to the chairman, and asked some very specific questions. The services are continuing to look at that, and we have not had feedback or reports from the services on whether they believe that they have overrelied or not.

Chairman LIEBERMAN. So was there a conclusion to the question that the chairman originally asked?

Mr. GINMAN. When they did it, they had high dependence in logistics and building partnerships, in corporate management and support, and in the net-centric area.

Chairman LIEBERMAN. Too high?

Mr. GINMAN. They described it as "high dependence." The chairman has basically asked the services to now take a look at what we found and make a determination where you think you are and what you need to do.

Chairman LIEBERMAN. Mr. Kennedy, what about the State Department as you look back?



Mr. KENNEDY. As we look back, Mr. Chairman, in direct answer to your question, I believe that the Secretary in her Quadrennial Diplomacy and Development Review has identified that, when we do police training, rule-of-law training, which we have done extensively in Iraq and Afghanistan, we need to partner with other U.S. Government agencies and deploy more U.S. Government subject matter experts who are from within the various elements of the U.S. Government. So I think on that aspect we would—and we are, right now in both Iraq and Afghanistan, recasting our efforts to use more U.S. Government experts there. But in security, aviation, and life support, we believe the balance is correct.

One codicil: I think we have learned a lesson that we have to deploy more contracting officer's representatives, U.S. Government employees, for oversight of those contracts in the field.

Chairman LIEBERMAN. Right. So you would say in that one area probably too much reliance on contractors, in the others probably not.

Mr. KENNEDY. Not, sir.

Chairman LIEBERMAN. Helpful answers.

The Commission has said in its report that it believes future waste resulting from the inability of the Iraqis and Afghanis to sustain projects will be as big as the waste that the Commission attributes to poor planning and oversight—in other words, the high numbers, \$30 to \$60 billion.

I wanted to ask you for your reaction to that prediction and, really more to the point, your reaction to the Commission's assertion, and that it "sees no indication that the Defense Department, the State Department, and USAID are making adequate plans to ensure that host nations will be able to operate and maintain U.S.-funded projects on their own." So that is a worry. That may not be U.S. taxpayer dollars operating them, but obviously it is U.S. taxpayer dollars that made the investment.

Mr. KENNEDY. Senator, that is an exactly broad but absolutely correct question. I believe that my colleagues in USAID and my colleagues in the State Department who do law enforcement and rule-of-law training are engaged with their respective partners in Afghanistan and Iraq. It is a question that was raised earlier. The gross national product of Afghanistan is not very large. It is a country with extreme potential. But until we build up a base there, until we build up their economic capabilities, it is a question about whether or not they can sustain them. However, unless we give them the roads, the hospitals, the schools that they can then grow their economy, we would be in a perpetual negative loop.

And so I think we are doing what we can. I think our partners are doing what they can. Should they do more? Will we try to get them to do more? Absolutely, sir.

Chairman LIEBERMAN. Mr. Ginman, how would you answer that?

Mr. GINMAN. It is clearly an important question. I would say that we documented in the fall of 2010, a requirement for all of our construction contracts to go through at 16 different no-go definitions, one of which is expressly to look at sustainability and whether the project can be sustained for the long haul. I know that Senator McCaskill asked earlier, could people provide documentation.

Chairman LIEBERMAN. Right.

Mr. GINMAN. Since October 2010, where we are, in fact, looking at sustainability and the corps has asked that, my presumption will be that the files will document that we, in fact, looked at sustainability.

Chairman LIEBERMAN. That is a great transition. Time is up on my side. Senator McCaskill.

Senator MCCASKILL. Thank you. Let me follow up with that.

Can you identify for me who would have made the decision to build the power plant in Kabul?

Mr. GINMAN. I am sorry. I do not know the answer to that.

Senator MCCASKILL. Would you see if you could get that for my office?

Mr. GINMAN. We will do that.

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The Department's understanding is that a decision was made in 2007 by the Administration, per the request of the Government of the Islamic Republic of Afghanistan (GIROA), to proceed with the power plant in Kabul, which was implemented by the U.S. Agency for International Development.

Senator MCCASKILL. And we are going to hold a hearing on Afghanistan in Armed Services tomorrow, and my line of questioning—I hate to show my hand because that means there will be 14 people working tonight somewhere harder than they should. But I need to know who made this decision and what were they thinking. How do you build a \$300 million facility without checking to see if the country can afford to operate it and if there is an alternative that is cheaper?

And, by the way, I am using this as an example, but if somebody says that example is not fair, I got five or six other ones that immediately come to mind that could also be used as examples. And I am trying to figure out why the reality of the situation is not matching up. And this notion that you are going to do better about when our money is going to the bad guys, I do not know how you are going to do that in Afghanistan. And if you know how you are going to do that, you need to let the folks over there know because I do not think they know how to do that.

Mr. GINMAN. It was either Senator Levin or Senator Lieberman who asked a question earlier about the task force. The task force that was especially set up to do that is Task Force 2010, led by Brigadier General Ross Ridge. One of the commissioners mentioned the \$360 million number. That was expressly out of Task Force 2010 where they have looked at \$30 billion worth of contracts and they have looked at \$1.5 billion in actual cash transactions flowing through the financial system in Afghanistan. That is where we are attempting to do it.

They are also the organization that is helping us with vetting contractors beforehand so that we can make better choices with to whom we are awarding the contracts. It is a challenge.

Senator MCCASKILL. Especially when we are trying to keep our contractors from getting killed, because we are paying off the bad guys to provide some level of security for the projects that are ongoing. Once again it seems to me that is something we should calculate in the sustainability question. If we cannot build it without

paying the bad guys to keep our contractors from getting shot, then why are we building it?

Mr. GINMAN. One of the other 16 elements is to look at are we in a safe environment and can we protect where it is at.

Senator McCASKILL. I am sure, Mr. Kennedy, you might have expected this, but, obviously, as a former auditor, nothing is more frustrating than when somebody you are auditing tells you, "Well, you cannot have a record because part of what you may want is relevant to you, but part of it may not be part of your auditing jurisdiction. It is another auditor that has jurisdiction over that. So, therefore, we are not going to give it to you." And, of course, I am referencing your letter to Stuart Bowen, SIGIR, that was this summer, saying that you thought because they were asking for documents that dealt with something outside the reconstruction area, since this was security contracts, that somehow it overlapped with the diplomatic function and, therefore, you did not think you could give those documents.

Would it be helpful if I asked for the same documents and then gave them to Stuart Bowen?

Mr. KENNEDY. We always try to be responsive, Senator, to the Congress, but if I could take a couple of seconds to explain that.

We receive oversight in our activities around the world by the Government Accountability Office, who you yourself described in your opening statement as "the eyes and ears" of this Committee. We also have the State Department's Inspector General who looks at all the activities of the State Department and has a special office forward-deployed in the region for oversight of our activities in Iraq and Afghanistan, as does the Government Accountability Office have office and bed space in both locations.

Ever since Mr. Bowen's office was established, they have been auditing the reconstruction efforts in Iraq and Afghanistan, and we have cooperated with him and provided him information that he has asked for. He recently asked to inspect the security platform that the State Department provides for U.S. Government civilian employees and the same security platform that we provide around the world for U.S. Government employees. And we said to him, as I said in the letter, that this is an activity that is part of the jurisdiction of the Government Accountability Office or the State Department's Inspector General. This is not inherently part of the reconstruction activities.

We are cooperating fully with Stuart Bowen, and I personally have met with Stuart Bowen and made sure that he has gotten everything he needs to inspect his reconstruction mandate. But when he moves to inspect other activities of the State Department that are the province of someone else, it does raise a question about jurisdiction.

Senator McCASKILL. And I get that. I understand the point you are making. It is just you have to understand when you tell an auditor they cannot look at something, that is the proverbial red cape when you do that. And so we will go down this road and figure out what is the information that has been requested and who needs to ask for it.

Maybe this is a good time to say perhaps it would be better to have a Special IG with broad and complete jurisdiction over all ac-

tivities for contingencies that would touch—yes, there is an Inspector General at the State Department, and they have done some great work. GAO does some great work. But this Congress also decided we also needed reconstruction auditing, which, of course, I think was obvious and remains obvious.

In fact I have gotten pushback on this subject from your IG and from some of the other IGs that we should not have a Special IG for contingencies. What is your view? Do you think it would be good to have a standing Inspector General with expertise that would look at everything in a contingency, including reconstruction, since reconstruction is part of the military mission?

Mr. KENNEDY. Well, I cannot address the military mission, but let me address any activity that is carried on by the State Department, and I believe that it is more appropriate and best use of the taxpayer's dollar to have that done by entities that are extant, that work with the State Department every day, who know our mission, who know how to read our books, and who can act quickly. And I believe that, therefore, no, a Special IG is not necessary. I believe that the competence and the expertise, for example, of the International Division of the Government Accountability Office and of the State Department's Inspector General, or the Inspector General of the Agency for International Development when you are in the foreign assistance arena, are much more appropriate, much more targeted, much more knowledgeable than, as the Commission said a small cadre of people who would somehow expand—they never do explain where these other auditors are coming from.

Therefore, I have no idea to be able to answer your question in a more full sense, Senator. Where are these auditors coming from? What is their expertise in international affairs or in auditing in these overseas activities when you have the International Division of the Government Accountability Office, backed up by their full range of expertise and the full range of either the Inspector General of the State Department or the Inspector General of the Agency for International Development? It seems one too many.

Senator MCCASKILL. Well, I do not think there is ever too many auditors, and I do not think it is one too many because, I mean, I am not sure that we need the Special IG, but I do know this: That the notion that we do not complement and/or augment IGs when we are talking about the kind of money we are spending in contingencies, particularly as it relates to security and reconstruction and logistics, that what has happened in this—and if you have dug down like this Commission did, if you have spent the time at this that I have you know that there is so much—I mean, figuring out who is it that decided to build that power plant that wasted \$300 million of taxpayer money? Was USAID in the room? Did the military make that call? It is hard for me to believe the USAID was not in the room.

So we have these cross-jurisdictions here that require somebody to be able to come in that is looking at the big picture. And I guess, I do not think anybody else has asked for the documents that SIGIR asked for. No one else is doing this investigation. This is not duplicative. And I think that we have to look at how we get the documents to SIGIR that they have requested. I do not think that they are making requests that are unreasonable or unfair because

security is part of reconstruction. You just heard me ask Mr. Ginman that security, as it relates to the ability to do reconstruction, is one of the sustainability tests.

Mr. KENNEDY. But that is not, Senator, what Mr. Bowen was asking for from the State Department. He was asking for the documents related to the contracts where the State Department protects its own people or protects other civilian employees. He was not asking for documents related to contractors' security. He was asking for the——

Senator MCCASKILL. Is there a security reason that you do not want this out?

Mr. KENNEDY. No.

Senator MCCASKILL. OK.

Mr. KENNEDY. We will be glad to send it up to your staff—there is a long list of reports that our Inspector General has done on State Department activities in Iraq, including on security, as well as the Government Accountability Office. So it is a matter that has been widely looked at. And I am not attempting to hide anything. To be blunt, I have the Government Accountability Office looking at my work, and I welcome that. I have the State Department's Inspector General looking at my work, and I welcome that. But there is a limitation of how much time I can pull people off the line, so to speak, to answer questions from still another Inspector General. And why not the Inspector General of the Agriculture Department, whose people I protect, or the Inspector General from the Department of Commerce, whose people I protect?

Senator MCCASKILL. I guess the answer to your question is that I do not think you get to make that call. I do not think that is your job. I think the job is for you to respond to requests that are legally made. If this is not a legally made request, then you do not have to respond to it. I respect that. And we will get to the bottom of it and hopefully work together and figure out if this is a legally made request.

But if Congress devises this oversight and they are there and they legally have the ability to look at you, then you do not get to say no just because you have too many. I think that is the bottom line. But if this is not a legally made request, if they do not have jurisdiction, I will be the first to take your side of it, and then I will probably ask you for the documents.

Mr. KENNEDY. And I will be glad to come up, Senator, and meet with you at any time to discuss why I believe it is outside their jurisdiction.

Senator MCCASKILL. We will definitely follow up with you. We will definitely follow up with your staff, and thank you both very much.

Mr. KENNEDY. I am always at your disposal.

Senator MCCASKILL. Well, I do not know about that. You do not want to take too many people off the line now. [Laughter.]

Thank you very much.

Mr. KENNEDY. I will find the time for you, Senator.

Chairman LIEBERMAN. Thank you. This may not have been a grand bargain, but it was a grand discussion and a grand debate, and I thank you for it.

I have just a few more questions, and then we will let you go. One is very recent and direct, Under Secretary Kennedy, which is that obviously we know our embassy in Kabul was attacked recently. I am curious whether that has led to any re-evaluation of the role of private security at the embassy, or do you feel that they performed, from what you know now—I know it was recent—adequately in that situation?

Mr. KENNEDY. Mr. Chairman, we have looked into this extensively. We have been in contact with the State Department's regional security officer, the Diplomatic Security Service senior representative on the ground, as well as with the Ambassador. The contract security personnel operating under the direction of the Diplomatic Security U.S. Government officials operated superbly. When the attack began, they moved personnel into safe locations, they took up defensive positions, and they were prepared to engage in any appropriate defensive act should the insurgents have moved on the compound. Instead, the insurgents did stay off in the upper floors of another building and fired upon us, and from time to time, under regional security officer direction, we did return fire on specific targets.

We think that is the right way to go, Senator. We think there must be a balance between contract security personnel and then strong oversight by Diplomatic Security Federal special agents overseeing them.

I have a cadre of 1,800 Diplomatic Security special agents for the entire world, all our activities in the United States to combat passport and visa fraud, protection of distinguished foreign visitors, and then 285-some diplomatic and consular operations around the world, many of which you visited. I do not have a government cadre. We even ran some numbers of looking at other government agencies from whom we could borrow personnel. If I had to replace all my security contractors in Iraq and Afghanistan with U.S. Government employees, I do not think there would be anyone left to administer Federal law enforcement.

Chairman LIEBERMAN. I hear you. One, I am glad that your review of the performance of the private security guards when the embassy in Kabul was attacked has led to a positive result. That is encouraging.

Two, my own experience with the security at the embassies that I visit as I travel around, particularly in Afghanistan and Iraq, is really quite high.

Mr. Kennedy, you said something in your testimony that was really intriguing to me, and I want to just ask you to flesh it out a little bit, which is this 1-percent fee, if I understand it correctly, charged on all contracting services to fund contract management. Are you charging the contractors? Are you sort of taking it off the top of what they otherwise would be paid? How does that work?

Mr. KENNEDY. If I could, Senator, when I came back to the State Department in 2007 from being on loan as the Deputy Director of Management at the Office of the Director of National Intelligence, I sat down and met with my colleagues and saw that there had been significant growth in the State Department's demand for contracting services. But because of budgetary and other constraints, the level of professionals in our Office of Acquisitions had not

grown concomitantly, and I saw that was a train wreck we were heading for.

I consulted my lawyers, my own expertise of 30 or more years with the government, with the Office of Management and Budget, and with our oversight committees. We have an authority in the State Department called "the Working Capital Fund." This is a fee-for-service authority, somewhat akin to the Industrial Fund that the Department of Defense uses for some activities. I then said in order to make sure that I can issue, analyze, execute, and administer contracts appropriately, I am going to charge the ordering office—the Bureau of Diplomatic Security, the Bureau of Consular Affairs—a 1-percent fee for every contract that they put forward to the Office of Acquisitions. And then I moved all the people in Acquisitions under the Working Capital Fund.

Now, as their workload grows or decreases, they have the resources that parallel the volume of their work, which is why I believe, in sort of a further answer to one of your earlier questions, that we do not need a Contingency Contracting Cops because I, in effect, have created that already within the State Department. Should our workload grow, I have the resources to bring in additional personnel.

Chairman LIEBERMAN. Just to make it clear. Is that money coming from money that would otherwise be paid to the contractors? Or is it coming from funds appropriated to those particular offices?

Mr. KENNEDY. Funds appropriated to those particular offices, sir. That way the contract, there is no chance of the contractor influencing it. This money is paid in when you ask for a contract to be worked on long before the contract is ever issued.

Chairman LIEBERMAN. And I presume that the offices or agencies you are taxing are not appealing?

Mr. KENNEDY. No, sir. This has been in effect for over 3 years now, and they are actually very pleased with this, for two reasons: First, there is not a long and pending queue of acquisitions to be done because of the growth of demand and the lack of supply of my professional contracting colleagues; and, second, this creates a partnership where the Bureau of Administration's Office of Acquisitions has the personnel in Washington to do contract administration in partnership with the contracting bureau's overseas representatives. So it makes for efficiency and effectiveness. I do not have a single protest. In fact, it is much welcomed.

Chairman LIEBERMAN. Mr. Ginman, so talk to me a bit about—because you accepted Recommendation 2, you said, about developing a deployable cadre of contract management experts. Does such a thing exist now in the Defense Department?

Mr. GINMAN. I will step back to the 2006 time frame when Army Secretary Peter Geren asked Dr. Jacques Gansler to form a committee and look at it. Their recommendation was, particularly for the Army, that there needed to be a deployable cadre. The Army stood up in 2009 the Army Acquisition Command, and one of those organizations was called the Expeditionary Contracting Command.

Chairman LIEBERMAN. This was civilian?

Mr. GINMAN. The Expeditionary Contracting Command has both military and civilian personnel, and it is principally military. It was first headed by Brigadier General Camille Nichols, now headed

by Brigadier General Joe Bass. The Army has grown from, I want to say, in 2007 from about 250 military contracting officers, they have more than doubled that number. Today, it is roughly 550 military contracting officers. I can get the exact numbers.

#### INFORMATION SUBMITTED FOR THE RECORD

In 2007, there were 240 authorized Army military contracting officers (known as career field 51C); in 2012, there are 583, which is a 143 percent increase of deployable personnel. These active-duty 51C military officer positions are located within the Army Expeditionary Contracting Command.

Chairman LIEBERMAN. Are they a mix of active Guard and Reserve?

Mr. GINMAN. They are active. They are a mix of officer and enlisted. There are currently six brigades that are developed. There is a seventh that is now being staffed and manned that will principally support the Africa Command mission. Somebody mentioned Haiti earlier. When Haiti took place, the Expeditionary Contracting Command literally within 24 hours had one of their deployed units in the theater to be able to do the contracting.

The Air Force, frankly, has provided the vast majority of our military contracting officers in Iraq and Afghanistan, so the Army's increase is welcome by the Air Force. It allows them to step back the number of people they need to provide.

Chairman LIEBERMAN. How about the Navy and the Marines?

Mr. GINMAN. Well, the Navy, by and large, since they deploy from a ship's perspective, does not have a major contingency force. They do have the Seabees, and each of the Seabee units has a contracting capability within it.

The Marine Corps 4 years ago completely revamped the way it thought through military contracting officers, revamped their training program, put it into a 16-week program, 8 weeks for an enlisted and then a rotational experience, and then another 8 weeks later the officers go through for 16 weeks. It is very focused to, in fact, get the level that they need so that they can support each of the deployable units.

The Marine Corps now in Afghanistan gives operational control of their contracting organization over to the Joint Contracting Command that is in theater.

Chairman LIEBERMAN. So to rephrase the question I asked the Commission members when they were here, we are winding down in Iraq and Afghanistan. We will negotiate with the stand-up governments of both countries the extent to which we have troops continuing there. Say it is 2015, 2016; another overseas contingency operation arises. Are you confident that the Department of Defense and the Department of State will be more prepared to oversee private contracting in that contingency than we had at the beginning of Iraq and Afghanistan?

Mr. GINMAN. I am comfortable that we will. We spent 2 years looking at—we used, I want to say, October 2008 as the baseline for the actual level we had in Iraq and Afghanistan and went through a major effort from what they call adaptive planning on the personnel side to say where we are with people. That effort is working through the Joint Staff, the J1, the personnel crowd, to ensure that we have the resources established there.



The question as we go forward certainly in the budget style where we are in is what is the level of risk we are going to go? It is on the table in a discussion. I do think from a cultural perspective that the senior military leadership, non-contracting officers now understand the importance of the overall management of contractors on the battlefield. I think the Chairman of the Joint Chiefs has embraced it, the Joint Staff has embraced it. General Kathleen Gainey, who just left her J4, certainly understood it. The Director of the Joint Staff issued a letter 4 or 5 months ago assigning very specific responsibilities to each of the Joint Staffs and what their responsibilities were.

So I think as we go forward and in the development that we have done in what we call operational contract support and the documentation, we have made significant strides over the last 2 or 3 years, and we are continuing to make that. So I think if I fast-forward another 3 or 4 years, will we be much better prepared? Yes, we will.

Chairman LIEBERMAN. Good. Would you consider implementing in the Department of Defense this 1-percent fee or something like it that the Secretary talked about?

Mr. GINMAN. We have activities today that are Working Capital Fund. There are contracting offices that, in fact, charge a fee. I headed, when I was on active duty, the contracting office at the Naval Sea Systems Command. We were mission funded, so we were given the number of people that was needed.

My personal philosophy would be if your principal person who was going to provide you money is the organization that you are part of, you should be mission funded. In fact, if I take the Defense Information Systems Agency, where they are getting requirements from a great many other agencies and they are coming in, then they do exactly what the State Department is doing. And as the money comes from the Army, Navy, or Air Force, there is a fee charged. Some are as low as a half a percent. I think I have seen fees up to 1.5 percent. They are different. But, by and large, I would expect most organizations to be mission funded. In those organizations where you have a broad breadth of people bringing money to you, for them to then mission fund that level, not knowing for sure, I think to Mr. Kennedy's point, it becomes fungible and you can flex up and down. That is an important capability to have.

Chairman LIEBERMAN. Fine. Ready in 2016 for a contingency?

Mr. KENNEDY. Mr. Chairman, I believe so. As I mentioned earlier, in the last 3 years we have hired 102 additional contracting personnel, both professionals and support professionals, to engage in our activities. I think we can flex up because of our fee-for-service.

I could note that when we had the earthquake in Haiti in 2010, our Regional Support Center for Latin America, which is based in Fort Lauderdale, Florida, supported them immediately. I had already had a contracting officer in Benghazi when the U.S. first staffed up during the conflict in Libya. And right now, or at least recently, there was another officer who especially was more focused on real estate activities, to bring the right real estate under contract already on the ground in Tripoli.

Chairman LIEBERMAN. Well done.

Mr. KENNEDY. So we believe that we are prepared, Mr. Chairman.

Chairman LIEBERMAN. Good. I thank you both for your testimony. I thank you for your positive reaction to the Commission's report. To the best that we are able, we are going to try to continue to monitor this because it is so important.

Senator McCaskill's ad hoc Subcommittee on Contracting Oversight will take the lead for our Committee both in oversight and in bringing forward a legislative package based on the Commission's report. And, of course, I am sure that the Foreign Relations Committee and the Armed Services Committee will, too. But we will do it because we have broad jurisdictional responsibility across the entire government, and this problem of oversight and management of contracting obviously is not limited to the Departments of State and Defense in wartime, although the numbers there, of course, are very large.

I thank you both for your continuing public service. I appreciate it a lot. It has been a good hearing. I think we have learned a lot, and I think we have a sense of mission about what we can do with you to make sure we do not repeat mistakes that we have made in the past.

The record of the hearing will be held open for 15 days for any additional questions or statements.

With that, I thank you again and adjourn the hearing.

[Whereupon, at 5:05 p.m., the Committee was adjourned.]

## A P P E N D I X



United States Senate  
Committee on Homeland Security and Governmental Affairs  
Chairman Joseph I. Lieberman, ID-Conn.

**Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting**  
**Chairman Joe Lieberman**  
**September 21, 2011**

Good afternoon. I want to start by welcoming members of the Commission on Wartime Contracting in Iraq and Afghanistan, especially the co-chairs. Unfortunately, Co-Chairman Michael J. Thibault can't join us today. He is a former deputy director of the Defense Contract Audit Agency and has a long and distinguished career in contract management.

The other Co-Chairman, who is joining us today, is my friend and colleague from Connecticut, Congressman Chris Shays, who served as a senior member of the House Oversight and Government Reform, Financial Services and Homeland Security Committees.

I want to both thank and compliment you for the sustained bipartisan effort it took to produce this report that had the unanimous agreement of its eight members. That's the kind of cooperative effort we need more of in Washington.

The Commission on Wartime Contracting was created by legislation sponsored by Sens. McCaskill and Webb, whom we will hear from shortly, to investigate our reconstruction efforts in Iraq and Afghanistan. Last month the Commission issued its final – and disturbing – report that says that at least \$31 billion – and perhaps as much as \$60 billion – have been squandered in waste, fraud and abuse in Iraq and Afghanistan over the past 10 years.

I support the wars in Iraq and Afghanistan and also support aggressive rebuilding efforts in both those nations as a way to establish stable democratic governments that would be our allies.

The ultimate waste – not just of money but of the brave sacrifice made by our men and women in uniform – would be to walk away and let Iraq and Afghanistan fall back into the hands of dictators or Islamist fanatics.

The doctrine of “clear, hold, and build” articulated by General Petraeus – as the way to defeat insurgents – is the right approach, and I know from my own visits to Iraq and Afghanistan that many of these projects are worthwhile.

Still, under our present budget pressures we just can't afford the sloppy spending identified by the Commission.

Some of the examples of waste are infuriating.

U.S. tax dollars paid \$300 million to build a power plant in Kabul that would supply the city with electricity around the clock and spur economic development. But the Afghan government couldn't afford the fuel

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340 Dirksen Senate Office Building, Washington, D.C. 20510  
Tel: (202) 224-2627 Web: <http://hsac.senate.gov>

to run the plant and instead contracted to buy electricity from Uzbekistan at a fraction of the price – and the power plant built with our money is now just an expensive backup generator.

U.S. tax dollars went toward building a \$40 million prison in Diyala Province of Iraq that the Iraqis said they didn't want and refused to take possession of. The project was not only never completed – it was abandoned with \$1.2 million worth of materials left at the site.

Much of the waste identified by the Commission stems from a lack of competition, which should be the cornerstone of government contracting because competition among vendors gets us the best prices.

The prime case in point is LOGCAP III – a key logistical contract to provide a variety of support services to our troops that was initially issued competitively to Kellogg Brown and Root – or KBR – but then ran another decade without being rebid. The Commission estimates that about \$3.3 billion was wasted due to this lack of competition.

One of the frustrations in reading the Commission's report is that the underlying problems it identifies are not a surprise – we have known about them for years. We've undertaken a number of important reforms to address those problems and yet we still continue to see billions of dollars wasted.

For example, Senator Collins and I authored a provision, enacted into law in 2008, that mandated the creation of a Contingency Contracting Corps – a cadre of trained acquisition professionals who could deploy in contingency operations or disaster response.

Now three years later we have the Commission recommending creation of such a Corps as one of its key recommendations.

Senator Collins and I also sponsored a number of contract reform provisions that were passed through this Committee in 2007 and signed into law as part of the annual Defense authorization bills in 2008 and 2009.

For example, we enacted a new limit on the length of non-competitive contracts, we passed rules requiring more competition, we mandated new regulations on the use of cost-reimbursement contracts, and we severely restricted the award of large task and delivery order contracts to a single source – the type of contract that KBR had under LOGCAP III.

Implementation of some of these provisions has been slow, and waste flowing from lack of competition and reliance on cost-type contracts is amply documented by the Commission.

The Armed Services Committee has also enacted a number of reforms, including provisions to tighten use of private security contractors.

And Congress has created Special Inspectors General for Iraq and Afghanistan Reconstruction, and the Commission whose report we consider today. The Government Accountability Office has produced many reports on contracting associated with the two wars. And here in our own Committee, the problems with wartime contracting were a major impetus for my decision to create a special subcommittee to oversee federal contracting, which is ably led by Senator McCaskill.

I will add that there are many fine public servants in the agencies who have been working to clean up wartime contracting and we have two of them here today – Pat Kennedy, the Under Secretary for Management for the Department of State, and Dick Ginman, the Director for Defense Procurement and Acquisition Policy at the Department of Defense.

But obviously our efforts have fallen short. As the Commission's 15 recommendations show, there is no single solution. So I hope that today we can learn what more needs to be done, and how we can institutionalize reform so that we don't keep making the same mistakes in the future.

**Opening Statement of  
Senator Susan M. Collins**

**Transforming Wartime Contracting:  
Recommendations of the Commission on Wartime Contracting  
September 21, 2011**

\* \* \*

I want to join the Chairman in thanking the Commission members for their report. I testified at the first hearing of the Commission on Wartime Contracting and noted then that there are four categories of problems that lead to contingency contracting failures:

- unclear and evolving contract requirements;
- poor management, including an inadequate number of skilled contracting personnel;
- an unstable security environment; and
- a lack of commitment by the host government officials to the reconstruction of their own country.

Unfortunately, the Commission has documented all of these problems and more in our wartime contracting efforts. It is especially troubling that our operations in Iraq and Afghanistan have been plagued by such a high level of waste, fraud, and abuse.

Some of the examples are almost too astonishing to believe. For example, a July 2011 special inspector general report found that a DOD contractor was charging \$900 for a control switch that was worth a mere \$7. In some cases, the IG found contractors overbilling the government with markups ranging from 23-hundred percent to more than 12-thousand percent.

One solution to this problem is the establishment of a professional acquisition cadre. That's why I authored an amendment to the FY 2009 Defense Authorization to create a contingency contracting corps. This year, I have introduced two bills designed to further strengthen the government's acquisition workforce – the Federal Acquisition Institute Act and the Federal Acquisition Workforce Improvement Act.

I want to emphasize a point that was raised by one of the Commissioners at a recent briefing about the report. Congress should either enhance and improve the acquisition workforce to handle these types of massive contingency operations, or we should rethink whether or not we want to run these massive operations. We simply can't justify doing major contracting without the necessary supporting workforce, as the findings of the Commission's report highlight today.

This is a point that I think often gets lost in the discussion of contingency contracting. The billions spent for development and big-infrastructure contracting were "invested" in order to support counterinsurgency efforts by winning hearts and minds of the people and establishing security. But with so many disappointing results, Congress should ask:

- Are we fulfilling our obligations to the American taxpayers who are footing the bill for these projects?
- Should we really be surprised at the problems arising from attempts to run major development programs and embark on large infrastructure construction while we're in the middle of a war zone?

The past 10 years have taught us that we need to spend more time focusing on these broader questions before we get into another contingency operation, if we hope to avoid repeating the mistakes of the past.

As I stated at the very first Commission hearing, "How well we execute wartime contracting helps to determine how well we build the peace." In my view, we can – and must – do better.

**TRANSFORMING WARTIME CONTRACTING: THE RECOMMENDATIONS OF  
THE COMMISSION ON WARTIME CONTRACTING**  
July 26, 2011

Statement of Senator Claire McCaskill

Chairman Lieberman, Ranking Member Collins, thank you so much for inviting me to testify before the Committee today. I want to thank you both for your support for the Wartime Contracting Commission. You both have been working to improve government contracting practices in the government since long before Senator Webb and I arrived, and you deserve recognition for your work in this area, as do the other members of this Committee.

More than four years ago, Senator Webb and I began to advocate for the creation of the Wartime Contracting Commission. At the time, I was inspired by Missouri's own Harry Truman, who, as a Senator, headed a committee that investigated and uncovered millions of dollars in wasteful spending during World War II. Senator Webb and I agreed that what we needed was a new investigatory body, inspired by the Truman Committee, to protect our tax dollars and bring better accountability to the way we do business while at war.

Harry Truman would have been astounded by what the Commission found. It is shocking that the Commission found such rampant waste, fraud, and abuse in government contracting. It is disgusting to think that nearly a third of the billions and billions we spent on contracting was wasted or used for fraud. Frankly, I think that estimate is very, very conservative. And it doesn't even begin to include the money wasted on projects that can't be sustained by the countries where they were built. And I think it bears repeating that a general went to jail after Harry Truman finished his work following World War II.



I would like to take the opportunity to tell just one anecdote that illustrates how serious the problems with contracting were. Shortly after I got to the Senate I went on a trip to Iraq and Kuwait to do oversight of government contracting. I sat in a room with the people who were responsible for administering LOGCAP, which as everyone who does oversight knows is the massive cost-plus contract that the military uses for food, laundry, and other logistics for the men and women in Iraq and around the world. They showed me a bar graph of how much the government had spent on that contract, and you saw a big drop in the LOGCAP contract after the first year to the next year. And when I asked why there had been such a steep decline, the one woman in the room, the civilian in charge of the contract, she looked at me and said, it was a fluke. That's when I really understood the magnitude of the problem.

The Commission's report and recommendations go to the heart of how we got into this mess, how we got to a place in Iraq where we were spending billions of dollars in contracts without a clue as to where it was going. I applaud the Commission for their thorough, comprehensive, and bipartisan review and for the tremendous contribution that they have made to our understanding of these problems.

We must know why we are contracting, who we contract with, and what we are paying for a particular service or function. It is just shameful that, despite the great work of the Commission and the community of auditors and inspectors general who have reviewed these contracts, that we don't know – and may not ever know – those simple things about the contracts awarded in Iraq and Afghanistan.

The Commission has offered a roadmap to improve accountability and root out waste, fraud and abuse. I am particularly encouraged to find that the Commission has recommended that the government increase its use of suspension and debarment, require consent to jurisdiction

for foreign contractors, and improve contractor performance data, which are issues on which I have held hearings and introduced legislation.

The issue of sustainability is crucial to how the government is spending its money and, although I am not going to go into great detail about it here, I would like to say that it is something that I will be returning to in tomorrow's Armed Services hearing and paying a great deal of attention to in the coming months.

Because many of the Commission's recommendations will require fundamental changes to the way that government operates, I am planning to introduce comprehensive legislation later this year. I am already working closely with Senator Webb on this legislation and I look forward to working with the other members of the Committee as well to ensure that the government does not repeat the mistakes of Iraq and Afghanistan that have cost us so dearly.

As one of the generals said to me when I was in Iraq: You know, everything you are seeing in terms of mistakes that have been made, most of them were made in Bosnia. And by the way, there was a lesson learned after Bosnia, except there was one problem: They forgot to learn the lesson. If the Commission's report becomes one more report sitting on someone's bookshelf somewhere, then we have failed also.

This is our chance. This is our chance to tell the American people that the government can spend their money wisely, can hold those accountable who are entrusted with contracting in contingencies and contract oversight, and can make sure that the men and women in the military and civilian agencies get what they need to do their job. We cannot waste billions through fraud, abuse, and mismanagement. We cannot fail to plan and then outsource gaps in war planning to be "done on the cheap". We cannot repeat these mistakes again.

Thank you again for the opportunity to testify this afternoon.

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**STATEMENT OF  
SENATOR JIM WEBB**

**BEFORE THE  
SENATE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENT AFFAIRS**

**CONCERNING THE FINAL REPORT OF  
THE COMMISSION ON WARTIME CONTRACTING**

**ON  
SEPTEMBER 21, 2011**

Chairman Lieberman, Senator Collins, and distinguished members of the Senate Committee on Homeland Security and Government Affairs. I appreciate very much having this opportunity to appear before you with Senator McCaskill as you examine the important recommendations made by the Commission on Wartime Contracting in its final report that was delivered to Congress just three weeks ago.

I would first like to express my thanks again to Commission Co-Chairs Michael Thibault [T-BOW] and Christopher Shays, their fellow Commissioners and their professional staff for the exemplary work that they have done to satisfy a very ambitious congressional mandate. I believe this Commission demonstrates the way that Congressional commissions should work. It was bi-partisan, independent, high energy, and composed of highly qualified people who were brought in for a specific period of time – a sunsetted commission that will be disestablished in two days.

When I came to the Senate, one of the eye-openers for me as a member of the Senate Foreign Relations Committee was a hearing in which the Department of State testified about \$32 billion in funding for programs for Iraq reconstruction projects. I asked the witnesses to provide the Committee a list of the contracts that had been let, the amount of the contracts, a description of what the contracts were supposed to do, and what the results were. They could not provide us that list. For months we asked them, and they were unable to come up with a list of the contracts that had been let.

As someone who spent five years in the Pentagon—one as a Marine and four as a defense executive—it was very clear to me that something was fundamentally wrong with the way contracts for infrastructure reconstruction, wartime support, and security programs were being put into place in Iraq and Afghanistan after 9/11.

There were good companies, as this Commission report has been careful to mention, who were doing a great deal of good work. But there were also a series of major structural, procedural, and leadership deficiencies in terms of the way wartime-support contracts were being prepared, awarded, and executed. You could look at the dynamics of what was going on—particularly in Iraq at the time—and know it wasn't out of the question to say that even then billions of taxpayer dollars were being exposed to waste, fraud and abuse for a host of reasons.

After many discussions with Senator McCaskill—who had expressed similar concerns as a fellow member of the Senate Armed Services Committee—we introduced legislation in 2007 that led to the establishment of this Commission a year later. As with all legislative proposals, we had to give on some areas that we believed in strongly, such as retroactive accountability for some of the abuses that had taken place. We did not get that provision, nor did we empower the Commission with subpoena authority. But, following close consultation with members of both parties, we were successful in enacting the legislation that put the Commission in place. Just as importantly, we achieved consensus that the Commission would be independent and bipartisan, that it would be energetic, and that it would come to us with the types of recommendations that would prevent the reoccurrence of these systemic problems and abuses in the future.

I commend the Commission for its intensive three-year effort to satisfy its statutory mandate. It went to extraordinary lengths here in the United States, as well as in Iraq and Afghanistan, to perform its mission. Its 25 public hearings ensured full transparency. Today's final report was preceded by two interim reports and five special reports. Each provides well-documented findings and sound recommendations.

The Department of State, the Agency for International Development, and the Department of Defense have already addressed many of the Commission's earlier recommendations. As a result, some contracting policies, procedures, and oversight activities have improved. Senior military commanders in the field now have a better understanding that wartime-support contracting is the commander's business. However, as the Commission's final report makes clear with its estimate that from \$31 billion to \$60 billion in wartime-support contracting has been wasted in Iraq and Afghanistan, we are a long way from having this awareness translated into the additional reforms necessary across federal agencies.

I am confident that members of this Committee and others with oversight responsibilities share these common concerns. When operations in Iraq and Afghanistan draw to a close, there is a real risk that the executive branch will have less impetus, incentive, and interest in instituting and institutionalizing necessary contracting reforms. Budget reductions will make necessary investments to improve the contracting process less appealing—but greater numbers of qualified federal contracting officers and auditors are essential if we are to reduce waste in contracting processes. If the Commission's recommendations are not acted upon aggressively, we will unavoidably repeat past mistakes and relearn old lessons when the next major overseas contingency or humanitarian crisis occurs for which extensive contractor support is necessary.

As the Commission has properly noted, Congress has a role to play to ensure this does not happen. Today's hearing sets us on the right path by allowing the Commissioners to testify directly and to receive the views of witnesses from the Executive Branch.

The Commission's final report makes 15 recommendations. Ten are directed to the State Department, USAID, the Department of Defense and other agencies involved in contingency operations. One recommendation—to elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, on the unified combatant commands, and in the military services—is directed only toward DoD. Four of the recommendations are directed toward Congress.

Together with my colleagues on this Committee and on Armed Services and Foreign Relations, I look forward to examining the Commission's recommendations carefully. Professional staff is already working to determine the need for additional legislation going forward, but it is important to emphasize that Executive Branch agencies already have the authority to adopt most of the recommendations directed toward them.

For this reason, at this preliminary point I strongly endorse the Commission's position that we in Congress should enact legislation requiring regular assessments and reporting by each agency to monitor their progress in implementing reform recommendations. Follow-up reports by the Comptroller General also should be used for an independent assessment of each agency's implementation and follow through.

As a member of the United States Senate and one of the two cosponsors of this legislation, I can say today that I know the Commission's recommendations will be listened to carefully and, when appropriate, acted on by the United States Congress.

In closing, when I addressed the Commission at its first public hearing in 2009, my challenge was for it to be aggressive in satisfying its statutory mandate, because the taxpayers, our warfighters, and foreign service professionals serving overseas deserve nothing less. The Commissioners and its professional staff met that challenge and have, in the process, performed an invaluable public service.

The administration and Congress must do their part. We must persevere in reforming wartime and contingency contracting. The waste of billions of taxpayer dollars described by the Commission in its final report is outrageous and intolerable.

Thank you again for the opportunity to appear before you today.



Joint Statement of  
The Commission on Wartime Contracting in Iraq and Afghanistan

Hearing:

**'Transforming Wartime Contracting:  
Recommendations of the Commission on  
Wartime contracting'**

U.S. Senate Committee on Homeland Security and Governmental Affairs  
Room 342, Dirksen Senate Office Building, Washington, DC  
2:30 PM., Wednesday, Sept. 21, 2011

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*[As prepared for delivery.]*

Chairman Lieberman, Ranking Member Collins, Members of the Committee, good morning. Thank you for inviting us to appear before you.

I am Katherine Schinasi, a member of the Commission on Wartime Contracting in Iraq and Afghanistan and a former managing director of the Government Accountability Office.

I am presenting this statement on behalf of all the Commissioners, including Co-Chairs Michael Thibault and Christopher Shays, and fellow Commissioners Clark Kent Ervin, Grant Green, Robert Henke, Charles Tiefer, and Dov Zakheim. With me at the witness table is Co-Chair Shays.

It is particularly fitting that the Committee on Homeland Security and Governmental Affairs should be the first committee of Congress to convene a hearing on the final report that the Commission filed on

August 31. Senate rules give this Committee the unique authority to inquire into “the efficiency, economy, and effectiveness of all agencies and departments of the Government,” including the organization of Congress and the Executive Branch.

If the final report of the Commission on Wartime Contracting demonstrated anything, it is that America needs a coordinated, whole-of-government approach to make contracting support of wartime and other contingency operations more efficient, economic, and effective. The effort is urgent for several reasons:

1. U.S. involvement in Iraq and Afghanistan will continue for years, and reforms can still save money, avoid unintended consequences, and improve outcomes there;
2. There *will* be new contingencies, whether they take the form of hostilities and humanitarian interventions overseas, or emergency responses to mass-casualty terror attacks or natural disasters like Hurricane Katrina here at home;
3. The U.S. government officially considers contractors to be part of the “total force” available for contingency operations and, more importantly, acknowledges that it cannot mount and sustain large operations without contract support;
4. The federal government nonetheless went into Afghanistan and Iraq unprepared to manage and oversee the thousands of contracts required, and despite some improvements over the

years, remains unable to provide fully effective interagency planning, coordination, management, and oversight of contingency contracting; finally,

5. The Commission estimates that at least \$31 billion, and possibly as much as \$60 billion, of the \$206 billion spent on contracts and grants in Iraq and Afghanistan has been wasted, and that many billions more may turn into waste if host governments cannot or will not sustain U.S.-funded programs and projects. Failure to enact powerful reforms will simply ensure that new cycles of waste and fraud will accompany the response to the next contingency.

The trend of our findings is surely no surprise to this Committee. Your 2006 report, "Hurricane Katrina: A Nation Still Unprepared," identified many problems with contractor support that we have seen in Iraq and Afghanistan, including poor planning, limited or no competition, weak management of performance, and insufficient recovery of over-billings or unsupported costs.

The main difference is that federal contracting for the Katrina response was about \$9 billion as opposed to the \$206 billion for Iraq and Afghanistan, and that the place of performance was domestic, so didn't involve complications like limited legal jurisdiction over foreign contractors, documentation in foreign languages if available at all, and limited deployability of federal-civilian oversight personnel to theater. But our two reports do make it clear that the need for reform in

government contracting is not confined to the Iraq and Afghan contingencies.

The wasteful contract outcomes in both Katrina and Iraq and Afghanistan demonstrate that the government's dependence on acquiring goods and services is just not thought to be important enough, by the agencies responsible, to plan for and effectively execute those acquisitions. The Commission has concluded that the problems are multi-faceted and need to be attacked on several levels. The first is holding contractors accountable. Federal statutes and regulations provide ways to protect the government against bad contractors and impose accountability on them including suspension and debarment from obtaining future contracts, as well as civil and criminal penalties for misconduct. Unfortunately, we found that these mechanisms are often not vigorously applied and enforced. And incentives to constrain waste are often not in place.

The Commission's research has shown, for example, that some contractors have been billing the government for years using inadequate business systems that create extra work for federal oversight personnel and auditors. Compelling cases for charging fraud may go unprosecuted because other, possibly more headline-grabbing, cases are given priority. Recommendations for suspension and debarment go unimplemented with no documentation for the decision. Data that would be important for past-performance reviews often go unrecorded. Staffing shortages have led to a Defense Contract Audit

Agency backlog of nearly \$600 billion, delaying recovery of possible overpayments.

The government has also been remiss in promoting one of the most effective of all disciplines: competition. It is perfectly reasonable to say that exigent circumstances may require sole-source or limited-competition awards in the early phases of a contingency operation. It is not at all reasonable that a decade into an operation, multi-billion-dollar tasks orders are being written with no break-out or recompetition of the base contract.

We recommend not only better application of existing tools to ensure accountability, but also adding to them. Our report contains recommendations to bolster competition, improve recording and use of past-performance data, expand U.S. civil jurisdiction as part of contract awards, require official approval of significant subcontracting overseas, and provide incentives for contractors to take active steps against human trafficking by subcontractors and labor brokers. These and other recommendations will go a long way toward reducing waste, fraud, and abuse among contractors.

The second level is holding the government itself more accountable for the decision to use contractors and the subsequent results. Part of the problem is resources. As you know, both the active military and the federal acquisition workforce were downsized during the "peace dividend" days of the 1990s. This reaction to the end of a 55-year Cold War was understandable. But it ensured that if a large and prolonged

contingency should develop, the military would greatly increase its reliance on contractors while its ability to manage and oversee contracts had shrunk.

Even when the government has sufficient policies in place, effective practices, ranging from planning and requirements definition, to providing adequate oversight of performance and coordinating interagency activities, are lacking. The principal agencies involved in contingency operations—Defense, State, and USAID—have all made improvements in these and other areas. But, opportunities for improvement exist and much work remains to be done.

We have recommended steps that would improve the government's handling of contingency contracting. They include developing deployable acquisition cadres, elevating the positions of agencies' senior acquisition officers, and creating a "J10" contingency-contracting directorate at the Pentagon's Joint Staff, where the broad range of contracting activities is treated as a subset of logistics.

Considering this Committee's broad and inter-departmental mandate, I would call special attention to two recommendations embodying a whole-of-government approach that will improve efficiency and effectiveness in contracting.

The first is to establish a dual-hatted position for an official who would serve at the Office of Management and Budget, and participate in National Security Council meetings. Such a dual-hatted position would

promote better visibility, coordination, budget guidance, and strategic direction for contingency contracting.

The second is to create a permanent inspector-general organization for use during contingencies and for providing standards and training between contingencies. Your inquiries into the work of the special inspectors general for Iraq and Afghanistan reconstruction have shown the drawbacks of creating organizations limited in functional authority, geographic location, and time. SIGIR and SIGAR have performed valuable service for the country, but they will go away, leaving the need to reinvent them and accept delays in deploying them when the next contingency emerges. A permanent contingency IG with a small but deployable and expandable staff can provide interdepartmental oversight from the outset of a contingency.

More details on these and other recommendations appear in our final report, *Transforming Wartime Contracting*. We have provided copies to Senators' office and to Committee staff, so I will not attempt a full summary here. We do ask, however, that the report be included in the record of this hearing.

Our Commission closes its doors in just nine days. Our organization will disappear, but the problems it has chronicled will not. Action and in some cases appropriations will be required to reform contingency contracting. Further, sustained attention during and after the reform process will be essential to ensure that compliance extends to institutionalizing reforms and changing organizational cultures. That is

why our recommendations include requiring periodic progress reports on the pace and the results of reform initiatives.

Contracting reform is an essential, not a luxury good. Perhaps we can avoid hostilities related to unfriendly regimes in east Asia, the Horn of Africa, the Mediterranean, the Balkans, and Latin America. Perhaps we will not be called upon to mount vast humanitarian interventions overseas. Still, we remain vulnerable to catastrophic floods, earthquakes, storms, fires, and mass-casualty terror attacks here at home.

Whatever form it takes, there *will* be a next contingency. The government would be foolish to ignore the lessons of the past decade and refuse to prepare for it. You, the members of the Senate Committee on Homeland Security and Governmental Affairs, are in a good position to prevent such a tragic sin of omission.

Chairman Lieberman, Ranking Member Collins, Members of the Committee, this concludes our formal statement. We appreciate this opportunity to speak with you, and will be happy to answer any questions you may have.



**STATEMENT BY**  
**Patrick F. Kennedy**  
**Department of State, Under Secretary for Management**

Good afternoon Chairman Lieberman, Senator Collins, and distinguished Committee members. Thank you for your invitation to appear here today to discuss the Commission on Wartime Contracting's final report and the steps that State has taken, and continues to take, to improve contingency contracting.

The State Department has been working with the Commission on Wartime Contracting (CWC) since it was formed in early 2008, and has gained valuable insight from the Commission's efforts. Department witnesses have appeared at numerous CWC hearings; we have also provided briefings and documents to the CWC.

The ongoing dialogue between CWC and the State Department has been very beneficial in improving State's contracting function. We have taken seriously the CWC's recommendations to increase our contract oversight staff as it was in accord with efforts that the Department already had underway. We also agree that contracting and contract administration is a critical function that must have full Departmental support.

Examples of improvements that State has made to improve our contracting function and increase oversight are:

- We have mandated upfront planning for contract administration on major programs.
- The Department has increased the number of Contracting Officer Representatives (COR) assigned to contracts in Iraq and Afghanistan.
- On recent major acquisitions, the Department of State has increased the competition and number of awardees.
- The Department of State has upgraded and modernized Contracting Officer Representative training to be interactive and skills based.

- Department of State personnel were actively engaged with the Office of Federal Procurement Policy and with our colleagues in other agencies on preparing both the draft and final Policy Letter to better define inherently governmental performance.
- The Department of State is working with the Department's Office of the Inspector General to strengthen the suspension and debarment process.

I will discuss each of these improvements in the context of the CWC Final Report recommendations that pertain to State.

#### **1. Use risk factors in deciding whether to contract in contingencies**

In deciding whether to contract in contingency situations, we note with appreciation the list of risk factors laid out by the CWC, and do consider them when evaluating whether to use contractor support. The CWC report states that because of the heavy reliance by agencies on contractors for professional and technical expertise, the government has lost much of its mission-essential organic capability, making it increasingly more difficult to oversee technical performance. We do not believe that our contracting for support in Iraq or Afghanistan has resulted in a loss of organic capability. We primarily contract to provide life support, security services, and aviation support, which allows us to carry out our core diplomatic and consular mission.

The Department has a long history of using contract guards for protection of facilities and personnel. Private security contractors (PSCs) are also critical to our readiness and capability to carry out American foreign policy under dangerous and uncertain security conditions. Maintaining this capability is particularly important at a time when the Department is taking on new and expanding missions in locations where military operations are ongoing, or areas that are just emerging from periods of intense conflict, such as in Iraq and Afghanistan.

We have sought to reduce risks associated with using contractors through robust oversight of our private security contractors (PSCs). Contractors are operationally overseen and contractually managed by direct hire Department of

State personnel. We have also instituted cultural training and behavioral standards to lessen the chance that a contractors' behavior will offend the sensibilities of the local populace. In situations where private security contractors have acted inappropriately or not performed as required we took corrective action.

The Baghdad and Kabul guard forces, like other local guards, serve as the first line of defense for our facilities and staff, but they differ from our typical local guard forces in that they have higher recruiting, screening, and training requirements; a high percentage of American and Third Country National personnel; and some specialized labor categories such as medical and logistics.

The Kabul and Baghdad guard forces also have specialized weapons and equipment which are necessary to counter the extreme threats in those countries and defend our personnel and facilities from attack.

The recent terrorist attack in Kabul illustrates the critical need for enhanced and robust security programs, including properly equipped private security contractors who are operationally overseen by direct hire members of the Department's Diplomatic Security Service and acting in concert with host country security forces. During the September 13 terrorist incident, the Embassy's security elements acted swiftly to protect embassy staff and Afghan visitors in the compound, moved them to safe locations, assumed defensive positions, and took defensive actions as directed by the Chief of Mission.

The Bureau of International Narcotics and Law Enforcement Affairs (INL) has re-designed its programs to address the issue of overreliance on contractors. While we judge that mentoring the Iraqi Police is not an inherently governmental function, we believe that program implementation by U.S. government personnel, where possible, is in our best interests. As a result, the Iraq Police Development Program (PDP) will now be composed almost entirely of U.S. government direct-hire personnel. The PDP's senior police advisors will either be former U.S. law enforcement personnel serving under temporary appointments (under 5 USC Sec. 3161) or active serving U.S. Federal Law Enforcement Officers.

Additionally, INL's Foreign Service staff at Embassy Baghdad and in each of the program's three hub locations will manage the PDP. Direct-hire contract

administration personnel at post will continue to oversee INL's contracts. Finally, four personnel to be hired as monitoring and evaluation officers will be U.S. government employees as well.

In Afghanistan, where INL has a smaller supporting role, Embassy Kabul has recently approved a civilian uplift to increase its direct hire employee capacity and to enhance the structure necessary for robust oversight of programs and contracts.

## **2. Develop deployable cadres for acquisition management and contractor oversight**

The Department of State experiences continuous contingency requirements around the world and our U.S. Government contracting staff is experienced in dealing with these types of situations.

In Recommendation 2, the CWC recommends a deployable cadre of acquisition professionals so that the U.S. Government does not rely on contractors for acquisition management and oversight. State does not use contractors for these functions; only U.S. Government staff provides contracting management and oversight. We use contractor staff to provide only administrative support.

When contingency contracting is needed, the Department deploys experienced contracting personnel and surges other resources to specific contingency operations. Through internal funding mechanisms (a one percent fee charged on all contracting services), the Department is able to draw upon its own resources including the hiring of 102 additional staff over the past several years.

The Department centralizes procurement operations in the Office of Acquisitions Management (AQM) and in its subordinate the Regional Procurement Support Offices (RPSO) and has found this model to be effective in supporting contingency situations such as in Haiti, Japan, Afghanistan, and Iraq among others. The Department does not see a separate contingency contracting acquisition cadre as an efficient or necessary model based on our experience as it would not avail itself of the experience we already have on-hand.

The Department's program offices are required to plan for technical support of contracting efforts to ensure adequate Contracting Officer Representative (COR) support. INL and Diplomatic Security (DS), the two bureaus most heavily involved in overseas contingency contracting, have both significantly increased resources to support contract administration.

#### **4. Improve interagency coordination and guidance for using security contractors in contingency operations**

The Department of State recognizes the need to increase oversight of private security contractors; this is an area where CWC's recommendations have been particularly helpful. CWC provided strong support to the Department, resulting in the enactment of an authority in the Consolidated Appropriation Act of 2010 that allowed guard contracts in Iraq, Afghanistan, and Pakistan to be awarded on a best value basis. Previously we could only award on the basis of lowest cost, technically acceptable. Enactment by Congress of this authority presented the opportunity to combine the World-wide Personal Protective Services II, Baghdad Embassy Security Force, and Kabul Embassy Security Force requirements into a single multiple award, indefinite delivery/indefinite quantity (IDIQ) contract for non-permissive environments.

In its final report, the CWC's recommendation 4 provides that:

- When private security or other contractors are to be armed, they should be overseen by government employees and tracked in a centralized system, as is done in Iraq.
- Reliance on private security contractors should be accompanied by greater use and emphasis on vetting, training, authorizing arms, and weapons control; post-convoy debriefing, locational tracking and video monitoring; and more thorough and comprehensive management.

We have already instituted operational measures, as well as increased contract oversight to ensure professionalism and responsibility through improved direct oversight of security contractor personnel. DS is staffed to achieve this

oversight. DS's actions for management, oversight, and operational control of PSC personnel include:

- DS Special Agents at each post in Iraq and Afghanistan serve as managers for the Static Guard and Personal Protective Security programs;
- DS Special Agents at each post also serve as Contracting Officer's Representatives (CORs) and Assistant CORs (A/COR) for the direct management and oversight of the Worldwide Protective Services (WPS) contract;
- DS personnel at each post are assigned as Government Technical Monitors (GTMs) to assist the COR and A/COR in the oversight of the WPS contract;
- DS personnel provide direct operational oversight of all protective motorcades in Iraq and Afghanistan;
- DS personnel continue to conduct frequent, unannounced health and welfare after-hours visits to WPS housing compounds. Collocation of contractor life support areas on Embassy, Consulate or compounds enhance after-hours oversight of contractor personnel;
- Revised mission firearms policies strengthen rules on the use of force and new less-than-lethal equipment have been fielded as a means to minimize the need for deadly force;
- Video recording systems and tracking systems installed in vehicles to enhance oversight and contractor accountability;
- All radio transmissions are recorded in Iraq.
- All incidents involving a weapons discharge and other serious incidents are thoroughly investigated by the Regional Security Office.
- In Erbil under the new WPS contract, all Third Country National (TCN) guards are being replaced with Local National (LN) Kurdish guards, thus reducing costs and building permanency in the guard force program.

Further, the Department tracks both security and non-security contractors through the USG-designated common database for contracts and contractors in Iraq and Afghanistan - SPOT, the "Synchronized Predeployment and Operational Tracker," which was developed by DoD.

The CWC report also states that Defense, State, and USAID should develop and enter into a standing interagency Memorandum of Agreement (MOA), incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors in future contingencies.

The Department does not concur that a MOA is necessary to share best practices and lessons learned with the Department of Defense (DOD) and USAID. The Department is co-located overseas with other agencies which already facilitates discussion and agreement on security issues. State chairs the Overseas Security Policy Board (OSPB), of which both the DOD and USAID are members, which the Department believes is a more appropriate forum for addressing future contingencies. The purpose of the OSPB is to develop, coordinate, and promote uniform policies standards, and agreements on security operations outside the United States, and programs and projects that affect U.S. Government civilian agencies represented abroad. The OSPB was created in 1994 and is made up of 19 member agencies who meet in Executive sessions every other month. From the outset of these contingency operations, the OSPB has discussed and addressed lessons learned and best practices in order to enhance cooperation, increase communication and ensure the safety of personnel under Chief of Mission responsibility in the contingency countries. Both the DOD and USAID regularly participate in OSPB Executive Sessions and working groups with other federal agencies who are represented in the contingency countries and are given the opportunity to concur with security standards and policies as they are developed. This process, because of its longstanding history and cooperative environment with other agencies operating in contingency countries allows for a more rapid and flexible solution to the Commission's recommendation than entering into an agreement with just two agencies.

On the international level, the U.S. Government, particularly State and DoD, actively engaged in the development of the Montreux Document (2008), which sets out the existing international legal obligations of states and PSCs, and provides states with a set of good practices to promote compliance with international law. Although it is not itself a legally binding instrument, the Montreux Document is an important resource for the development of national regulation to promote accountability for PSCs.

The “International Code of Conduct for Private Security Service Providers” (the Code), a follow on to the Montreux Document, has the potential to improve compliance of PSCs with applicable law and provide additional tools for ensuring that PSCs are held accountable. The Department of State, along with other federal agencies including the Department of Defense, is actively engaged in ongoing efforts to establish the governance and oversight mechanism, which will oversee company compliance with the commitments contained in the Code. More than one hundred companies have signed the Code, including many that contract with the Department of State in places like Iraq and Afghanistan. Innovative projects such as the Code offer the potential for making real progress in altering company practices and creating tools for holding wrongdoers accountable.

#### **5. Take actions to mitigate the threat of additional waste from unsustainability**

The State Department and USAID place considerable emphasis on sustainability as part of the planning and execution process of all of our programs and projects. The U.S. Government has made both internal and external arrangements to ensure that GOI commitment to our work building the capacity of its institutions is secured before implementation begins.

The April 2009 “Guidelines for Government of Iraq (GOI) Financial Participation in U.S. Government (USG)-Funded Civilian Foreign Assistance Programs and Projects” require, with limited exceptions, that the value of U.S. Government assistance, excluding costs for security and life support, must be matched on a one-to-one basis by the GOI in cash or in-kind during the lifetime of the project.

As an external element, agreements are now generated in advance to ensure that our Iraqi counterparts are able, willing, and committed to sustaining these program efforts after the completion of U.S. Government involvement. Ranging from small scale grants to broad MOUs with Iraqi Ministries, these commitments help ensure that the US and Iraqi people derive the maximum long-term benefit from DOS and USAID investments. The Department is currently working to



finalize the remaining agreements with the Government of Iraq, including the MOU on the PDP.

The CWC Report describes 133 primary health-care centers built by the United States for about \$345 million as an example of unsustainability, when the Iraqi Ministry of Health lacked the capability to sustain the facilities. This experience from the early days of the Iraq conflict showed both DOS and USAID the importance of having a functional, legitimate host country counterpart with the capability and authority to sustain U.S. Government projects before commencing program activities. The U.S. Army Corps of Engineers restored and refurbished health clinics in Iraq from 2003-2005, with support from USAID. It should be noted that the U.S. Government implemented these projects at an early stage in Iraq's transition to a democratically elected government. When an Iraqi government was elected in 2005, the officials put in charge of the Ministry of Health declined to work with the United States due to opposition to the U.S. presence in Iraq.

Recognizing the importance of emphasizing the sustainability issue as a central element of implementation, both DOS and USAID have made concerted efforts to address the core capabilities of our local partners. Started in May 2011, USAID's new Primary Health Care program focuses on building the Ministry of Health's capacity to manage and improve primary health care clinics throughout Iraq. USAID is currently in the midst of negotiating an MOU with the Ministry to ensure the sustainability of our assistance.

INL works closely with its interagency partners and foreign governments around the world to ensure that programs will be sustainable by those governments in the long-term. The CWC report states that in Afghanistan INL has supported two counternarcotics compounds, one near the Kabul airport and one in Kunduz for the past 5 years, with the intention to transfer the compounds to the Afghan government, but the report states that it is not clear when the Afghan Government will be able to assume control.

INL's goal is to transfer these two counternarcotics compounds to the Afghan government as quickly as local capacity will permit, and has already

transitioned some responsibilities, such as perimeter security, to the Afghan government at the Kunduz compound, thus reducing the cost of operations. As Afghan capacity grows, we are planning to transition responsibilities for activities such as facilities maintenance and operation at all compounds INL supports.

In Kabul, INL is awarding a contract to connect the compounds that we operate near the airport to the local power grid to reduce energy production costs. We are also providing a logistics mentor to the Ministry of Interior's Counternarcotics Police to assist them in taking over key functions, such as the operation of dining facilities and other routine management responsibilities, which will be necessary to sustaining a police force in the future. In Kunduz, security at the Counternarcotics Police compound is already being overseen by the Afghan government.

**6. Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID**

The Department of State centralizes acquisition support for contingency contracting. The Department finds this model to be the most effective and efficient model, and does not believe that a separate office of contingency contracting would work as well for our operations.

The Assistant Secretary for Administration at State has a professional acquisition staff that is sufficient to handle \$9 billion in contracting a year. The contracting function is comprised of contracting staff, and because of State's matrixed structure, can draw necessary expert support such as recruitment, staffing, space planning, legal counsel, etc. from those specialized professional offices.

The Assistant Secretary also serves as the Department's CAO. While contingency contracting is overseen by the Assistant Secretary, contingency contracting issues are consistently coordinated at the Under Secretary for Management level providing for high level focus. Major decisions on contingency contracting policy such as how to strengthen private security contractor oversight, are led by the Under Secretary for Management.

**9. Create a permanent office of inspector general for contingency operations**

State agrees that there must be independent oversight of contingency operations, but believes that these inspections would be most effective if they are carried out by experts who consistently focus on State programs, and who understand the agency mission, policy, procedures, and operations.

The Department's OIG and the GAO regularly perform audits and investigations on Department of State activities and are in the best position to perform the same activities related to Overseas Contingency Operations (OCO) and other contingencies. In addition, in the past few years, we have been reviewed regularly by the House Appropriations Committee, Survey and Investigations unit, which was created in the 1940s specifically to review wartime spending.

The Department has consistently raised significant concerns regarding the establishment of new Inspectors General with responsibilities that overlap existing oversight entities because the same functions can be performed more effectively and efficiently through the coordinated efforts of existing agency Inspectors General.

**10. Set and meet annual increases in competition goals for contingency contracts (competition and management)**

DOS agrees with maintaining robust competition on contingency as well as other contracts. The Department's competition advocates will continue to work with the individual contracting officers and program offices on strategies to increase competition.

On recent major acquisitions, the Department of State has increased the competition and number of awardees.

- On the Worldwide Protective Services contract, the successor contract to the Worldwide Personal Protective Services II contract, the number of companies that received an award increased from three to eight.

- On a recent procurement for Containerized Housing Units, the Department of State originally planned to select 8 contract awardees; however, after reviewing the proposals submitted increased the awardees to 13 and selected 8 large business companies and 5 small business companies.
- INL increased the use of fair opportunity awards under the Civilian Police contracts substantially since 2007. All three current Civilian Police contractors were offered the fair opportunity to compete for the current task order awarded for Iraq in 2008. In addition, a recent competition to replace the current Civilian Police contract resulted in six Criminal Justice Program Support (CJPS) contract awards for meeting all aspects of the contract requirements. We also expect there to be multiple awards as small business set-asides for those requirements with an estimated value of \$5 million or less. The small businesses selected will also be eligible to compete for requirements exceeding \$5 million. The set aside awards are a first for INL and part of our concerted effort to enhance competition among partners who provide critical support for INL's missions worldwide.

Where a single offer is received, DOS believes the Contracting Officer, time permitting, should determine why competition was limited and re-solicit. Where operational requirements mandate expeditious award, cost or price analysis should be used to determine price reasonableness and the reasons for limited competition should be determined after the fact. This allows us maximum flexibility while still protecting the government's interest.

#### **11. Improve contractor performance-data recording and use**

The Department of State agrees with this recommendation, and looks for implementation with a Federal Acquisition Regulation (FAR) change.

#### **12. Strengthen enforcement tools**

The Department commends the CWC for its recommendations on strengthening enforcement tools. We agree that Contracting Officers should require that a contractor obtain Contracting Officer consent to subcontract under

certain conditions. This recommendation should be implemented through a Federal Acquisition Regulation (FAR) change.

The Department of State recognizes the importance of preventing trafficking in persons (TIP) and has taken an active role in defining actions to be taken by government contracting officers and contracting officer representatives to prevent violations. The Department does not concur with incentivizing contractors to adhere to current TIP contract requirements. We disagree with including performance incentives, at U.S. taxpayer's expense, to require contractors to do what the contract already requires. Office of the Inspector General reviews have not identified trafficking in persons violations on Department of State contracts.

The Department of State requires that TIP requirements be discussed in pre-proposal and post award conferences and are a part of Contracting Officer Representatives oversight responsibilities. These requirements include contractor briefings for their personnel on TIP requirements. Acquisitions that will involve contractor provided housing will require a housing plan to allow contract administrators to verify the adequacy of housing conditions.

The Department issued guidance on TIP defining COR responsibilities. TIP guidance is also included in our revised COR Handbook and COR Course. State's Office of the Procurement Executive (A/OPE) worked with G/TIP and the Department of Homeland Security on a Contracting Officer TIP on-line course, which is now being offered as a pilot.

The Department of State has reviewed suspension and debarment processes to make them more effective. We have done the following:

- Contacted other agencies to identify best practices in their suspension and debarment programs.
- Drafted more detailed policies and procedures to make the process more consistent and fair.
- Created a suspension and debarment database to track actions.
- Established regular meetings with the Office of the Inspector General Investigations Office to ensure cases are dealt with expeditiously.

- Provided training on suspension and debarment to grants officers and scheduled training for Contracting Officers.
- Strengthened participation in the Interagency Suspension and Debarment Council (ISDC).
- Identified additional training for the suspension and debarment participants.
- The Department of State is revising procedures to require a written determination on action taken regarding referrals for suspension or debarment from Contracting Officers and/or the Office of the Inspector General.
- A/OPE drafted a Suspension and Debarment Handbook, which is currently being routed for approval. OIG already reviewed and provided comments.

While the Department of State does not believe procedural barriers currently hamper suspension and debarment activity at State, any actions to lower procedural barriers should be addressed by the Interagency Suspension and Debarment Council (ISDC) to ensure consistent treatment of contractors across agencies. Any changes to procedures should be directed at all agencies.

The Department of State agrees that a written determination on actions taken regarding referrals for suspension and debarment from Contracting Officers and/or the Office of the Inspector General should be made by the Suspension and Debarment Official.

### **13. Provide adequate staffing and resources, and establish procedures to protect the government's interests**

As noted above, the Department employs an internal funding mechanism, charging a one percent fee on all contracting services. This gives the Department flexibility to surge and dedicate resources to manage acquisition support to specific contingency operations as required.

**INL oversight improvements:** INL has taken steps since 2006 to improve contract administration and program management, including for operations in conflict areas, in response to a variety of oversight community recommendations

as well as INL's own managerial initiatives. Among the improvements are enhanced financial management, contract administration and oversight standard operating procedures and additional education for our personnel that strengthen INL's management and operations in those venues. Beginning in 2006, INL used the findings from three internal reviews of our Iraq and Afghanistan contract administration processes and controls to develop a new contract administration framework, with tougher contract oversight, invoice reviews, and reporting requirements. Key among the improvements was the establishment of an office that provides contract oversight and supports program management for Afghanistan and Iraq as well as increased staffing for contract administration and program management at headquarters and in the field. Specifically, INL:

- Instituted more precise Statements of Work (SOWs) and more specific interagency agreements;
- Employed the use of Quality Assurance Surveillance Plans (QASPs) to more closely monitor contract performance;
- Required the use of a credible inventory system for use by foreign assistance contractors, which meets Defense Contract Management Agency (DCMA) requirements; and instituted an annual inventory system for contractor purchased property to reinforce accountability measures already employed through INL's end-use monitoring procedures;
- Increased the number of program officers and contract administration personnel in the field and at headquarters;
- Defined specific roles and responsibilities for contract administration staff which includes greater specificity in defined standard operating procedures for invoice validation and review;
- Improved the accessibility of contract management staff to Contract Officer's Representative (COR) files by instituting remote electronic access from the field to headquarters;
- Engaged the Defense Contract Audit Agency (DCAA) to conduct incurred cost audits of our task orders for Iraq and Afghanistan; and
- Required contractors to provide more frequent and detailed cost reporting and detailed work plans prior to the commencement of work.

INL has paid special attention as well in its planning to ensure effective management and oversight is built into its Iraq programs. We have established a new position – Assistant Chief of Mission for Law Enforcement and Rule of Law Assistance, reporting to the Ambassador, who oversees all INL assistance in Iraq. For the new PDP, INL will utilize a robust monitoring and evaluation (M&E) program to ensure that the PDP is managed to achieve the goals and objectives that were established during the planning stage of the mission. Federally hired M&E specialists, under temporary appointment (5 USC Sec 3161), in the INL/Baghdad office and at INL's hub locations will gather information from our senior police advisors, analyze the information, and provide regular reporting to ensure that the program is proceeding as planned and is efficiently allocating resources. INL is also able to bring additional personnel to Iraq on a temporary duty basis for specialized needs.

**DCAA and DCMA audits:** The Department of State currently participates in annual audits with the Defense Contract Audit Agency (DCAA) of our high risk contracts to ensure the appropriateness of contractor's cost representations and determine whether incurred costs are reasonable, applicable and allowable. The Department is also initiating analysis of contractors' property management systems with the Defense Contract Management Agency (DCMA) for contracts that have Contractor Held Property exceeding the \$25,000 threshold. AQM puts in place similar audit programs for each major Department contractor, to include those supporting the INL Bureau.

Acquisitions Management has an interagency agreement with the Defense Contract Audit Agency (DCAA) to obtain these audit services. Five DCAA auditors will reside in Baghdad to perform contract oversight/audits.

In addition, auditors from DCAA will be assigned to each company receiving a task order under the Worldwide Protective Services (WPS) contract.

**Police Training Contracts:** AQM has arranged, or is arranging, for DCAA to provide audit services for three police training contracts, held by DynCorp, PA&E, and Civilian Police International.



Through the interagency agreement, the DCAA has audited six DynCorp task orders (Civilian Police) for Iraq. In total, 30 task orders will be audited under this contract. The Department has participated in the DCAA's (DynCorp Resident Office) audit program since 2010. This includes mandatory annual audits of business systems and internal controls, audit of incurred costs proposals, labor floor checks, Cost Accounting Standard audits, and special audits. The DCAA DynCorp Resident Office has called upon several additional audit teams to assist with the audit of direct and indirect costs on 10 major DynCorp contracts that have expired. Some of these contracts supported the INL Bureau. The audits are being performed in 2011 and 2012.

Acquisitions Management is working with DCAA to arrange for a similar audit presence for the PA&E CIVPOL Contract.

We are in preliminary discussions with DCAA and Civilian Police International (CPI) for the initiation of incurred cost audits for task orders under CPI's CIVPOL contract.

**Property Management Systems:** The Department has established an interagency agreement with the Defense Contract Management Agency (DCMA). DCMA performs Property Management System Analysis (PMSA) of contractor property management systems in accordance with FAR Part 45. DCMA conducts these reviews for all contracts that have Contractor Held Property exceeding the \$25,000 threshold.

Fifty-two DCMA personnel will support our Iraq contracting efforts, with 26 DCMA personnel in Baghdad and the remainder posted at other locations in Iraq.

**Conclusion:** In summary, I would like to emphasize that the Department takes its contracting program very seriously, and has taken steps to improve it and elevate its status. Secretary Clinton and the Department's senior management realize the importance of a sound contracting function that protects U.S. Government assets. Further, we work in close coordination with our colleagues at DOD, to ensure we take a whole of government approach.

In December 2010, the Department issued its first ever Quadrennial Diplomacy and Development Review (QDDR), which provides a blueprint for elevating American "civilian power" to better advance our national interests and to be a better partner to the U.S. military. The QDDR calls for a new bureau to deal with conflict prevention and stabilization, which will assess needs for contingency resources.

The QDDR sets out four key outcomes for State and USAID, one of which is working smarter to deliver results for the American people, including managing contracting and procurement to achieve our mission effectively and efficiently.

We have begun implementing the QDDR, to improve contracting oversight; some specific examples are as follows:

*Elevate the status of contract oversight personnel*

As initial steps, this summer we created a Contracting Officer Representative (COR) Award to highlight contract administration achievements by the COR; the first awardee has been selected. We also published an article in State Magazine highlighting the importance of contract administration and the valuable role of the COR.

*Link Oversight Duties to Performance Evaluation*

In January and April 2011, we issued Department notices reminding staff of work elements for CORs and Government Technical Monitors (GTMs). The April 2011 notice provided guidance on critical work elements for supervisors to include in COR and GTM performance appraisal plans (or Employee Evaluation Reports (FERs)).

*Expand Training*

Training has been expanded by launching a skills-based COR class in May 2011. The Department also adopted the Federal Acquisition Certification –

Contracting Officer Representative (FAC-COR) requirements for initial and continuous training in the business and technical skills of contract administration.

*Elevate Accountability for Planning and Oversight of Large Contracts*

As part of the QDDR process, the Department of State instituted a requirement for the Assistant Secretary of a Bureau with a service contract with expenditures exceeding \$25 million per year to certify that adequate contract administration resources have been identified to manage the contract.

The QDDR, initiated by Secretary Clinton, reflects the importance that the Department places on contracting. We will continue working to improve contracting oversight and management, for our entire acquisition program, including contingency contracting.

As I have discussed today, we believe our current organization is most effective for us -- having an Assistant Secretary of Administration, who also serves as the CAO, in charge of all contracting, including contingency. Currently, we are awaiting confirmation of this Assistant Secretary, nominee Joyce Barr, a Foreign Service officer with 30+ years experience. When Ms. Barr comes up for her confirmation vote, I ask that you approve her swiftly so she can assume the management of our acquisition program.

Thank you again for inviting me here today to discuss the CWC final report and State's contracting program. I will be glad to answer any questions you have.

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WRITTEN STATEMENT OF

MR. RICHARD T. GINMAN  
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY

BEFORE

U.S. SENATE HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE

ON

TRANSFORMING WARTIME CONTRACTING:  
RECOMMENDATIONS OF THE COMMISSION ON WARTIME CONTRACTING

September 21, 2011

Chairman Lieberman, Senator Collins, and distinguished members of the committee, I welcome this opportunity to report to you on the Department of Defense efforts to provide our contingency contracting officers with the best support possible to our deployed forces—whether they are directly supporting the warfighter, or assisting victims of a natural disaster.

I am Richard Ginman, and I am the Director of Defense Procurement and Acquisition Policy (DPAP) in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), where I am responsible for Department-wide contingency contracting policy and functional leadership. I am a Career Civil Servant, with more than 40 years experience in government and commercial business in the fields of contracting, acquisition, and financial management. Before returning to DPAP duties in October 2006, I held several private sector positions including Vice President of General Dynamics Maritime Information Systems and Director of Contracts for Digital System Resources. I served in the United States Navy for 30 years, retiring as a Rear Admiral, Supply Corps. In addition to three tours afloat, I served in a variety of contracting and acquisition positions that included Commander, Navy Exchange Service Command; Deputy for Acquisition and Business Management in the office of the Assistant Secretary of the Navy, Research Development and Acquisition; and Deputy Commander for Contracts, Naval Sea Systems Command.

Before I get too far, I would like to take a moment to thank the Commission on Wartime Contracting (CWC) for its support of our troops and all it did to help with their mission. I commend the Commission on the work it has done to identify problems in wartime contracting and in recommending solutions to those problems. I have read all

the Commission's reports and believe they have identified many real and important problems. In fact, the Department agrees in principle with the Commission's 11 DoD-specific recommendations in its final report. I have concerns about a few of the specific details within those final report recommendations; but, at the highest level, the Department is in synch with the Commission's strategic recommendations.

I'd also like to thank the men and women who serve our great country, including our military, civilian, coalition, and industry partners. None of us could get the job done without the other, and I am continuously impressed with the cooperation between them. I am committed to providing the leadership, policies, and innovative tools needed for contracting in support of our Iraq and Afghanistan mission.

#### **Commission on Wartime Contracting Final Report**

You asked that I identify select recommendations within the Commission's final report and state whether I agree with them. Of the 15 strategic recommendations, I picked a few to discuss today. I chose to feature these because they represent the range of possible outcomes: in the first case, the Department is still assessing a new recommendation; in the second case, the Department is implementing a Commission recommendation; and in the final case, the Department has concerns with a specific approach the Commission has suggested.

First, we are still in the process of fully assessing the recommendations, particularly those that did not previously appear in a prior major Commission report. Recommendation #5, to "*take actions to mitigate the threat of additional waste from*

*unsustainability*,” falls in that category. We agree with the Commission that any fraud or waste is not acceptable and are analyzing the Commission’s proposed way forward to address the challenge.

Second, as I indicated earlier, the Department agrees in principle with the Commission’s DoD-specific final report recommendations. In particular, I would like to highlight the Commission’s recommendation #2, to “*develop deployable cadres for acquisition management and contractor oversight*.” I support this recommendation to grow a trained, experienced, and deployable cadre, and the Department is taking steps to implement it. USD(AT&L) is working with the Military Services and Defense Agencies to support these enduring requirements for contingency operations. Thanks to Congress, the Department has 10 new General/Flag Officer billets, and the Department has filled 9 of these 10 billets.

Finally, in a couple areas the Department has concerns with details within the 11 DoD-specific recommendations. The Department raised its concerns to the Commission when these same recommendations appeared in its 2<sup>nd</sup> interim report. In these areas, we have a professional difference of opinion about the best way to proceed. For example, Recommendation #12 is to “*strengthen enforcement tools*,” which I support. The Department supports two Senate bills that would be beneficial. One would expand the government’s access to contractor records; the other provides the authority to void any DoD contracts if funds directly or indirectly support the enemy.

However, one of the means the Commission recommends to strengthen enforcement tools is to “*facilitate the increased use of suspensions and debarment for contingency contractors by revising regulations to lower procedural barriers and require*

*a written rational rationale for not pursuing a proposed suspension and debarment.”* In the 2<sup>nd</sup> Interim Report, the Commission said this written rationale should be published in the government-wide past performance database. I believe it is inappropriate to include this information as documentary evidence to suggest unreliable performance.

The Department has increased the use of these enforcement tools; from Fiscal Year 2007 to 2011, the number of Army debarments has increased 46 percent (from 94 debarments to 178). The Department has consistently advocated the policy that Debarring and Suspension Officials need to treat each case on its own facts and circumstances. We need to preserve the discretion of our officials to determine on a case-by-case basis what makes the best sense.

#### **DoD Support of Commission on Wartime Contracting**

The Department is determined to identify, correct, and prevent contracting efforts not in consonance with U.S. objectives in Iraq and Afghanistan and wasteful of U.S. tax dollars. These areas were of specific concern to the CWC, and the Department has supported fully the Commission’s independent study by providing it with personnel, data, interviews, and insights. Some examples of the Department’s support to the Commission include:

- I served as the Department’s focal point to facilitate the Commission’s efforts, from the Commission’s outset in 2008.
- The Department detailed subject-matter experts (SMEs) to augment the CWC’s 40-member staff.



- The Department testified in 18 of CWC's 25 hearings.
- The Department analyzed each CWC publication—including its June 2009 first interim report, February 2011 second interim report, August 2011 final report, and its five special reports—and is moving out on solutions, as appropriate.

In short, the Department has been interacting regularly with the Commission throughout its endeavors and will continue to carry the torch to ensure improvements in the way ahead for addressing contracting challenges in Iraq and Afghanistan.

#### **DoD Analysis of Wartime Contracting Reports**

Improving contingency contracting has top Departmental support and is benefitting from joint solutions. To begin, I will briefly discuss the DoD's analysis of the CWC three primary reports. Together, these reports contained 82 recommendations: 35 in the first interim report, 32 in the second interim report, and 15 in the final report. The Department has analyzed each of the earlier reports, and is tracking progress for those actions deemed suitable for DoD implementation. We are still in the process of fully analyzing the final report.

**First Interim Report (June 2009).** Upon the issuance of the CWC first interim report, which contained 35 observations in 8 areas of concern, the USD(AT&L) stood up a DoD Task Force in July 2009 to analyze the Commission on Wartime Contracting First Interim Report. Establishing this task force was a clear sign of his commitment to

improvements. The composition of the task force is further testimony to senior leadership support of contingency contracting. The senior procurement executive from each Service participated on the task force, as did the directors of the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA).

This joint task force inventoried and assessed an extensive array of Departmental solutions to the concerns the Wartime Commission voiced. The joint task force created a scorecard and rated the Department's efforts. The task force identified six observations where the Department encountered major challenges, primarily in the area of resourcing of personnel for contingency contracting. The Department continues to be focused on adequate resourcing of the contingency contracting community. In fact, our contracting fill rate for the U.S. Central Command's Joint Theater Support Contracting Command (C-JTSCC) is at 98.3 percent.

The Task Force report is available on my DPAP website at:

[http://www.acq.osd.mil/dpap/pacc/cc/docs/TFWC\\_Rpt\\_to\\_USD.pdf](http://www.acq.osd.mil/dpap/pacc/cc/docs/TFWC_Rpt_to_USD.pdf).

**Second Interim Report (February 2011).** In March 2010, USD(AT&L) created a permanent board to provide strategic leadership to the multiple stakeholders working to institutionalize Operational Contract Support (OCS). This board analyzed the Commission's 32 recommendations in its second interim report, maintains a scorecard, and reports to senior leadership on progress. In fact, our most recent meeting was held less than a month ago, on August 23. Our analysis shows that DoD is moving forward on most of the DoD-applicable recommendations, either through direct implementation or alternative approaches to meet the Commission's intent. Of the recommendations that

DoD deemed it could not implement, at the time the report was released, was one relating to automatic suspension and debarment because a fundamental tenet of the current system is to handle suspension and debarment on a case-by-case basis. I do note, however, that the Commission withdrew this recommendation in its final report. Others we could not implement because they were out of AT&L's purview related to creating or elevating organizations such as creating a permanent office of inspector general for contingency operations and creating a contingency contracting directorate in the Joint Staff. As far as elevating the organizational placement of the Deputy Assistant Secretary of Defense for Program Support, USD(AT&L), Logistics and Materiel Readiness, we believe the intent has been met, as the Department determined that existing capabilities and relationships already are effective, as articulated by the USD(AT&L), Dr. Carter.

As further demonstration of the continued engagement of senior leadership in the Commission's analysis, the USD(AT&L), Dr. Carter, appeared before the Commission on 28 March 2011 to share his views on the second interim report. He provided a preliminary assessment of the Commission's second interim report, which was later complemented by a more detailed analysis by the permanent board he established.

**Final Report (August 2011).** The Commission's recent final report contains 15 strategic recommendations – or 58 total recommendations, including the more detailed recommendations within the report. Our analysis shows that the great majority of these appeared in some form in the Commission's earlier reports. For those previously published recommendations, DoD has completed a thorough analysis and continues to

track progress. For the new strategic recommendations, DoD needs to complete its analysis.

In broad terms, I agree in principle with the overarching precepts driving the Commission's 11 DoD-specific final report recommendations. Within that umbrella, the Department may differ on specific approaches to solving the associated challenge. But rest assured that DoD is committed to making improvements.

#### **Value of Wartime Contracting Reports**

The Commission has identified many real and important problems in wartime contracting. Monitoring, assessing, and taking corrective action is a continuous process within the Department. Reports such as those published by the Commission help us to improve and better define our ongoing efforts. One area where the Commission's work has been particularly helpful in shining a light is resourcing. The Commission's first interim publication focused on the need for the right number and quality of people to award, manage, oversee, and closeout contracts as we drew down in Iraq and built up in Afghanistan. In reaction to the Commission's insights, we are successfully addressing the challenge of an inadequate number of trained Contracting Officer Representatives (CORs) assigned to contractor oversight in Iraq and Afghanistan. The Department has come a long way. In 2009 when the Commission published its first interim report, the number of CORs in Afghanistan had been lagging. With constant attention, we have successfully addressed that challenge. In short, we have added hundreds of CORs to the

war zone to help oversee theater contracting. We continue to monitor these resources closely to ensure this support remains a success story.

### **DOTMLP Initiatives**

#### **(Doctrine, Organization, Training, Materiel, Leadership, and Personnel)**

Tangible evidence of our commitment to continuous progress is found in the many accomplishments the Department has made, across the DOTMLP (Doctrine, Organization, Training, Materiel, Leadership, and Personnel) spectrum. I would like to take a few moments to highlight some of those accomplishments.

### **Doctrine**

Doctrine provides a common frame of reference across the military, describing how military forces contribute to campaigns, major operations, battles, and engagements. This doctrine now includes operational contract support, or OCS, as a way of accomplishing military tasks. OCS is a strategic capability that must be integrated into planning and training as well as mission execution. OCS is broader than contingency contracting. OCS delivers effects using contracts and contractors to support joint force commanders during contingencies. OCS includes multiple stakeholders, including the commands that are now incorporating contracted support into their logistics support plans, the units that develop requirements documents to augment their organic capabilities, the resource management and finance personnel that allocate and disburse

funds, contracting officers that award contracts and their representatives that oversee those contracts, and the contractors that perform the contract.

The Joint Staff J-4 published Joint Publication 4-10, Operational Contract Support, on 17 October 2008 to establish doctrine for planning, conducting, and assessing operational contract support integration and contractor management functions in support of joint operations. Joint Publication 4-10 currently is being updated.

On June 20, 2011, the Army published Army Tactics, Techniques, and Procedures 4-10, Operational Contract Support, to provide “how to” guidance to Army operational commanders and their non-acquisition officer staffs for planning, requirements preparation, and integration of OCS into combat operations. Recognizing OCS as a joint capability area, the Army has improved OCS training, developed OCS policy and doctrine, and is expanding the personnel and organizations responsible for training, planning, coordinating, and executing operational contract support.

### **Organization**

The Department is improving its organizational structure to ensure it best supports OCS and contingency contracting. As mentioned earlier, on March 29, 2010, USD(AT&L) established the Operational Contract Support Functional Capability Integration Board to provide strategic leadership to the multiple stakeholders engaged in OCS. Co-chaired by Joint Staff and the Deputy Assistant Secretary of Defense for Program Support, USD(AT&L), Logistics and Materiel Readiness, and meeting quarterly, membership includes the Services, DPAP, DCMA, DCAA, Comptroller,

Personnel and Readiness, and others as required. This group monitors the Department's progress in making improvements in the areas of concern to the Commission.

In the U.S. Central Command (CENTCOM) Area of Responsibility, the Joint Theater Support Contracting Command (JTSCC) re-organized, moving from being a U.S. Forces-Iraq subordinate command to joint functional command directly reporting to HQ CENTCOM in May 2010. This action recognizes that contract oversight is a combatant command responsibility; it also recognizes the importance of Afghan operations.

The Department created the Joint Contingency Acquisition Support Office (JCASO) as an enabling capability to synchronize, coordinate, and manage OCS across DoD and the Whole of Government during peacetime and contingency operations. JCASO was established at the Defense Logistics Agency (DLA) in August 2009 and has been fully operational since October 2010. JCASO provides a combatant command with an initial enabling capability to establish a JTSCC, and is led by a flag officer who can potentially transition to be a future JTSCC Commander.

The Army has reorganized its contingency contracting forces to better plan, train, equip, and execute operational contract support, in response to a recommendation from the "Gansler Commission," an independent body established by the Secretary of the Army in 2007. The Army's Expeditionary Contracting Command (ECC) headquarters reached Full-Operational Capability on 8 October 2009. The ECC has six active Contracting Support Brigades (CSBs). These CSBs are geographically aligned in order to provide responsive operational contracting support to the Army Service Component Commands (ASCCs) and provide the Army with greater flexibility to place contracting teams into areas to support Joint Force operations. This organizational alignment has

proven effective in assisting the ASCCs in developing and synchronizing contracting support integration plans. The ECC is scheduled to stand-up a seventh CSB in support of AFRICOM. In addition to training and equipping contingency contracting officers, the ECC has engaged the brigades deploying to Afghanistan and Iraq to provide on-site training on COR responsibilities in a contingency operation, field ordering officer training, and Commander's Emergency Response Program (CERP) project office training.

All the hard work to build the Army expeditionary and contingency contracting capability is paying off as demonstrated in the Army's rapid response to support the mission in Haiti. The ECC 410th Contracting Support Brigade (CSB) was engaged with U.S. Army South and the Southern Command within hours after the earthquake and deployed contracting personnel into Haiti within 48 hours to establish a regional contracting office.

In order to leverage the power of the Army Contracting Command (ACC) enterprise in supporting global operations, the Army has established a "reach-back" contracting capability. In addition to the Expeditionary Contracting Command and Mission Installation Contracting Command, the ACC also has six major contracting centers. These contracting centers provide contracting to a wide number of customers. The real power of these contracting centers has been demonstrated in the Army's ability to provide reach-back contracting support to contingency operations that are enduring in nature. As an example, Army Contracting Command - Rock Island (ACC-RI) established a reach-back team in early 2008 with 8 personnel executing over \$800 million worth of contracts in support of our Kuwait contracting operations. As of September



2011, ACC-RI has a reach-back capability of over 100 personnel working 1350 active requirements with a total value of \$30.4 billion that are in varying stages of the acquisition cycle. Having this reach-back capability reduces our in-theater footprint and the number of individuals in harm's way. We support the Senate bill that would strengthen this reach-back resource by providing the ability to use the overseas increased micro-purchase threshold and the simplified acquisition threshold in the same manner and to the same extent as if the contract were to be awarded and performed outside the U.S.

On 8 December 2009, the Assistant Secretary of the Army for Acquisition, Logistics and Technology chartered the OCS and Policy Directorate. This new directorate is the proponent for operational contracting policies supporting the full spectrum of contingency operations worldwide, and will synchronize contingency contracting planning and policy across the Army and Army Staff. The OCS Policy directorate also provides liaison for and oversight of the C-JTSCC on behalf of the Army Acquisition Executive. Additionally, a concept plan is in development to staff the directorate to increase its planning and oversight capability for future operations.

### **Training**

The Department has increased its training portfolio to properly prepare personnel for the reality of OCS and contingency contracting on the battlefield. The training addresses a range of audiences, from commanders to acquisition professionals to subject-matter experts performing oversight.

The Joint Staff J-7 has produced three online OCS training courses for commanders and their staffs:

- Introductory Operational Contract Support (OCS) Commander and Staff Course.
- Operational Contract Support (OCS) Flag Officer/General Officer Essentials Course.
- Introduction to Operational Contract Support Planning Course.

The Defense Acquisition University (DAU) offers seven contingency contracting courses for the acquisition community, including our contingency contracting officer course, CON234, and to date, the course is a success with great feedback. While on the topic of training, it is worth pointing out that DAU, DPAP, and the Services have already standardized our formal Contingency Contracting Officer (CCO) training, and the result is 90 to 95 percent commonality across all Services.

The Army has enhanced the training of the contracting workforce and acquisition support staff to build the skills necessary to better support the warfighter and better manage contracted support. To do this, they have added and improved multiple acquisition training courses including instruction in 16 officer and non-commissioned officer courses; incorporated contracting operations and planning into the Battle Command Training Program and Combat Training Center training; and included OCS scenarios to exercise CORs during Mission Readiness Exercises prior to deployments.

Last year, the Army Logistics University began the OCS Planning and Management Course, a two-week course which trains logistics planners at any echelon in

OCS management and oversight, requirements determination, and performance work statement writing. Currently, the demand for the course is exceeding available capacity. Officers and Non-Commissioned Officers who complete the course are awarded an additional skill identifier – 3C – which will allow the Army to better manage OCS planner assignments.

In addition to the required Defense Acquisition University training for CORs, the Army and C-JTSCC have added ethics training as an additional requirement. To better train CORs for deployment, the Army Contracting Command (ACC) has developed and implemented a COR training program provided to brigades prior to deploying, a critical step in strengthening the Army's ability to oversee contractor performance. The Army has issued an Execution Order, referred to as an EXORD, to all commands requiring commanders to determine the number of CORs they'll need in theater *before they deploy* and train enough CORs to fill those positions. The EXORD also requires COR training to be added to Soldiers' electronic training records, requires reporting of COR training shortfalls, and requires training on the CERP.

The OCS training portfolio will continue to receive Departmental attention. In a memo dated 24 January 2011, the Secretary of Defense emphasized improvements in education and training, among other areas, as critical to how the Department will view, plan, and account for Operational Contracting Support in the future. The Joint Staff's analysis of OCS education and training began more than a year ago with the development of OCS and Contingency Contracting core competencies, and the development of on-line distance learning courses.

To further improve OCS training, the Joint Staff (J-4), in conjunction with the National Defense University, sponsored a study to analyze the current state of OCS education and training programs and propose an institutional OCS Education and Training Program that will provide practical training content tailored to the training recipient's role and responsibility in OCS. Due in August 2012, this study will determine the requirement for OCS education and training at the strategic, operational, and tactical levels, and develop methodologies that will expand the awareness of OCS across the national security enterprise.

### **Materiel**

Next I would like to address some tools that the Department has developed—or is in the process of developing—to help our acquisition community do its job more effectively and efficiently.

### **Defense Contingency Contracting Handbook**

Our Defense Contingency Contracting Handbook was developed to fill a gap: while deployed CCOs performing in a joint environment had Service-specific guidance, they lacked consolidated, joint guidance. The joint handbook was developed by CCOs, for CCOs. It was developed in a joint environment so all Services and Components had a say in what went into it. We also went beyond the contracting community to get feedback: auditors and lawyers helped us develop the right content. From the start, the handbook has contained tools, templates, forms, training guides and material, and

checklists. We continue to refine these, as well as add features, for each annual update to the handbook. For example, the second edition introduced critical action checklists and made the accompanying DVD more user-friendly. The third edition expanded the website capabilities, added over 100 new resources and additional material based on special interest items occurring in theater today. Over 10 thousand second edition handbooks were distributed and over 15 thousand third edition handbooks were published due to increase in demand.

Initially started as a hard copy with a DVD, the handbook has become more automated over time. Starting with the second version, the handbook and DVD information are now also available on the DPAP web site. This enables us to update content in real-time, if we find needed improvements or specific gaps in training. Having multiple platforms to access this information ensures the broadest support to CCOs.

The DVD and web site provide access to a variety of resources, so our deployed contracting offices do not have to start from scratch. Today the DVD/web site contains over 3 thousand drill-down support tools. The resources include training, specific forms they will most likely use, and samples of determinations and findings. We include a topical index to facilitate navigating the plentiful resources. We also include games, which make the learning process entertaining. This is a good tool and is being made better by feedback from CCOs who have recently returned from a deployment.

**Defense Contingency Contracting Officer's Representative Handbook and COR Tracking Tool**

Building on a successful joint handbook for CCOs, we created a joint handbook for CORs. The DoD Contingency Contracting Officer Representative (COR) Handbook supplements official training and policy and serves as a handy pocket guide that provides CORs, who are supporting contingency operations with basic tools and knowledge. This 346 page handbook and accompanying CD provides checklists, how-to guides, form procedures, and examples. This handbook provides the basic knowledge and tools needed by CORs to effectively support contingency operations and is designed specifically to address the realities faced by CORs in operations outside the continental United States (OCONUS). The information in the handbook is extracted from numerous sources within the Defense acquisition community. Over 13 thousand handbooks were distributed in only 6 months. High demand required a reprint of another 9 thousand books that will be distributed over the next 10 months.

This unified guide strengthens the ability of CORs to provide needed contract surveillance. Another tool we are currently deploying is the DoD COR Tool (CORT), a web-based management capability for the appointment and management of CORs. It provides an automated means to access important data on CORs, including the COR name, career field, certification level, and other contact information; the COR's supervisor contact information; and the Contracting Officer's contact information. Beyond contact information, it identifies all training completed by the COR.. The DoD CORT automates key parts of the process—it enables an electronic nomination, approval, and termination process of candidate CORs, and it provides the capability to record key

process documents online, such as status reports, trip reports, correspondence. DoD contracting personnel are provided with a web-based portal for all relevant COR actions. The CORT is being deployed within DoD and full deployment will occur by the end of fiscal year 2012.

### **Other Tools**

The Department also has other tools in the pipeline, including:

- The Automated Contingency Contracting Officer After Action Report Database – a data collection and reporting tool that will help us leverage lessons learned and incorporate them into training
- The 3-in-1 Tool – a handheld device that will help us reduce cash on the battlefield
- The Contingency Acquisition Support Model – a tool to translate a combatant commander's requirement into a procurement package that will help us with consistency

### **Leadership**

The "Gansler Commission" report on Army Expeditionary Contracting, which was presented to the Secretary of the Army in October 2007, voiced a concern about the lack of military leadership in the contracting profession. One initiative that addresses this concern is the Department's implementation of legislation Congress provided in the

Fiscal Year 2009 National Defense Authorization Act, which adds 10 military general/flag officer billets. Having senior leaders in military positions will be a great help our contracting workforce, specifically in enhancing the stature of our contracting officers, and I thank Congress for authorizing these positions.

Army contracting has four new General Officers: at the Army Materiel Command's Expeditionary Contracting Command (ECC), Mission Installation Contracting Command (MICC), U.S. Army Corps of Engineers (USACE) National Contracting Organization, and the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)). To fill these positions, the Army has promoted three colonels to brigadier general and one brigadier general, BG Nichols, has been selected for promotion to major general. BG Nichols was a former Commander of the C-JTSCC. BG Bass is currently the commander of the ECC, BG Leisenring is the commander of the MICC, BG Harrison is serving as the Deputy Director of Contracting in the USACE. In addition two other colonels from the Army contracting career field have recently been selected for promotion to brigadier general. The Army promoted LTG Bill Phillips to his current position as the Principal Deputy to the Assistant Secretary of the Army (Acquisition, Logistics and Technology), following his tenure as a commander of C-JTSCC, which is further testimony to the importance of contracting in the Army.

The Navy has three flag officers serving in contracting joint billets: Rear Admiral (Lower Half) Ron MacLaren as the director of the Joint Contingency Acquisition Support Office ; Rear Admiral (Lower Half) Nicholas Kalathas, in the Office of the Deputy Under Secretary of Defense (Program Support), USD(AT&L), Logistics and Materiel



Readiness, who serves as the Commander, C-JTSCC; and Rear Admiral (Lower Half) Robert Gilbeau as the Commander of DCMA International.

For the Air Force, Major General Wendy Masiello was selected to serve as Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, Washington, D.C., replacing a civilian leader. Further, Brigadier General Casey Blake is the Senior Contracting Official-Afghanistan in the C-JTSCC.

CENTCOM has recognized the importance of contracting in the CENTCOM AOR and pushed for and received approval to fill two general officers billets, one (Rear Admiral Kalathas) is the Commander, C-JTSCC, and one (Brigadier General Blake) serves as the Senior Contracting Official in Afghanistan. Thus, with Brigadier General Blake and Rear Admiral Kalathas, for the first time the Department has two general or flag officers in key contracting positions in Iraq and Afghanistan.

### **Personnel**

People are the key to our success. The Department also is directly addressing personnel issues impacting operations in Iraq and Afghanistan, as discussed below.

#### **Contingency Contracting Officers in Support of Iraq and Afghanistan**

The Department has proactively managed the placement of Contingency Contracting Officers to support Iraq and Afghanistan. The C-JTSCC is currently 97.8 percent staffed overall within their Joint Manning Document and Request for Forces.

The number authorized does not include just CCOs, but also essential staff elements required to support a Headquarters and Regional Contracting Centers, such as information technology, administrative, legal, logistics, and supply personnel. Our Contingency Contracting Officers are always in high demand and many have been rotated in and out numerous times.

In 2010 we transitioned the Joint Contracting Command-Iraq/Afghanistan to the CENTCOM Joint Theater Support Contracting Command (C-JTSCC). This action placed the C-JTSCC as a direct subordinate command under CENTCOM vice a command that was previously a subordinate to U.S. Forces-Iraq, although supported Afghanistan as well. Now, the C-JTSCC Commander has the latitude to reposition these high demand resources to meet operational requirements more easily. We have continually balanced the requirements for our contingency contracting officers, which are low density-high demand assets, between Iraq and Afghanistan. For example, several years ago the number of contracting officers supporting Iraq was much greater than those supporting Afghanistan. With the drawdown in Iraq and the increased contracting focus in Afghanistan, we have greatly adjusted that balance. Today, approximately 227 of the C-JTSCC's 355 personnel are in Afghanistan, with 76 in Iraq supporting the drawdown and transition. The remainder compose the headquarters in Qatar and close out functions in the U.S. As we transition Iraq to the State Department, the C-JTSCC will reduce its size to 30 personnel or less to conduct termination functions (assuming post-2011 Iraq will not include additional Title 10 forces under a new security agreement). In June 2012 this function is expected to be completed and the C-JTSCC mission in Iraq will end altogether. As this occurs, it is our intent to reassess CCO requirements again.

**Contingency Contracting Officers**

DPAP is developing a joint standard for CCOs, which will help the commander ask for exactly what skill level person he or she needs. The Defense Acquisition Workforce Improvement Act (DAWIA) looks at education and training and years and type of experience for its three levels of contracting officer certification. What we need for CCOs is further granularity and specificity: we have to break this down to contingency education and training and contingency contracting experience. When the standard is established, the deployed contracting commander will actually be able to put a requirement in for what he or she actually needs, and the Services can respond accordingly. This approach will allow the Department collectively to use the right person and match the individual to the right job.

**Contingency Contracting Officer's Representatives**

Just as we are dedicated to making improvements for our CCOs, so too are we committed to ensuring enhancements for our contracting officer's representatives (or CORs) that monitor contract performance. The Section 813 Contracting Integrity Panel, which Congress required in the Fiscal Year 2007 National Defense Authorization Act, required the Department to examine efforts to eliminate areas of vulnerability that allow for fraud, waste, and abuse. Insufficient surveillance on contracts was identified a vulnerability which can lead to fraud, waste, and abuse—by both the contractor and the

government. The Section 813 Panel identified solutions to help eliminate vulnerabilities in contract surveillance. They include developing a COR standard for certification, developing a COR-specific policy, and requiring a COR's performance to be reflected in his or her performance assessment.

The subcommittee has developed a draft DoD Instruction, or DoDI. This DoDI is significant, not only because it will standardize COR functions, but also because it will require the Defense Components to plan and budget for COR requirements.

### **Workforce Growth**

On 6 April 2009, the Secretary of Defense gave direction to grow and in-source the acquisition workforce. By Fiscal Year 2015 the Army contracting civilian workforce will grow by over 1,600 new positions. This growth has been facilitated by Section 852 of the 2008 National Defense Authorization Act, which provided short term funding to hire acquisition personnel while permanent positions are resourced. Section 852 has been utilized to hire 352 Army civilian contracting interns to date, with hundreds more planned over the next three years. Section 852 provided critical funds to help reconstitute the acquisition workforce as well as many other initiatives and I would like to thank Congress for its foresight in providing these funds.

### **Conclusion**

All of the Services are working hard to translate the lessons learned regarding contingency contracting and translate them into an integrated logistics strategy that

incorporates contracted support planning, management, and oversight. As our deployed acquisition workforce continues to serve in harm's way, we owe them the resources required to complete the tasks we have given them. DPAP, in partnership with OSD, the Services, and Components, is enhancing professional standards, tools, and training to better serve this workforce. Again, I thank you for the opportunity to report to you on just some of the many initiatives we are working to support these patriots.



**STATEMENT FOR THE RECORD  
OF THE  
PROFESSIONAL SERVICES COUNCIL  
FOR THE  
SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
HEARING ON  
"TRANSFORMING WARTIME CONTRACTING: RECOMMENDATIONS  
OF THE COMMISSION ON WARTIME CONTRACTING"  
SEPTEMBER 21, 2011**

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The Professional Services Council (PSC) thanks the Homeland Security and Governmental Affairs Committee for holding this hearing and welcomes the invitation to provide a written statement for the record. The results of three years of work by the Commission on Wartime Contracting (Commission) have been much anticipated and the commission is to be commended for its efforts. Many of the commission's recommendations are strongly supported by PSC, while others could be improved if slightly modified and some are simply misguided. What is clear is that more can be done to benefit from the lessons learned in Iraq and Afghanistan. The work of the commission should serve as a valuable resource to Congress, the administration, and industry as the recommendations are evaluated for implementation.

PSC is the nation's largest association of government services contractors and counts among our nearly 350 member companies several dozen firms that provide critical support to U.S. government activities in contingency environments. That support includes logistics, engineering, infrastructure, satellite and information technology support, international development assistance, capacity building and more. As such, the work of the commission was of great significance and importance to the nation and to our community. In addition to this written statement, PSC provided a statement to the commission for its February 28, 2011 hearing<sup>1</sup> and testified before its May 2, 2011 hearing.<sup>2</sup>

Following the release of the commission's final report, media outlets focused on the \$60 billion that the commission estimated as waste, fraud and abuse during 10 years of U.S. contingency operations in Iraq and Afghanistan. These initial reports, and to an extent the tone of the commission's report, gave the impression that rampant waste, fraud and abuse in Iraq and Afghanistan was a result of substantial contractor misconduct. Furthermore, the commission led readers to believe that there is a vast, inappropriate over-reliance on contractors operating "in theater." However, for those that chose to examine the report more closely, it became clear that government management, poor planning, and lack of resources led to many of the reported problems in Iraq and Afghanistan. Such deficiencies do not by themselves support the conclusion that there is a gross over-reliance on contractors supporting the missions in those countries. In a broad context, the real issue facing the government is not the role of contractors or myths about "over-reliance" on them. Rather, it is developing sufficient organic capacity to oversee and manage its contingency operations. In fact, it is essential to take into account the tasks that contractors were asked to perform—the vast majority of which were performed admirably and effectively, on time, within budget and accomplished the government's desired results—and the benefit the government was able to receive by being able to tap its private sector support

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<sup>1</sup> PSC February 28, 2011 Statement for the Record available at:  
<http://www.pscouncil.org/AM/Template.cfm?Section=Register&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=6897>

<sup>2</sup> PSC May 2, 2011 Testimony available at:  
<http://www.pscouncil.org/AM/Template.cfm?Section=Register&CONTENTID=7367&TEMPLATE=/CM/ContentDisplay.cfm>

partners. It seems highly unlikely that the government could or should develop an organic workforce to do the bulk of the tasks currently performed by contractors and required by these larger contingency operations. Even assuming that the necessary skilled resources were readily available through government employees, doing so, as evidenced by numerous analyses from the Congressional Budget Office, Government Accountability Office and others, would be prohibitively expensive. Moreover, the vast majority of work performed by contractors in a contingent or post-conflict environment is work that fluctuates constantly in both scope and pace. And that is precisely the kind of work that most obviously lends itself to temporary, not permanent, capabilities. As such, rather than focusing on an over-reliance on contractors—a term open to misinterpretation—the focus instead should be on appropriately resourcing the government’s critical organic skills needed to oversee and manage contingency and post-conflict operations, including the use of contractors. As the Under Secretary of Defense for Acquisition, Technology, and Logistics recently testified before the Commission, “We’re simply not going to go to war without contractors.”

That is why we strongly share the commission’s view that inadequate attention has been paid to the government’s organic workforce capabilities required to effectively manage and oversee contingency operations and all that entails.

#### Workforce Capabilities

There is clearly a compelling need for the Defense and State Departments, as well as the U.S. Agency for International Development and other agencies, to enhance their key workforce capabilities in both numbers and knowledge to support contingency operations. This is the single most important element of the report and could have the greatest impact on improving mission outcomes over the long term. In fact, five years ago, PSC proposed in Senate testimony the creation of a government staffed Contingency Contracting Corps that would be available for deployment for both disaster relief and overseas operations in conflict environments. The Defense Department has already established a Civilian Expeditionary Workforce (CEW), comprised primarily of DoD civilian employees, covering a wide range of job functions, including contracting, finance and logistics. Of significance is that participation in the CEW is voluntary. Although an appropriate approach, a Contingency Contracting Corps has not been established in an effective manner and thus had little impact on the missions in Iraq and Afghanistan.

Among the findings that PSC strongly concurs with is that contingency contracting should be considered as a critical function for DoD. However, despite the critical importance of contracting during a contingency, the full execution and support of the contingency process is not and should not be misconstrued as being an “inherently governmental function” and we intentionally avoid using the term “core” to avoid any implication that these functions are to be performed exclusively by military or federal employees. As such, to the extent that the report highlights the



importance of the Defense Department maintaining a well trained, forward-deployed workforce focused on contingency contracting, we support it. We also support the government taking actions to ensure that the role of operational support contracts are fully integrated into the plans, education and exercises DoD conducts. We believe this integration is already a responsibility of the DoD contingency contracting officer and is embedded in the department's policy requirements, including coverage in DoD Joint Publication 4-10, various DoD Instructions, and the August 2010 Defense Contingency Contracting Officer's Representative (COR) Handbook. But we welcome any clarification and elaboration of this responsibility. We also support the thrust of the commission's recommendation on training for contingency contracting.

While there are many obvious differences between disaster relief and contingency operations, there are also significant similarities and our view has been, and remains, that the creation of such a government-wide cadre of skilled professionals, with special training in the unique challenges of a conflict environment, would best serve the taxpayers and the mission. As the report recognizes, the training involved cannot be generic. It must be aligned with mission complexity and the scope of requirements.

Further, we share the commission's view that contingency missions must also specifically include planning for, and with, the contractors who will be supporting the military, diplomatic, or development requirements. As the Special Inspector General for Iraq Reconstruction detailed in several lessons learned reports, the combination of enhanced resources and workforce training with dramatically improved planning and coordination are key to improving performance. This view was reinforced by others, including the agencies themselves.

#### Competition

The commission concludes that the use of pre-competed, pre-positioned contracts for support services and supplies in Iraq and Afghanistan led to waste, declaring that a process for competing each task order as a separate contract would be a more prudent and cost-effective approach. However, this approach ignores lessons learned from Hurricane Katrina and other contingency events. The recent response to Hurricane Irene showed that having such contracts in place allows the government to respond quickly with proven, capable and prepared contractor support, rather than having immediate responses delayed by what can be complex procurement processes. While competing individual task order awards during ongoing operations may make sense in certain limited situations, particularly for more routine needs in an environment of reasonable stability, it is not generally a viable means of ensuring that immediate support and services are available under the urgent timeframes often called for by the warfighters and diplomats. Additionally, task order contracts are typically highly competitive at their creation, thus eliminating the need for additional competition at the task order level. The whole idea behind a task order contract is for the government to be able to move quickly under a previously competitive framework. In short, while we support enhancing competition whenever and wherever doing so is appropriate, have

supported the competitive “fair opportunity” process for domestic task orders, and agree that more competition for support in a contingency environment is desirable, we believe that there is a risk associated with focusing solely on competition requirements at the expense of operational needs in a “hot” zone.

#### Past Performance and Suspension and Debarment

The commission’s recommendation No.11 addresses the use of past performance information. PSC has long supported the government appropriately using relevant past performance information in future source selection decisions and strongly supports ensuring that this information be shared only within government offices with a need to access the information. We supported the creation of the government-wide Past Performance Information Retrieval System (PPIRS) and strongly encourage federal agencies to ensure that contracting officers complete contractor past performance reports on a timely basis. Hence, we support efforts to increase the use and timeliness of past performance information.

However, we oppose the commission’s recommendation that would deny the contractors’ ability to appeal agency performance assessments. These contractor scorecards must be accurate and not merely reflect the contracting officer’s perspective. Both the government and the contractor share an interest in having current and accurate information in PPIRS. While we believe that there are a very limited number of appeals of adverse agency performance assessments, protecting this element of fundamental due process is essential to ensuring that both the government and the contractor have confidence that fair treatment is provided throughout the acquisition process. Similarly, while we can appreciate that there may be very limited circumstances when performance ratings might be released even before providing a contractor with an opportunity to provide any comment, we are concerned that the commission’s report could be read as creating a blanket exemption from such procedural protections. Furthermore, it is not the permissibility of contractors’ rights to appeal, or rebut, past performance findings that is leading to an ineffective past performance system. The agencies simply aren’t focused on timely posting of such information. Therefore, PSC supports the recommendation that agencies certify the use of the past performance database and would further support recommendations that would incentivize agencies to post finally determined performance evaluations in a timely manner.

With regard to suspension and debarment, PSC was pleased to see the commission rescind its misguided interim recommendation to require the automatic suspension and debarment (S&D) of contractors based on accusations alone, and without fundamental due process protections. The commission’s final report stated that it took into account feedback from many forums, which included PSC testimony.<sup>3</sup> The commission’s final recommendation is to instead lower procedural

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<sup>3</sup> Ibid.

barriers to the use of S&D and require suspension and debarment officials (SDOs) to write justifications for not pursuing a proposed S&D action. The revised recommendation preserves both the due process rights of contractors and the ability of SDOs to use their best judgment to decide each case on its own merits. However, even this scaled-down recommendation raises serious concerns for us and has been strongly challenged by senior federal acquisition officials because it would increase the administrative burden on an already-limited S&D workforce and would subject their professional judgment to outside influences that are not fully versed on the nuances of the suspension and debarment framework. Furthermore, as the government considers actions around suspension and debarment, it is important to recognize the intent of this process. Some believe that suspension and debarment are tools for punishing contractors for misdeeds. In fact, the suspension and debarment policies and processes, and any resulting affirmative suspension and debarment finding, are established solely to ensure that federal agencies conduct business with companies that are responsible to carry out the requirements of the specific contract for which they are being considered. Subpart 9.4 of the Federal Acquisition Regulation, which governs suspension and debarment, specifically states: *"The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the government's protection and not for purposes of punishment."*

Policymakers should also recognize that there are often more effective tools to ensuring proper contractor conduct than suspensions and debarments. Administration agreements, for example, are often structured in a way that better motivate improvements to contractors' ethics and compliance systems and allow the federal government to further monitor such compliance, often on a quarterly basis. As outlined in a recent *Service Contractor* magazine article by officials from the Air Force Office of General Counsel, "administrative agreements serve as the 'carrot' by providing the contractors with an incentive to avoid debarment by improving its ethical culture, compliance and business processes and the 'stick' by identifying consequences for failure to do so, including debarment."<sup>4</sup>

#### Risk – It's Not Just About Relying on Contractors

The commission's report asserts that there is potential for further significant waste as a result of the U.S. government attempting to carry out projects or programs that are unsustainable.

PSC agrees that these risks are indeed present, but they also underscore the importance of effective government planning, coordination, and follow-through. Moreover, in Afghanistan, the U.S. was "building from a dismal baseline of no effective central government, no basic public services, no developed financial system, and no consistent rule of law."<sup>5</sup> These conditions were

<sup>4</sup> *Service Contractor*, Sept. 2011, available at: <http://www.pscouncil.org/AM/Template.cfm?Section=Register&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=7663>

<sup>5</sup> Commission on Wartime Contracting Final Report, pg. 108

likely under-estimated by the U.S. government and, hence, exacerbated the impact of the risk. Had the government seriously confronted the risks and taken appropriate steps to mitigate them, the estimates of waste, fraud and abuse would have been much lower. In fact, only one of the seven risk factors is attributable to federal contractors and even if contractors were not present there would still have been risk with government performance. Hence, the commission mislabels the problems in Iraq and Afghanistan as being an "over-reliance on contractors."

Furthermore, the final report states that reliance on contractor support may introduce operational, political, and financial risks to the government. The commission fails, however, to acknowledge that the operational and political risks are also present if the U.S. military or a federal civilian workforce were to conduct functions in theater. Furthermore, financial risks would also be present if a civilian workforce attempted to implement its initiatives in a host country with an ingrained culture of corruption.

#### Conclusion

The commission is to be commended for its work. Many of the recommendations for improving government planning, coordination, and implementation of contracting actions in a contingency operation would be a benefit for future overseas operations. Chiefly, the more skilled the government's acquisition workforce is and the greater its capacity to deploy rapidly and in a coordinated fashion will likely result in the most significant improvements. Other commission recommendations need further refinement and should not be adopted as "gospel" by policymakers. PSC looks forward to an opportunity to engage further with, and provide industry perspectives to, this committee, other congressional committees and offices with interest in these issues, and to the administration, as the commission's recommendations spur ongoing discussions and appropriately targeted reforms.

**Post-Hearing Questions for the Record  
Submitted to the Honorable Christopher Shays  
From Senator Carl Levin**

**“Transforming Wartime Contracting:  
Recommendations of the Commission on Wartime Contracting”  
September 21, 2011**

1. The Commission’s final report makes 15 recommendations, some of which include multiple sub-recommendations. The Commission made additional recommendations in its interim and special reports. These recommendations are listed in Appendix A of the final report.
  - Which of these recommendations and sub-recommendations does the Commission believe should be accomplished by Executive Branch action alone?
  - Which ones will require the enactment of legislation (either because changes to law are needed or because the Executive Branch is unlikely to address the issue on its own initiative)?

Response: See attached “Recommendations That Require Legislation.”

September 27, 2011

## Commission on Wartime Contracting in Iraq and Afghanistan

### Recommendations That Require Legislation

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p align="center"><b>Final report</b>  <b>Transforming Wartime Contracting: controlling costs, reducing risks</b>  Issued August 31, 2011</p>		
<p><b>RECOMMENDATION 1</b>  <b>Use risk factors in deciding whether to contract in contingencies</b></p> <p>Heads of agencies involved in a contingency should:</p> <ul style="list-style-type: none"> <li>▪ issue and ensure implementation of policy guidance for using risk factors such as those listed above, as well as those described in the Office of Federal Procurement Policy draft policy letter of March 2010 and Department of Defense Instruction 1100.22, to provide guidance on what functions are <i>appropriate</i> to contract for in a contingency setting;</li> <li>▪ provide funding and direction for agencies involved in contingency operations to identify a trained, experienced, and deployable cadre for stabilization-and-reconstruction functions in areas of contingency operations so that the government has an alternative to contracting for performance of critical or sensitive functions; and</li> <li>▪ provide a strategic plan for deploying these cadres that includes provisions for mandatory deployability of civilian members, and is supported by a back-up capability for rapidly making temporary hires for large-scale or long-term contingency operations.</li> </ul>	49	<p align="center"><b>No</b></p> <p align="center"><b>Yes</b></p> <p align="center"><b>No</b></p>
<p><b>RECOMMENDATION 2</b>  <b>Develop deployable cadres for acquisition management and contractor oversight</b></p> <p>Agency heads should:</p> <ul style="list-style-type: none"> <li>▪ Provide funding and direction to establish a trained, experienced, and deployable cadre for acquisition-management and contractor-oversight functions in areas of contingency operations so that the government has an alternative to relying on contractors for acquisition management and oversight.</li> </ul>	52	<p align="center"><b>Yes</b></p> <p align="center">Same as Recommendation #2 in Second Interim Report</p>

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p><b>RECOMMENDATION 3</b>  <b>Phase out use of private security contractors for certain functions</b></p> <p>Agency heads should:</p> <ul style="list-style-type: none"> <li>Phase out use of host-nation private security contractors in Afghanistan for the convoys on high-volume roads that the insurgency controls or contests. Current alternatives include U.S. military, Afghanistan National Army units, the new Afghan government-sanctioned security providers established under the Karzai decrees as the Afghan Public Protection Force, or some combination of the above.</li> <li>Evaluate each static-security site to assess the risk associated with the use of contractors. Where the military commander determines there is a high risk, use military forces. Where the commander determines the high risk is specifically the result of using local-national contractors, use military forces or third-country national PSCs for security.</li> </ul>	61	<p>No</p> <p>No</p>
<p><b>RECOMMENDATION 4</b>  <b>Improve interagency coordination and guidance for using security contractors in contingency operations</b></p> <ul style="list-style-type: none"> <li>Provide greater control and accountability for security contracting.</li> <li>Hold the ambassador, USAID mission director, and military commanders responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change, giving particular consideration to the geographic, temporal, and organizational proximity to armed conflict.</li> <li>When private security or other contractors are to be armed, they should be overseen by government employees and tracked in a centralized system, as is done in Iraq.</li> </ul> <p>Reliance on private security contractors should be accompanied by greater use and emphasis on vetting, training, authorizing arms, and weapons control; post-convoy debriefing, locational tracking and video monitoring; and more thorough and comprehensive management.</p> <ul style="list-style-type: none"> <li>Execute an interagency agreement to provide guidance on security contracting</li> <li>Defense, State, and USAID should develop and enter into a standing interagency Memorandum of Agreement (MOA), incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors in future</li> </ul>	64	<p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes*</p> <p>Yes*</p>

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p>contingencies.</p> <ul style="list-style-type: none"> <li>This standing MOA should be modified within 90 days of a declared combat operation or other contingency to specifically address the needs and circumstances of that operation.</li> </ul>		<p><b>Yes*</b></p> <p>*Legislation may not be required for the last three recommendations but would help as otherwise might not be implemented</p>
<p><b>RECOMMENDATION 5</b>  <b>Take actions to mitigate the threat of additional waste from unsustainability</b></p> <p>Officials at the Department of Defense, State, and the USAID should:</p> <ul style="list-style-type: none"> <li>examine both completed and current projects for risk of sustainment failure and take appropriate action to cancel or redesign programs and projects that have no credible prospect of being sustained. =</li> <li>ensure that any new requirements and acquisition strategies for contingency contracts for projects or services to be handed over to a host nation include a detailed assessment of long-term costs and of host nations' ability and willingness to meet those costs; and</li> <li>report to Congress, by December 31, 2011, and annually thereafter, their analysis and proposed actions for mitigating sustainability risks.</li> </ul>	111	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help as otherwise might not be implemented.</p> <p>Same as Recommendations in Special Report 5.</p>
<p><b>RECOMMENDATION 6</b>  <b>Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID</b></p> <ul style="list-style-type: none"> <li>The Commission endorses the House version of the National Defense Authorization Act for FY 2012, H.R. 1540, sec. 967, which would amend section 138(b) of Title 10 U.S.C., stating in part:</li> </ul> <p>(a) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Contingency Contracting. The Assistant Secretary of Defense for Contingency Contracting is the principal adviser to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on matters relating to planning, funding, staffing, and managing contingency contracting of the Department of Defense.</p>	128	<p><b>Yes</b></p>



Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p>(b) Requirement to Establish Office of Contingency Contracting - The Secretary of Defense shall rename and expand the Office of Program Support in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics as the Office of Contingency Contracting. The Office of Contingency Contracting shall be headed by the Assistant Secretary of Defense for Contingency Contracting and shall be responsible for planning, funding, staffing, and managing contingency contracting in the Department of Defense.<sup>1</sup></p> <ul style="list-style-type: none"> <li>▪ To elevate the role of contingency contracting at the Department of State, supporting the department's mission and ensuring that acquisition is viewed as a full business partner and not a back-room administrative function, State should: <ul style="list-style-type: none"> <li>○ establish a separate Bureau of Acquisition led by an assistant secretary for acquisition who has a background as a qualified acquisition professional and who would be designated as the agency's chief acquisition officer,</li> <li>○ ensure that the new bureau would have acquisition as its singular focus and primary mission, and</li> <li>○ establish additional Senior Executive Service positions to support the bureau's work.</li> </ul> </li> <li>▪ The chief acquisition officer within USAID should be a non-career appointment at an organizational level so as to facilitate advising and assisting the agency head. In addition, Congress should amend 41 U.S.C. 1702 to provide that the CAO's duties include managing policy and monitoring contingency contracting.</li> <li>▪ To elevate the role of contingency contracting within USAID, the CAO should be identified as a "direct advisor" to the Administrator, a similar position to that of the chief financial officer and the chief information officer.</li> </ul>		
<p><b>RECOMMENDATION 7</b>  <b>Elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, the combatant commanders' staffs, and in the military services</b></p> <p>Defense should:</p> <ul style="list-style-type: none"> <li>▪ Extract operational contract support and other contract-support duties and responsibilities from J4 (Logistics) and create a J10 Directorate of Contingency Contracting at the Joint Staff in order to better support contracting in other directorates and missions such as</li> </ul>	129	<p><b>Yes*</b></p> <p>*Legislation may</p>

<sup>1</sup> H.R. 1540, sec. 967 (112<sup>th</sup> Congress).

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p>intelligence, communications, linguistic support, and security; and</p> <ul style="list-style-type: none"> <li>▪ Create functional alignment by establishing similar J10 organizations at the combatant commands and in the four military services</li> </ul>		not be required but would help as otherwise might not be implemented
<p><b>RECOMMENDATION 8</b>  <b>Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction</b></p> <p>Congress should create a position in the Administration for a single dual-hatted official to:</p> <ul style="list-style-type: none"> <li>▪ Serve at OMB and on the NSC staff.</li> <li>▪ Ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission, and that agencies' budgets are complementary rather than duplicative or conflicting. In OMB, this official should be a deputy director and thus a presidential appointee confirmed by the Senate.</li> <li>▪ Oversee and ensure coordination of interagency contingency operations, including contracting-related matters. At the NSC, this senior official shall attend and participate in the meetings of the NSC as the principal advisor to the NSC on interagency contingency operations. This official should be a deputy national security adviser and deputy assistant to the President.</li> </ul>	144	Yes
<p><b>RECOMMENDATION 9</b>  <b>Create a permanent office of inspector general for contingency operations</b></p> <p>Congress should establish and fund a permanent inspector general for contingency operations to:</p> <ul style="list-style-type: none"> <li>▪ Operate with a small staff in collaboration with agency inspectors general to regularly assess the adequacy of agency planning and readiness for contingencies, to be ready to deploy at the outset of a new contingency, and to expand as necessary.</li> <li>▪ Exercise audit and investigative authority over all functions (such as logistics, security, and reconstruction) and across Defense, State, USAID, and other agencies participating in contingency operations.</li> <li>▪ Develop, plan, and, as appropriate, deliver investigative and oversight training targeted to contingency operations.</li> </ul>	147	Yes

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<b>RECOMMENDATION 10</b> <b>Set and meet annual increases in competition goals for contingency contracts</b>  Agency heads should: <ul style="list-style-type: none"> <li>▪ require competition reporting and goals for contingency contracts;</li> <li>▪ break out and compete major subcontract requirements from omnibus support contracts;</li> <li>▪ limit contingency task-order performance periods;</li> <li>▪ reduce one-offer competitions; and</li> <li>▪ expand competition when only one task-order offer is received.</li> </ul>	155	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented.  Includes Recommendations #15 to #19 in Second Interim Report.
<b>RECOMMENDATION 11</b> <b>Improve contractor performance-data recording and use</b> <ul style="list-style-type: none"> <li>▪ Allow contractors to respond to, but not appeal, agency performance assessments;</li> <li>▪ Align past-performance assessments with contractor proposals; and</li> <li>▪ Require agencies to certify use of the past-performance database.</li> </ul>	156	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented.  Includes Recommendations #20 to #22 in Second Interim Report.
<b>RECOMMENDATION 12</b> <b>Strengthen enforcement tools</b> <ul style="list-style-type: none"> <li>▪ Facilitate the increased use of suspensions and debarments for contingency contractors by revising regulations to lower procedural barriers and require a written rationale for not pursuing a proposed suspension and debarment.<sup>2</sup></li> </ul>	160	<b>Yes *</b>

<sup>2</sup> In its February 2011 interim report, the Commission recommended mandatory suspension for contractors indicted on contract-related charges. Following additional research and deliberation, the Commission has withdrawn that provision from its recommendations to strengthen enforcement.

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<ul style="list-style-type: none"> <li>▪ Make consent to U.S. civil jurisdiction a condition of contract award.</li> <li>▪ Expand the power of inspectors general.</li> <li>▪ Amend acquisition regulations to require contracting-officer consent for the award of subcontracts valued at or above \$300,000 to foreign companies when performance will predominantly be conducted overseas in support of contingency operations.</li> <li>▪ Direct agencies to incentivize contingency contractors to end trafficking in persons by labor brokers and subcontractors by requiring prime contracts to include performance incentives, such as award fees, and mandate that an assessment of contingency contractors' management of trafficking in persons be included in performance assessments.</li> </ul>		<p>Yes Yes Yes*</p> <p>Yes*</p> <p>*Legislation may not be required but would help as otherwise might not be implemented.</p> <p>Includes Recommendations #23, #25, #26, and #29 in the Second Interim Report.</p>
<p><b>RECOMMENDATION 13</b> Provide adequate staffing and resources, and establish procedures to protect the government's interests</p> <ul style="list-style-type: none"> <li>▪ Strengthen authority to withhold contract payments for inadequate business systems.</li> <li>▪ Amend access-to-records authority to permit broader government access to contractor records.</li> <li>▪ Increase agencies' staff and resources to enable adequate management of all aspects of contingency contracting: financial management, acquisition planning, business-system reviews, source selection, incurred-cost audits, performance management, property management, contract payment, and contract close-outs.</li> </ul>	163	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Includes Recommendations #31 and #32 in Second Interim Report.</p>
<p><b>RECOMMENDATION 14</b> Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission</p>	168	Yes
<p><b>RECOMMENDATION 15</b> Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform</p>	171	Yes

Final Report – Recommendation	Page in Final Report	Would require or would best be accomplished through legislation
<p><b>recommendations</b></p> <p>The legislation should require:</p> <ul style="list-style-type: none"> <li>▪ The Secretaries of Defense and State and the Administrator of USAID to submit reports detailing their plans for implementation of Commission recommendations, commencing 180 days from enactment of the legislation, with annual reporting thereafter.</li> <li>▪ Agencies' reports shall be submitted to congressional committees of jurisdiction (armed services, homeland security, government oversight, and foreign affairs); the inspectors general of the Departments of Defense and State, and of USAID; and to the officials holding the proposed new positions at OMB/NSC and the permanent inspector general for contingency operations; all of whom would be required to review and validate the reports.</li> <li>▪ Reporting requirements that include: <ul style="list-style-type: none"> <li>• actions taken or planned to implement recommendations, including an implementation schedule with milestones and assignments of responsibility;</li> <li>• explanations for non-implementation of recommendations, including counter-measures for barriers to implementation; and</li> <li>• evaluation within 120 days by the Comptroller General of the United States and agency inspectors general (and the permanent contingency inspector general when available) of the agencies' reports and their compliance with requirements.</li> </ul> </li> </ul>		

Second Interim Report – Recommendations	Page in Second Interim Report	Would require or best be accomplished through legislation
<p style="text-align: center;"><b>Second interim report</b></p> <p style="text-align: center;"><b>At what risk? Correcting over-reliance on contractors in contingency operations</b></p> <p style="text-align: center;">ISSUED FEBRUARY 24, 2011</p> <p>In this report, the Commission made recommendations to address the underlying causes of poor outcomes in contracting and to institutionalize changes for lasting effect.</p>		

Second Interim Report – Recommendations		Page in Second Interim Report	Would require or best be accomplished through legislation
<b>RECOMMENDATION #1</b> <b>Grow agencies' organic capacity</b>  Require DoD, State, and USAID to: <ul style="list-style-type: none"> <li>▪ Undertake a comprehensive, risk-based, contingency-manpower assessment to determine the organic resources needed to preserve a core level of capability, including consideration of the agencies' ability to manage any contractors they use.</li> <li>▪ Submit budget justifications and obtain the hiring authority to accommodate staffing increases.</li> </ul>		15	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented
<b>RECOMMENDATION #2</b> <b>Develop a deployable contingency-acquisition cadre</b>  <ul style="list-style-type: none"> <li>▪ Provide funding and direction for agencies involved in contingency operations to establish a trained, experienced, and deployable cadre for acquisition-support functions. The strategic plan for deploying this cadre should be supported by a back-up capability for making rapid, temporary hires of acquisition professionals for large-scale or long-term contingency operations.</li> </ul>		18	<b>Yes</b>  Same as Recommendation #2 in Final Report
<b>RECOMMENDATION #3</b> <b>Restrict reliance on contractors for security</b>  <ul style="list-style-type: none"> <li>▪ Restrict the reliance on private security contractors by requiring agencies to more broadly provide embedded government personnel responsible for leadership, command and control, and oversight of all security contractors and operations.</li> </ul> <p>This recommendation does not, however, address the Commission's abiding concern that agencies' reliance on contractors relative to government personnel is excessive, notably in the realm of movement security contractors. The Commission's final report will address that concern.</p>		18	<b>No</b>
<b>RECOMMENDATION #4</b> <b>Designate officials with responsibility for cost consciousness</b>  Revise management directives, instructions, and other policies as necessary to: <ul style="list-style-type: none"> <li>▪ Ensure that senior officials are specifically designated as being accountable for contract-cost consciousness, and develop metrics to facilitate assessment of contract outcomes.</li> <li>▪ Establish criteria allowing promotion boards and selection panels to</li> </ul>		24	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented

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evaluate and reward officials for contract cost consciousness.			
<b>RECOMMENDATION #5</b> <b>Measure senior military and civilian officials' efforts to manage contractors and control costs</b>  Revise senior officials' personnel-evaluation reports to: <ul style="list-style-type: none"> <li>Affirmatively state the responsibility to avoid excess cost, accurately establish contingency-contract support requirements, manage contractor performance, and revalidate requirements at appropriate stages of the acquisition process.</li> <li>Include an acquisition-management category that is separate from any existing category to measure officials' demonstrated commitment to contractor management and oversight, and to acquisition-cost control.</li> </ul>		24	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented
<b>RECOMMENDATION #6</b> <b>Integrate operational contract support into plans, education, and exercises</b>  Revise agency strategic and operational plans and policies to: <ul style="list-style-type: none"> <li>Identify in strategic documents (including the QDR and QDDR) and specify in operational plans those missions and tasks that will be assigned to contractors, and take steps to ensure effective operational contract-support planning, deployment, and management.</li> <li>Revise policies for professional education by including operational contract support in learning objectives.</li> <li>Include contractors in mission-rehearsal exercises <i>in the roles they would perform during contingency operations</i>, after properly mitigating the competitive advantage that naturally attends an incumbent contractor's performance.</li> </ul>		26	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented
<b>RECOMMENDATION #7</b> <b>Include operational contract support in readiness and performance reporting</b>  Revise statutory readiness- and performance-reporting requirements to: <ul style="list-style-type: none"> <li>Mandate that appropriate metrics be included in readiness and performance reports within a year. These metrics should effectively assess DoD, State, and USAID preparedness for contingency</li> </ul>		26	<b>Yes</b>

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contracting to include: development of contractor-support plans, staffing the acquisition function, and management of contractor performance.			
<b>RECOMMENDATION #8</b> <b>Establish a contingency-contracting directorate in the Office of the Joint Chiefs of Staff</b>  Create a new contingency-contracting directorate to: <ul style="list-style-type: none"> <li>Elevate the critical role of contingency contracting by establishing a new J-10 directorate, managed by a general or flag officer with the contracting expertise and training necessary to promote better visibility, planning, and coordination of operational contractor-support issues.</li> </ul>		29	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented
<b>RECOMMENDATION #9</b> <b>Establish Offices of Contingency Contracting at Defense, State, and USAID</b>  Establish offices of contingency contracting and appoint senior-level officials to facilitate planning, preparedness, and resource allocation, and provide a focal point for interagency communication and coordination for contingency-contracting operations to: <ul style="list-style-type: none"> <li>Elevate the organizational placement of the existing deputy assistant secretary of defense for program support and rename the office to become the office of contingency contracting. The new office should be led by an assistant secretary of defense.</li> <li>Establish positions in State and USAID comparably placed to the assistant secretary of defense to lead their new offices of contingency contracting.</li> </ul>		29	<b>Yes*</b>  *Legislation may not be required but would help as otherwise might not be implemented
<b>RECOMMENDATION #10</b> <b>Direct the Army's Installation Management Command to manage bases and base-support contractors in contingencies</b>  Direct the Army Installation Management Command to: <ul style="list-style-type: none"> <li>Assume responsibility as the overseas executive agent for managing major contingency-operation facilities and the contractors that support them. Congress should provide the Installation Management Command with adequate funds and the resources necessary to</li> </ul>		30	<b>No</b>



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assume the responsibility for improving process accountability, ownership, and control over the contingency-installation management function.			
<b>RECOMMENDATION #11</b> <b>Establish a new, dual-hatted position at OMB and the NSC to provide oversight and strategic direction for contingency operations</b>  Create positions in both the Office of Management and Budget (OMB) and the National Security Council (NSC) for a single dual-hatted official to: <ul style="list-style-type: none"> <li>▪ Ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission, and that agencies' budgets are complementary rather than duplicative or conflicting. In OMB, this official should be a deputy director and thus a Presidential appointee confirmed by the Senate.</li> <li>▪ Oversee and coordinate interagency contingency operations, including contracting-related matters. At the NSC, this official should be a deputy national security adviser and deputy assistant to the President.</li> </ul>		36	<b>Yes</b>  Same as Recommendation #8 in Final Report
<b>RECOMMENDATION #12</b> <b>Create a permanent office of inspector general for contingency operations</b>  Establish and fund a permanent inspector general for contingency operations to: <ul style="list-style-type: none"> <li>▪ Operate with a small, permanent staff in collaboration with agency inspectors general, regularly assess the adequacy of agency planning for contingencies, and be ready to expand and deploy at the outset of a new contingency.</li> <li>▪ Address all functions and aspects of contingencies across all agencies.</li> </ul>		37	<b>Yes</b>  Same as Recommendation #9 in Final Report
<b>RECOMMENDATION #13</b> <b>Establish interagency certification requirements and training curricula for contingency acquisition personnel</b>  Standardize certification requirements and training curricula:		38	

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<ul style="list-style-type: none"> <li>The Office of Federal Procurement Policy and the Office of Personnel Management should develop standardized certification requirements and training curricula for contingency-acquisition personnel. These new curricula would consolidate the best elements of the training provided by the Defense Acquisition University, Federal Acquisition Institute, Federal Emergency Management Agency Academy, Naval Postgraduate School Monterey, professional organizations like the National Contract Management Association, and industry.</li> </ul>		<p><b>Yes*</b></p> <p>*Legislation may not be required but would help as otherwise might not be implemented</p>
<p><b>RECOMMENDATION #14</b>  <b>Create a committee to integrate the individual authorities, resources, and oversight of contingency operations</b></p> <p>Take the necessary steps to:</p> <ul style="list-style-type: none"> <li>Create a committee to support the current contingencies, and establish a committee at the outset of future contingencies to provide oversight and clear authorities, and to allocate resources across agencies that support contingency operations.</li> </ul>	39	<p><b>Yes</b></p>
<p><b>RECOMMENDATION #15</b>  <b>Require competition reporting and goals for contingency contracts</b></p> <p>Require agency competition advocates to:</p> <ul style="list-style-type: none"> <li>Immediately establish separate contingency-contract and task-order categories for services, construction, and supplies for Iraq, Afghanistan, and other ongoing contingencies. Competition advocates should report competition levels and establish separate goals for each of these contracting categories. For all future contingency operations, such actions should be taken no later than two years from the start of such contingencies, and sooner if possible.</li> </ul>	44	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help as otherwise might not be implemented</p> <p>Included in Recommendation #10 in Final Report.</p>
<p><b>RECOMMENDATION #16</b>  <b>Break out and compete major subcontract requirements from omnibus support contracts</b></p> <p>Require, for LOGCAP and similar omnibus contracts, that agency competition advocates:</p> <ul style="list-style-type: none"> <li>Determine and document the feasibility of breaking out the major</li> </ul>	44	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help as otherwise might</p>

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<p>subcontract requirements. Considerations should include whether local or other qualified providers are available, whether the current contract supports operational strategy, and whether cost control on the current contract is successful. This determination should lead to new fixed-price competitions for the major subcontract requirements, negotiations with the incumbent to transition from cost-reimbursement to fixed-price payment terms, or continuation of the existing contract. All exercised options must meet this competition-advocate review requirement.</p>			<p>not be implemented.</p> <p>Included in Recommendation #10 in Final Report.</p>
<p><b>RECOMMENDATION #17</b>  <b>Limit contingency task-order performance periods</b></p> <p>Revise procurement policy and procedures to:</p> <ul style="list-style-type: none"> <li>▪ Limit the performance periods of contingency-support contracts to one base year plus four one-year option periods, and limit contingency task orders to one base year plus two one-year option periods. Only contract and task-order options exercised within these contingency performance-period limits should be reported as competitive.</li> </ul>		44	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #10 in Final Report.</p>
<p><b>RECOMMENDATION #18</b>  <b>Reduce one-offer competitions</b></p> <p>Quantify the instances of one-offer competitions, mitigate their consequences, and establish procedures designed to reduce their occurrence:</p> <ul style="list-style-type: none"> <li>▪ Publicize the government's requirement for an additional 30 days if a solicitation attracts only one acceptable offer.</li> <li>▪ Determine price reasonableness by conducting negotiations with the single offeror if the additional 30-day publication period fails to generate additional acceptable offers.</li> <li>▪ Report as competitive only those contract awards that meet the previous two criteria.</li> </ul>		45	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented</p> <p>Included in Recommendation #10 in Final Report.</p>
<b>RECOMMENDATION #19</b>		45	

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<p><b>Expand competition when only one task-order offer is received</b></p> <p>Conduct a new acquisition when only one acceptable task-order offer is received:</p> <ul style="list-style-type: none"> <li>Require a new acquisition when task-order solicitations in contingencies result in only one offer deemed acceptable. This mandate would apply to task orders valued over \$100 million.</li> </ul>		<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #10 in Final Report.</p>
<p><b>RECOMMENDATION #20</b> <b>Allow contractors to respond to, but not appeal, agency performance assessments</b></p> <p>Revise policy and procedures for contingency-related contracts to:</p> <ul style="list-style-type: none"> <li>Exempt agencies from the policy that provides for contractor disagreements on performance assessments to be elevated to a level above the contracting officer for review.</li> <li>Allow government officials who enter performance assessments in the federal database to release that information for other officials' use even if the contractor has not yet provided comments or rebutting statements.</li> </ul>	47	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #11 in Final Report.</p>
<p><b>RECOMMENDATION #21</b> <b>Align past-performance assessments with contractor proposals</b></p> <p>Revise agency policies and procedures for contingency-related contracts to:</p> <ul style="list-style-type: none"> <li>Limit contractors' proposed federal past-performance references to only those contracts that have been recorded in the government's past-performance database.</li> </ul>	47	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #11 in Final Report.</p>
<p><b>RECOMMENDATION #22</b> <b>Require agencies to certify use of the past-performance database</b></p> <p>Certify the use of the past-performance database semi-annually to:</p>	47	<p><b>Yes*</b></p> <p>*Legislation may</p>

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<ul style="list-style-type: none"> <li>Verify that contracting officers have recorded contractor-performance assessments in the federal past-performance database for any contingency-support contract that requires assessment under agency procedures.</li> <li>Certify that information in the database has been used, as required, to make source-selection decisions and to determine whether to exercise option periods.</li> </ul>			<p>not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #11 in Final Report.</p>
<b>RECOMMENDATION #23</b> <b>Require a written rationale for not pursuing a proposed suspension or debarment</b>  Require suspension and debarment officials to: <ul style="list-style-type: none"> <li>Document their rationale for not taking action against a contractor officially recommended for suspension or debarment. This written justification should be approved by the agency head, placed in the contract file, and immediately included in the government-wide past-performance data-collection system.</li> </ul>		51	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might not be implemented.</p> <p>Included in Recommendation #12 in Final Report.</p>
<b>RECOMMENDATION #24</b> <b>Increase use of suspensions and debarments</b>  Mandate automatic suspensions of indicted contractors and prevent contractors from avoiding suspension and debarment: <ul style="list-style-type: none"> <li>Make suspension actions based on contract-related indictments mandatory for a predetermined time, not subject to discretion of the suspension and debarment official.</li> <li>Prevent deferred-prosecution and non-prosecution agreements between the Department of Justice and a contractor from being linked to administrative agreements between an agency and a contractor in connection with a suspension or debarment action.</li> </ul>		51	<p>Recommendation #12 in the Final Report includes "increased use of suspensions and debarments" but the Commission withdrew this Recommendation #24 mandating "automatic suspensions."</p>
<b>RECOMMENDATION #25</b> <b>Revise regulations to lower procedural barriers to contingency suspensions and debarments</b>  Require regulations and policies be revised to: <ul style="list-style-type: none"> <li>Exempt agencies from the requirement to provide contractors with</li> </ul>		52	<p><b>Yes*</b></p> <p>*Legislation may not be required but would help otherwise might</p>

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the opportunity for a hearing prior to a suspension or debarment action not based upon a conviction, civil judgment, or indictment, and when there is a dispute over material facts. Agencies should instead be able to make decisions based on the documentary record alone. This provision should apply only to contracts performed predominantly overseas in support of overseas contingency operations.			not be implemented.  Included in Recommendation #12 in Final Report.
<b>RECOMMENDATION #26</b> <b>Make consent to U.S. civil jurisdiction a condition of contract award</b>  Revise regulations and policies to: <ul style="list-style-type: none"> <li>Require that foreign prime contractors and subcontractors consent to U.S. jurisdiction as a condition of award of a contract or subcontract.</li> <li>Require foreign contractors to register an agent in the United States to be responsible for receiving notice, summons, and other legal documents in connection with any legal actions against those contractors.</li> <li>Reduce the burden on smaller foreign contractors by limiting these requirements to contracts and subcontracts of \$5 million or more. Exceptions should also be provided for foreign contractors participating in local-preference programs such as Afghan First and Iraqi First.</li> </ul>		53	Yes  Included in Recommendation #12 in Final Report.
<b>RECOMMENDATION #27</b> <b>Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas</b>  Revise statutes to: <ul style="list-style-type: none"> <li>Clarify that civilian-agency contractors operating overseas are subject to U.S. criminal jurisdiction.</li> </ul>		53	Yes  Included in Recommendation #12 in Final Report.
<b>RECOMMENDATION #28</b> <b>Establish a permanent organization to investigate international-contract corruption</b>  Authorize and fund a permanent interagency contract-corruption organization to assume the responsibilities of the ICCTF:		56	Yes

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<ul style="list-style-type: none"> <li>Institutionalize the ad hoc and under-resourced task force and charge the permanent organization with the ICCTF's current responsibilities. Define the permanent organization's charter so that it is equipped to begin its collaborative work at the outset of a contingency, when the risk of fraud and other crimes is the greatest.</li> </ul>		
<p><b>RECOMMENDATION #29</b>  <b>Expand the power of inspectors general</b></p> <p>Expand the authority of inspectors general by:</p> <ul style="list-style-type: none"> <li>Giving subpoena power to civilian inspectors general to include subpoenas for the attendance and testimony of witnesses, as is currently provided to the DoD inspector general.</li> <li>Providing both civilian and Defense inspectors general with authority to interview contractor and subcontractor personnel.</li> </ul>	56	<p><b>Yes</b></p> <p>Included in Recommendation #12 in Final Report.</p>
<p><b>RECOMMENDATION #30</b>  <b>Raise the ceiling for access to the Program Fraud Civil Remedies Act</b></p> <p>Revise the statutory provisions to reflect current cost trends and to incentivize agencies to pursue claims:</p> <ul style="list-style-type: none"> <li>Raise the Program Fraud Civil Remedies Act dollar limit on claims, and allow monies recouped under this Act to flow back to the originating agency rather than revert to the Treasury.</li> </ul>	56	<p><b>Yes</b></p>
<p><b>RECOMMENDATION #31</b>  <b>Strengthen authority to withhold contract payments for inadequate business systems</b></p> <p>Incentivize contractors to improve business-system deficiencies:</p> <ul style="list-style-type: none"> <li>Strengthen civilian agencies' authority to withhold contract payments for inadequate business systems in line with the authority already given to the Department of Defense.</li> </ul>	57	<p><b>Yes</b></p> <p>Included in Recommendation #13 in Final Report.</p>
<p><b>RECOMMENDATION #32</b>  <b>Amend access-to-records authority to permit broader government access to contractor records</b></p> <p>Mandate broader access to relevant contractor records by oversight</p>	57	<p><b>Yes</b></p> <p>Included in</p>

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personnel: <ul style="list-style-type: none"> <li>Provide for greater government-agency access to contractor reports and documentation related to the contractor's internal audits and to other types of management reviews pertaining to government contracts.</li> </ul>			Recommendation #13 in Final Report.

Special Reports -- Recommendations		Would require or would best be accomplished through legislation
<b>Special Report 1</b> <b>Defense agencies must improve their oversight of contractor business systems to reduce waste, fraud, and abuse</b> ISSUED SEPTEMBER 21, 2009 The Commission learned that unreliable data from business systems produced billions of dollars in contingency-contract costs that government auditors often could not verify. The Commission recommended that: <ol style="list-style-type: none"> <li>DoD needs to ensure that government speaks with one voice to contractors</li> <li>DoD needs to improve government accountability by rapidly resolving agency conflicts on business systems</li> <li>Defense Contract Audit Agency (DCAA) needs to expand its audit reports to go beyond rendering a pass/fail opinion</li> <li>Defense Contract Management Agency (DCMA) needs to develop an effective process that includes aggressive compliance enforcement</li> <li>DCAA and DCMA need to request additional resources and prioritize contingency-contractor oversight workload</li> </ol>		No No No No No
<b>Special Report 2</b> <b>Lowest-priced security not good enough for war-zone embassies</b> ISSUED OCTOBER 1, 2009 The Commission urged that Congress change a statutory restriction on the State Department's ability to choose security contractors for its overseas Foreign Service buildings. The Commission recommended that Congress:		



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<p><b>Special report 5</b>  <b>Sustainability: hidden costs risk new waste</b>  ISSUED JUNE 3, 2011</p> <p>The Commission recommended that:</p> <ol style="list-style-type: none"> <li>1. Officials at the Department of Defense, the Department of State, and the USAID examine both completed and current projects for risk of sustainment failure and pursue all reasonable strategies to mitigate risks.</li> <li>2. Officials ensure that any <i>new</i> requirements and acquisition strategies regarding contingency contracts for projects or services to be handed over to a host nation include a detailed assessment of that host nation's ability and will to meet the out-year costs essential for long-term success.</li> <li>3. Officials take appropriate action to cancel or redesign projects or programs that have little or no realistic prospect for achieving sustainability.</li> <li>4. Officials report to Congress by December 31, 2011, and annually thereafter, their analysis of current and proposed projects and their planned actions for mitigating sustainability risks.</li> </ol>	<p><b>Yes*</b></p> <p><b>*Legislation may not be required but would help as otherwise might not be implemented.</b></p> <p><b>Same as Recommendation #5 in the Final Report.</b></p>
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**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Joseph I. Lieberman (#1)  
Senate Committee on Homeland Security and Government Affairs  
September 21, 2011**

**Question:**

What is the process within the State Department for reviewing the Office of Federal Procurement Policy's (OFPP's) Policy Letter 11-01 of September 12, 2011, regarding performance of inherently governmental and critical functions, and determining whether, as a result of the Policy Letter, functions performed by contractors should be transitioned to performance by federal employees?

**Answer:**

Department of State personnel were actively engaged with the Office of Federal Procurement Policy and with our colleagues in other agencies on preparing both the draft and final Policy Letter to better define inherently governmental performance.

The State Department performed the OMB-mandated Service Contract Inventory (SCI), conducting data collection and interviewing efforts that are in alignment with OFPP Policy Letter 11-01. That is, the SCI should help the agency understand where there may be imbalances in its mix of contractors and federal employees. The results of this first SCI effort are due to the Office of Management and Budget (OMB) in December 2011. In light of OFPP Policy Letter 11-01, the Department is updating its Foreign Affairs Manual to reflect the new language. The Department's contracting officers' representative (COR) training class has been updated to reflect the changes in Policy Letter 11-01. Also, in response to OMB Memorandum M-09-26, the State Department developed a process and piloted two projects that analyzed how to determine the best utilization of the multi-sector workforce. This included analyzing whether a

function was critical and determining whether inherently governmental (or closely associated) functions were performed under contract and how to proceed in the event that this situation arose. The Department submitted the results of these pilots to the OMB on April 28, 2010 and looks forward to learning from OMB what its assessment of the Department's efforts is, as well as to receiving further instruction and guidance on the future of this initiative.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Joseph I. Lieberman (#2)  
Senate Committee on Homeland Security and Governmental Affairs  
September 21, 2011**

**Question 2 A:**

In the past several weeks, there have been two serious breaches of security at the U.S. Embassy in Kabul – an hours-long attack on the Embassy on September 13, and a shooting on September 25 that resulted in the death of a person reported to be an American contractor working for the Central Intelligence Agency (CIA).

Who is in charge of investigating the September 13, 2011 assault on the Embassy, and when will that investigation be completed?

**Answer:**

Consistent with its sovereign authorities, the Government of Afghanistan has assumed the lead role in the investigation of events of September 13, 2011, since the attack was from outside the Embassy and none of the attackers ever entered the Embassy Compound. The Regional Security Office in Embassy Kabul and the Federal Bureau of Investigation have initiated an independent internal investigation of the incident.

**Question 2 B:**

Security for the Embassy in Kabul currently is provided by ArmorGroup North America. Who is in charge of assessing the performance of the contractor's employees during the September 13 attack?

**Answer:**

The Regional Security Office in Embassy Kabul.

**Question 2 C:**

Is the CIA office where the September 25 shooting occurred protected by ArmorGroup under its contract with the Department of State for security of the Embassy?

**Answer:**

The Department would be pleased to provide a classified briefing on this incident.

**Question 2D:**

The press has characterized the September 25 shooter as an "Afghan security guard employed by the U.S. Embassy." Was this person employed directly by the U.S. Embassy, or was this person employed by ArmorGroup or another contractor to the U.S. government?

**Answer:**

The Department would be pleased to provide a classified briefing on this incident.

**Question 2E:**

Who is in charge of conducting the investigation of the September 25 shooting, and when will that assessment be completed?

**Answer:**

The Department would be pleased to provide a classified briefing on this incident.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Joseph I. Lieberman (#3)  
Senate Committee on Homeland Security and Governmental Affairs  
September 21, 2011**

**Question #3 A:**

OFPP's Policy Letter 11-01 of September 12, 2001, provides an illustrative list of inherently governmental functions, which includes "[s]ecurity operations performed in an environment where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat."

In general, who is the "responsible Federal official" who determines whether security operations supporting the Department of State in contingency operations have "significant potential for the security operations to evolve into combat"?

**Answer:**

Chiefs of Mission (COM) are responsible for the security of U.S. missions abroad.

**Question 3 B:**

Who is the "responsible Federal official" for such a determination relating to the security operations for the U.S. Embassy in Kabul? Following the September 13 and September 25 breaches of security at the Embassy, has there been any reassessment of whether the provision of security for the Embassy by private contractors is consistent with OFPP's Policy Letter 11-01, or whether security risks at the Embassy otherwise dictate that security functions be transitioned to government personnel?

**Answer:**

The Chief of Mission in Kabul is responsible for security operations for U.S. Embassy Kabul. He is advised on security matters by the Post's Emergency Action Committee (EAC). Preliminary results from the RSO investigation of the September 13, 2011, incident have shown that the private security contractors employed by the Embassy responded appropriately to the attack by protecting Embassy property and ensuring that the attacker never penetrated the Embassy Compound and that no U.S. government employees were injured during the incident. The Department would be pleased to provide a classified briefing on the September 25, 2011 incident.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Joseph I. Lieberman (#4)  
Senate Committee on Homeland Security and Government Affairs  
September 21, 2011**

**Question:**

In July 2010, the Commission issued a special report on the shift of responsibilities in Iraq from the Department of Defense to the Department of State that noted some of the steps taken by State and DoD to address the challenges posed by the transfer. However, the Commission also concluded that much remained to be done, and made four recommendations for further improvement.

- a. What is the current status of the transfer of responsibilities and related contracting efforts from DoD to State?
- b. Were any of the recommendations from the Commission's July 2010 report on this issue implemented? If not, why?

**Answer:**

Of the four recommendations made by CWC in its July 2010 report, three were directed to the Department of State:

1. The Departments of Defense and State accelerate, intensify, and better integrate their joint planning for the transition in Iraq.
2. All levels of Defense and State immediately initiate and complete planning with the Government of Iraq to address critical security functions now performed by Defense.
3. State use, on a reimbursable basis, DoD's LOGCAP IV contract.

State has made substantial progress on fulfilling all three of the recommendations, including transferring non-military responsibilities and related contracting efforts from the Department of Defense (DoD) to State.

Question 4a above, concerning joint DoD – State planning, is related to CWC recommendation number 1, so we are answering them together here.



*Recommendation 1. The Departments of Defense and State accelerate, intensify, and better integrate their joint planning for the transition in Iraq.*

State continues to work very closely, every day, on an unprecedented level with our DoD colleagues on implementing the transition from a military-led to a civilian-led mission in Iraq. Support from DoD is essential to our success; this close relationship between DoD and State, ongoing for over 2 years, has made effective use of resources in a contingency contracting situation.

In February of this year, the Secretary of State created the Office of the Iraq Transition Coordinator, led by Ambassador Pat Haslach reporting directly to Deputy Secretary of State Thomas Nides. The Transition Coordinator works daily with her DoD Iraq transition counterparts who represent OSD and Joint Staff to ensure all USG transition efforts are synchronized. In addition to daily correspondence, the three Iraq transition offices meet at least once a week and have traveled multiple times together to CENTCOM in Tampa, and to Kuwait and Iraq to ensure a common understanding of progress and remaining issues.

In testimony before the House Oversight and Government Reform Committee, DoD witnesses stressed that “The Department of Defense (DoD) is committed to ensuring a smooth transition of DoD functions to the Department of State in support of the enduring U.S. Government diplomatic and security assistance missions in the region. We continue to provide oversight of the logistical functions associated with the orderly withdrawal of U.S. forces by the end of December 2011.”

State and DoD established a Senior Executive Steering Group focused on coordinating and synchronizing the materiel and support aspects of the transition. This same group continues to lead the initiatives associated with this transition, meeting biweekly to review milestones and ensure regular progress is being made in the eight subordinate functional areas (supply chain, equipment, contracting, medical, facilities and construction, information technology, security, and aviation). The Executive Steering Group reports to both Ambassador Kennedy, Under Secretary of State for Management, and to Acting Under Secretary of Defense Kendall on a regular basis in order to ensure that milestones are met and to address any issues that may impact the transition.

DoD has embedded staff officers within State, who have served as a bridge between departments and have helped to facilitate timely coordination. The joint DoD Equipping Board has identified more than 3,260 individual pieces of equipment worth approximately \$224 million to be transferred as excess, sold, or loaned to State. These include medical, sense-and-warn, information technology, and 60 Mine Resistant Ambush Protected Vehicles or MRAPs.

In addition to the MRAPs, DoD has agreed to loan the State Department two Giraffe Radar (rocket warning) systems and a suite of biometric collection and identification systems (164 pieces of Biometric Identification System for Access (BISA), and Biometric Automated Tool Set (BATS) biometric collecting equipment).

State continues to leverage DoD resources in theater where DoD has superior capabilities. DoD is providing State with a number of specific functions on a reimbursable basis under the authority of the Economy Act:

- The LOGCAP IV Task Order was announced on August 1, 2011, to provide the State Department with basic life support and core logistics services.
- Food distribution as well as fuel supply and disposition services will continue to be provided by the Defense Logistics Agency.
- The Army Sustainment Command recently modified the Field and Installation Readiness Support Team (FIRST) maintenance contract for those items of equipment not maintained under existing State Department contracts, LOGCAP IV, or the appropriate Program Executive Office, such as the sense-and-warn systems and MRAP vehicles.
- Administrative contract support and oversight will continue to be provided by the Defense Contract Management Agency and Defense Contract Audit Agency.
- Additionally, the Department tracks both security and non-security contractors through the USG-designated common database for contracts and contractors in Iraq and Afghanistan - SPOT, the "Synchronized Predeployment and Operational Tracker," which was developed by DoD.

This close partnership during the Iraq transition, including the transfer of equipment for use by State; embedding DoD staff in State offices; and use of DoD contracts enables the best use of resources and prevents waste in the contingency contracting environment. It also lays the groundwork for enhanced cooperative efforts during future contingencies.

*Recommendation 2. All levels of Defense and State immediately initiate and complete planning with the Government of Iraq to address critical security functions now performed by Defense.*

As DoD draws down its forces and security activities, the Department is expanding its activities, through our Bureau of Diplomatic Security (DS). Because DS will not perform inherently military activities, the Department will not attempt to undertake all of the security activities that DoD provided in Iraq. DS is picking up the non-military security functions performed by DoD, and for some of these functions will be supported by the Government of Iraq (GoI).

Some of the functions previously performed by DoD will be performed by the Government of Iraq (GoI). Because of the sensitivity of this topic, the Department would be glad to provide additional information under separate cover.

*Recommendation 3. State use, on a reimbursable basis, DoD's LOGCAP IV contract.*

As noted above, the LOGCAP IV Task Order was announced on August 1, 2011, to provide the State Department with basic life support and core logistics services. This contracting mechanism is scalable and can respond to changing conditions on the ground. The Army has developed a comprehensive transition plan to ensure that the conversion from LOGCAP III to LOGCAP IV will be seamless, with no impact on either DoD or State Department operations.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Claire McCaskill (#1)  
Senate Committee on Homeland Security and Government Affairs  
September 21, 2011**

**Question:**

The Commission's report found that a "cultural change" was needed at the strategic and operational levels at the State Department to address failures in contingency contracting. Under its existing structure, how has the State Department addressed the contracting failures identified by the Commission and others in Congress?

**Answer:**

The Department of State believes that our current authorities and contingency contracting model provide the maximum flexibility to meet mission requirements. The Department centralizes acquisition support for contingency contracting in its Office of Acquisitions Management. The Department finds this to be the most effective and efficient model.

The Department's acquisition cadre report to the Assistant Secretary for Administration. The professional acquisition staff is sufficient to handle \$9 billion in contracting a year. The contracting function is comprised of contracting staff, and because of State's matrixed structure, can draw necessary expert support such as recruitment, staffing, space planning, legal counsel, etc. from those specialized professional offices.

The Assistant Secretary also serves as the Department's Chief Acquisitions Officer. While contingency contracting is overseen by the Assistant Secretary, contingency contracting issues are consistently coordinated at the Under Secretary for Management level providing for high level focus. Major decisions on contingency

contracting policy such as how to strengthen private security contractor oversight, are led by the Under Secretary for Management.

The Department of State also instituted a requirement for the Assistant Secretary of a Bureau with a service contract with expenditures exceeding \$25 million per year to certify that adequate contract administration resources have been identified to manage the contract.

The Department has taken numerous steps to address some of these concerns:

- Increase in number of contracting management staff (i.e. Contracting Officers, Contracting Officer Representatives (CORs), and Government Technical Monitors (GTMs)) assigned to contracts in Iraq and Afghanistan (see more detailed response in #3).
- Upfront planning on Contract Administration was outlined in June 2011 Procurement Information Bulletin;
- Increase in new, competitively awarded, major contracts:
  1. The Department competitively awarded base contracts for Worldwide Protective Services to eight companies. Task orders under these contracts are competed among base contract awardees and awarded on the basis of best value, allowing for increased competition and thereby controlling costs. As of now, task orders for static and movement security have been awarded for all Department of State sites in Iraq.

2. A new Life Support solicitation was issued, and until it can be awarded a new task order was issued under DOD's LOGCAP IV, which follows CWC recommendation no. 3 from its July 2010 report.
3. State competitively awarded a medical contract in June 2011 to provide country-wide medical support in Iraq covering Chief of Mission personnel;
4. A Grounds Handling contract was recently competitively awarded by the Iraq Support Office in Amman for support of the Department's aviation services.

- Enhanced Contracting Officer Representative Training and FAC-COR certification requirements to be more interactive and skill based and coordinated training requirements closely with DOD to ensure cadre of CORs are available;
- We have partnered with DOD to improve efficiency and reduce costs for Information Technology support services and equipment.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Claire McCaskill (#2)  
Senate Committee on Homeland Security and Governmental Affairs  
September 21, 2011**

**Question:**

The Commission found that reliance on private security contractors caused great harm to the war effort. Over two years ago, the Subcommittee on Contracting Oversight, which I chair, held a hearing that revealed gross failings on the part of ArmorGroup, a private security contractor for the State Department. Even though the contract was eventually terminated, ArmorGroup continued to perform on this contract to guard the U.S. Embassy in Kabul because of problems found with another private security contractor for the State Department, EOD Technology. Does the State Department plan to reduce its reliance on private security contractors in high risk areas like the Kabul Embassy? Why does the State Department continue to rely on contractors to perform this function?

**Answer:**

The Department's readiness and ability to carry out American foreign policy under dangerous and uncertain security conditions require individuals with highly specific skill sets to perform many different security-related roles, including, but not limited to, personal protective services, criminal investigations, and counterterrorism. The Department invests considerable resources to identify, hire, and train Special Agents and Security Protective Specialists (SPS) (direct-hire Government employees) to complete these missions. The Bureau of Diplomatic Security (DS) employs approximately 1,800 Special Agents, who are deployed in the United States and at 285 overseas posts. DS also employs 80 SPS personnel, and an additional 19 are scheduled to begin training in October.



Since 2001, the Department has taken on new and expanding missions in locations with significant security threats, including countries where military operations are ongoing, or areas that are emerging from periods of intense conflict or natural disasters. The protection of missions like the U.S. Embassy facilities in Kabul necessitates a large number of security personnel. The number of security personnel required in Kabul alone exceeds the number of Special Agents and SPS personnel employed by the Department. In locations like Afghanistan or Iraq, DS awards contracts to companies experienced in high-risk environments that can provide highly specialized personnel capable of augmenting our DS direct hires while supporting our core diplomatic and consular missions.

These contracts require higher recruiting, screening, and training requirements than guard forces in lower-threat countries, generally employ a high percentage of American and third-country-national personnel, and provide specialized functions, such as medical professionals, logisticians, explosives experts, and canine handlers. The Department recognizes the diplomatic and cultural challenges in relying on contract personnel and has sought to reduce the risks of these contracts in many ways.

Direct-hire Department of State personnel provide robust oversight and tracking of our private security contractors. DS constantly re-evaluates the availability of its Special Agents and SPS personnel, realigning the number of direct-hire personnel to meet emerging challenges in locations like Afghanistan or Iraq. DS works tirelessly to place private security contractors under direct oversight of its Special Agents and SPS personnel, particularly if those contractors will be interacting with the general public, such as in personal protective details. The Department strives to award contracts in contingency operating areas to the highest caliber private security contractor with the best training, experience, and cultural awareness capabilities. These standards allow the Department to respond to emerging security situations in the most timely manner, while maximizing flexibility, and without compromising other mission-critical operations.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Claire McCaskill (#3 and #4)  
Senate Committee on Governmental Affairs and Homeland Security  
September 21, 2011**

**Questions:**

3. At the conclusion of the Commission's second interim report earlier this year, Senator Webb and I requested that the State Department provide details about whether the Department had adopted or planned to adopt the 32 recommendations in the Commission's interim report. Of the 32 recommendations, the Department disagreed with, failed to directly answer, or questioned the support for almost half of the Commission's recommendations. Does the State Department believe there is a need for any reform of how it awards, oversees, or manages contracts in contingencies based on its performance over the past decade in Iraq and Afghanistan?
4. Given the Department's response to the interim report, should we conclude that no substantive reform will occur without congressional action?

**Answer:**

The Department has made many improvements over the past 3 years to its contracting function. We value the insight we receive from our oversight entities. We have adopted and refined many of the recommendations in the CWC's reports, and have also incorporated changes recommended by our Congressional oversight committees, the State Inspector General, the Government Accountability Office, and the Special Inspector General for Iraq Reconstruction.

The Department of State experiences continuous contingency requirements in our daily operations around the world under challenging conditions. The Department centralizes procurement operations in the Office of Acquisitions Management (A/LM/AQM) and the Regional Procurement Supply Offices (RPSO), and has found this model to be effective in supporting contingency situations such as Haiti, Japan,

Afghanistan, and Iraq, among others. While the Department does not see a separate contingency contracting acquisition cadre as an efficient or necessary model based on our experience, we have made many improvements to the manner in which we award, oversee, or manage contracts in contingency situations. In addition, while the Department's contracting function is largely centralized, several Contracting Officers are embedded with program management offices in the Bureau of Diplomatic Security, the Bureau of International Narcotics and Law Enforcement (INL), the Bureau of Consular Affairs, and the Bureau of Information Resource Management to provide responsive support to Contracting Officer Representatives (CORs), assistance writing scopes of work, prompt invoice management, and onsite contract administration.

The Department has extensive experience in overseas service contracting; we have managed local guard, cleaning, construction, and other contracts for decades in dangerous and remote locations. We assign contracting resources as necessary and dedicate resources to specific contingency operations when required.

Even though we have implemented many beneficial changes over the past few years, the Department continues to make improvements to its contracting function.

- Increased oversight of our contracts and enhanced COR (and Government Technical Monitor (GTM)) training and accountability. In May 2011, a new, enhanced COR class was introduced which provided increased emphasis on Combating Trafficking in Persons, inspection/acceptance, and interactive training exercises.

- Requirement for all CORs/GTMs to be FAC-COR certified and for such jobs/responsibilities to be written and evaluated in individual work requirements in accordance with an April 2011 Departmental Notice and ALDAC;
- In October 2011 the Department's Office of the Procurement Executive issued a new Department of State Suspension and Debarment Handbook to ensure actions are taken against contractors involved in fraud, overcharging the U.S. Government, poor performance, statutory violations, etc.; contractor suspension and debarment has been an area of CWC focus. A Department of State Debarment Program Manager was created to liaison with GSA on the Excluded Party List, Office of Inspector General, Office of Legal Adviser, companies, etc. A copy of this Handbook is included with this QFR response.
- Online checklist and brochure for CORs were created to provide a list of critical duties and responsibilities;
- Over the past several years, the Department has enhanced oversight of USG contracts, including those for private security contractors. The private security contractors who protect our diplomats in high-risk environments perform an essential function that enables the conduct of American diplomacy in the places where it is needed most. The Worldwide Protective Services contract alone will have more than 175 direct hire personnel to administer the contracts and task orders to ensure compliance and oversight of approximately 5,000 security contract employees. CORs, Assistant Contracting Officer's Representatives (A/CORs), and GTMs are receiving enhanced training to allow for better management, inspection, and operational control of these contracts (such as stronger rules on use of force, unannounced inspections, housing compounds, collocation

of contractor life support areas on USG compounds, video recording, and tracking systems such as SPOT, etc). We believe with robust oversight of our contracts we will reduce risk, and we also have instituted cultural training and behavioral standards to lessen the chance that contractors' behavior will offend the sensibilities of the local populace. Use and oversight of private security contractors is another area of study by CWC, where the Department has gained much positive input from CWC's work.

- The Bureau of International Narcotics and Law Enforcement Affairs (INL) has also improved its contract oversight in conflict areas. Key among the improvements was the establishment of an office that integrates program management and contract support for Afghanistan and Iraq, as well as increased staffing for contract administration and program management at headquarters and in the field. Among specific measures taken, INL has instituted more precise Statements of Work (SOWs); employed the use of Quality Assurance Surveillance Plans (QASPs) to more closely monitor contract performance; defined specific roles and responsibilities for contract administration staff which includes greater specificity in defined standard operating procedures for invoice validation and review; improved the accessibility of contract management staff to COR files by instituting remote electronic access from the field to headquarters; engaged the Defense Contract Audit Agency (DCAA) to conduct incurred cost audits of our task orders for Iraq and Afghanistan; and required contractors to provide more frequent and detailed cost reporting and detailed work plans prior to the commencement of work.

The Department believes that many of these changes are in accordance with guidance provided by the CWC. We continue to seek areas to improve and expand oversight, especially for large, complex contracts.

**Questions for the Record Submitted to  
Under Secretary Patrick F. Kennedy by  
Senator Claire McCaskill (#5)  
Senate Committee on Homeland Security and Government Affairs  
September 21, 2011**

**Question:**

What structural reforms, if any, does the Department intend to make based on the Commission's final report to Congress?

**Answer:**

The Department of State experiences continuous contingency requirements around the world, and our U.S. Government contracting staff is experienced in dealing with these types of situations. We believe that our current system, where contracting personnel experienced in contingency contracting are part of our larger contracting office, fulfills our need to rapidly respond to contingencies.

When contingency contracting is needed, the Department deploys experienced contracting personnel and surges other resources to specific contingency operations. Through internal funding mechanisms (a one percent fee charged on all contracting services), the Department is able to draw upon its own resources including the hiring of 102 additional staff over the past several years.

The Department centralizes procurement operations in the Office of Acquisitions Management (AQM) and in its subordinate, the Regional Procurement Support Offices (RPSO), and has found this model to be effective in supporting contingency situations such as in Afghanistan and Iraq. We continue to work with the executive steering group, our teams in Iraq and Afghanistan, interagency State-DOD-AID teams, the Department's

Iraq Transition Coordinator, to ensure delivery of mission requirements. Therefore, the Department does not see a significant structural change as efficient or necessary based on our experience, as it would not avail itself of the experience we already have on-hand.

We value the insight we receive during oversight by our Congressional Committees, the Government Accountability Office, State's Inspector General, SIGIR, and the CWC, and carefully consider their recommendations. The Department continues to evaluate and implement improvements in our contracting function, particularly in contingency operations. We remain ever-cognizant of the current strained fiscal environment and the need to ensure that all taxpayer dollars are spent wisely.

CHARRTS No.: SHSGAC-03-001  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator Lieberman  
Question: #1

**Question.** What is the process within the Department of Defense for reviewing the Office of Federal Procurement Policy's (OFPP's) Policy Letter 11-01 of September 12, 2011, regarding performance of inherently governmental and critical functions, and determining whether, as a result of the Policy Letter, functions performed by contractors should be transitioned to performance by federal employees?

**Answer.** The Department currently is updating its workforce mix policies, as necessary, to implement changes promulgated within OFPP Policy Letter 11-01. Across the entire Department, continuous improvement to Total Force management of active and reserve military, government civilians, and contracts for services is critical. Total Force Management requires a holistic analysis and prioritization of the work to be done. It requires identification of and investment in the most effective and efficient component of the workforce to best accomplish the tasks to deliver required capabilities and levels of readiness. The separate decisions that affect each component of the Total Force must be synchronized to achieve the desired outcomes and balance operational, fiscal, and acquisition risks. Successful implementation is tied to several initiatives that will enhance our ability to effectively plan for and manage the Total Force to fulfill current and future needs. OFPP Policy Letter 11-01 and earlier OMB guidance require Federal agencies to determine their workforce requirements and decide which should be performed by government personnel and which should be performed by contractors. The Department intends to document and use this data to enhance planning for current and future missions and to improve strategic management of the Total Force. The OFPP policy letter also required Federal agencies to identify inherently governmental and critical functions and ensure sufficient organic capacity to maintain control over functions that are core to the respective agency's mission. As such, the Department is committed to meeting its statutory obligations under Title 10 (sections 2330a, 2383, and 2463) to annually inventory and review its contracted services, identifying those that are inappropriately being performed by the private sector and should be in-sourced to government performance, including those that are inherently governmental, closely associated with inherently governmental in nature, or may otherwise be exempted from private sector performance (to mitigate risk, ensure continuity of operations, build internal capability, meet and maintain readiness requirements, etc).



CHARRTS No.: SHSGAC-03-002  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator Lieberman  
Question: #2

**Question.** The report of the Commission on Wartime Contracting notes the widespread shortage of trained acquisition and contracting personnel. In April 2009, Secretary Gates announced his intent to increase the size of the Department of Defense (DoD) acquisition workforce by 20,000 personnel by fiscal year 2015. What progress has DoD made toward growing the workforce? Is it still DoD's intent to grow the acquisition workforce by 20,000 personnel? If not, what level of growth are you projecting?

**Answer.** As of the end of fiscal year (FY) 2008, DoD had 25,680 contracting professionals supporting all aspects of the DoD acquisition mission, to include the contingency mission. Enabled in part by the Defense Acquisition Workforce Development Fund, DoD has increased contracting workforce capacity. As of the end of the third quarter of FY11, DoD now has 30,366 contracting professionals, an increase of 4,686 (18 percent). DoD's current plan would complete 14,000 of the 20,000 in acquisition workforce growth under the DoD initiative.

CHARRTS No.: SHSGAC-03-003  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator Lieberman  
Question: #3

**Question.** The Commission's report discusses the consideration of a selective phasing out of private security contractors for high-risk positions, regions, and contexts. In some instances, such as forward camps in areas of heavy insurgency and where there is a significant likelihood of well-planned enemy attacks, the Commission suggests that military forces should be used to provide static security. a) To what extent would DoD be able to provide military forces to perform such security functions and what impact would that have on the overall military strategy in Afghanistan? b) What factors affect DoD's ability to implement this recommendation of the Commission?

**Answer.** Defense Department policy restricts the use of private security companies (PSCs) in guarding military supply routes, military facilities, military personnel or military property wherever major combat operations are ongoing or imminent. In these situations, contract security services are not authorized, unless under a specific exception granted by the Combatant Commander. The authority to grant this exception may not be delegated to subordinate command levels. Regardless of the likelihood of combat or orchestrated attack, wherever contract security services are used to provide static security, their role is not to engage in an offensive maneuver. The task is to prevent unauthorized personnel, contraband, and instruments of damage, destruction, and information collection from entering the installation. Contractors are forbidden from engaging in combat or combat-like activities. Such activities specifically include, but are not limited to, reconnaissance patrolling, cordon and search operations, or acting as an observer or spotter for indirect fire operations. Defense of the installation from enemy attacks, whether well planned or otherwise, is and always has been the responsibility of the military forces on that installation.

Implementing the Commission's recommendation does not change existing policy or military strategy in Afghanistan and should not affect force structure. I defer, however, to the Chairman of the Joint Chiefs of Staff and Commander, US Forces Afghanistan for a more precise assessment of that impact on military strategy and force structure that might be required should the discretion of when to use PSCs be taken away from the Combatant Commander.

CHARRTS No.: SHSGAC-03-004  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator Lieberman  
Question: #4

**Question.** In July 2010, the Commission issued a special report on the shift of responsibilities in Iraq from the Department of Defense to the Department of State that noted some of the steps taken by State and DoD to address the challenges posed by the transfer. However, the Commission also concluded that much remained to be done, and made four recommendations for further improvement. a) What is the current status of the transfer of responsibilities and related contracting efforts from DoD to State? b) Were any of the recommendations from the Commission's July 2010 report on this issue implemented? If not, why?

**Answer.** We continue to provide oversight of the logistical functions associated with the orderly withdrawal of U.S. forces by the end of December 2011. With regard to logistics issues (including contracting), we are in the execution phase of this transition and are on track, and in some cases, ahead of schedule. The Defense and State Departments established a temporary Senior Executive Steering Group focused on coordinating and synchronizing the materiel and support aspects of the transition. It is co-chaired at the Deputy Assistant Secretary level and meets biweekly to review milestones and ensure regular progress is being made in the eight subordinate functional areas (supply chain, equipment, contracting, medical, facilities and construction, information technology, security, and aviation). We have had constant, direct participation from the U.S. Embassy in Iraq and from United States Forces-Iraq (USF-I) as well as from other key players in Washington, D.C. The Executive Steering Group reports to both Ambassador Kennedy, the Under Secretary of State for Management, and Mr. Frank Kendall, Acting Under Secretary of Defense (Acquisition, Technology and Logistics), on a regular basis. Further, DoD has embedded staff officers with the Department of State (DOS) and they have served as a bridge between departments and have helped to facilitate timely coordination.

DoD has identified more than 3,260 end items that are being transferred, sold or loaned to DOS and is also providing a number of specific functions on a reimbursable basis under the authority of the Economy Act to assist the Department of State capacity in Iraq until at least fiscal year 2013. The Department of Defense, through the Army's Sustainment Command, is executing and overseeing contracts for basic life support, maintenance support and security. The Defense Logistics Agency (DLA) will contract for food, fuel and disposition services. Administrative contract support and oversight will continue to be provided by the Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA). Also, DOS will use two DoD IT Systems - the Synchronized Pre-deployment and Operational Tracker (SPOT) and the Total Operational Picture Support System (TOPSS) to manage personnel in Iraq. DOS will provide Contracting Officer Representatives for the contracts awarded by DoD. All

support provided to DOS is on a reimbursable basis under the authority of the Economy Act. Specific details on each function follows:

#### Logistics Civil Argumentation Program (LOGCAP)

Kellogg Brown & Root (KBR) was announced as receiving the LOGCAP IV DOS/OSC-I post-2011 BLS W52P1J-07-D-0009, Task Order 0004, on Aug 1, 2011, at a total evaluated price of \$506,534,413.00 to provide basic life support. This includes a transition period in 2011 (through December 31, 2011), a base year in 2012, and one option year in 2013. LOGCAP IV is coming on line incrementally with priority to those locations where LOGCAP III is absent. All LOGCAP III functions will transfer to LOGCAP IV NLT December 31, 2011.

#### Maintenance

The Army Sustainment Command recently modified the Field and Installation Readiness Support Team (FIRST) maintenance contract for those items of equipment not maintained under existing State Department contracts, LOGCAP IV, or the appropriate Program Executive Office, such as the sense-and-warn systems and Mine Resistant Ambush Protected vehicles. The contractor will perform maintenance on all Army "Green" equipment, which comprises a mix of tactical vehicles and force protection equipment. This FIRST Task Order is with URS Federal Support Services, Inc. Contract Type: Cost Plus Fixed Fee. Total negotiated award is valued at \$65.8M (incrementally funded).

#### Security

The Security Support Services-Iraq (SSS-I) contracts were solicited under full and open competition and resulted in award of three multiple award task order contracts, with firm fixed price and cost reimbursable line items. The base contracts were awarded on May 3, 2011. The awardees are: Olive Group North America; Triple Canopy, and Aegis Defence Services. The period of performance is one base year with four option years. Support can be provided to Department of Defense entities, to include the Office of Security Cooperation-Iraq, and for the DOS should such services be required. The contract ceiling is \$499M.

#### Contractor Oversight and Management

DCMA plans on deploying up to 52 personnel to provide contract management oversight and the DCAA will deploy 5 auditors to provide audit services.

#### DLA

Food—DLA currently has or is in the process of standing up the delivery of food to all the DOS locations.

Fuel—DLA is delivering fuel to all locations, however some DOS fuel storage sites are not ready due to construction delays with the DOS Overseas Building Office managed contracts. DLA and DOS have developed mitigation measures to ensure that there are no negative impacts to operations.

Disposition Services—DLA will continue to provide services at DOS designated disposal yards.

b) DoD is committed to ensuring a smooth transition to the DOS in support of the enduring U.S. Government diplomatic and security assistance missions in the region. We have taken all the actions suggested by the Commission on Wartime Contracting in its Special Report on Iraq Transition Planning, including: accelerating, intensifying, and better integrating DoD and DOS joint planning for the Iraq transition; addressing critical security functions with the Government of Iraq; and allowing State to use, on a reimbursable basis, LOGCAP IV and other contracts.

CHARRTS No.: SHSGAC-03-005  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator McCaskill  
Question: #5

Question. Please comment on your responsibilities as Director of Defense Procurement and Acquisition Policy for the Department of Defense. Specifically, do your responsibilities include advanced planning for contingency contracting? Have you been a part of the preparation of strategic and operation planning documents that contemplate the use of contractors in contingencies? If not, then whose role is this?

Answer. In general, I am responsible for contracting and procurement policy matters, including E-business in the Department of Defense. With regard to contingency contracting, I have a broad swath of responsibilities directed toward enabling effective and efficient contracting in support of deployed forces, humanitarian or peacekeeping operations, and disaster relief. This includes acting as an advisor to the Under Secretary of Defense for Acquisition, Technology and Logistics on all matters pertaining to contingency contracting policy, providing functional leadership for the Department on contingency contracting matters, developing DoD contracting policy and issuing necessary guidance for effective contingency contracting support to joint operations during contingency and crisis planning and actual contingency operations, and developing solutions, including tools, training and communications.

I do not have responsibility for advanced planning of contingency contracting in support of Combatant Commander operational plans. The Chairman of the Joint Chiefs of Staff, as the principal military advisor to the President and Secretary of Defense, has specific responsibilities in the areas of strategic direction as well as in strategic and contingency planning. The Joint Staff is responsible for developing and promulgating Operational Contract Support (OCS) planning guidance and ensuring that OCS is addressed in Combatant Commander Operational Plans. That said, I have a close relationship with J-4 and we work collaboratively on numerous OCS matters, including those related to planning and resourcing. On the planning side this includes providing input to Joint Publication 4-10, Operational Contract Support, including its Contract Support Integration and Contractor Management Planning Considerations and Checklist Appendices, and participating in OCS Planning Conferences, including those that helped develop OCS planning annexes in support of the new Joint Chiefs of Staff Manual 4300.01A. On the resourcing side, this includes working with the Joint Staff and Service Senior Procurement Executives to ensure that we adequately resource the manpower required to conduct contingency contracting.

I also work closely with United States Central Command (USCENTCOM) and have provided input to key contracting related fragmentary orders (FRAGOs), including those that established the Joint Contracting Command (Iraq/Afghanistan) and the Joint Theater Support

Contracting Command. At the operational level, one of my key concerns is making sure DoD contracting officers are aware of and understand unique considerations and requirements associated with contractors delivering goods, services and construction to contingency areas, regardless of where the contracts are let. To that end, we have issued numerous contracting policy letters supporting operations in the CENTCOM AOR and made many changes to the Defense Federal Acquisition Regulations Supplement (DFARS) and associated Procedures, Guidance, and Information (PGI) that address key considerations and requirements contracting officers must address when contracting outside the United States, including planning considerations.

I work closely with both Joint Staff J-4 and the Deputy Assistant Secretary of Defense for Program Support, who has the program management and policy responsibilities for OCS on strategic OCS-related issues, and we frequently collaborate on inputs to strategic DoD and Joint Chiefs of Staff documents. I also coordinate and provide input on a myriad of Directives and Instructions to ensure that contingency contracting related equities are addressed and in turn, that the associated contracting officer/contractor related requirements are captured in DFARS/PGI. Key examples include: DODD 3020.49, Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution; DODD 5105.64, Defense Contract Management Agency; DODI 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces; and DODI 3020.50, Private Security Contractors.

CHARRTS No.: SHSGAC-03-006  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator McCaskill  
Question: #6

Question. In January 2011, former Defense Secretary Gates issued a memorandum which instructed the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L), among others, to inventory, review, coordinate, and provide guidance on a list of factors to determine the appropriate level of contractor dependence by the military. I have asked GAO to conduct a review of the Department's compliance with Secretary Gates' directives. Do you believe that the planning for use of contractors has received sufficient attention by the Defense Department in Iraq and Afghanistan? What changes have been made to improve planning?

Answer. The Department has continually increased its efforts in this area over the last 3 years. A key step in the planning effort was the introduction of Operational Contract Support (OCS) Planners into each Combatant Command. In USCENTCOM, these planners have produced the first OCS plan annexes used in support of contingency operations in Iraq and Afghanistan, including those supporting the Joint Contracting Command (Iraq/Afghanistan), the Joint Theater Support Contracting Command, the Iraq Transition Plan and Contractor Demobilization Operations. While Combatant Command OCS Planners are a good first step, we also need to bring more OCS planning expertise to the Joint Staff. The Department is looking at how to resource that requirement. As noted in the Secretary of Defense's January 24, 2011 memorandum, the Department needs to improve OCS planning to better manage the risks associated with reliance on contracted support. The Department's first step to improving planning at the operational level was with the establishment of contracting and contractor management planning considerations in JOPES Volume II, Planning Formats, in 2006. This was followed by the publication of JP 4-10, Operational Contract Support, in 2008, which included Contract Support Integration and Contractor Management Planning Considerations and Checklist Appendices. Joint Staff J-4 is currently working on the new Joint Chiefs of Staff Manual 4300.01A, Planning Joint Logistics Support, which includes vastly improved and expanded OCS planning guidance. Joint Staff also produced a Contractor Estimate Tool for use in support planning efforts. However, planning guidance is only one part of the answer. There are a myriad of other initiatives that directly impact our ability to do OCS planning well, including having the supporting policy, organization, training, material, leadership, education and personnel. OSD, the Joint Staff, the Services, the Combatant Commands and the Defense Agencies are all engaged in various aspects of this effort at both the strategic and the tactical level that will ultimately improve our ability to plan for and execute OCS.

CHARRTS No.: SHSGAC-03-007  
 Senate Committee on Governmental Affairs  
 Hearing Date: September 21, 2011  
 Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
 Witness: Director (DP&AP) Ginman  
 Senator: Senator McCaskill  
 Question: #7

**Question.** Secretary Gates also directed the Under Secretary of Defense for AT&L, to whom you report, to coordinate with the Under Secretary of Defense for Personnel and Readiness to identify critical civil service skill sets that should be substituted for contracted work in contingencies. What has been done to comply with this directive?

**Answer.** The Department of Defense is working multiple initiatives to address the total force mix required to support the contingency needs of the Combatant Commanders. Part of DoD's strategy is to identify those skills sets that can be used to replace or substitute for contractors in order to achieve a mission-ready, cost effective and effective civilian cohort that augments the operational military force.

Per the January 24, 2011 SECDEF Memo, "The Under Secretary of Defense for Personnel and Readiness shall:

Inventory and identify the critical civil service skill sets that may augment or substitute for contracted or military personnel in contingencies in coordination with the USD(P), USD(AT&L), USD(C), Director of Cape, and the Joint Staff."

As such, in collaboration with OSD (Policy), AT&L, and others, OSD (P&R) is:

1. Managing a hiring surge requirement to support U.S. Forces Afghanistan (USFOR-A) to support the military drawdown.
2. Revising its draft Department of Defense Instruction governing the management of a Civilian Expeditionary Workforce, including consideration of a dedicated CEW Office with its own HR servicing capability.
3. Redeploying civilians from Iraq to Afghanistan in response to Combatant Commander needs.
4. Refining critical skill set requirements to meet contingency operations.

Currently, OSD (P&R) is managing the surge hiring requirements for USFOR-A. Currently this requirement is for 490 Federal civilians in key functions such as ministerial advisors, program managers, intelligence, logistics, financial management, engineers, contracting and acquisition, human resources and training. Large increases in the number of contracting professionals and other DoD civilians in the CENTCOM AOR have been made in direct response to the Commission on Wartime Contracting recommendations. As we continue to drawdown the military in the CENTCOM AOR – the appropriate number of civilians to deploy in support of



the Combatant Commander is being constantly reevaluated and changed to meet operational realities on the ground, to include the identification of critical civil service skill sets.

The OSD (P&R) Civilian Expeditionary Workforce (CEW) Personnel office is evaluating a plan to establish a dedicated HR Office and organization structure that will improve the recruitment, accountability, sustainment and post-deployment support to civilians who volunteer to accept positions with the critical skill sets needed to meet Combatant Commander needs.

The Department is critically reviewing and modifying its long-term CEW program. The Department is committed to moving from a largely "volunteer" system to one which embeds across its footprint a sufficient number of readily deployable civilians who maintain deployment status as a condition of employment. This cadre of readily deployable civilians is being right-sized to maintain a cost-effective capability. The ability of the Department to deploy a larger cadre of trained Federal civilians is necessary in order to reduce any over-reliance on contract support as identified in the Commission's recommendations. It will be two to three years before this strategic vision is fully realized, but incremental progress is being made.

CHARRTS No.: SHSGAC-03-008  
Senate Committee on Governmental Affairs  
Hearing Date: September 21, 2011  
Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
Witness: Director (DP&AP) Ginman  
Senator: Senator McCaskill  
Question: #8

**Question.** The Commission's report found that a "cultural change" was needed at the strategic and operational levels at the Department of Defense to address failures in contingency contracting. Under its existing structure, how has the Department of Defense addressed the contracting failures identified by the Commission and others in Congress?

**Answer.** The Department of Defense has made great strides in initiating the "culture change" needed with respect to contingency contracting. A broad swath of personnel and activities from the strategic to tactical levels are engaged in efforts that will ultimately change the culture of our enterprise to completely integrate the planning and execution of contracted support for contingency operations into the fabric of deployed military operations.

The Department has consistently given high-level attention to strategic and operational concerns, issues and recommendations brought by the Government Accountability Office and Department of Defense Inspector General and the Gansler Commission and the Commission on Wartime Contracting (COWC). In response to the recommendations of the latter two organizations, we formed DoD Task Forces to consider each recommendation proposed, each led by key leaders including the Director of Defense Procurement and Acquisition Policy and Senior Procurement Executives from the Military Departments, DCMA and DCAA. Of the 101 DoD recommendations made in the Gansler Report, the COWC's 1<sup>st</sup> and 2<sup>nd</sup> interim reports and the COWC's final report, our analysis shows that DoD has moved forward on most of the DoD-applicable recommendations, either through direct implementation or alternative approaches. This includes 15 of 18 Gansler Report Recommendations and 59 of 72 COWC Interim Report Recommendations. We are still in the process of analyzing the 11 COWC Final Report Recommendations.

The DoD and the Military Departments have embarked on a myriad of initiatives to improve planning for and execution of contracted support of contingency operations. Monitoring, assessing improving OCS and contingency contracting is a continuous process within the Department. Tangible evidence of our commitment to continuous progress is found in the many accomplishments the Department has made across the Doctrine, Organization, Training, Materiel, Leadership and Education, Personnel and Facilities (DOTMLPF) spectrum.

As I mentioned in my testimony, the Department has improved its organizational structure at many levels to ensure it best supports Operational Contract Support (OCS) and contingency contracting. The importance of the organizational structure in resolving the Department's issues in the planning, management and oversight of contingency contracting, and

the associated change in culture, cannot be understated and, although discussed in some detail in the testimony, bear reiterating here.

In 2006, Congress directed the appointment of Program Managers at the OSD and Military Department levels to focus the Operational Contract Support efforts (section 854 of the FY2007 NDAA; 10 USC 2333). The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Military Department Acquisition Chiefs, respectively, have made these appointments and their responsibilities were further clarified in the charter of the OCS Functional Capabilities Integration Board (FCIB). The OCS FCIB provides strategic leadership to the multiple stakeholders working to institutionalize OCS. It is co-chaired by the Deputy Assistant Secretary of Defense (Program Support) and the Vice Director of the Joint Staff Logistics Directorate (J-4), and brings together key strategic leaders from OSD, the Military Departments, Combatant Commands and the Defense Agencies to address both strategic- and operational-level issues affecting contracted support of military operations. This forum provides the basis for conducting independent assessments and analysis of OCS capabilities (to include supporting DOTMLPF of the Armed Forces; advocates OCS capability development in a variety of venues; establishes and assesses ways to improve measures of performance, metrics, and processes for measuring OCS readiness; develops joint policies required by 2007 National Defense Authorization Act section 854, for requirements definition, contingency program management, and contingency contracting during combat and post-combat operations; provides continued enterprise-wide visibility and oversight of OCS-related Task Forces (e.g. Gansler and COWC) to ensure timely completion of Task Force Initiatives and integration of these initiatives with related ongoing Department activities. The OCS FCIB provides the strategic-level forum that will help ensure alignment and coordination of the myriad of efforts being made at all levels to improve OCS.

Another key indicator of our commitment to changing the culture has been filling General Officer positions established under the 2009 National Defense Authorization Act. The Department believes that a key element of strengthening both the oversight of contracting and the contracting career path for officers is the establishment of general officer billets for contracting positions. A pool of deployable general officers with strengths in contracting and contract management is essential for successful contracting support for future contingencies and expeditionary operations.

One of these General Officers(GO)/Flag Officers (FO) is assigned to the office of the DASD (PS) and is currently serving as the Commander of the Joint Theater Support Contracting Command (JTSCC). In May 2010, this command recently re-organized, moving from being a U.S. Forces-Iraq subordinate command to joint functional command reporting directly to HQ CENTCOM. This action recognizes that contract oversight is a combatant commander responsibility and that establishing centralized oversight is key to ensuring all contracts executed or performed in the theater are in compliance with contracting policy and procedures. It also ensures contracting support in Afghanistan and Iraq are viewed together rather than placing one theater above the other.

Another of the GO/FO positions was established to the Director of the Joint Contingency Acquisition Support Office (JCASO). The Department created the JCASO as an enabling

capability to assist Combatant Commanders in staffing, coordinating, organizing, and managing joint OCS efforts in all phases of operations. This includes deploying teams at the Combatant Commander's request to coordinate the establishment and implement joint OCS-related review boards, and participate in board proceedings to provide OCS advice to intergovernmental partners and assist in the standup of theater contracting organizations such as the Joint Theater Support Contracting Command. JCASO provides forward teams during non-contingencies as requested to organize, coordinate, and establish tailored OCS strategies to resolve operational challenges and to provide implementation roadmaps, theater business clearance/common contracting coordination processes and constructs, and guidance for lead service for contracting (LSC) where appropriate. They may also assist in the review of all command memoranda, policies, orders, etc, for OCS matters and/or impact on OCS-related actions. JCASO also collects and gathers joint OCS lessons learned and best practices for process improvements and revisions to regulations, policies, doctrines, and plans to enhance future OCS support to the Contractor Cost Data Reporting (CCDR). JCASO was established at the Defense Logistics Agency (DLA) in August 2009 and has been fully operational since October 2010.

On December 8, 2009, the Assistant Secretary of the Army for Acquisition, Logistics and Technology chartered the OCS and Policy Directorate. This new directorate is the proponent for operational contracting policies supporting the full spectrum of contingency operations worldwide, and will synchronize contingency contracting planning and policy across the Army. The OCS Policy Directorate also provides liaison for and oversight of the C-JTSCC on behalf of the Army Acquisition Executive.

Besides these organizational changes, numerous other actions taken by OSD, the Joint Staff and Military Departments across the other DOTMLPF lanes have helped set forth a basis for better planning and execution of OCS efforts in the future, some of which were discussed in my testimony. These include successful efforts to improve resourcing of contracting and contracting officer representative positions, publication of the first Joint OCS Doctrine, the Army's publication of an Army Tactics, Techniques, and Procedures on Operational Contract Support, OCS training and education for the non-acquisition community (strategic to tactical levels), contingency contracting training for contracting officers and contracting Officer Representatives (CORs) and numerous tools to support OCS and Contingency contracting efforts, including handbooks, the CORs Tracking Tool, a 3-in-1 tool (supporting Field Ordering Officers), a Contingency Acquisition Support Module (supporting requirements development), and an Automated Contingency Contracting Officer After Action Report.

In addition to the initiatives at the DoD level, each of the Military Departments has also made great strides in initiating the required change in culture with respect to OCS. For example, The Army has reorganized its contingency contracting forces to better plan, train, equip, and execute operational contract support, in response to a recommendation from the Gansler Commission. The Army's Expeditionary Contracting Command (ECC) headquarters reached Full-Operational Capability on October 8, 2009. The ECC has six active Contracting Support Brigades (CSBs). These CSBs are geographically aligned in order to provide responsive operational contracting support to the Army Service Component Commands (ASCCs) and provide the Army with greater flexibility to place contracting teams into areas to support Joint Force operations. This organizational alignment has proven effective in assisting the ASCCs in

developing and synchronizing contracting support integration plans. The ECC is scheduled to stand-up a seventh CSB in support of AFRICOM. In addition to training and equipping contingency contracting officers, the ECC has engaged the brigades deploying to Afghanistan and Iraq to provide on-site training on COR responsibilities in a contingency operation, field ordering officer training, and Commander's Emergency Response Program (CERP) project office training.

In order to leverage the power of the Army Contracting Command (ACC) enterprise in supporting global operations, the Army has established a "reach-back" contracting capability to support contingency operations that are enduring in nature. As an example, Army Contracting Command - Rock Island (ACC-RI) established a reach-back team in early 2008 with 8 personnel executing over \$800 million worth of contracts in support of our Kuwait contracting operations. As of September 2011, ACC-RI has a reach-back capability of over 100 personnel working 1,350 active requirements with a total value of \$30.4 billion that are in varying stages of the acquisition cycle. Having this reach-back capability reduces our in-theater footprint and the number of individuals in harm's way.

We have worked hard to improve the management and control of contracted support of deployed operations. While we clearly have a long way to go, the steps taken above and our continuing efforts towards improvement have helped to put us on a path that will ensure we do a better job in planning and executing contingency contracting in the future.

CHARRTS No.: SHSGAC-03-009  
 Senate Committee on Governmental Affairs  
 Hearing Date: September 21, 2011  
 Subject: Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting  
 Witness: Director (DP&AP) Ginman  
 Senator: Senator McCaskill  
 Question: #9

**Question.** At the hearing we discussed sustainability as a requirement in contractor planning. What steps have been taken to achieve greater consideration of sustainability in future contracts and projects? Are current projects being assessed for sustainability? Have any DOD funded or managed projects ever been terminated as a result of findings that they were not sustainable? If so, please provide a list of projects.

**Answer.** The Department recognizes the importance of sustainment for the Commander's Emergency Response Program (CERP) and Afghanistan Infrastructure Fund (AIF) projects, as was addressed in the Department of Defense Appropriations Act, 2011 (division A of Public Law 112-10), and consistent with the purposes of section 1217 of the Ike Skelton National Authorization Act for FY 2011 (Public Law 111-383). These Acts specifically added the requirement to submit to Congress, a plan for sustainment of CERP projects over \$5M, to include any agreement with the Government of Afghanistan, a department or agency of the U.S. government other than DoD, or a third party contributor to finance the sustainment of activities and maintenance of any equipment or facilities to be provided through the proposed project. These Acts also require that all proposed AIF projects address sustainability and include a plan for sustainment in their notification to Congress, prior to execution.

In addition, the U.S. Forces-Afghanistan (USFOR-A) Money As a Weapon System (MAAWS) guidance updated in February 2011, requires a Sustainment Memorandum of Agreement (MOA) for all CERP projects \$50K, or greater, incurring operating or sustainment costs – such as construction projects and large equipment purchases. The signed MOA is between the U.S. (with joint secretariat coordination between J9 and the U.S. State Department representatives in the International Security Assistance Force) and the Afghani district or provincial governor. The intent of these agreements is to educate the Government of Afghanistan representative on the project itself and ensure there is an understanding of the project's out-year operating and sustainment costs. Guidance is specific that if the Government of Afghanistan official is not willing to fund the operating costs or maintain the investment, the United States is not to fund or proceed with the project.

All CERP project managers are required to coordinate proposed projects with Afghan agencies and local officials, as well as with the nearest Provincial Reconstruction Team (PRT), to ensure there is no unwanted duplication of efforts by DoD, USAID, State and Non-Governmental organizations in the area.

In addition to the CERP and the AIF, the Afghanistan Security Forces Fund (ASFF) has a significant role in Afghanistan in developing, training, and equipping the Afghanistan security forces. Senate Report 111-295 (S. 3800) requested the Secretary of Defense to establish an ASFF Executive Council to oversee the planning, contracting and execution of the ASFF.

The Deputy Secretary of Defense established the Afghanistan Resources Oversight Council (AROC) on August 3, 2011. The Council was initially assigned the responsibility to oversee only the ASFF. This was later expanded to include CERP, AIF, and other DoD funded programs in Afghanistan (such as the Afghanistan Reintegration Program). The membership includes Co-Chairs Under Secretary of Defense (Acquisition, Technology and Logistics), USD (Policy), and USD (Comptroller), as well as senior representatives from U.S. Central Command, Joint Staff, and Army (Financial Management and Comptroller). The AROC will provide a venue to oversee the overall execution of the resources.

Further, the U.S. Army Corps of Engineers (USACE) uses 16 Go/No-go criteria for construction projects which take into consideration not only sustainability, but capacity building, operations and maintenance, master plan coordination, and quality assurance management, to name a few.

For Contingency Military Construction (MILCON) projects, funds are line-item authorized (name, location, and cost) by Congress and are scrutinized to ensure their validity upon completion. There are authorities to reprogram MILCON funds from cancelled or de-scoped projects, but there is no flexibility to change a specific project's scope, cost, or location once approved. Continuous project review and approval occurs at the United States Forces-Afghanistan (USFOR-A), Service Component, U.S. Central Command (CENTCOM), and Joint Staff/OSD levels prior to submission and throughout the Congressional approval period. USFOR-A and USACE further validate projects prior to award and again prior to the start of construction. These projects have been reviewed over the last two years to ensure our investments support operational requirements. These reviews resulted in cancellation of a number of projects and identification of emerging projects to support changes in the overall Afghanistan strategy or changes in force levels:

- 44 projects (\$500M) cancelled from the original 137 projects (\$2.3B) in the FY10 program submitted in December 2008 to OSD.
- 24 projects (\$300M) cancelled from the original FY11 program (58 projects, \$1B) submitted by CENTCOM to OSD in October 2009.

USFOR-A has just completed another review of the entire MILCON program; of \$4.64B in MILCON projects approved, \$576M in MILCON projects are being recommended for cancellation and \$205M for descoping. This was based on evaluating projects against three criteria: 1) projects essential to retrograde, 2) projects supporting enduring strategic basing, and 3) projects in support of surge operations.

For Afghanistan National Security Forces (ANSF) construction projects, Congress authorized funds and authorities which allow CSTC-A the flexibility to change, cancel, and

relocate construction projects. As with the MILCON program, CSTC-A operational requirements drive their construction program. ANSF projects are screened against the GO/NO-GO criteria as well. There were no projects cancelled as a result of the screenings, but many were modified to meet the criteria. In-progress projects were reviewed and appropriate changes were made as required and allowable. This year, four ANP projects were relocated due to physical requirements, and approximately 50 ANP projects across Paktika, Helmand, Ghazni, Kunduz, Zabul, and Farah Provinces were put on hold until security conditions improve.

CSTC-A Engineers continue to revise ANSF facilities construction standards. The CSTC-A focuses on making current and future ANSF facilities sustainable, affordable and durable. These standards ensure facilities meet Afghan requirements, can be sustained and are cost effective. Examples include washrooms built with trough sinks vice pedestal sinks, use of ceiling fans vice heating ventilation and air conditioning systems, and dining facilities equipped with propane and/or wood stoves vice electric stoves. A primary challenge for CSTC-A is stewardship and sustainment - ensuring Afghans are capable of managing facilities once security has fully transitioned. They have enhanced this capability by establishing:

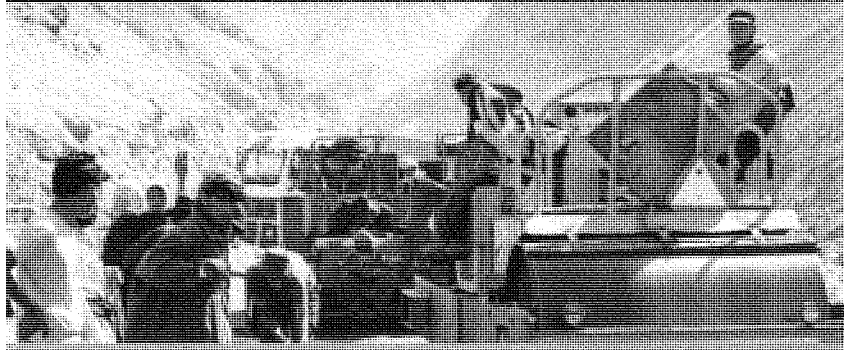
- Advisory groups for ministerial development in the Ministry of Defense (in support of ANA) and the Ministry of Interior (in support of ANP).
- Advisors with Afghan Facilities Departments to handle daily issues and assist with implementing Ministerial strategic initiatives.
- Embedded Infrastructure Training Advisory Group (ITAG) teams to transition to Afghan led facility maintenance. ITAG protects our investment in ANSF infrastructure.

Finally, most recently, USFOR-A is accounting for the reduction of U.S. forces in newly transferred areas. When future transfers occur in two of the Regional Commands, projects regarding housing, waste management, wastewater treatment, and dining facility projects (6 projects, \$29M), will be cancelled. The message is that we will continue to assess projects as U.S. forces reposture from Afghanistan, ensuring that we make only the investment required to support operations.



# Transforming Wartime Contracting

Controlling costs, reducing risks



COMMISSION ON WARTIME CONTRACTING  
IN IRAQ AND AFGHANISTAN

[WWW.WARTIMECONTRACTING.GOV](http://WWW.WARTIMECONTRACTING.GOV)

## FOREWORD

Contractors represent more than half of the U.S. presence in the contingency operations in Iraq and Afghanistan, at times employing more than a quarter-million people. They have performed vital tasks in support of U.S. defense, diplomatic, and development objectives. But the cost has been high. Poor planning, management, and oversight of contracts has led to massive waste and has damaged these objectives.

The volume and complexity of contract actions have overwhelmed the ability of government to plan for, manage, and oversee contractors in theater. Contracting decisions made during urgent contingencies have often neglected the need to determine whether host-nation governments can or will sustain the many projects and programs that U.S. contracts have established in their countries.

Americans' "Can do!" response to the challenge of contingency operations is admirable, but human and financial resources have limits, and long-term costs are seldom considered when short-term plans are being framed. Much of the waste, fraud, and abuse revealed in Iraq and Afghanistan stems from trying to do too much, treating contractors as a free resource, and failing to adapt U.S. plans and U.S. agencies' responsibilities to host-nation cultural, political, and economic settings.

This final report to Congress summarizes the Commission's work since 2008 and offers 15 strategic recommendations that it believes warrant prompt action.

Delay and denial are not good options. There *will* be a next contingency, whether the crisis takes the form of overseas hostilities or domestic response to a national emergency like a mass-casualty terror attack or natural disaster.

Reform will save lives and money, and support U.S. interests. Reform is essential. Now.

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### Continuing access to Commission resources

The Commission on Wartime Contracting in Iraq and Afghanistan will, by statutory mandate, cease operations at the end of September 2011.

The Commission's public website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov), will not be updated after September, but will continue to provide public access to Commission reports, hearing documents, news releases, and other material.

The Commission's electronic and paper records will be turned over to the National Archives and Records Administration for preservation.



COMMISSION ON WARTIME CONTRACTING  
IN IRAQ AND AFGHANISTAN

# **Transforming Wartime Contracting**

Controlling costs, reducing risks

Final report to Congress

Findings and recommendations for legislative and policy changes

**COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN**

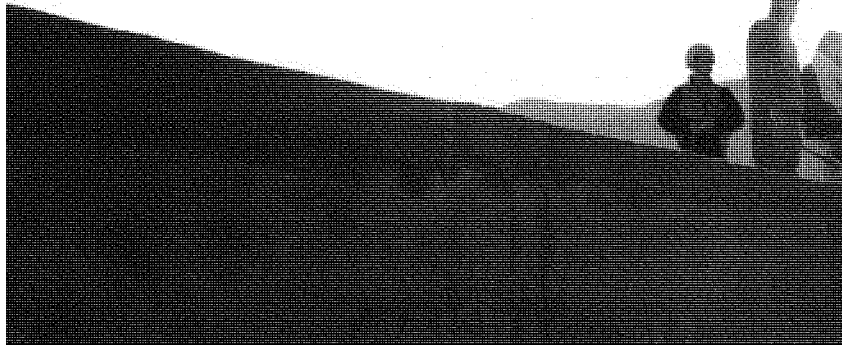
A bipartisan congressional commission

**AUGUST 2011**

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### About the Commission

Congress created the independent, bipartisan Commission on Wartime Contracting in Iraq and Afghanistan in 2008 (Public Law 110-181) to assess contingency contracting for reconstruction, logistics, and security functions; examine the extent of waste, fraud, and abuse; and provide recommendations to Congress to improve the structures, policies, and resources for managing the contracting process and contractors.

The Commission filed interim reports to Congress in June 2009 and February 2011, and has also issued five special reports. The reports, including this final report and other materials such as hearing transcripts, are posted at [www.warimecontracting.gov](http://www.warimecontracting.gov).

## EXECUTIVE SUMMARY

**A**t least \$31 billion, and possibly as much as \$60 billion, has been lost to contract waste and fraud in America's contingency operations in Iraq and Afghanistan. Much more will turn into waste as attention to continuing operations wanes, as U.S. support for projects and programs in Iraq and Afghanistan declines, and as those efforts are revealed as unsustainable.

This sobering, but conservative, estimate flows from nearly three years' work by the Commission on Wartime Contracting in Iraq and Afghanistan, an independent and bipartisan panel created by Congress in 2008 to examine waste, fraud, abuse, accountability, and other issues in contingency contracting, and to make recommendations for improvement.

Much of the contingency-contract waste and fraud could have been avoided. Unless changes are made, continued waste and fraud will undercut the effectiveness of money spent in future operations, whether they involve hostile threats overseas or national emergencies here at home requiring military participation and interagency response. Responsibility for this state of affairs lies with Congress, the White House, federal departments, the military services, agency leadership, contractors, and individuals who abuse the system.

Contract waste, fraud, and abuse take many forms:

- An ill-conceived project, no matter how well-managed, is wasteful if it does not fit the cultural, political, and economic norms of the society it is meant to serve, or if it cannot be supported and maintained.
- Poor planning and oversight by the U.S. government, as well as poor performance on the part of contractors, have costly outcomes: time and money misspent are not available for other purposes, missions are not achieved, and lives are lost.
- Criminal behavior and blatant corruption sap dollars from what could otherwise be successful project outcomes and, more disturbingly, contribute to a climate in which huge amounts of waste are accepted as the norm.

This final report documents the Commission's extensive research, hearings, meetings and briefings, domestic and overseas travel, and the work of professional staff stationed full-time at Commission offices in Baghdad and Kabul. The Commission's observations, findings, and key recommendations are organized under broad contingency-contracting themes. A complete list of recommendations from all of the Commission's reports to Congress appears in Appendix A.



## EXECUTIVE SUMMARY

## Agencies over-rely on contractors for contingency operations

Forced to treat contractors as the default option because federal agencies lack the organic capacity to perform some mission-critical functions, the government also lacks the acquisition personnel and structures needed to manage and oversee an unprecedentedly large contractor force that at times has outnumbered troops in the field.

The consequences have been:

- extending contracting to activities that law, policy, or regulation require government personnel to perform;
- creating unreasonable risks to mission objectives and other key U.S. interests;
- eroding federal agencies' ability to perform core capabilities; and
- overwhelming the government's ability to effectively manage and oversee contractors.

Spending on contracts and grants performed in Iraq and Afghanistan in support of operations in those countries is expected to exceed \$206 billion through the end of fiscal year (FY) 2011. The money goes to two categories of activities: first, support of U.S. operations, such as logistics; and second, direct execution of programs like training host-country military and police forces. Construction projects fall into both categories. Contracts are awarded and managed in various locations—in country, in other countries in the region, and at various buying commands in the United States.

The number of Department of Defense (Defense), Department of State (State), and the U.S. Agency for International Development (USAID) contractor employees in Iraq and Afghanistan has varied, but exceeded 260,000 in 2010. The contractor-employee count has at times surpassed the number of U.S. military personnel in the two countries. Most contractor employees are third-country nationals and local nationals; U.S. nationals totaled more than 46,000, a minority of those employed.

Although contract activity has taken on increasing importance, the resources devoted to managing contracts and contractors have not kept pace. The number of contract specialists—an occupation critical to the execution of contingency contracting—rose by only 3 percent government-wide between 1992 and 2009, despite an enormous increase in contracting activity during that period.





Because the heavy reliance on contractors has overwhelmed the government's ability to conduct proper planning, management, and oversight of the contingency-contracting function, the Commission concludes that the government is *over-reliant* on contractors.

### **'Inherently governmental' rules do not guide appropriate use of contractors in contingencies**

The "inherently governmental" standard in law, policy, and regulation that reserves certain functions for government personnel provides insufficient guidance for contracting in contingencies. Nor does it enable officials to decide whether contracting for non-governmental functions is *appropriate* or prudent in contingency operations.

Events in Iraq and Afghanistan have shown that systematic consideration of operational, political, and financial risks must be a factor in judging appropriateness, as opposed to assuming that any task not deemed inherently governmental is automatically suitable for performance by contract.

The Commission endorses the context-sensitive, risk-sensitive, and mission-sensitive approach taken by the Office of Federal Procurement Policy's March 2010 draft policy letter on this topic, and recommends vigorously applying this guidance to the unique contingency-contracting environment.

Applying risk and other situational considerations to a contingency may indicate that a particular task should not be contracted. For such cases, the government needs in-house options beyond canceling or postponing activities, such as having qualified, expandable, and deployable federal cadres for stabilization-and-reconstruction functions.

In Afghanistan, for instance, carrying out stabilization-and-reconstruction projects in insurgent-contested areas with contractor employees has led to deaths, delays, and waste. If agencies had trained, experienced, and deployable cadres for stabilization-and-reconstruction functions in high-risk areas of contingency operations, the government would have an alternative to contracting for those functions.

→ **RECOMMENDATION 1**  
Use risk factors in deciding whether to contract in contingencies

**EXECUTIVE SUMMARY**

In those cases where performance by contract is appropriate, the government must provide acquisition management and contractor oversight. Relying on contractors to perform these functions is especially risky, and can give rise to potential or actual conflicts of interest. The use of contractors to manage other contractors reveals a failure of government to provide for a sufficient contingency workforce.

→ **RECOMMENDATION 2**  
**Develop deployable cadres for acquisition management and contractor oversight**

The use of private security companies can present especially sensitive risks, because their armed employees can become involved in incidents that injure or endanger innocent civilians. In addition, their use for convoy security in parts of Afghanistan invites pay-for-protection extortion that diverts taxpayers' funds to local warlords and insurgents.

Another essential task would be to assess the risk of using contractors for static security at bases and camps, particularly the risk of using local nationals for that task. If commanders judge the risks of using contractors, or more specifically using local nationals, to be unacceptable, then military forces or third-country nationals would provide static security. On the basis of operational, financial, and political risks, performance by contractors for some security tasks should be phased out.

→ **RECOMMENDATION 3**  
**Phase out use of private security contractors for certain functions**

Agencies must provide greater control and accountability for security contracting, starting with documenting an interagency understanding of lessons learned in Iraq and Afghanistan, agreeing on best practices, and providing overall guidance for security functions in future contingencies.

Defense, State, and USAID should develop and enter into a standing interagency Memorandum of Agreement (MOA), incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors now and in future contingencies. Such an MOA would be modified as needed soon after the start of a declared combat operation or other contingency to address the particular circumstances of that operation.



At the operational level, ambassadors, USAID mission directors, and military commanders should be responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change. These officials should also apply greater emphasis to security-contractor vetting, training, weapons authorization and control, and oversight.

**RECOMMENDATION 4**  
**Improve interagency coordination and guidance for using security contractors in contingency operations**

### **Inattention to contingency contracting leads to massive waste, fraud, and abuse**

Engaging in contingency operations is not cheap. But U.S. operations in Iraq and Afghanistan have entailed vast amounts of spending for little or no benefit. That is waste. The Commission's conservative estimate of waste and fraud ranges from \$31 billion to \$60 billion based on contract spending from FY 2002 projected through the end of FY 2011.

Failure to curb contract-related waste, fraud, and abuse is a breach of agencies' fiduciary duty to efficiently manage budgets and resources. Worse still, it undermines U.S. defense, diplomatic, and development missions.

Waste in contract outcomes has been driven by factors at the host-country level, at the program and project level, and at the individual-contract level.

- At the host-country level, U.S. officials lack an understanding of the need to reconcile short-term military and longer-term development goals and objectives, realistically assess host-country conditions and capabilities, and work within the constraints of local economies' absorptive capacity for influxes of cash. These deficiencies have contributed to costly and failed contract outcomes.
- At the program and project level, agencies have not sufficiently integrated their programs and projects with one another and with other donors, or paid adequate attention to the cost and management implications of poor security conditions. These shortcomings have doomed numerous acquisition strategies. Inadequate competition and lack of knowledge of local contractor and sub-contractor companies are major contributors to contracting waste.

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- At the contract level, there is a frequent failure to define requirements within reasonable timeframes and to assign appropriate management and oversight resources. Without sufficient management and oversight, officials have been late to identify and correct poor contractor performance. Key deficiencies include idle contractor personnel, defective construction, and inadequate protection of property and personnel.

Numerous examples from Commission travel, hearings, and research have demonstrated serious incidents of waste at every phase of the contingency acquisition process, from project selection and requirements definition, through solicitation and vetting, to management and oversight. Problems are widespread and endemic.

### **Looming sustainment costs risk massive new waste**

A particularly troubling outcome of the Commission's examination of waste is that billions of dollars already spent, including spending on apparently well-designed projects and programs, will turn into waste if the host governments cannot or will not commit the funds, staff, and expertise to operate and maintain them.

Money lost as a result of the inability to sustain projects could easily exceed the contract waste and fraud already incurred. Examples range from the \$35 billion that Congress has appropriated since 2002 to train, equip, and support the Afghan National Security Forces, to scores of health-care centers in Iraq that far exceed the Ministry of Health's ability to maintain them.

Officials have often not examined programs and projects for sustainability, or taken appropriate action to cancel or redesign those that have no credible prospect of being sustained. Requirements and acquisition strategies for projects or services to be handed over to a host nation have often lacked a detailed assessment of long-term costs and of host nations' ability and willingness to fund them. There is, moreover, no current requirement that officials analyze sustainability risks and report their findings and risk-mitigation strategies.

→ **RECOMMENDATION 5**  
**Take actions to mitigate the threat of additional waste from unsustainability**

## Agencies have not institutionalized acquisition as a core function

Acquisition officials have become more knowledgeable and vocal about the extent and nature of the problems in contingency contracting, yet agencies are slow to change.

Meaningful progress will be limited as long as agencies resist major reforms that would elevate the importance of contracting, commit additional resources to planning and managing contingency contracting, and institutionalize best practices within their organizations.

Defense has promulgated important policy and doctrinal changes. However, the structure needed to force important lessons learned through the system and the authority to enable resource shifts to support the acquisition process does not exist. More than half of Defense's contract spending is for services and not for hardware procurement. Yet Defense's culture and processes remain focused on weapons systems. This imbalance in focus is particularly risky in the context of operations in Iraq and Afghanistan, where 66 percent of contract spending is for services.

In contrast to Defense's omission of contingency contracting in its Quadrennial Defense Review, State offered some encouraging comments about the importance of contracting in its 2010 Quadrennial Diplomacy and Development Review. But State has not fully recognized or implemented many of the needed changes. Therefore, significant additional waste—and mission degradation to the point of failure—can be expected as State continues with the daunting task of transition in Iraq.

USAID has made procurement reform part of its agency-wide improvement initiatives. However, it is still far from achieving the cultural change needed to make reforms a reality. Both State and USAID will face additional contract-management challenges in Afghanistan as U.S. military forces begin to withdraw.

Changes in agency structures and practices affect culture and behavior, but cannot have deep and lasting impact without the full involvement of senior leadership. Effective leaders provide attention, focus, visibility, motivation, and energy to the process of improvement and to the daily work of delivering results. They reward success, correct failure, and punish misconduct.

**EXECUTIVE SUMMARY**

Contingency-contracting reform demands active and sustained attention from senior agency leaders that transcends succession in office and changes in administration.

Raising the profile and authority of civilian and military leaders responsible for contingency contracting would boost the impact of the reform effort and provide some measure of accountability.

→ **RECOMMENDATION 6**  
Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID

→ **RECOMMENDATION 7**  
Elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, the combatant commanders' staffs, and in the military services

## **Agency structures and authorities prevent effective interagency coordination**

The misalignment of organizational structures and authorities impedes interagency coordination and cooperation for contingency contracting. This misalignment leads to duplication of effort, gaps in continuity, improper phasing of operations, and waste.

Defense has well-established arrangements for ensuring joint operations, but there is no effective whole-of-government equivalent, particularly where international diplomacy and development are concerned. The Commission proposes new positions and authorities that would improve coordination and cooperation, including alignment of agency budgets, especially among Defense, State, and USAID.

Currently no one person has the authority to ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission, and to ensure that agencies' budgets are complementary rather than duplicative or conflicting.

→ **RECOMMENDATION 8**  
Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction

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Improving agency planning, readiness, and performance would be greatly facilitated by creating a permanent office of special inspector general for contingency operations. The authority of existing inspectors general is either limited by department (Defense, State, and USAID) or restricted by time and function (the temporary special inspectors general for Iraq and Afghanistan are focused on reconstruction).

Having a small, but expandable, permanent inspector-general staff devoted to contingency operations would provide critical monitoring from the onset of a contingency, permit collaboration with agency inspectors general to regularly assess the adequacy of agency planning and coordination for contingencies, and provide a logical center for developing and coordinating needed training among agencies.

→ **RECOMMENDATION 9**  
**Create a permanent office of inspector general for contingency operations**

## Contract competition, management, and enforcement are ineffective

Agencies have failed to set and meet goals for competition in Iraq and Afghanistan. In particular, they have awarded task orders for excessive durations without adequate competition. The agencies have failed to set and meet goals for competition and have repeatedly:

- awarded long-term task orders that were not recompeted when competitive conditions improved;
- extended contracts and task orders past their specified expiration dates, increased ceilings on cost-type contracts and modified task orders and contracts to add extensive new work;
- favored using existing task- and delivery-order contracts like LOGCAP III over creating more competitive and more targeted contract vehicles; and
- used cost-reimbursable contract types even though simpler, fixed-price contracts could expand the competitive pool.

Dynamic contingency operations generate rapidly changing support requirements that must be met within short timeframes. Effective competition motivates contractors to provide fair pricing, best value, and quality performance. On the other hand, the tension between a contractor's motivation to make a

**EXECUTIVE SUMMARY**

profit and the government's demand for good performance still exists. The lessons from contingency contracting in Iraq and Afghanistan are that agencies have not effectively employed acquisition-management strategies that balance the United States' interests with contractors' profitability objectives.

Several policies and practices hamper competition in a contingency environment. Despite a more mature contracting environment in Iraq and Afghanistan today, Defense, State, and USAID still do not consistently emphasize competitive contracting practices. Some of the agencies' acquisition strategies have restricted competition and favored incumbent contractors, even those with performance deficiencies.

→ **RECOMMENDATION 10**  
**Set and meet annual increases in competition goals for contingency contracts**

Monitoring the performance of individual contractors is critical at all stages of the contracting process both to allow proper management and oversight and to obtain necessary information for making payments. Better collection, recording, and use of contractor performance data would significantly improve government contracting officials' ability to weed out poor performers and manage the contingency-contracting process.

→ **RECOMMENDATION 11**  
**Improve contractor performance-data recording and use**

Suspension and debarment can be powerful tools to protect the government's interest in doing business only with contractors capable of performing their contractual obligations and maintaining acceptable standards. The opportunity costs of a suspension or debarment are very high for government contractors, and thus provide incentives for proper behavior. Nevertheless, agencies sometimes do not pursue suspensions or debarments in a contingency environment.

The challenge of fostering a culture of contractor accountability is especially difficult in war zones, where the contractor community is made up of U.S., local, and third-country nationals; where gathering a stable of responsible, competitive companies eligible for contract award is a challenge; where security threats hamper oversight; and where fluid operations drive changing requirements under short timeframes. Enforcement of laws, regulations, and contract terms serves two purposes: it addresses wasteful and fraudulent behavior, and it sets a standard for future performance.



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More aggressive use of enforcement techniques for contracting would reduce the risk of awarding contracts to companies with questionable capability to perform. Expansion of investigative authority and jurisdiction would facilitate imposing effective accountability on contractors, especially foreign contractors and subcontractors who are difficult or impossible to subject to U.S. law. Increasing contractor accountability would also enhance protections against exploitation of persons.

→ **RECOMMENDATION 12**  
**Strengthen enforcement tools**

A variety of weaknesses frustrate the U.S. government's ability to protect its—and federal taxpayers'—interest in economical and effective performance of contingency contracting:

- Agencies continue to lack sufficient staff and resources to enable adequate management of all aspects of contingency contracting. These include: financial management, acquisition planning, business-system reviews, source selection, incurred-cost audits, performance management, property management, contract payment, and contract close-outs. These shortfalls have been especially pronounced at key entities like the Defense Contract Management Agency and the Defense Contract Audit Agency. Indeed, at current staffing levels, DCAA's backlog of unaudited incurred costs will exceed \$1 trillion in 2016.
- Inadequate contractor business systems for functions such as estimates, labor billing, and purchases impede the work of government management and oversight officials. Yet the government's authority to withhold contract payments on grounds of business-system inadequacy is limited.
- The government faces significant limitations in its authority to access contractor records that can be useful or essential for examining matters such as supervision of subcontractors.
- Agencies continue to struggle with an absence of strategic planning and lack a dedicated budget to support related human resources and information-systems requirements.

→ **RECOMMENDATION 13**  
**Provide adequate staffing and resources, and establish procedures to protect the government's interests**

## EXECUTIVE SUMMARY

## The way forward demands major reforms

The Commission's authorizing statute requires it to end operations by September 30, 2011. The work of crafting, securing, and implementing lasting reforms will require much more time.

Congress must issue mandates and provide resources for improved planning, management, and oversight capabilities if it expects significant change and real savings in contingency contracting. Given the federal budget outlook, the temptation will be powerful to postpone the investments needed to support contingency-contracting reform and thereby to avoid making hard choices.

Congress must resist that temptation and recognize preparedness for emergencies requiring contingency contracting is as much a national-security priority as procuring weapons systems.

→ **RECOMMENDATION 14**  
**Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission**

Continued attention, monitoring, and advocacy may require congressional requests for subsequent evaluations and agency reporting, and the engagement of governmental or non-governmental organizations to continue to focus on contingency-contracting issues.

A forcing function is needed to ensure widespread and effective adoption of contingency-contracting reform. Otherwise, agency inertia, resistance to change, sporadic attention, personnel turnover, and a lack of sustained and focused leadership may combine into a powerful barrier that blocks progress. Effective implementation of reform requires establishing a method for periodic reporting on the status of the Commission's recommendations to keep the reform agenda in decision makers' field of vision.

→ **RECOMMENDATION 15**  
**Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform recommendations**

**EXECUTIVE SUMMARY****Conclusion**

The need for reform is urgent. Over the past decade, America's military and federal-civilian employees, as well as contractors, have performed vital and dangerous tasks in Iraq and Afghanistan. Contractors' support however, has been unnecessarily costly, and has been plagued by high levels of waste and fraud.

The United States will not be able to conduct large or sustained contingency operations without heavy contractor support. Avoiding a repetition of the waste, fraud, and abuse seen in Iraq and Afghanistan requires either a great increase in agencies' ability to perform core tasks and to manage contracts effectively, or a disciplined reconsideration of plans and commitments that would require intense use of contractors.

Failure by Congress and the Executive Branch to heed a decade's lessons on contingency contracting from Iraq and Afghanistan will not avert new contingencies. It will only ensure that additional billions of dollars of waste will occur and that U.S. objectives and standing in the world will suffer. Worse still, lives will be lost because of waste and mismanagement.

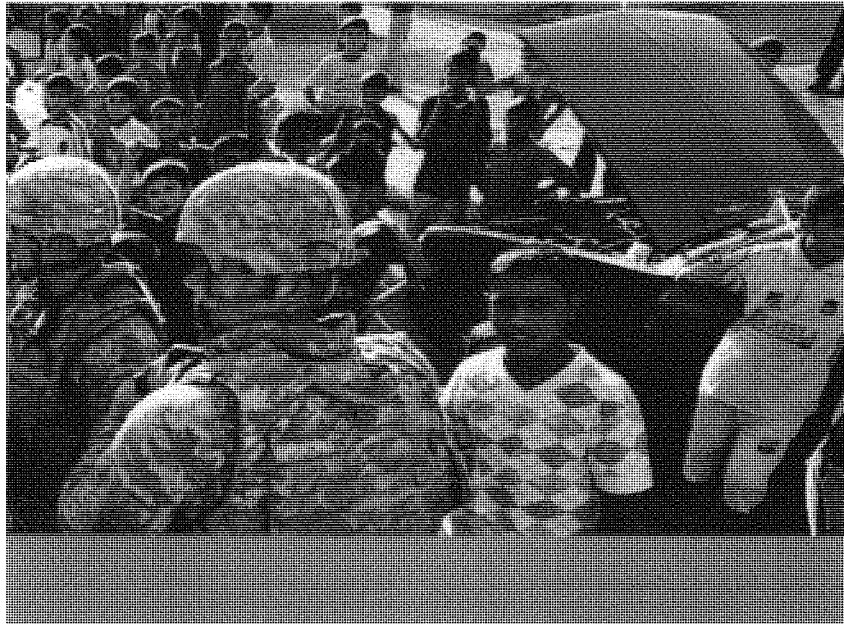
The nation's security demands nothing less than sweeping reform.



U.S. and Iraqi soldiers, Mosul, Iraq. U.S. Navy photo.

## Chapter 1

### **Agencies over-rely on contractors for contingency operations**



## Agencies over-rely on contractors for contingency operations

Contingencies in general—and those in Iraq and Afghanistan in particular—are operations involving the U.S. military and civilian agencies, often requiring deployment of federal civilians and contractors under conditions that make freedom of movement dangerous, and entailing dynamic and rapidly changing support requirements.<sup>1</sup>

Defense undertakes the preponderance of activity in the Iraq and Afghanistan contingency operations, executes a majority of the transactions for contractor support services, and is therefore the primary focus of the Commission's reform agenda. The Commission also assesses State and USAID, the other two federal agencies with a significant role in contingency-contracting operations, and addresses related areas of concern in this final report.

The Commission's assessment of contingency contracting focuses on the formation and execution of contracts and grants in support of the wartime missions in Iraq and Afghanistan. Despite this focus, the Commission's recommendations for reform have broader applications for peacetime contracting and affect future contingencies.

U.S. agencies engaged contractors at unprecedented levels to help achieve mission objectives in Iraq and Afghanistan and to support U.S. military service members and civilian employees deployed there. The failure to effectively prepare to rely on contractors became all too clear as these two contingencies

Patrol in Helmand Province, Afghanistan, 2009. (U.S. Marine Corps photo)



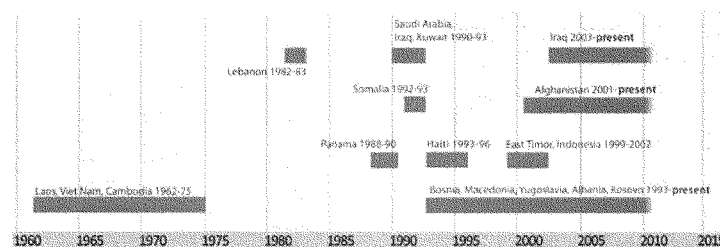
1. 10 U.S.C. 101(a)(13): This section defines a contingency operation as "a military operation that—(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (B) results in the call or order to, or retention on, active duty of members of the uniformed services under [other portions of this title] . . . or any other provision of law during a war or during a national emergency declared by the President or Congress." Civilian agencies' definitions of contingencies broadly reflect the language for Defense.

evolved over the last decade and the number of contractors and the scope of their work overwhelmed the government's capacity to manage them effectively.

The use of contractors in the United States' earlier contingencies did not overtax agencies' capacity to support, manage, and oversee them because the contingencies' scope or duration were comparatively smaller or shorter than the ongoing operations in Iraq and Afghanistan.<sup>2</sup> However, in every year of the past 23 years, the United States has been engaged in an overseas-contingency operation. For the past 12 years, the United States has always and simultaneously been engaged in two or more overseas regions.

The United States has engaged in 56 "ventures abroad" for other than normal peacetime purposes since 1962, and Figure 1 illustrates that the United States has conducted 10 land-based deployments lasting a year or more during this time period.<sup>3</sup>

Figure 1. U.S. Forces Abroad, 1962 through 2011



Source: Commission analysis of CRS Report R41677, "Instances of Use of United States Armed Forces Abroad, 1798-2010," March 10, 2011.

2. The scope and duration of previous contingencies are outlined in CRS Report R41677, "Instances of Use of United States Armed Forces Abroad, 1798-2010," March 10, 2011.

3. Ibid., 1. Note: Ventures abroad include those "instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests."

## CHAPTER 1

Preparing to manage contractors for overseas-contingency operations neither signals U.S. intent nor creates a momentum to launch a military operation. The geopolitical environment of recent years and in the foreseeable future provides ample reason to plan for the possibility that the United States may again become involved in overseas-contingency operations that require extensive contractor support.

The unexpected and swift development of a campaign executed by the United States and NATO to suppress the Libyan government's attacks on its citizens is a recent case in point. Unrest in Somalia and Yemen also raises the potential of a contingency operation that might require contractor support and stabilization-and-reconstruction operations.

Preparing to manage contractors for overseas-contingency operations neither signals U.S. intent nor creates a momentum to launch a military operation.

The logical implication of this geo-political environment is that contractors will remain a significant element of the U.S. government's total

force. The Under Secretary of Defense for Acquisition, Technology, and Logistics recently testified before the Commission, saying, "We're simply not going to go to war without contractors."<sup>4</sup>

This chapter describes the extent of agencies' reliance on contractors for support in Iraq and Afghanistan; the characteristics of contingency contracting over the past ten years; and the serious political, operational, and fiscal risks of reliance on contractors during contingency operations.

## The extent of reliance on contractors in contingencies

### Indicators of over-reliance on contingency contractors

The number of contractor employees supporting Defense, State, and USAID operations in Iraq and Afghanistan exceeded 260,000 in 2010—a number larger than the U.S. military and federal-civilian workforce in theater. More than 80 percent of the contractor employees were local or third-country nationals, not U.S. citizens.

4. Dr. Ashton B. Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, Commission hearing, March 28, 2011, transcript, 39. Note: A list of all Commission hearings, arranged by date, appears in Appendix D of this report. Statements, transcripts, and other hearing materials will remain publicly available on the Commission website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov).



The tasks that agencies have relied on contingency contractors to perform, coupled with their ineffective management of many contractors in Iraq and Afghanistan, have bred an unhealthy over-reliance that is too risky and costly to repeat.

Contractors are performing functions that law or regulation require government employees to perform. The large number of contractors erodes federal agencies' ability to self-perform core capabilities, and their presence at times has created unacceptable risks to mission or other key U.S. objectives.

The Commission's hearings, research, and discussions with officials at all levels of the acquisition community confirm that Defense and civilian agencies do not effectively assess the legality or the risks of contracting for functions.

Agency officials' decisions to heavily rely on contractors for professional and technical expertise has shifted the balance of knowledge to the extent that the government has lost much of its mission-essential organic capability, making it increasingly more difficult to oversee technical performance.

Furthermore, the agencies have demonstrated their inability to manage large numbers of contractors effectively.

**The decision to award contracts should not merely be based on what the law allows or what is cheapest.**

Only if government officials properly manage and incentivize performance would the reliance on contractors be a rational approach for obtaining quality contingency-support services at a reasonable price.

The decision to award contracts should not merely be based on what the law allows or what is cheapest. Instead, the decision should be based

on a strategic understanding of the functions being performed, a determination of the appropriateness of the use of contractors, and in the case when contractors are appropriate, the agency must have the ability to ensure effective management and oversight of contract performance. This issue is more fully discussed in Chapter 2.

### What is 'over-reliance'?

In concluding that the United States is "over-reliant on contractors," the Commission is not simply looking at metrics like the contractor-to-military ratio.

Indicators of over-reliance include contracting that:

1. Extends to functions that law or regulation require government personnel perform,
2. Creates unreasonable risks to mission objectives or other key U.S. interests,
3. Erodes federal agencies' ability to self-perform core capabilities, or
4. Overwhelms the government's ability to effectively manage and oversee contractors.

### Contractors outnumber service members and federal civilians

Table 1 shows that Defense, State, and USAID have awarded contracts to firms that have employed in excess of 260,000 persons in Iraq and Afghanistan. Contractor workers comprise U.S. nationals, local nationals, and third-country nationals.

**Table 1. Defense, State, and USAID contractor personnel in Iraq and Afghanistan as of March 31, 2010**

	Defense	State	USAID	Total
U.S. nationals	40,800	4,322	805	45,927
Local nationals	95,692	10,194	32,621	138,507
Third-country nationals	71,061	4,734	1,193	76,988
Unknown	—	60	1,149	1,209
<b>Total</b>	<b>207,553</b>	<b>19,310</b>	<b>35,768</b>	<b>262,631</b>

**Source:** GAO Report 11-1, "Iraq and Afghanistan: Defense, State, and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel," October 2010, 44-45.

Defense dominates contracting in Iraq and Afghanistan and manages nearly 80 percent of the contractor workforce there. Comparisons over time of the number of contractors working under Defense contracts with the number of service members show that the contractor footprint in Iraq and Afghanistan generally has corresponded to the number of deployed service members they support, in roughly a 1-to-1 ratio.<sup>5</sup>

On the other hand, the number of contractor employees compared to the number of State and USAID federal civilian employees working in Iraq and Afghanistan has varied with the extent and scope of the diplomatic and development missions being performed. The number of contractors and grantee employees supporting State and USAID in Iraq and Afghanistan greatly exceeds the agencies' employees—18 to 1 for State, and 100 to 1 for USAID.<sup>6</sup>

5. See Appendix E, Figures E-1 and E-5.

6. State and USAID federal-employee footprint data collected from State on June 23, 2011. State contractor footprint data is current as of the end of FY 2010. State and USAID enter their contractor headcount into the Defense database, Synchronized Predeployment and Operational Tracker (SPOT). Updates can be obtained through inquiries to the SPOT program manager.

The ratios for State and USAID employees and their contractors/grantees reflect both the extent of the agencies' reliance on contractors and the absence of their organic capacity to perform in a contingency environment. The difference in ratios between Defense and the two civilian agencies in part reflects contractors' roles: primarily support for Defense, and mission execution for State and USAID. The higher ratios at State and USAID, however, raise questions about whether these agencies have the capacity to effectively oversee and manage this enormous component of their workforce in theater.

Based on developments in Iraq, a potential contractor surge in Afghanistan is looming after the military withdraws. Given the upcoming transition to a diplomatic mission in Iraq and the absence of an agreement on the level of U.S. contractor presence, the military withdrawal contributed to an increase in the ratio of contractors to the service members they support.<sup>7</sup> Though the Status of Forces Agreement between the United States and Iraq mandates a specific military drawdown from Iraq, there is no similar stipulation for withdrawing U.S. contractors.

The number of contractors and grantees supporting State and USAID in Iraq and Afghanistan greatly exceeds the agencies' employees—18 to 1 for State, and 100 to 1 for USAID.

### Contingency-contracting characteristics

Contingency-contracting characteristics are significantly different from routine peacetime contracting:

- Contracts are managed under a variety of acquisition procedures by multiple organizations from multiple locations: in the overseas area of operations, in a nearby foreign country, and in the United States.
- An already strained acquisition workforce is further burdened by the need to deploy overseas.
- Most contracts are for services supporting the U.S. forces and civilians or actually carrying out direct-mission objectives.
- The contingency-contractor workforce comprises U.S.-based companies, host-nation, and third-country firms.
- Most contract dollars are awarded to just a few large U.S. companies.
- Much of the work is performed through multiple tiers of subcontractors, resulting in a large host- and third-country workforce.

7. See Appendix E, Figure E-1.

## CHAPTER I

- Socio-economic procurement policies such as Iraqi First and Afghan First give priority to helping develop local economies and countering the insurgency.<sup>8</sup>
- Perhaps the most important characteristic of contingency contracting in Iraq and Afghanistan is the sheer volume of contract dollars that will have been injected into those underdeveloped economies because of the United States' presence.

### Value of contingency contracts and grants

The value of contingency contracts and grants is another relevant measure of the extent of agencies' reliance on contractors in Iraq and Afghanistan. As depicted in Table 2, the U.S. has spent more than \$192 billion on contracts and grants through the first two quarters of fiscal year (FY) 2011.

**Table 2. Total obligations on contracts and grants, FY 2002 through mid-FY 2011**  
Performed in support of operations in Iraq and Afghanistan (in billions)

	Defense	State	USAID	Total
Contracts	\$166.6	\$12.2	\$8.4	\$187.2
Grants		0.4	4.9	5.3
<b>Total</b>	<b>\$166.6</b>	<b>\$12.6</b>	<b>\$13.3</b>	<b>\$192.5</b>

**Source:** Commission calculations from: Federal Procurement Data System - Next Generation (FPDS-NG) and USASpending.gov, last updated on June 12, 2011 for FY 2002 through the end of the second quarter of FY 2011. Includes contracts performed in Iraq, Afghanistan, Bahrain, Kuwait, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Includes grants performed in Iraq and Afghanistan only.

The Commission estimates that by the end of FY 2011, an additional \$14 billion will be obligated under contracts, bringing the estimated total for FY 2002 through FY 2011 to \$206 billion. Actual expenditures will be even higher because not all contracts that support contingency operations in Iraq and Afghanistan are identifiable as such.

8. The National Defense Authorization Act for FY 2008, sec. 886, authorized the Secretary of Defense to establish preference for the acquisition of products and services from Iraqi and Afghan companies.

### Service contracts

Two-thirds of the money spent to date for contingency contract support in Iraq and Afghanistan was for services.<sup>9</sup> Agencies obligated the most dollars for logistics support services (\$46.5 billion).

The 10 most commonly acquired services are depicted in Table 3 below. They account for 44 percent of total services obligations.<sup>10</sup>

Two-thirds of the money spent to date for contingency contract support in Iraq and Afghanistan was for services.

**Table 3. Top 10 services acquired through contingency contracts**

Performed in support of operations in Iraq and Afghanistan, FY 2002 through mid-FY 2011

Service description	Total (in billions)
Logistics support services	\$46.5
Construction of miscellaneous buildings	10.5
Technical assistance	5.5
Other professional services	5.2
Guard services	3.8
Maintenance and repair, alterations of office buildings	3.5
Construction of office buildings	2.9
Lease-rent or restoration of real property	2.8
Facilities operations support services	2.5
Program management/support services	2.4
<b>Total obligations for top 10 services</b>	<b>\$85.6</b>
Top 10 as percentage of total services obligations	44 %

**Source:** FPDS-NG and USASpending.gov, last updated on June 12, 2011 for FY 2002 through the end of the second quarter of FY 2011. Includes contracts performed in Iraq, Afghanistan, Bahrain, Kuwait, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Includes grants performed in Iraq and Afghanistan only.

9. Commission calculation from: FPDS-NG and USASpending.gov, last updated on June 12, 2011 for FY 2002 through the end of the second quarter of FY 2011.

10. See Appendix E, Table E-5 for a more comprehensive list of most-often procured products and services.

**Concentration of contingency contracting**

Contingency-contract spending in Iraq and Afghanistan is highly concentrated. Awards to the largest four individual companies account for more than 40 percent of total obligations.

A total of 22 individually identifiable contractors received at least a billion dollars each and account for 52 percent of contract awards. The second-highest obligations category, however, is "miscellaneous foreign contractors." The \$38.5 billion recorded for "miscellaneous foreign contractors" suggests the difficulty of compiling reliable, accurate procurement-transaction data.

Moving military equipment through the mountains, northern Afghanistan. (U.S. Army photo)

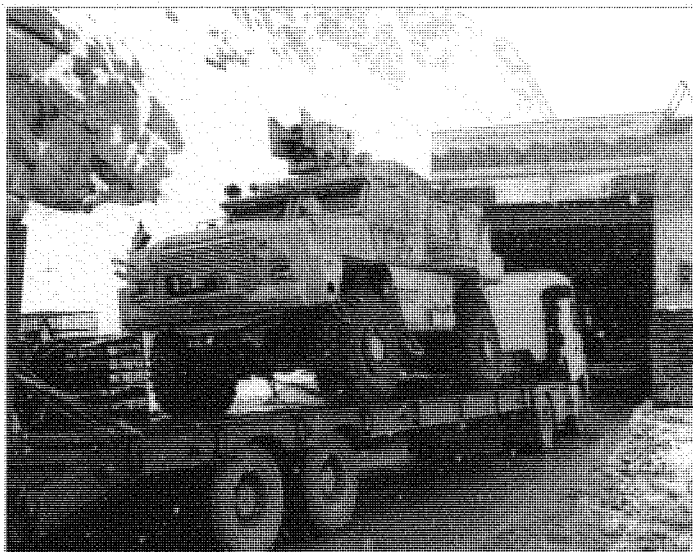


Table 4 displays the awards to the top contractors as measured by the value of the awards they have received.

**Table 4. Top contingency contractors**  
Performing in support of operations in Iraq and Afghanistan,  
FY 2002 through mid-FY 2011

	Vendor	Obligations (in billions)
1	KBR	\$40.8
2	"Miscellaneous foreign contractors"	38.5
3	Agility	9.0
4	DynCorp	7.4
5	Kuwait Petroleum Corporation	5.0
6	Fluor Intercontinental, Inc.	5.0
7	The Bahrain Petroleum Company	5.0
8	Combat Support Associates	3.6
9	ITT Federal Services International	3.4
10	The Louis Berger Group, Inc.	2.3
11	International Oil Trading Company	2.1
12	Readiness Management Support	2.0
13	L-3 Communications	1.7
14	Red Star Enterprises, Ltd.	1.7
15	IAP Worldwide Services	1.5
16	Environmental Chemical Corporation	1.5
17	Perini Corporation	1.5
18	Blackwater Lodge and Training Center	1.4
19	Contrack International, Inc.	1.4
20	Triple Canopy, Inc.	1.2
21	DAI/Nathan Group, LLC	1.1
22	Washington Group, International	1.1
23	Bearing Point, LLC	1.0
<b>Total obligations</b>		<b>\$139.2</b>
22-firm % of total \$192.5B spend, excluding "miscellaneous foreign contractors"		52 %

**Source:** FPDS-NG and USASpending.gov, last updated on June 12, 2011, for FY 2002 through the end of the second quarter of FY 2011. Includes contracts performed in Iraq, Afghanistan, Bahrain, Kuwait, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Includes grants performed in Iraq and Afghanistan only.

The data in Table 4 illustrate one of the serious aspects of contractor over-reliance—52 percent of the total dollars obligated on contract transactions performed in support of Iraq and Afghanistan went to only 22 individually identifiable contractors. Without proper oversight, this heavy reliance on

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contractors has placed the U.S. government in the very risky and costly position for many contingency-support functions. The relatively small number of contractors performing such a large percentage of the contingency-support mission also presents potentially serious implications regarding effective competition and support for the U.S. government mission.

Table 5 illustrates that for certain products or services, the concentration of awards is dramatic.

**Table 5. Contingency contractor concentration**  
Performing in support of operations in Iraq and Afghanistan,  
FY 2002 through mid-FY 2011

	Product or service description	FY 2002 to mid-FY 2011 obligations (in \$ billions)	Low concentration	Moderate concentration	High concentration
1	Logistics support services	\$46.5			X
2	Miscellaneous items	25.7	N/A	N/A	N/A
3	Liquid propellants-petroleum base	16.7		X	
4	Construction of miscellaneous buildings	10.4		X	
5	Dairy, foods, and eggs	6.6			X
6	Technical assistance	5.5		X	
7	Other professional Services	5.2		X	
8	Guard services	3.8		X	
9	Maintenance, repair, and alteration of office buildings	3.5		X	
10	Construction of office buildings	3.0		X	
11	Lease-rent of restoration	2.8			X
12	Fuel oils	2.7			X
13	Facilities operations and support services	2.5			X
14	Program management and support services	2.4		X	
15	Maintenance and repair of vehicles, trailers, and cycles	2.4			X

**Source:** FPDS-NG FY 2002 through end of second quarter FY 2011. Data extracted June 12, 2011.

**Note:** Based on obligations to the top four companies. "Low Concentration" indicates top four firms account for less than 20 percent of obligations. "Moderate Concentration" means top four firms have 20 to 80 percent. "High Concentration" means top four firms have more than 80 percent.

For six of the most commonly acquired products and services, no more than four contractors accounted for over 80 percent of the awards. For logistics support services, a single contractor accounted for nearly 80 percent of the contract dollars.



Another individual contractor accounted for 67 percent of the funds obligated for the maintenance and repair of vehicles.

The second largest category is for "miscellaneous items," once again suggesting the difficulty of compiling reliable, accurate procurement-transaction data.

#### Acquisition workforce

The federal acquisition workforce includes all officials who play a role in the contingency-contracting mission and who must now oversee a large number of complex service contracts. The growing complexity and volume of the workload has outpaced agencies' capacity to manage it. One critical indicator appears in the Department of Defense's 2010 Quadrennial Defense Review, which reported that the number of Defense acquisition professionals had declined by 10 percent during a decade that saw contractual obligations triple.

While Defense has a dedicated acquisition workforce and a mature process for acquiring and managing commodities and major weapons systems, there has been no comparable government-wide focus on the acquisition of contingency-support services. Service contracting has inadequate training programs, and the few program-oversight and management processes that are in place have proven ineffective.

The significant increases in procurement budgets since contingency operations began in Iraq and Afghanistan did not effectively translate into a heightened emphasis on planning, awarding, and managing the additional billions in contingency contracts and grants.<sup>11</sup>

**The number of Defense acquisition professionals declined by 10 percent during a decade that saw contractual obligations triple.**

Provincial Reconstruction Team members with Afghan contractors at hospital expansion site. (U.S. Air Force photo)



11. Commission calculation from: FPDS-NG and USAspending.gov, last updated on June 12, 2011 for FY 2002 through the end of the second quarter of FY 2011. Includes contracts performed in Iraq, Afghanistan, Bahrain, Kuwait, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Includes grants performed in Iraq and Afghanistan only.

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**Risks of using contingency-support contractors**

There are several reasons agencies rely on contractors for contingency-support services:

- statutory and budgetary limits on the number of military service members and federal employees;
- military services' having concentrated limited resources on combat functions, which led to a degradation of organic capability;
- long lead times for employee recruitment and development;
- voluntary deployment conditions for most federal civilian personnel; and
- assumptions of cost-effectiveness for using contractors.

The size of military services and the federal government workforce have long been a point of political debate. Given the constant imperative to accomplish more with a depleted federal workforce, the result has been a gradual increased reliance on

**As new and expanded missions were added with time-critical needs, contracting for contingency-support services became the default option.**

contractors. As new and expanded missions were added with time-critical needs, contracting for contingency-support services became the default option. Awarding contracts to provide services also made the federal workforce appear smaller, producing what is known as the "shadow workforce."

In a contingency environment, reliance on contractor support may introduce operational, political, and financial risks not present in peacetime.

The underlying truth is that the total cost of using contractors includes more than just the price of the contract. Depending on an outside source creates unavoidable risks. The risk factors include:

- operational risk to achieving the defense or development mission,
- political risk to achieving U.S. goals and foreign-relations objectives, and
- financial risk of dollars lost to contract fraud and waste.

The level of risk will depend on many factors, including the culture and characteristics of the host country, the location of battles, the phase of the contingency, the type of activity, and the quality of government oversight.

Fiscal concerns also complicate the success of ongoing and future contingency contracting.

#### Operational risks

The extensive use of contractors frees the military to use service members primarily for warfighting. However, relying on contractors for so much professional and technical expertise eventually leads to the government's losing much of its mission-essential organic capability.

Relying on contractors for so much professional and technical expertise eventually leads to the government's losing much of its mission-essential organic capability.

Short-term and inconsistent rotation periods across the different military services and civilian agencies contribute their own set of problems for continuity of contract management and oversight. During a contract-performance period, oversight and management may have been passed between multiple contracting officers and contracting officer representatives without a thorough transfer of knowledge. Because of the military and civilian agencies' frequent rotations, contractors often become the keepers of historical knowledge. Thus, government officials in some cases gradually cede de facto control over defense, diplomatic, and development activities to them.

This heavy reliance on contractors requires a fully capable and fully deployable acquisition infrastructure and workforce. In addition, non-acquisition officials who possess the necessary subject-matter expertise to perform requirement analysis, program management, and contractor oversight are especially needed.

#### Political risks

Particularly important is the impact on U.S. objectives resulting from the government's extensive use of contractors. Using local contractors not only supports the local economy, but often helps the United States develop a good rapport with the host-nation government and communities.

However, rapidly pouring large amounts of money into Afghanistan's local economy, which has limited absorptive capacity, has contributed to inflation, distorted normal economic activity, and encouraged fraud and corruption. Also, once the United States leaves, the economy will be disrupted because many of the local nationals

Local contractors at school construction site near Mahmudiyah, Iraq. (U.S. Army photo)

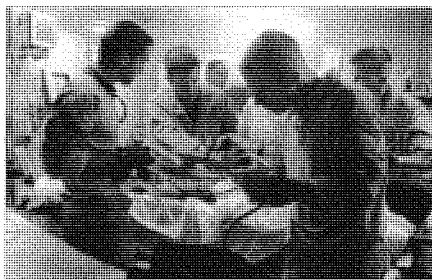


## CHAPTER I

who are employed by the U.S. government and U.S. contractors may once again become unemployed or under-employed. The risk is that the United States withdrawal will undermine its objectives by leaving local laborers vulnerable to recruitment by the Taliban or other insurgent groups.<sup>12</sup>

Serious public-opinion backlash in the local communities and governments can also occur after contractors are accused of crimes. Public opinion can be further inflamed because jurisdiction over contractors is ambiguous, legal accountability is uncertain, and a clear command-and-control structure is absent. A prime example of this risk becoming reality occurred in 2007 with the killing of 17 Iraqi civilians in Baghdad's Nisur Square by employees of the company then known as Blackwater. The armed security guards were under contract by State. Perceptions of improper or illegal behavior by contractors who suffer few or no consequences generate intense enmity and damage U.S. credibility.<sup>13</sup>

The extensive use of contractors obscures the full human cost of war. The full cost includes all casualties, and to neglect contractor deaths hides the political risks of conducting overseas contingency operations. In particular, significant contractor deaths and injuries have largely remained uncounted and unpublicized by the U.S. government and the media.



Preparing an injured contractor for transport from a coalition hospital in Herat, Afghanistan. (U.S. Air Force photo)

12. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign assistance to Afghanistan," June 8, 2011.

13. National Bureau of Economic Research Working Paper Series, Working Paper 16152, "The Effect of Civilian Casualties in Afghanistan and Iraq," July 2010, 1-5.

Table 6 below displays U.S. military fatalities and those reported by foreign and domestic contractors supporting the United States in Iraq and Afghanistan.

**Table 6. Military and contractor fatalities**  
Iraq and Afghanistan

	Iraq Mar 2003–Jul 2011	Afghanistan Oct 2001–Jul 2011
U.S. military fatalities	4,464	1,667
Contractor fatalities	1,542	887

**Source:** Military casualties reported by the Department of Defense Statistical Information and Analysis Division, Defense Manpower Data Center, as of July 25, 2011. Contractor fatalities reported on the Department of Labor (DoL) website, Division of Longshore and Harbor Workers' Compensation, Defense Base Act Summary, as of June 30, 2011. Many foreign contractor employee deaths are believed not to have been officially reported by the firms that employed them. No definitive accounting for federal civilian-employee deaths in Iraq and Afghanistan has been located.

The recent withdrawal of combat units from Iraq and the surge in Afghanistan have resulted in increased contractor casualties. Between June 2009 and March 2011, contractor deaths, including local- and third-country nationals, exceeded the military's in both countries.<sup>14</sup> Moreover, contractor deaths are undoubtedly higher than the reported total because federal statistics are based on filed insurance claims, and many foreign contractors' employees may be unaware of their insurance rights and therefore unlikely to file for compensation.

Between June 2009 and March 2011, contractor deaths in both Iraq and Afghanistan exceeded military deaths.

#### Financial risks

There are significant negative financial effects of the U.S. government's current reliance on contractors in the Iraq and Afghanistan contingencies. Extensive contingency-contract waste, fraud, and abuse are the most obvious. While using contractors for support services can lead to lower costs, agencies could save even more if they were to increase the use of competitive procedures and improve their contract management.<sup>15</sup>

14. Department of Labor, Division of Longshore and Harbor Workers' Compensation, "Defense Base Act Summary," June 23, 2011. Note: On its website, the Department of Labor disclaims accuracy of these numbers, saying, "These reports do not constitute the complete or official casualty statistics of civilian contractor injuries and deaths. They are offered as general information to the public who may be interested in the scope of civilian government contracting overseas."

15. Appendix F discusses cost comparisons between contractor and government task performance.

## CHAPTER 1

Most important, the extent of contracts being performed without adequate oversight and contract management has resulted in unacceptable vulnerability to contract waste and fraud. The Commission estimates that contract waste and fraud ranged from \$31 billion to \$60 billion during military operations in Iraq and Afghanistan—at the mid-range of the estimate, this amounts to \$12 million every day for the past 10 years.

**The Commission estimates that contract waste and fraud ranged from \$31 billion to \$60 billion during military operations in Iraq and Afghanistan.**

Some degree of waste and fraud has always accompanied the uncertainties of war. But much of the waste and fraud in Iraq and Afghanistan that resulted from ineffective contingency contracting was foreseeable and avoidable.

The Commission predicts that many programs, projects, and contracts that are simply not sustainable by the governments of Iraq and Afghanistan will reveal even more waste in the months and years ahead. Another significant cost of overseas-contingency contracting is diversion—payments commonly made for safe passage of U.S. convoys and for protection of U.S. personnel performing reconstruction projects. Contingency-contract waste and fraud are bad enough; worse yet is that some of the wasted dollars are diverted to warlords and insurgents in Afghanistan.

### Fiscal concerns

For the past 10 years, overseas contingency-operations funding has been designated as “emergency spending,” and funded through supplemental appropriations. They have been excluded from the regular budgetary process. This approach can distort the apparent size of the federal budget submission by segregating substantial proposed expenditures as subsequent supplemental submissions.

Seemingly unlimited funding for contingencies through supplemental appropriations allows agencies to avoid a prioritization of their program requirements in support of the war effort. The supplemental budget also obscures the full cost of contracting and creates the illusion that contractors in the war zone are a free resource.

The ongoing debate about the federal budget and the deficit is likely to translate into reductions in the size of the military and federal-civilian workforce, but not a corresponding reduction in national-security missions. This “do the same with less”

outcome—or an even riskier “do more with less” outcome—may drive an even heavier over-reliance on contractors than has been seen in the past decade.

Faced with a mandate to reduce staffing, the bureaucratic instinct is usually to put acquisition staff on the chopping block first. Unfortunately, these are the same professionals the agencies would need to plan, manage, and oversee the additional contracts that would be signed to compensate for a reduced federal workforce and keep up with unrelenting mission pressure. Likely result: a dangerous spiral of growing over-reliance on contractors and shrinking management capability.

Because the U.S. government relies on only a handful of contractors to provide most of the support for the contingencies in Iraq and Afghanistan, this reliance potentially presents a situation analogous to the U.S. financial industry’s “too big to fail” calamity.

Another concern could arise from a tension between private and public interest. A company’s main motivation—indeed, its fiduciary duty—is to produce earnings to compensate its owners for the use of and risks to their capital. This is not a judgmental statement, simply a factual observation.

In a competitive market that limits a single firm’s ability to raise prices, an obvious way to increase or maximize earnings is to cut costs. Cost reduction might take the form of efficiency improvements that do not degrade quality, or might even improve it—but could also take the form of lower-quality materials, reduced training, or lower performance standards that *do* affect quality. It should be noted that a firm operating under a cost-plus government contract may face a different incentive structure.

While a company’s self-interest in winning and retaining government contracts could prompt it to focus on efficiency, short-term pressures or a profit-maximization drive may lead it to cut corners. By contrast, the public’s interest is in maximizing the quality of every good or service being provided under contract. This inescapable tension between private and public motivation requires that government contract managers carefully monitor and scrupulously evaluate a company’s performance. That is a difficult task in the best of circumstances, and an extraordinarily difficult one in a wartime setting.

This “do the same with less” outcome—or an even riskier “do more with less” outcome—may drive an even heavier over-reliance on contractors than has been seen in the past decade.

## CHAPTER 1

Lessons from 10 years of contingency contracting in Iraq and Afghanistan have led to many legislative, regulatory, and policy changes designed to improve processes and outcomes. However, better outcomes from these incremental improvements have in some cases not yet materialized, and in other cases have not been fully realized.

The costs are too great and the risks are too high—both to the outcomes of current operations and to future contingencies—for the U.S. government not to commit

**Implementing real improvement to the contingency-contracting process could enhance the entire federal acquisition system.**

resources to improving the contingency-contract function. Because many of the high-risk issues in contingency contracting mirror those that have also proven problematic in the overall federal acquisition system, implementing real improvement to the contingency-contracting process could enhance the entire federal acquisition system.

Contingency-contracting improvements are in danger of atrophy once operations in Iraq and Afghanistan recede and the current leaders who champion these improvement initiatives shift their attention elsewhere or are replaced. Yet the federal

government's current fiscal constraints provide a challenge for ensuring continued leadership emphasis and for commitment of the resources necessary for enduring improvements to the contingency-contracting mission.

The government's options could include a selection or combination of:

- increasing the size of the federal workforce;
- decreasing the use of contractors; and
- reconsidering the number, nature, and scope of the overseas contingency operations.

### Outline of report content

The next chapter in this report provides Congress and the contingency-stakeholder community with the Commission's recommendations for determining the appropriate use of contractors, including private security contractors. Chapter 3 provides numerous examples of waste, fraud, and abuse, and connects them to the problems of agency-oversight and poor contractor performance.

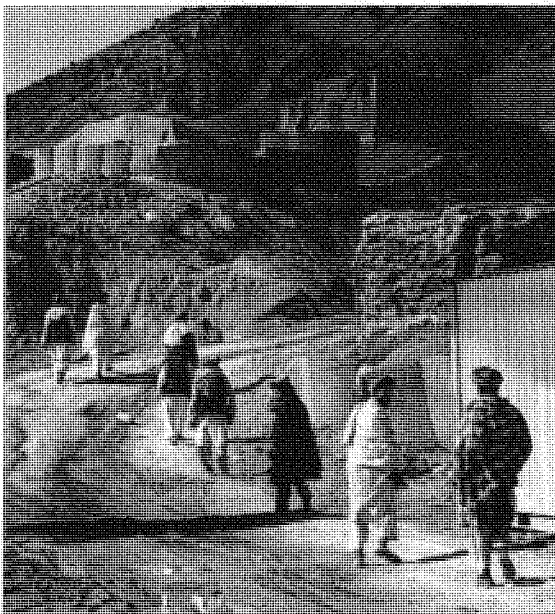
Because so much of contingency-contract waste has yet to be realized, Chapter 4 warns of project-sustainability issues and provides recommendations for mitigation.



A major factor in avoiding waste from unsustainable projects in a contingency environment is the elevation of the contingency-contracting function and interagency coordination. Chapters 5 and 6 provide recommendations for agencies to implement a strategic, whole-of-government approach to contingency contracting.

Chapter 7 provides recommendations for improving accountability for contracting outcomes by strengthening contingency-contract competition, performance management, and enforcement. Finally, Chapter 8 provides recommendations to advance Congress' objectives for contingency-contracting reform after the Commission's sunset at the end of the 2011 fiscal year.

Afghans at U.S.  
project site.  
(Defense photo)





## Chapter 2

**'Inherently governmental' rules  
do not guide appropriate use of  
contractors in contingencies**



## 'Inherently governmental' rules do not guide appropriate use of contractors in contingencies

Ten years of war in Iraq and Afghanistan have seen the United States using too many contractors for too many functions with too little forethought and control. Even if every instance of contracting had satisfied the legal restrictions on contractor performance of "inherently governmental functions"—a dubious proposition at best—the Commission believes far too little attention has been devoted to the question whether all of that contracting was *appropriate* for contingency operations.

Government actions in the 1990s led to reductions in U.S. military force structure and civilian agency strength. Given a reduced force structure and a desire to

Acquisition decisions that are expedient in the short term can increase costs and constrain government's options in the long term.

maintain levels of combat personnel, the military reduced its organic support personnel, which increased the need for contractor support.

In addition, there was a general decline in federal agencies' acquisition staff and agencies' ability to perform many functions related to their core missions, even as the volume and complexity of

acquisitions were increasing. These trends often left government officials with no alternative but to enlist contractor support when a contingency developed. For

Afghan and U.S. soldiers on patrol, Pad Khwab-E Rowan, Afghanistan. (U.S. Army photo)



many purposes, then, contracting became the default option for Defense, State, and USAID, because it was the only realistic option.

Nonetheless, planning, sourcing, and requirements definition must be carried out with more attention to appropriateness and risk, including risk mitigation, than has been evidenced in the Afghanistan and Iraq contingencies. Acquisition decisions that are expedient in the short term can increase costs and constrain government's options in the long term. Unless contingency-contracting reforms are implemented, future contingencies will continue to exhibit inappropriate levels of reliance on contractors.

All too often, officials assume that any task deemed not inherently governmental is therefore automatically suitable for performance by contractors.

The inherently governmental standard is insufficient, offering little or no useful guidance for deciding whether contracting for non-governmental functions is *appropriate* or prudent in contingency operations. After determining whether the inherently governmental prohibition applies, decisions to contract still need a context- and risk-sensitive consideration of appropriateness for contingency operations.

Events in Iraq and Afghanistan have shown that systematic consideration of operational, political, and financial risks must be a factor in judging appropriateness. All too often, officials assume that any task deemed not inherently governmental is therefore automatically suitable for performance by contractors.

The concept of financial risk requires a word about costs. The Commission has done research on the comparative financial costs of using contractors. Appendix F of this report lays out a method for identifying and comparing the incremental costs of military forces, federal civilians, and contractor personnel. It describes how factors such as the contingency duration, rotation policies, and local labor market affect comparisons.

Our research indicates that, under certain, limited circumstances, contractors can be a less costly option for extended contingencies. The dominant factor driving these reduced costs is lower labor rates paid to local-national and third-country national contractor employees.

So to the question "Are contractors cheaper?," the short answer is: it depends. And because it depends upon a whole range of factors, many of them not under

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direct government control, considerations of cost cannot be the driving factor in determining whether to contract or what to contract.

Moreover, national security is not a business decision. The Commission firmly believes that in matters of national security and foreign policy involving sustained combat and arduous diplomatic action overseas, considerations of cost are and must be a far less important consideration than mission accomplishment.

**Contracting that is not restricted by the inherently governmental prohibition may still be inappropriate.**

Also, and to be absolutely clear: "cost" must not be confused with "waste." Our view that cost should not be a decisive factor in wartime contracts is absolutely no justification for tolerating waste.

The Commission looked at costs, and acknowledges that contractors can be cheaper in long wars. Nonetheless, however

costly or cheap they may be, there are still many circumstances where contractors are too risky, where contractors actually induce new risks, and where contractors are not appropriate.

In the area of operational and political risks, the Commission's findings pay special attention to contracting for security and acquisition-management functions.

Much public and political attention has been drawn to private security contractors and to the sensitivity of engaging their services:

- Iraqi insurgents' murder and brutalization of four Blackwater guards in 2004,
- private guards' shooting of Iraqi civilians in Baghdad's Nisur Square in 2007,
- the billions of dollars spent on private security contracts, and
- reports of weak oversight of subcontracting for local-national or third-country national security guards.

Acquisition management also deserves special attention because the U.S. cannot conduct contingency operations without contractor support. Agencies generally consider this function of secondary importance, as opposed to a core capability. Furthermore, agencies involve contractors in the acquisition management process without paying due regard to the risk of indirect damage. Those risks include the relationships and working knowledge a contractor develops while supporting acquisition management that may subtly bias a contracting official's decisions,

or confer a windfall competitive advantage on the contractor for future solicitations.

The treatment of inherently governmental functions in federal statute, regulations, and policy is intended to be a critical barrier to ensure that only government personnel perform certain functions, such as waging war, conducting diplomacy, or making commitments that bind the government. The Commission believes, however, that:

- Contracting that is not restricted by the inherently governmental prohibition may still be inappropriate.
- Contracting that may be appropriate in routine, *peacetime* circumstances can be inappropriate in the urgent, volatile setting of a contingency operation.
- Contracting that in the long term may be significantly less expensive than other options (such as retaining the function in-house) may still be inappropriate in a wartime setting.



Ugandan security contractor, Mosul, Iraq.  
(U.S. Navy photo)

### Current federal guidance on inherently governmental functions is not sufficient

The concept of inherently governmental functions appears in a number of sources, including the Federal Activities Inventory Reform Act of 1998 (the FAIR Act), the Office of Management and Budget's Circular A-76, and the Federal Acquisition Regulation (FAR).<sup>1</sup> A number of functions, while not considered to be inherently governmental and which thus may be performed by contractors, are denominated as "closely associated" with inherently governmental functions, and may only be contracted after giving special consideration to using federal employees.<sup>2</sup> Not addressed are "critical functions" and the need to maintain a sufficient number of federal employees to perform them so that the government keeps control over agencies' core missions and operations.

The published guidance reflects much thought and effort. Unfortunately, the overall result is muddled and unclear. It is riddled with exceptions, ambiguities, and ad hoc legislated interventions. The Commission does not consider it a sound

1. The FAIR Act, 31 U.S.C. 501 (note); OMB Circular A-76, revised May 29, 2003. The FAR is the core federal regulation for use by all federal executive agencies acquiring supplies and services with appropriated funds.

2. Sec. 736 of Division D of the Omnibus Appropriations Act, 2009, P.L. 111-8; 10 U.S.C. 2463; 10 U.S.C. 2330a; FAR 7-503(d).

## CHAPTER 2

platform from which to make risk-based or other decisions, beyond those driven by statutory or policy mandates, on what functions are appropriate to contract.<sup>3</sup>

Several laws prohibit certain functions from being contracted, notwithstanding their relationship to inherently governmental rules. These laws include:

- 5 U.S.C. 306—Prohibits contracting for services to draft strategic plans.
- 10 U.S.C. 2464—Requires Defense to maintain a core logistics capability to maintain and repair weapon systems and other military equipment by assigning government personnel and government-owned facilities “sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities” defined by the secretary.
- 10 U.S.C. 2465—Prohibits, with certain exceptions, contracting for firefighting and security guards at domestic military installations.
- 31 U.S.C. 1115—Prohibits contracting for services to draft agency performance plans.

Agencies violate inherently governmental standards. The law requires Defense as well as civilian agencies to survey and report on their services contracting.<sup>4</sup> A 2009 Army base-budget survey of services contracts found some 2,000 contractor positions, expressed in full-time equivalents, performing inherently governmental functions.<sup>5</sup> If this is occurring in *base-budget* activities, a reasonable assumption

is that it also occurs in supplemental-funded activities supporting contingency operations, perhaps to a greater extent.

**Determining that a task is not inherently governmental does not mean that it is a good idea to have contractors perform that task in a contingency operation.**

It is, of course, essential that contractors not perform functions that law, regulation, or official policy reserve for government employees. But that is a basic principle applicable to all government activity, contingent or otherwise. Determining that

3. OMB Circular A-76, revised May 29, 2003. Inherently governmental functions include waging war, binding the government to take or not take action, and exercising ultimate authority over federal property and funds.

4. Sec. 807 of the National Defense Authorization Act for FY 2008, PL. 110-181 (for Defense agencies); sec. 743 of Division C of the Consolidated Appropriations Act, FY 2010, PL. 111-117 (for civilian agencies).

5. The United States Army, “Army FY 2009 Inventory of Contracts for Services: Enclosure 2,” undated, 1-12. The Army’s and other Defense efforts to bring such activity in-house have recently been slowed by the federal budget situation. On March 14, 2011, Under Secretary of Defense Ashton Carter and Under Secretary of Defense Robert Hale issued guidance that all in-sourcing decisions would henceforth be made case by case.



# INHERENTLY GOVERNMENTAL RULES

a task is not inherently governmental does not mean that it is a good idea to have contractors perform that task in a contingency operation. "Permissible" is not a synonym for "appropriate." Deciding whether a function needed or contemplated for contractor performance *in a contingency* must involve more than applying a binary, yes-or-no filter like "inherently governmental." For a function to be both permitted *and* appropriate for contingency contracting, the baseline inherently governmental test must be followed by consideration of other factors, the most important of which is risk.

When officials judge that risk levels are high for a given task and that no practicable and effective risk-mitigation strategies for contractor performance are available, it is appropriate that the contract tasks be modified or canceled, or that the work be brought in-house.

## Movement toward a more risk-based approach

The Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) has taken a helpful step in discussing risk factors as part of the considerations to be weighed in making decisions on contracting. The OFPP's proposed policy letter on "Work Reserved for Performance by Federal Government Employees" responds to congressional direction that tasked OMB with developing a "single consistent definition" of "inherently governmental function."<sup>6</sup>

Published in draft form in 2010 and still awaiting final release, the Office of Federal Procurement Policy letter embodies a single definition of inherently governmental, proposes evaluation criteria and risk-mitigation strategies to guide federal officials, and includes directives such as this guidance relating to critical functions and risk:

Agencies should be alert for situations where internal control of missions and operations is at risk due to overreliance on contractors to perform critical functions. ... If an agency has sufficient internal capability to control its mission and operations, the extent to which additional work is performed by federal employees [rather than contractors] should be based on cost considerations *unless performance and risk considerations in favor of federal employee performance will clearly outweigh cost considerations.*<sup>7</sup> [Emphasis added.]

The letter focuses on the inherently governmental standard, and is not designed to guide contingency-contracting decisions. But its emphasis on considering risk

6. National Defense Authorization Act for FY 2009, sec. 321, PL. 110-417.

7. Office of Management and Budget, "Notice of proposed policy letter," Federal Register, 75:61, March 31, 2010, 16188-16197.

and other factors beyond the baseline legal construct of inherently governmental functions is a thoughtful and helpful exercise that can be extended for particular use in contingencies.

### Risk as a factor in selecting appropriate contracting

For functions performed in a war zone, prudent decisions on contracting include assessing the level of *risk* associated with contracting, and judging whether that level is or can be mitigated to an acceptable level. When officials at Defense, State, USAID, or other federal agencies judge that risk levels are high for a given task and that no practicable and effective risk-mitigation strategies for contractor performance are available, it is appropriate that the contract tasks be modified or canceled, or that the work be brought in-house.

The U.S. government has established processes for evaluating risk that embody this approach. For example, U.S. Army Field Manual FM 5-19, "Composite Risk Management," details a risk-assessment and control approach that starts by weighing the probability of a given hazard's occurrence against its impact on the mission. It is a judgmental, iterative, and probabilistic process, not a mechanical application of rules:

[Once hazards were identified and assessed,] an initial risk level was determined. In this step, controls are developed and applied. The hazard is reassessed to determine a residual risk. Risk decisions are always based on the residual risk. The process of developing and applying controls and reassessing risk continues until an acceptable level of risk is achieved or until all risks are reduced to a level where benefits outweigh the potential cost.<sup>8</sup>

This process offers a good discipline for operational commanders. However, such risk analyses have not driven broad-scale, strategic contracting decisions by Defense, State, or USAID in Iraq and Afghanistan, leaving the United States ill-prepared to use contractors for the scale and duration seen in those countries.

Afghan road maintenance team, Kapisa province, Afghanistan. (U.S. Air Force photo)



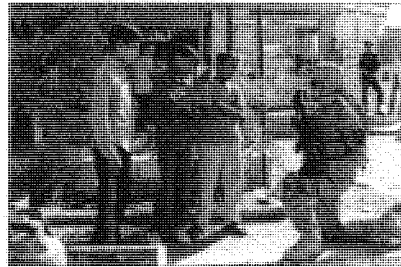
8. Department of the Army, Field Manual FM 5-19, "Composite Risk Management," July 2006, Chapter 1, 10.

When the U.S. government went to war, it did not have enough acquisition personnel, the capacity to manage and oversee contracts, adequate training on operational contract support for non-acquisition military personnel, or core contracting capabilities in crucial areas, including one of the highest-risk areas—security.

The Department of Defense "Instruction" (DoDI) on workforce mix also provides detailed risk-based guidance on choosing among military, civilian, and contractor personnel to perform specific functions. The 55-page instruction provides, among other things, that:

- "When reviewing the adequacy of critical contract services that support the Combatant Commanders' contingency plans during the deliberative planning process of the Joint Strategic Planning System, [the Chairman of the Joint Chiefs shall] assess the risks of using contract support consistent with this Instruction and require Combatant Commanders to develop contingency plans if they have a reasonable doubt that a contractor will continue to provide essential services during a mobilization or crisis."
- "When establishing the workforce mix, manpower planners shall review all mission requirements and design units and/or organizations to accomplish baseline operations and transition quickly and easily to support military operations (e.g., contingency, humanitarian, peacekeeping) and crises. Manpower analysts also shall use the guidance for risk assessments ... to help identify risks."
- "Risk mitigation shall take precedence over cost savings when necessary to maintain appropriate control of Government operations and missions ... [or] to maintain core capabilities and readiness."
- "Functions that are [inherently governmental] cannot be legally contracted" and "Functions that are not [inherently governmental] are commercial in nature."
- "Security actions that entail assisting, reinforcing, or rescuing PSCs [private security contractors] or military units who become engaged in hostilities are [inherently governmental] because they involve taking deliberate, offensive action against a hostile force on behalf of the United States."

U.S. soldier with residents, Nassir Wa Salaam, Iraq.  
(Defense photo)



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- "Security is [inherently governmental] if, in the commander's judgment, an offensive response to hostile acts or demonstrated hostile intentions would be required to operate in, or move resources through, a hostile area of operation."<sup>9</sup>

The Defense Instruction is carefully constructed, even to the point (as seen in the quoted excerpts) of noting that an otherwise commercial activity such as security may, in effect, *become* inherently governmental under particular circumstances. Nonetheless, the Instruction is not framed as a guide to contracting decisions *for contingency operations*: the word "contingency" appears only a few times in the main narrative of the Instruction, and some of those uses refer to classifications rather than criteria for contracting decisions. Further, the implication that, within a single department, a particular task may or may not be inherently governmental, depending on circumstances, suggests that some conceptual ambiguity lies nestled in the meaning ascribed to "inherent."

The language of the Instruction also serves as an illustration that different agencies within the federal government can reach starkly differing conclusions about the meaning of "inherently governmental."

Consider the treatment of quick-reaction forces—usually small light-infantry or police units tasked to respond on very short notice to emergencies. The Defense guidance quoted above says, "assisting, reinforcing, or rescuing PSCs or military

Zabul Provincial  
Reconstruction Team,  
Qalat, Afghanistan.  
(U.S. Air Force photo)



9. Excerpts from Department of Defense Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix," April 12, 2010.

units who become engaged in hostilities" is inherently governmental because doing so involves offensive action. The State Department, on the other hand, has used and will use thousands of private contractors for both standard security and quick-reaction-force duties in Iraq as U.S. military forces withdraw because it does not view those tasks as inherently governmental.<sup>10</sup> USAID does not enter into this discussion: the agency has no organic security force and does not contract directly for security. Any private security for USAID-funded projects occurs as subcontracting activity by USAID's "implementing partners" who receive grants or contracts.

These disparities in definitional treatment illustrate that the rules on inherently governmental functions do not produce predictable and consistent results on the legal baseline of permissibility, much less offer guidance on what is appropriate for contracting in contingency operations.

The rules on inherently governmental functions do not produce predictable and consistent results on the legal baseline of permissibility, much less offer guidance on what is appropriate for contracting in contingency operations.

#### Characteristics of risk in contracting for a contingency

The observations and research of the Commission have identified a number of risk factors that should be considered as a guide in determining what is appropriate to contract for in a contingency. The following list does not purport to be definitive or exhaustive, for there is no apparent standard for judging that all risks have been identified, even conceptually. Indeed, presuming that one has identified all possible risks is itself likely to be a risky thing to do. Nonetheless, some risk factors within the broad areas of operational, political, and financial risks are apparent, including risks to:

- U.S. goals and objectives, such as from behavior that injures innocent members of the local population or outrages their sensibilities;
- federal civilians' or military personnel's safety, if contractors' presence or performance creates unsafe conditions or invites attack;
- managerial control, such as relying on contractors to monitor other contractors with no means for government to check their work;

10. See Commission Special Report 3, "Better planning for Defense-to-State transition in Iraq needed to avoid mistakes and waste," July 12, 2010. See also Patrick F. Kennedy, Under Secretary of State for Management, Commission hearing, June 6, 2011, transcript, 57: "Even in those circumstances [reference to question about a force having to shoot its way into a situation to rescue people], security is not inherent in the government."

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- maintaining agencies' critical organic or core capabilities;
- critical knowledge or "institutional memory" as federal personnel rotate in and out of theater so that government must rely on long-serving contractors for area or subject-matter expertise;
- government's ability to control costs, waste, fraud, abuse, and conflicts of interest; and
- mission, such as from contractors walking off the job or being unable to perform when there is no timely back-up available.

These and other risks can assume greater or lesser salience depending upon the circumstances in which a contractor would be operating. As an example, recruiting local nationals as private security guards in an area where local sympathies are divided entails higher risk to the safety of U.S. and allied personnel than in a neutral or friendly area. If risk mitigation, such as stricter vetting and more vigorous human-intelligence gathering, could not reduce the residual risk to an acceptable level, decision makers would then consider not using contractors, modifying their use, or canceling or postponing the mission.

**If mitigation or control measures leave the residual risks of using contractors at a level that outweighs the expected benefits, then government needs timely and deployable options to support the contingency mission.**

Situational risk factors that could affect risk assessment include:

- operating in a combat zone or insurgent-threat area;
- lack of effective federal oversight in the area of operations;
- presence of a culture of corruption;
- a host government incapable of enforcing the rule of law;
- inadequate accounting, financial, and business systems among contractors and subcontractors; and
- lack of legal accountability for foreign prime contractors and subcontractors.

These situational factors should be considered along with the risks discussed earlier as part of the decision on what is appropriate for the government to contract for in a particular contingency. If mitigation or control measures leave the residual risks of using contractors at a level that outweighs the expected benefits, then government needs timely and deployable options to support the contingency mission.

► **RECOMMENDATION 1****Use risk factors in deciding whether to contract in contingencies**

Heads of agencies involved in a contingency should:

- issue and ensure implementation of policy guidance for using risk factors such as those listed above, as well as those described in the Office of Federal Procurement Policy draft policy letter of March 2010 and Department of Defense Instruction 1100.22, to provide guidance on what functions are *appropriate* to contract for in a contingency setting;
- provide funding and direction for agencies involved in contingency operations to identify a trained, experienced, and deployable cadre for stabilization-and-reconstruction functions in areas of contingency operations so that the government has an alternative to contracting for performance of critical or sensitive functions; and
- provide a strategic plan for deploying these cadres that includes provisions for mandatory deployability of civilian members, and is supported by a back-up capability for rapidly making temporary hires for large-scale or long-term contingency operations.

Heavy reliance on contractors can easily introduce risk into the area of acquisition management.

### Contractors and risks to proper acquisition management

The government often employs contractors to help evaluate or otherwise support its management of other contractors. Doing so, however, can give rise to potential or actual organizational conflicts of interest (OCI) that must be avoided or mitigated.

The Federal Acquisition Regulation (FAR) requires contracting officers to analyze planned acquisitions to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate significant conflicts before contract award.<sup>11</sup>

Common sense, good judgment, and sound discretion are required in deciding whether a significant potential conflict exists and, if it does, in developing an appropriate means to resolve it. The two underlying principles are to avoid

11. FAR 9.504.

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conflicting roles that might bias a contractor's judgment, and to prevent a contractor's acquiring an unfair competitive advantage.

The risk of organizational conflicts of interest need not be a significant problem if handled appropriately. OCI can, however, be a problem when the contracting officer is overloaded and his or her support staff are themselves predominantly contractors, as has often been the case in the Iraq and Afghanistan contingency operations.

Heavy reliance on contractors can, for example, easily introduce risk into the area of acquisition management. Several instances of potential organizational conflicts of interest were identified in Iraq and Afghanistan. In each case, mitigation was attempted. But the appearance of conflicts of interest and the potential for problems were there:

- The U.S. Army contracted with Serco, Inc. in February 2007 to act as an independent stateside contractor to plan and develop performance work statements to compete future work among three competing contractors under the Army's Logistics Civil Augmentation Program (LOGCAP), a worldwide support contract. A contract clause prohibited Serco from working in any capacity under a LOGCAP IV contract. However, a Serco subcontractor, Military Professional Resources Inc. (MPRI), was drafting statements of work for both LOGCAP and non-LOGCAP work. MPRI could have been placed in a position to favor itself when developing performance work statements for requirements that it might have performed under the LOGCAP program as a subcontractor. After an inspector general identified the problem, Serco discontinued the subcontract with MPRI.<sup>12</sup>

In Afghanistan, the firm Aegis Defense Services was selected in 2009 to support the Armed Contractor Oversight Directorate (ACOD), with an Aegis contractor serving as deputy director and having day-to-day responsibility for managing the directorate. Aegis's responsibilities included working with the Afghan Ministry of Interior on investigations of PSC escalation-of-force incidents. The military's request for expedited assignment of four field-grade officers for ACOD went unfilled for months, leaving Aegis effectively in charge of making decisions on potential competitors' conduct.

Discovering this situation during theater travel, Commissioners concluded and reported that it created a potential conflict of interest if Aegis were to begin providing security for Defense. The government notified Aegis of the potential conflict, and offered Aegis the chance to be able to compete for

12. DoD IG Report No. D-2011-032, "Logistics Civil Augmentation Program Support Contract Needs to Comply with Acquisition Rules," January 7, 2011, 1, 9-10.



# 'INHERENTLY GOVERNMENTAL' RULES

future security work by withdrawing from the ACOD support contract in Afghanistan. The company withdrew, effective November 15, 2009.

- The U.S. government contracted with Virginia-based CACI International in 2004 to provide operations-support services to the Joint Contracting Command Iraq/Afghanistan (JCC I/A). Attempts to increase the JCC I/A's military staffing levels and to recruit volunteers had failed, so dozens of CACI employees were added and performed work that government contract specialists would normally have done.

By way of organizational-conflict-of-interest risk mitigation, CACI undertook not to compete for other JCC I/A solicitations, and to "firewall" the JCC I/A-support group from other CACI operations.<sup>13</sup> With the government's approval, this CACI business segment continued to act as part of a larger organization that competed for other contracts in theater. The Commission has reservations, however, whether such firewall arrangements can be effective.

The use of contractors to manage other contractors reveals a failure of government to provide for a sufficient contingency workforce.

These examples illustrate how easily potential or actual organizational conflicts of interest can arise, and to suggest that the urgency of contingency operations requires a vigilant and effective risk-identification, risk-mitigation, and OCI-enforcement process. When, however, organizational conflict of interest cannot be avoided or mitigated to an acceptable level, the work must not be done by contractors.

A somewhat different example—contractor work performed in the United States in support of the Afghanistan and Iraq operations, rather than in theater—illustrates a combination of problems that were not mitigated in advance. The case involves a \$285.5 million contract awarded in 2009 by Army Contracting Command to Science Applications International Corporation (SAIC) for follow-up maintenance support for the Army's Mine Resistant Ambush Protected (MRAP) vehicles. According to the inspector general of the Department of Defense, Army, and Joint Program Office officials

inappropriately allowed the contractor to perform inherently governmental functions, such as disciplining DoD employees, and to have organizational conflicts of interest, such as helping prepare requirements for the follow-on contract that the contractor bid on and won. ... This greatly increased the risk for potential waste or abuse on the contract.<sup>14</sup>

13. Dr. Terry Raney, Senior Vice President, CACI International, Inc., Commission hearing, April 19, 2010, transcript, 126.

14. DoD IG Report D-2011-081, "Contract Management of Joint Logistics Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement," July 11, 2011, i.

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The use of contractors to manage other contractors reveals a failure of government to provide for a sufficient contingency workforce. Personnel shortages are not sufficient justification for contracting for high-risk functions after a crisis develops. Congress and federal agencies are responsible for structuring the U.S. peacetime workforce to deal with projected mobilization and crisis demands. Securing a standing capability to deploy at the start of a contingency would reduce contract waste, fraud, and abuse, which were a significant problem in the early days of the operations in Iraq and Afghanistan, as well as help to avoid or mitigate potential organizational conflicts of interest.

► **RECOMMENDATION 2**  
**Develop deployable cadres for acquisition management and contractor oversight**

Agency heads should:

- Provide funding and direction to establish a trained, experienced, and deployable cadre for acquisition-management and contractor-oversight functions in areas of contingency operations so that the government has an alternative to relying on contractors for acquisition management and oversight.

Determining whether an instance of static, personal, or convoy security is appropriate for contracting out in a contingency environment depends upon factors in addition to the inherently governmental construct.

### Appropriate use of security contractors in contingencies

The government uses security contractors in three main ways:

1. *Static* security for sites like embassies and consulates, for military forward operating bases (FOBs), and for construction sites;
2. *Personal* security details for diplomats and other government personnel, and for other persons requiring special protection; and
3. *Convoy* security for movement of personnel and goods.

Direction regarding the performance of security functions in a contingency came with the enactment of the National Defense Authorization Acts for FY 2008 and 2009, as well as in the 2006 version of DoDI 1100.22, "Guidance for Determining Workforce Mix," which delegated decisions on the use of armed contractors

# 'INHERENTLY GOVERNMENTAL' RULES

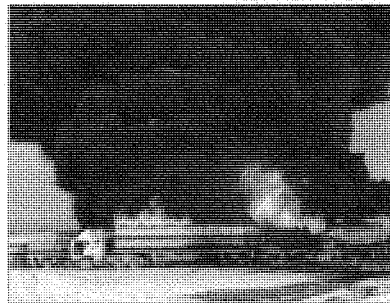
to the Combatant Commands (COCOMs)—years after the start of the Iraq and Afghanistan contingencies.<sup>15</sup>

In January 2006, Defense's general counsel issued a legal opinion concluding that the use of PSCs to protect U.S. personnel and property in Iraq and Afghanistan was appropriate. This opinion states that it would be inappropriate to use armed security contractors in "situations where the likelihood of direct participation in hostilities is high."<sup>16</sup>

The "likelihood" caveat in the Defense legal opinion underscores the Commission's belief that determining whether an instance of static, personal, or convoy security is *appropriate* for contracting out in a contingency environment depends upon factors in addition to the inherently governmental construct. Those factors include the type of security, risk of the specific mission, situational conditions, the current or potential kinetic environment, and host-nation stability.

The presence and scale of risks can be highly context-sensitive. In Afghanistan, for example, the difficulties of vetting and overseeing Afghan personnel hired for security tasks in a zone of contingency operations have been illustrated by incidents of attacks and fatalities inflicted on U.S. and other allied personnel with the participation or support of security contractor employees—and at least one episode of Afghan security guards huddling in their beds while insurgents attacked the U.S. combat outpost they were hired to guard.<sup>17</sup>

It should be noted that members of the Afghan military and police have also inflicted U.S. fatalities. Given that avoidable risks of operational, fiscal, and



Fuel trucks ablaze,  
Oruzgan province,  
Afghanistan.  
(Photo courtesy of  
DCMA)

15. Secs. 832, 853, National Defense Authorization Act for FY 2009, P.L. 110-417; sec. 862, National Defense Authorization Act for FY 2008, P.L. 110-181.

16. Department of Defense, Deputy General Counsel Charles A. Allen, memorandum, "Request to Contract for Private Security Companies in Iraq," January 10, 2006.

17. MSNBC News, "Afghan security contractor accused of killing US soldiers," March 21, 2011. The report said a recently hired guard with Tundra Security Group opened fire on a group of U.S. soldiers at Forward Operating Base Frontenac in Argandab Valley, killing two and wounding four before being shot to death. Associated Press, "Probe: Afghan Troops Ran, Hid During Deadly Attack," June 10, 2011. The story details an October 3, 2009 insurgent attack on Combat Outpost Keating in which eight U.S. soldiers were killed and 22 wounded, and includes reports on the conduct of both Afghan soldiers and Afghan security guards.

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political failures fall directly on the U.S. government and its policy objectives, the Commission believes that risk assessments for using security contractors should be a standard, regularly updated exercise, and that agencies involved in contingency operations should formally agree on general principles for using security contractors.

As Iraq and Afghanistan show, the environments are dynamic and numbers of contractors and the scope of their missions can change dramatically from one year to the next. This is in contrast to labeling any one type of security as inherently governmental, assigning a "bright line" to that function, and prohibiting the U.S. government from contracting for such a service in future contingencies.

In a war zone, as troop limitations and expanded agency missions drive manpower decisions, a risk-based determination process of whether a function should or

**A realistic risk assessment must consider whether contracting for these services, currently performed with limited government oversight, is acceptable and whether risk can be brought to acceptable levels.**

should not be contracted may take a back seat to mission accomplishment. As the Under Secretary of State for Management remarked, "The surge capability is, in my mind, what contracting is for ... to be able to grow the work when you have a particular need and then to shrink that work back for the benefit of the mission and the American taxpayer."<sup>18</sup>

State's Bureau of Diplomatic Security has limited employee resources, yet in Iraq must significantly expand its security workforce to develop its countrywide presence as Defense continues to withdraw troops and resources. Contractors will supply much of the increased workforce.

A realistic risk assessment must consider whether contracting for these services, currently performed with limited government oversight, is acceptable and whether risk can be brought to acceptable levels. Lack of proximity to contracting and oversight authorities and to trained or experienced personnel in theater makes this a difficult challenge for State and especially for USAID, with its numerous and widely dispersed projects. The Commission has expressed concern in hearings and special reports about State's ability to manage and oversee a major expansion of its contracting activity. A similar concern applies with more force to USAID, which has an even smaller acquisition staff than State,

18. Patrick F. Kennedy, Under Secretary of State for Management, House of Representatives Committee on Oversight and Government Reform, Subcommittee on National Security, Homeland Defense, and Foreign Operations hearing, "U.S. Military Leaving Iraq: Is the State Department Ready?," March 2, 2011.

no organic security forces, and no direct contractual relationships with security contractors that its implementing partners may engage.

State and Defense have made significant progress in implementing standards and processes for the selection, training, equipping, accounting for, coordinating, monitoring, and investigating private security contractors and their activities. The Commission is concerned whether similar risk-mitigation strategies will be applied to security subcontractors for USAID implementing partners.

USAID pursues hundreds of projects in Iraq and Afghanistan for traditional reconstruction and development goals, as well as "stabilization" goals linked to political/military objectives. These efforts have entailed work dispersed among many remote locations, often in areas of lethal insurgent activity or at least constant threat of attack. USAID does not contract directly for security, and some of its implementing partners work without security. But security is an issue. As GAO has noted, "U.S. officials cited poor security as having caused delays, disruptions, and even abandonment of certain reconstruction projects."<sup>19</sup> USAID's inspector general told the Commission that the agency had cited security as "the overriding risk confronting USAID's ability to manage its assistance activities" as early as 2003, then elaborated as recently as 2009:

In addition to causing operating and program costs to increase, the lack of security imposes significant constraints on USAID's ability to monitor its programs. USAID officials are unable to make routine site visits, and their official counterparts are often reluctant to be seen meeting with Americans. Normal branding procedures (e.g., ensuring that USAID's logo is readily visible at project sites and on delivered commodities) are sometimes bypassed in order to protect the implementers and the beneficiaries. USAID-funded vehicles have been damaged or destroyed by insurgents, and implementing partners and host country officials have been the targets of threats, kidnappings, and murders.<sup>20</sup>

Delays, abandonments, threats, and attacks all create an environment which contributes to waste. But this outcome is to be expected if U.S. policy departs from the maxim of "clear, hold, build." There may be powerful geopolitical or humanitarian reasons to launch large-scale reconstruction projects in unsecured or contested areas, but obtaining cost-effective contracting is not one of them. As the Special Inspector General for Iraq Reconstruction (SIGIR) told the Commission at its first hearing:

19. GAO Report GAO-10-932T, "Afghanistan Development: USAID Continues to Face Challenges," July 15, 2010, 4.

20. Donald A. Gambatesa, Inspector General, USAID, statement, Commission hearing, February 2, 2009, 2.

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A successful reconstruction program requires a balancing of security, political, and economic interests. Reconstruction cannot proceed on a large scale without the requisite security to protect those responsible for implementing and overseeing projects. When embarking on a contingency relief and reconstruction operation, the U.S. government should analyze whether and at what costs those security risks can be mitigated. Projects should only proceed when senior leaders determine that the strategic objectives they seek to fulfill outweigh the risk of failure and the costs of mitigating security risks.<sup>21</sup>

Officials who take into account the operational and fiscal implications of providing the level and duration of security required to complete and operate a project might well decide to cancel, postpone, or modify it before the associated costs and risks outweigh the presumptive benefits.

### Conditions influence appropriate use of contractors

Compared to the scope of contracting in reconstruction or logistics programs, contracted security providers are relatively small in number. However, any incident involving an armed private security contractor has immediate impact, with even minor incidents generating extensive media and host-nation attention.

Even if permitted by U.S. or host-nation laws, using contractors to provide security functions in specific contingency operations may not be the best decision based on conditions and risk. President Karzai's decree to restrict the use of PSCs may influence the decision to contract security services even if this is not expressly prohibited by the government of Afghanistan.<sup>22</sup> Concerns of waste, fraud, and indirect insurgent funding in convoy contracts in Afghanistan increase the risk to the mission of using PSCs. In these cases contracting for services is not appropriate unless the potential benefits outweigh the associated risks.

Risk evaluations include assessments of PSC use-of-force incidents, illegal activity, and implementation of procedures for coordinating, monitoring, reporting, and investigating contractor movements and incidents. Options available to mitigate risk are necessarily contingency-specific.

Situations vary among contingencies. A core set of mitigation steps, however, could be applied to all contingencies, including:

21. Stuart Bowen, Jr., Special Inspector General for Iraq Reconstruction (SIGIR), statement, Commission hearing, February 2, 2009, 4.

22. President Hamid Karzai, Presidential Decree 62, "Ordinance of the President of the Islamic Republic of Afghanistan About Closing Security Companies," August 17, 2010.

- clarifying legal accountability under U.S. and host-nation laws,
- defining agency roles and responsibilities for oversight of all PSCs,
- drafting sufficient policies and procedures,
- securing appropriate funding to sustain management and oversight positions, and
- deploying trained or experienced staff in the field to monitor performance.

Additional risk mitigation can be adapted from lessons learned in previous or current contingency operations, including the establishment of interagency PSC coordination centers such as the Defense-managed Contractor Operations Cell (CONOC), clear incident-reporting guidance, and doctrine for interagency and bilateral investigations of incidents. Reforms implemented since 2007 have contributed to decreasing security contractor incidents, yet continued improvement is required.

### Risk considerations for contract security in Afghanistan

The scale and intensity of U.S. contingency operations in Afghanistan, the challenging security environment, and the Afghan government's policy toward private security contractors all warrant a discussion of contract security issues in that country.

As of June 30, 2011, Defense had over 15,000 private security contractor personnel working in Afghanistan, more than double the count of June 2009. Of these,

- over 13,000 were Afghan nationals,
- nearly 1,300 were third-country nationals, and
- about 700 were U.S. nationals.<sup>23</sup>

About 12,000 additional private security contractors and subcontractors were working in Afghanistan supporting State and USAID as of fall 2010.<sup>24</sup>

Concerns of waste, fraud, and indirect insurgent funding in convoy contracts in Afghanistan increase the risk to the mission of using PSCs. In these cases contracting for security services is not appropriate unless the potential benefits outweigh the associated risks.

23. Deputy Assistant Secretary of Defense (Program Support), "Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility, Iraq, and Afghanistan," July 7, 2011. The numbers are about 4,000 lower than the previous quarter's report as a result of licensing issues with the Afghan government and compliance with Presidential Decree 62.

24. GAO Report 11-1, "Iraq and Afghanistan: DOD, State, and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel," October 1, 2010, 21.

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The security landscape in Afghanistan is in flux. In response to the Afghan government's decree of August 17, 2010, the country's Ministry of the Interior issued a "bridging strategy" implementation plan on March 15, 2011.<sup>25</sup> The bridging strategy addresses implementation of President Karzai's decree, exempting private companies that provide security for diplomatic organizations. Otherwise, PSCs will be unable to provide security for development or reconstruction projects after March 2012, and for international-forces' convoys and sites after March 2013.

The Afghan government's plan is that functions prohibited to foreign PSCs will be assumed by an Afghan government-controlled Afghan Public Protection Force (APPF). The U.S. government supports the bridging strategy and creation of the APPF, but has conditioned its support on the APPF's ability to assume responsibility and on the Afghan government's establishing acceptable administrative procedures.<sup>26</sup>

Considering the risks and appropriateness of contracting for private security in Afghanistan requires noting the distinctions among static security, personal security, and convoy security.

### Security for bases, camps, and diplomatic posts

Static security for bases, camps, and diplomatic posts involves considerations different from those applicable to convoy security.

The biggest threat is from insurgent attempts to target bases and camps in order to inflict casualties on U.S. forces. Other kinds of problems arise from relying upon Afghan PSCs who recruit local nationals. A Pashtun PSC guarding a base or camp in a contested Pashtun area may have pro-insurgent personnel in its workforce. However, bringing in guards from other areas may cause suspicion and friction among the local civilians. The Afghan Presidential Decree 62 mandates that static security ultimately will be provided by an entity under Afghan governmental control. A later decree exempted foreign diplomatic security.

These considerations suggest selective phasing out of PSCs in the most at-risk positions, regions, and contexts. At forward camps in insurgent-controlled areas

25. Ministry of the Interior, Afghanistan, "The Bridging Strategy for Implementation of Presidential Decree 62, (Dissolution of Private Security Companies)," March 15, 2011.

26. Special Inspector General for Afghanistan Reconstruction (SIGAR), Audit Report 11-15P, "Analysis of Recommendations Concerning Contracting in Afghanistan, as Mandated by Section 1219 of the Fiscal Year 2011 NDAA," June 22, 2011, 14.

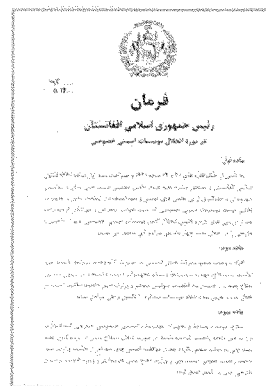


where there is a significant likelihood of well-planned enemy attacks, military forces should provide static security.

At the other end of the spectrum, PSCs may serve well to guard outer areas and perimeter gates for forward operating bases in completely uncontested areas. Deciding which PSCs to use requires a challenging calculation involving the risks of different kinds of PSCs and the application of the Karzai decrees. The problem is not merely that third-country nationals (TCNs) may be costlier than Afghans. Using TCNs may erode local support by removing employment opportunities for local Afghans. Using PSCs for static security in low-risk areas serves its classic function of freeing up troops for combat operations. That said, improvements are needed in PSC vetting, training, arming, weapons control, oversight, and management. For example, during March 2011 travel in Afghanistan, Commission members and staff learned of drug paraphernalia and ingredients for improvised explosive devices having been found in hired guards' possession.

Afghanistan requires a risk-based analysis, with selective phasing-out of private security in the riskiest areas. In some roles, however, if the benefits associated with PSC use are outweighed by the risks, reform rather than phase-out is the reasonable approach.

Afghan decree limiting foreign security firms.  
(Afghan government document)



### Personal-security details

So long as the U.S. military continues its minimal participation in personal-security missions, the State Department has no practical alternative to using contractors. State's Bureau of Diplomatic Security has only about 1,800 Diplomatic Security agents world-wide, and cannot meet all of the Department's security needs amid the Afghan insurgency without contractor support.

Changing State's personal-security practices in Afghanistan would entail heavy burdens, at least in the near term. But change in this function does not appear urgent. When the Karzai government demanded changes to reduce the presence of foreign private-security companies, it exempted personal-security details used by the Department of State. Otherwise, an agreement between the International Security Assistance Force and the Afghan government calls for phasing out PSC performance of personal-security missions by 2012 and turning responsibility over to the Afghan Public Protection Force. It is uncertain whether this process will be completed on schedule.

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There is room for improvement. Many important reforms made in Iraq have not been implemented in Afghanistan. They include reliable incident-reporting

**Afghanistan requires a risk-based analysis, with selective phasing-out of private security in the riskiest areas.**

mechanisms for all PSCs and compliance with arming-authorization and host-nation regulations. Documentary requirements such as arming authorizations and rosters are far from complete. The ACOD in Afghanistan does not function at the same level as the ACOD has in Iraq. Many other inadequacies and needed reforms could be cited. These improvements were useful in Iraq, and need to be better applied in

Afghanistan and in future contingencies.

### Convoy security

Convoy security in Afghanistan has several features that suggest PSCs should be phased out or at least sharply restricted for that function.

The Commission has previously noted that "contractors who perform movement security in Iraq and Afghanistan are likely to traverse hostile environments and enter into or generate high-risk situations."<sup>27</sup> That concern primarily involved potential (and actual) civilian casualties, as well as alienation of the local population that could undermine U.S. and allied political initiatives and increase sympathy for the Taliban. An additional concern in Afghanistan is that convoys have become vulnerable to extortion, generating payments that flow to local warlords or to insurgents who control or contest a particular stretch of road.<sup>28</sup> On high-volume roads, insurgents concentrate their efforts to target convoy traffic.

The U.S. military has already limited its use of private security for convoys, furnishing its own security for convoys carrying critical material such as ammunition or military vehicles. Also, American forces provide security when convoy contractors identify certain routes as particularly hazardous enemy-controlled roads.

27. Commission second interim report, "At what risk? Correcting over-reliance on contractors in contingency operations," February 24, 2011, 17.

28. This issue, as embodied in the Department of Defense's Host Nation Trucking Program, was explored at length by the then-majority staff of the U.S. House Subcommittee on National Security and Foreign Affairs, House Committee on Oversight and Government Reform. See U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, "Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan," June 2010.

Phasing out PSC convoy security could be selective. Main roads in much of the western and northern provinces of Afghanistan are not under insurgent control. Convoy-security risks could also be mitigated by replacing PSCs with military guards for high-volume movement along the contested parts of the most heavily traveled routes such as the paved "Ring Road" linking Kabul, Kandahar, Herat, and other cities. Also, U.S. and Afghan forces could cooperate in providing military security for convoys.

A selective phasing out of PSC-provided convoy security would not erase the need for reforms. More rigorous vetting of PSC subcontractors and checking of their armed employees would help, as would tracking and video records of convoy movements and debriefings of convoy personnel.

Many important reforms made in Iraq have not been implemented in Afghanistan.

#### ► RECOMMENDATION 3

##### Phase out use of private security contractors for certain functions

- Phase out use of host-nation private security contractors in Afghanistan for the convoys on high-volume roads that the insurgency controls or contests. Current alternatives include U.S. military, Afghanistan National Army units, the new Afghan government-sanctioned security providers established under the Karzai decrees as the Afghan Public Protection Force, or some combination of the above.
- Evaluate each static-security site to assess the risk associated with the use of contractors. Where the military commander determines there is a high risk, use military forces. Where the commander determines the high risk is specifically the result of using local-national contractors, use military forces or third-country national PSCs for security.

## CHAPTER 2

### Interagency agreement on security in contingency zones is needed

Following the watershed events of Nisur Square in September 2007, a Memorandum of Agreement (MOA) between Defense and State was signed regarding the use of armed contractors in Iraq.<sup>29</sup> This document broadly defined procedural requirements and standards in the selection, vetting, training, equipping, and accounting for PSCs under Defense and State in Iraq.

There is no similar interagency guidance applicable to all federal agencies regarding the proper use of PSCs in Afghanistan or future contingency operations and incorporating lessons learned since December 2007.

The United States has learned lessons, especially in Iraq, regarding effective oversight over PSCs. Examples include interagency-coordinated operations

U.S. Marine convoy,  
Helmand province,  
Afghanistan.  
(U.S. Marine Corps  
photo)



29. Department of Defense and Department of State, memorandum, "Memorandum of Understanding Between the U.S. Department of State and the U.S. Department of Defense and the U.S. Agency for International Development Relating to Contracting in Iraq and Afghanistan," December 5, 2007.

centers, command and control authorities, clear policies, and technical monitoring of mobile security.

Despite the success of some risk-mitigation strategies, many have not been implemented across the agencies or required in future contingency or combat operations involving the use of PSCs. The U.S. government will likely repeat costly mistakes in future contingencies if best practices are not institutionalized.

**The U.S. government will likely repeat costly mistakes in future contingencies if best practices are not institutionalized.**

Clearly identifying agency roles and responsibilities in the management of PSCs during contingencies allows agencies to prepare for their responsibilities in funding, planning, staffing, and training prior to the actual requirement. In the current military-to-civilian transition in Iraq, State is challenged to quickly fill the voids in specific capabilities as Defense draws down its forces. In addition to assuming Defense Logistics Agency and Army LOGCAP contracts in Iraq, State is adding contracts for support in security, aviation, response capabilities, and medical care. State could at some point face similar challenges in Afghanistan.

An MOA between federal agencies and applicable to all contingency operations regarding the use of PSCs would identify areas that must be addressed by all agencies prior to deploying security contractors.

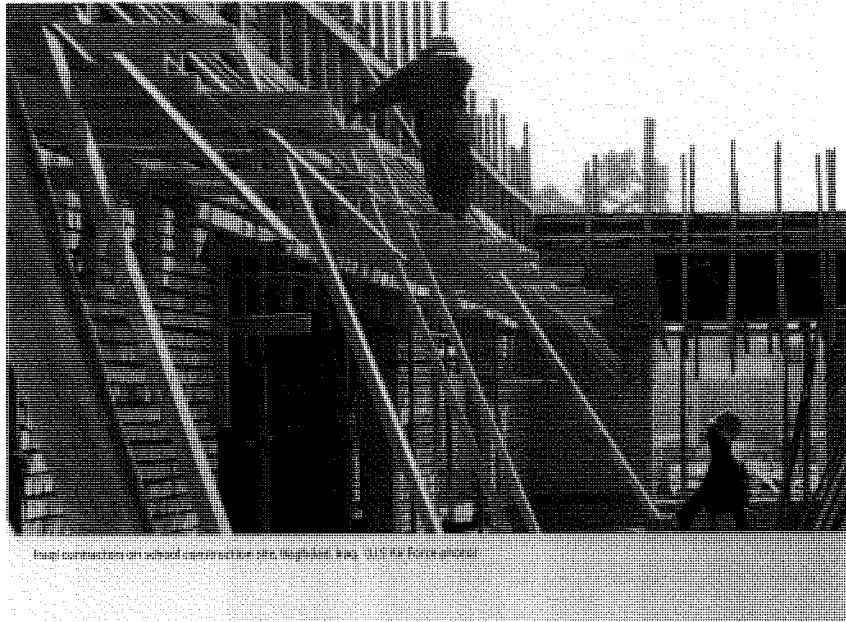
Necessary conditions, such as serious-incident definition and reporting, effective incident reporting, points of contact, tactical responsibilities like quick-response forces and medevac services, investigative processes, and legal accountability of contractors must be identified to determine whether an agency is prepared to employ armed contractors in a responsible manner.

**► RECOMMENDATION 4****Improve interagency coordination and guidance for using security contractors in contingency operations**

Provide greater control and accountability for security contracting:

- Hold the ambassador, USAID mission director, and military commanders responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change, giving particular consideration to the geographic, temporal, and organizational proximity to armed conflict.
- When private security or other contractors are to be armed, they should be overseen by government employees and tracked in a centralized system, as is done in Iraq.
- Reliance on private security contractors should be accompanied by greater use and emphasis on vetting, training, authorizing arms, and weapons control; post-convoy debriefing, locational tracking and video monitoring; and more thorough and comprehensive management.
- Execute an interagency agreement to provide guidance on security contracting.
- Defense, State, and USAID should develop and enter into a standing interagency MOA, incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors in future contingencies.
- This standing MOA should be modified within 90 days of a declared combat operation or other contingency to specifically address the needs and circumstances of that operation.

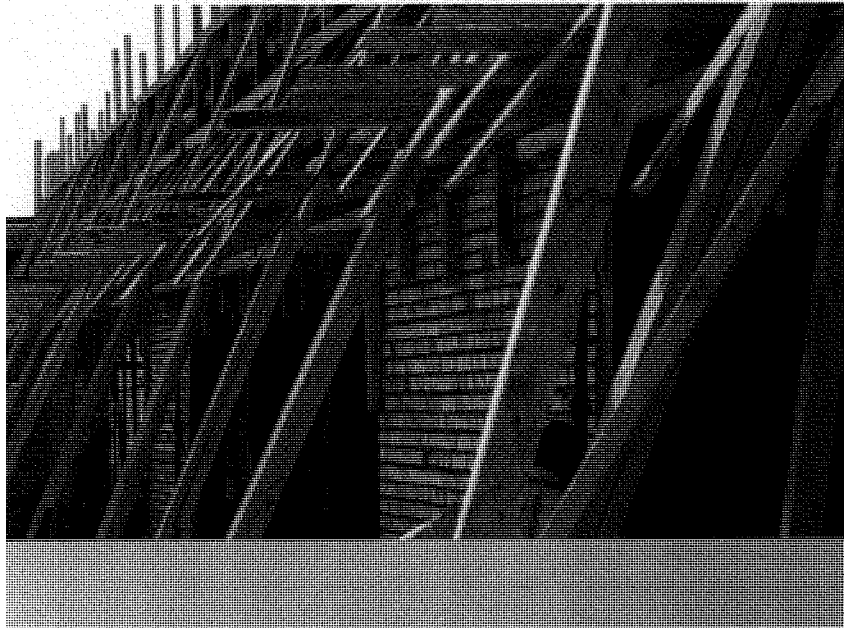
INHERENTLY GOVERNMENTAL RULES





## Chapter 3

**Inattention to contingency  
contracting leads to massive  
waste, fraud, and abuse**



## CHAPTER 3

## Inattention to contingency contracting leads to massive waste, fraud, and abuse

Contingency-contract waste is a breach of agencies' fiduciary duty to efficiently manage budgets and resources. Contract-related fraud undermines the United States' defense, diplomatic, and development missions. Though calculating the exact dollar amount lost through waste and fraud is problematic, determining some measure of their extent is important in assessing their impact on contingency goals and objectives.

The Commission estimates that waste and fraud together range from \$31 billion to \$60 billion.<sup>1</sup> Given the often chaotic environment in Iraq and Afghanistan, this is a conservative estimate of the money that has been lost through contingency contracting. The Commission estimates that at the mid-range, waste and fraud during contingency operations in Iraq and Afghanistan averaged about \$12 million every day for the past 10 years.

Qualitative assessments of the impact of waste and fraud are also important because losses weigh heavily on political and operational effectiveness.

1. The Commission examined authoritative evidence on waste and fraud. It estimates that wartime contracting waste in Iraq and Afghanistan ranges from 10 percent to 20 percent of the \$206 billion spent since fiscal year (FY) 2002, projected through the end of FY 2011. The Commission also estimates that fraud during the same period ran between 5 and 9 percent of the \$206 billion.

Concerns about wartime contracting have surfaced in numerous media reports.

**The Gang That Couldn't Shoot Straight**  
Six billion dollars later, the Afghan National Police can't begin to do their jobs right—never mind relieve American forces

—Newsweek, March 29, 2010

**How the US Funds the Taliban**

—The Nation, November 11, 2009

**Weak Oversight mars Success of Iraq Hotel**

—AP, July 26, 2009

**\$40M fuel theft from Army prompts global manhunt**

—Time, April 16, 2009

**US Embassy in Iraq missing property worth millions**

—AP, June 2, 2010

Headlines like those below illustrate the media attention given to waste, fraud, and abuse in wartime contracting.

Standards for successful contract outcomes are breached in many aspects of the contingency-contracting process. Agencies often fail effectively to:

- coordinate their project plans with foreign and domestic mission partners;
- estimate the costs of performing contracts in dangerous environments when making project-selection decisions;
- consider the host nation's ability to finance and sustain stabilization and reconstruction projects when developing project requirements and planning for effective transfers;
- set and meet goals for effective competition;
- control contractors' costs during their performance under undefinitized contract actions, even though performance continues without benefit of having defined requirements or negotiated terms and conditions;
- assess and mitigate contingency contractors' potential for organizational conflicts of interest; and
- monitor and correct poor contractor performance.

Despite years of experience with contingency contracting in Iraq and Afghanistan, the root causes of these failures persist.



## Waste from contingency contracting increases mission cost and diminishes mission success

As shown in the Commission's estimate, the waste incurred in Iraq and Afghanistan has added enormously and unnecessarily to the cost of U.S. involvement.

There is no commonly accepted methodology for determining the extent of waste. The Commission bases its estimate on information derived from multiple sources: 25 hearings; interviews with hundreds of military and civilian officials

**The waste incurred in Iraq and Afghanistan has added enormously and unnecessarily to the cost of U.S. involvement.**

during 15 trips in theater; hundreds of audit and inspection reports on projects in Iraq and Afghanistan; consultations with scholars in academia, policy institutes, and federally funded research-and-development centers; and a full-time staff presence in Iraq and Afghanistan.

The Commission's estimate of waste does not include what is yet to be revealed from expected shortcomings in program and project sustainability. The next chapter deals with these sustainability issues.

The Commission's research and the audits conducted by oversight organizations document agencies' repeated and unacceptable failures to meet standards for successful contract outcomes. Examples of poor contract outcomes highlight the areas where the risk of waste requires mitigation or prevention.

Wasteful contingency-contract outcomes have three contexts: host-nation issues, programs and projects, and individual contracts.

In Iraq and Afghanistan, significant *host-nation* issues include:

- limited economic-absorptive capacity,
- unsustainable development projects,
- diversion of contract funding to the insurgency, and
- unanticipated security costs.

At the level of programs and projects execution, significant aspects include limited competition and lack of control over poor performance by subcontractors.

At the level of *individual contracts*, significant aspects include failure to define requirements and definitize orders; lack of planning; inadequate oversight of construction; and poor oversight of diverse services. All of these are often coupled with poor contractor performance and failures often result from several inter-related conditions.

### Host-nation issues

#### Limited economic absorptive capacity

In Afghanistan, the country's limited absorptive capacity poses a serious problem. When U.S. operations began there in 2001, Afghanistan's per capita gross domestic product was \$800.<sup>2</sup> As part of the counterinsurgency mission, the United States has poured more resources and development funding into the country than the domestic economy can support.

**\$360 million USAID agricultural development project**—The Afghan Vouchers for Increased Production in Agriculture began as a modest \$60 million initiative in 2009, distributing vouchers for wheat-seed and fertilizer to counteract drought-related food shortages in Afghanistan's north. Under pressure to inject \$1 million each day into a dozen or so key terrain districts for seeds, fertilizer, tools, cash-for-work, and community development, USAID within a few weeks turned the initiative into a massive \$360 million stabilization program in the south and east. The pressure to quickly spend the millions of dollars created an environment in which waste was rampant. Paying villagers for what they used to do voluntarily destroyed local initiatives and diverted project goods into Pakistan for resale.<sup>3</sup>



Afghan farmer:  
Harvested produce,  
Afghanistan.  
(U.S. Marine Corps  
photo)

2. Central Intelligence Agency, "World Fact Book for Afghanistan," 2001.

3. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 20; Michael Bowers, Regional Program Director for South Asia, Mercy Corps, Commission hearing, April 11, 2011, transcript, 9; USAID IG Audit Report No. 5-306-10-008-P, "Audit of USAID/Afghanistan's Vouchers for Increased Productive Agriculture (AVIPA) Program," April 20, 2010, 7.

## CHAPTER 2

**Unsustainable development projects**

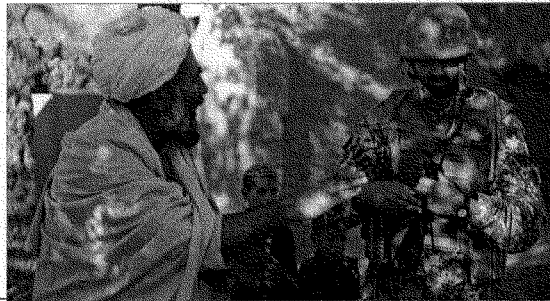
The U.S. government built many facilities in Iraq and Afghanistan that proved unsustainable.

**\$6.4 annual billion Defense (CSTC-A, USACE) Afghan National Security Forces**—Between FY 2006 and FY 2011, Congress appropriated \$38.6 billion,

**The \$6.4 billion per year Combined Security Transition Command-Afghanistan program to train, equip, and provide other support for the Afghan National Security Forces goes far beyond what the government of Afghanistan can sustain.**

an average of \$6.4 billion a year, to the Combined Security Transition Command-Afghanistan (CSTC-A) program to train, equip, and provide other support for the Afghan National Security Forces (ANSF). Such costs far exceed what the government of Afghanistan can sustain, so it is unclear how those costs will be funded in future. Meanwhile, \$11 billion of facilities constructed by the U.S. Army Corps of Engineers (USACE) for the ANSF are “at risk.”<sup>4</sup>

**\$82 million Defense Afghan Defense University**—Defense awarded a contract for about \$82 million for the design and construction of Afghan Defense University, Afghanistan’s West Point. As the size of the ANSF tripled, the contract costs grew.<sup>5</sup> During an August 2010 Commission trip to Afghanistan, Defense officials said it would cost \$40 million per year to operate and maintain—an amount possibly beyond the Afghan government’s ability to fund.



Afghan National Army soldier questioning villager. (U.S. Marine Corps photo)

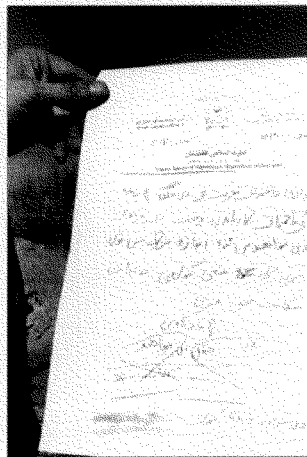
4. Major General Arnold Fields, USMC (Ret.), Special Inspector General for Afghanistan Reconstruction (SIGAR), Commission hearing, January 24, 2011, transcript, 30-32.

5. Major General Arnold Fields, USMC (Ret.), Special Inspector General for Afghanistan Reconstruction (SIGAR), written statement, Commission hearing, January 24, 2011, 2.

### Diversion of U.S. funds

In Iraq and Afghanistan, U.S. funds have been diverted to insurgents and warlords as a cost of doing business in the country. In Afghanistan, insurgents, warlords, or other groups control or contest parts of the country. They threaten to destroy projects and harm personnel. The Commission finds it particularly alarming that Afghan subcontractors on U.S.-funded convoys, road construction, and development projects pay insurgent groups for protection.

### Mujahedeen threat letter sent to contractor:



#### Islamic Imarat of Afghanistan Mujahedeen of west area

Letter # 1207

This construction company which is working in the Jagla area cannot continue to work unless it does obtain permission from the Mojahedeen.

Or else, it does not have the right to complain.

Sincerely,

Haqmal Mojahed

You can contact with this phone number XXXXXXXXXX.

**Source:** Provided by a representative of a provincial reconstruction team, Afghanistan, January 25, 2011, translated for the Commission by a USAID translator/interpreter, June 1, 2011.

While there is no official estimate of the amount of U.S. funds diverted to insurgents, it certainly comes to a significant percentage of a project's cost. The largest source of funding for the insurgency is commonly recognized to be money from the drug trade. During a March 2011 trip to Afghanistan, experts told the Commission that extortion of funds from U.S. construction projects and transportation contracts is the insurgent's second-largest funding source.

Afghan contractors hired under the Host Nation Trucking program have turned to Afghan private security contractors. These Afghan subcontractors in turn pay off

the insurgents or warlords who control the roads their convoys must use.<sup>6</sup> Almost 6,000 Afghan truck movements a month are funded under the program. Diversion on this scale did not occur in Iraq, where the U.S. military provided most of the escorts for similar convoys.

Many contracts other than transportation provide opportunities for diversion:

- Afghan subcontractors on a USAID community-development program in Kunar Province were paying up to 20 percent of their total subcontract value to insurgents for "protection." The USAID IG estimated that over \$5 million of program funding was at risk of falling into insurgents' hands.<sup>7</sup>
- A congressional staff report cited Afghan Taliban demands for pay-offs from businesses and households for electricity generated by USAID-funded projects. This occurs in Taliban-controlled areas like Helmand Province.<sup>8</sup>

**Extortion of funds from U.S. construction projects and transportation contracts is the insurgents' second-largest funding source.**

Because they directly strengthen the insurgency, diverted funds pose far more danger than other kinds of waste and have a disproportionately adverse impact on the U.S. effort.

#### **Unanticipated security costs**

Agencies continue to take on some projects without sufficient regard for the costs of security. Numerous audits estimate that unanticipated security costs increased expenses by 25 percent.<sup>9</sup>

**Numerous audits estimate that unanticipated security costs increased project expenses by 25 percent.**

Failure to anticipate, estimate, and factor spending on security costs into project and program decisions has led to massive waste as projects are shut down or abandoned.

6. U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, "Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan," June 2010, 29.

7. USAID IG Review Report 5-306-10-002-S, "Review of Security Costs Charged to USAID Projects in Afghanistan," September 29, 2010, 6.

8. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 10.

9. GAO Report GAO-07-30R, "Rebuilding Iraq: Status of Defense's Reconstruction Program," December 15, 2006, 8; GAO Report GAO-05-737, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," July 2005, 33; SIGAR Audit 10-4, "Afghanistan Energy Supply Has Increased but an Updated Master Plan is Needed and Delays and Sustainability Concerns Remain," January 15, 2010, 11; World Bank Report 34582-AF, "Afghanistan: Managing Public Finances for Development," 2005, 17, 29.



**\$176 million USAID Khost-Gardez road**—Costs more than doubled for the Khost-Gardez road project built by a Louis Berger Group/Black & Veatch joint venture. The project was designed to link southeastern Afghanistan to the national highway system. The original USAID contract had a value of \$86 million.<sup>10</sup> High security costs could double that figure by the time the contract is complete.

### Programs and projects

#### Inadequate competition for contracts and task orders

Agencies' procedures failed to generate effective competition. The government awarded a large logistics-support contract that ran for a decade without a re-competition, with cost-reimbursable task orders that were not subject to competition. For different reasons, its replacement contract also failed to provide effective competition.

**\$36.3 billion Defense (Army) LOGCAP III contract**—The Army has awarded a number of contracts under its worldwide Logistics Civil Augmentation Program (LOGCAP). Of these contracts, the largest is the LOGCAP III contract supporting the wars in Iraq and Afghanistan. The base contract for LOGCAP III was awarded competitively, but lasted for 10 years without competition on any of its task orders.

Kellogg Brown and Root (KBR) was awarded the LOGCAP III contract in December 2001, as sole provider. The contract had one base year followed by nine option years. War requirements rapidly and unexpectedly expanded the contract value to more than \$36.3 billion from the time of award.<sup>11</sup>

As sole provider, without the discipline of task-order competition, KBR proposals included large amounts of questioned and unsupported costs identified by the Defense Contract Audit Agency (DCAA). KBR billings also included large amounts subject to challenge for disallowance, such as unjustified dining-facility costs.<sup>12</sup>

**\$6 billion Defense (Army) LOGCAP IV contract**—Not until 2009—nearly a decade after the start of LOGCAP III—did the Army award task orders for Afghanistan under the successor LOGCAP IV contract. Factors contributing to the delay included a lack of government acquisition personnel,

10. Afghanistan Infrastructure and Rehabilitation Program Press Release, "President Karzai and U.S. Ambassador Wood Witness Contract Signing for Gardez-Khost Road Construction," April 26, 2008.

11. Commission analysis of Federal Procurement Data System-Next Generation (FPDS-NG) data.

12. April G. Stephenson, Director, DCAA, statement, Commission hearing, May 4, 2009, 9-11.

## CHAPTER 3

competing priorities, commanders' resistance to shifting contractors, and contractor protests.

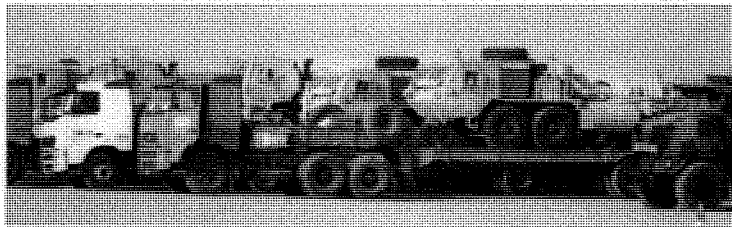
Delay in implementing a competitive strategy for LOGCAP IV, combined with a failure to have competition at the task-order level at the outset of LOGCAP III, resulted in tremendous waste. The Commission estimates that waste from these two factors alone was \$3.3 billion.<sup>13</sup>

**Delay in implementing a competitive strategy for LOGCAP IV, combined with a failure to have competition at the task-order level at the outset of LOGCAP III, resulted in tremendous waste.**

The LOGCAP IV task-order competition plan had a number of aspects that created "mini-monopolies." Each geographically awarded task order (Fluor in the northern Afghanistan provinces, DynCorp in the southern provinces) consisted of an initial year and four option years, a long period without a new competition. This meant that all new work in the two regions of Afghanistan went to single sources without further competition. The Army has in effect awarded two single-source, long-term task orders for Afghanistan.

In the first nine months of LOGCAP IV, more than \$500 million in new work was added to the LOGCAP IV Afghanistan task orders awarded in 2009—over \$235 million to DynCorp for Afghanistan South and \$270 million to Fluor for Afghanistan North. By comparison, over the life of the LOGCAP III task orders for work in Iraq, the Army issued 11,000 modifications adding more than \$2.7 billion in new work.

Contractors preparing to move U.S. military vehicles, Kuwait. (Commission photo)



13. The Commission arrived at this estimate by applying the Army Sustainment Command's observed results of a 9 percent reduction in operating costs from the use of LOGCAP IV in Afghanistan (referenced in its business case analysis for transition from LOGCAP III to IV, March 4, 2010) to the \$36.37 billion in obligations under LOGCAP III as of September 30, 2010.

### Contract extensions limit competition

Another kind of problem can arise at the end of a contract's period of performance when the government issues a long-term sole-source extension or contract "bridge" rather than recompeting the requirement. Agencies have justified long-term extensions, citing a need to obtain contractor support until they can take all the steps required to compete a follow-on contract. However, the agencies often have failed either to develop an acquisition strategy to re compete the follow-on contract promptly, or to compete a short-term contract that will bridge the gap between the expiration date of the incumbent's contract and the award date expected for the follow-on contract.

Some of the programs extended for long periods or expanded without competition are valued at over a billion dollars.

**\$3 billion Defense (DLA) food service contract**—Supreme Foodservice provided about \$3 billion in food, water, and non-food supplies for the troops in Afghanistan between 2005 and 2010. In December 2010, the Defense Logistics Agency (DLA) awarded it a one-year extension contract with two six-month option periods, for a total estimated value of \$4 billion.

**Defense (Army) LOGCAP III base-life services task order**—The Army awarded KBR, without competition, a task order under LOGCAP III for Base Life Services in Iraq in 2010. Commission hearings in spring 2010 raised doubts as to why the Army did not compete the task-order award under LOGCAP IV instead.<sup>14</sup>

**\$1 billion Defense (INSCOM) translation services contract**—INSCOM, the U.S. Army Intelligence and Security Command, expanded its contract with Mission Essential Personnel, LLC for linguist and translator services when the contract neared its funding ceiling in 2010, and again in 2011. Together these steps increased the contract ceiling by over a billion dollars.

### Other problems that inhibit competition

A serious competition problem occurred with the handoff of the billion-dollar program for training the Afghan National Police from State to Defense, resulting in lengthy delays before the final contract award.

**\$1.5 billion Defense (CSTC-A) Afghan National Police training program**—In 2009, the Combined Security Transition Command-Afghanistan (CSTC-A) planned to award a task order for training the Afghan National

14. Commission hearing, March 29, 2010, transcript, 3.

Police (ANP). This indefinite-delivery contract limited competition to five contractors who provided the Army with counter-narcoterrorism technology but had not provided police training. The competition under this Army contract did not include the State Department's incumbent, DynCorp.

DynCorp protested to GAO, which sustained the protest, finding that the new award of a national police training program was outside the scope of an indefinite-delivery, indefinite-quantity (IDIQ) contract focused on counternarcotics programs. The original date for hand-over from State to Defense was mid-November 2009, yet not until December 2010 was DynCorp competitively awarded a two-year, \$718 million base contract for ANP training with a \$322 million one-year option.

Other problems ranged from awards with no justification for the absence of competition to awards with no audits of proposals—even for billion-dollar task orders. For the Iraqi police training program, State awarded a \$1.4 billion task order to DynCorp, foregoing competition.

**\$1.4 billion State Department Iraq police training task order**—In February 2004, State awarded a \$2.5 billion contract to DynCorp to support its Iraqi police training program. Task Order 1436, worth \$1.4 billion, was subsequently awarded for only four months as an exception to “fair opportunity” to compete without stating a justification for doing so. It was extended by modifications through May 2008.<sup>15</sup> The Special Inspector General for Iraq Reconstruction found no written support for the exception to “fair opportunity.”<sup>16</sup>

The Defense Logistics Agency (DLA) failed to follow proper procedures for the procurement of fuel.

**\$2.7 billion Defense (DLA) fuel contract**—Starting in 2004, DLA Energy awarded four contracts totaling \$2.7 billion to the International Oil Trading Company (IOTC) for delivery of fuel in Iraq. The Defense inspector general found that DLA contracting officers improperly determined that adequate price competition existed even though only one firm could perform. Since the procurements were wrongly deemed “competitive,” IOTC was not required to submit certified cost and pricing data. Consequently, DLA did not perform a detailed cost analysis of what IOTC charged. DLA paid IOTC about \$200 million more than a cost analysis could support.<sup>17</sup>

15. SIGIR Audit Report 10-008, “Long-Standing Weaknesses in Department of State’s Oversight of DynCorp Contract for Support of the Iraqi Police Training Program,” January 25, 2010, 7-9.

16. *Ibid.*, i, 2.

17. Defense IG Report D-2011-049, “Competition Issues and Inherently Governmental Functions Performed by Contractor Employees on Contracts to Supply Fuel to U.S. Troops in Iraq,” March 15, 2011, 5.

The problems with competition and awarding contracts indicate the need for reforms to apply the discipline of competition in contingency operations.

#### Problems with subcontracting

Subcontracting has posed numerous problems in Iraq and Afghanistan. In these countries, key subcontractors came from cultures in which bribes and kickbacks are common, and United States' legal institutions often have little or no leverage over foreign subcontractors.

**\$400 million Defense (Army) LOGCAP III subcontracts**—Starting in 2002, the Iraq general manager for Tamimi, a Kuwaiti company, gave kickbacks to KBR's LOGCAP III managers on initial awards of contracts. Subsequently, KBR awarded additional subcontracts for dining-facility services to Tamimi worth more than \$700 million. Later, the general manager of Tamimi was convicted of related felonies.<sup>18</sup> Finally, in March 2011, the Department of Justice filed a claim that KBR had engaged in false claims.

Both DCAA and the Commission demanded more complete records of these subcontracts, but at a 2010 Commission hearing Tamimi refused, relying on the fact that they performed under a fixed-price contract.<sup>19</sup> It is difficult for the government to investigate the circumstances of performance by a foreign subcontractor working under a fixed-price contract.<sup>20</sup>

The Commission's August 2009 hearing examined the five-year, nearly \$5 billion contract for translator services in Iraq between the U.S. Army Intelligence and Security Command (INSCOM) and prime contractor Global Linguist Solutions (GLS).

**In Iraq and Afghanistan, key subcontractors came from cultures in which bribes and kickbacks are common.**

**\$4.6 billion Defense (INSCOM) linguistics service subcontracts**—GLS subcontracted work to Northrop Grumman, L-3 Communications, and other vendors. DCAA found that GLS subcontracted almost \$3 billion of work, issued under a contract with an estimated value of \$4.6 billion, to multiple subcontractors, some of which merely provided pass-through payments to the linguists, adding little value.

A large subcontract was awarded by GLS to its main competitor L-3, an award that appeared to be an accommodation to a firm that had protested

18. United States of America v. Mohammad Shabbir Khan, Case No. 06-cr-40055 (C.D. Ill. 2006).

19. Commission hearing, July 26, 2010, transcript, 110-111, 182-184.

20. 10 U.S.C. 2313.

the award to GLS. To make up for the contract's cost increases from this "accommodation," GLS trimmed the salaries of linguists, and led them to believe the government had directed the salary reductions.<sup>21</sup>

The GLS procurement involved two large firms that were expected to compete—one of which protested the Army's contract award and later became a subcontractor to the awardee, to their mutual benefit.<sup>22</sup>

Afghan subcontractors have proved to be unreliable, while agency oversight has been especially difficult to implement.

**\$5.9 million Defense (USACE) Afghan National Police construction project**—In 2007, the U.S. Army Corps of Engineers (USACE) was provided with \$5.9 million to construct seven Afghan National Police (ANP) district headquarters in Helmand and Kandahar Provinces. It awarded the contract to the Afghan-owned Basirat Construction Company. Basirat subcontracted work to two other Afghan-owned construction companies implicated in the problems that followed. SIGAR auditors identified construction deficiency costs up to \$1 million. The flawed work meant contract requirements went unmet and that delivery of the facilities to the ANP was delayed.<sup>23</sup>

**\$17.6 million Defense (AFCEE) infrastructure project**—In September 2007, the Air Force Center for Engineering and the Environment (AFCEE) awarded a \$17.6 million construction contract to CH2M HILL for infrastructure work at Camp Phoenix, an Army installation in Afghanistan. During the months of April and May 2009, ENCORP (a subcontractor to CH2M HILL) failed to pay their subcontractors, and the owner fled Afghanistan with around \$2 million. Later, the second-tier subcontractors walked off the job site for lack of payment. One of the second-tier contractors removed two 750-kilowatt generators and other electrical material from the jobsite to hold as collateral for the money it was owed by ENCORP until CH2M HILL agreed to pay them. Completion of a key center at the camp was delayed for over a year, resulting in inadequate housing for several hundred military personnel for over 18 months.

21. Commission hearing, August 12, 2009, transcript, 1, 7, 8, 20-21, 26, 32, 35.

22. *Ibid.*, 1, 7.

23. SIGAR Audit 11-3, "ANP District Headquarters Facilities in Helmand and Kandahar Provinces Have Significant Construction Deficiencies Due to Lack of Oversight and Poor Contractor Performance," October 27, 2010, ii, 4.

### Individual contracts

#### Problems with defining requirements and managing contractor performance

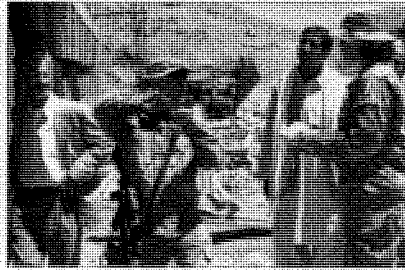
At the level of individual contracts, significant factors leading to waste include failures to define requirements, poor use of management resources, and poor oversight. These shortcomings are often linked to poor contractor performance.

The government accepts great risk when it fails to effectively define detailed requirements before it awards a contract. Inadequately defined contract requirements are particularly vulnerable to waste in construction contracting, since the government often provides engineers with little or no guidance. Two Afghanistan projects exemplify this failure.

The government accepts great risk when it fails to effectively define detailed requirements before it awards a contract.

**\$57 million USAID health and education construction program—** Afghanistan entered into a cooperative agreement with the International Organization for Migration to meet health and education needs through the construction of 18 hospitals, midwife-training centers, and colleges in Afghanistan. The agreement was subsequently modified to conform to new, more rigorous international building codes and to address security issues, all adding to the project's time and expense.

U.S. Air Force and USAID personnel at school site, Panjshir Province, Afghanistan. (Defense photo)



**\$24 million State prison renovation project—**Similarly, planning for the Pol-i-Charkhi Prison Renovation Project involved mid-course changes in requirements. In addition, a poorly performing contractor was selected to undertake the work. A base contract with Al-Watan Construction Company was modified twice by State. The first modification, to accelerate the schedule, cost \$3.6 million. The second modification, for the renovation of the industries building and the staff barracks cost \$500,000.<sup>24</sup> State issued a stop-work order effective November 5, 2010, to Al-Watan. Basirat Construction, the design consultant and quality-assurance firm, also received a stop-work order in November 2010, when the project was 66 percent complete.

24. Narcotics Affairs Section (NAS)/Bureau of International Narcotics and Law Enforcement (INL), "NAS/INL Construction Overview," November 16, 2010, 9.

Accurate and complete requirements are also essential for non-construction projects. When the government does not provide specific requirements, contractors sometimes charge excessive or unnecessary costs for the services.

**\$3 billion Defense (DLA) subsistence contract**—The Defense Logistics Agency has paid Supreme Foodservice AG about \$3 billion as the Subsistence Prime Vendor (SPV) for food, water, and some non-food items in Afghanistan. In 2011, the Defense inspector general estimated DLA overpaid Supreme by about \$124 million in transportation (airlift) and packaging costs.

Certain items, like fresh fruit and vegetables, required airlift to isolated bases, but DLA did not include this requirement in the original contract. The contracting officer attempted to rectify the omission by tasking Supreme with providing “premium airlift,” which it did at a total cost of over \$450 million.

DLA failed to ask the U.S. Transportation Command (TRANSCOM), which has extensive experience contracting for airlifting in Afghanistan, to review the requirement. The Defense IG recommended that DCAA determine a fair and reasonable price for the airlift. Commission inquiries found that DCAA is currently working on such a determination, which may lead to retrieving excess funding from Supreme.

**When the government does not provide specific requirements, contractors sometimes charge excessive or unnecessary costs for the services.**

#### Problems with contract definitization

Problems also arise when agencies fail to definitize contract or task-order terms and conditions in a timely manner. Acquisition regulations require that when it is not possible to negotiate a definitive contract in advance of award, the terms must be definitized within 180 days of award or before completion of 40 percent of the work.<sup>25</sup>

Agencies generally avoid using undefinitized orders because they permit a contractor to incur significant costs—which at times may be unnecessary and on which profit may be based—in the absence of fully defined constraints or contract terms and conditions.

In a contingency-contracting environment, agencies have all too often allowed a contractor to begin work under an “undefinitized” (nonspecific) contract or order.

25. FAR 16.603-2(c)(3); FAR 52.216-25; 10 U.S.C. 2326.



Waste from KBR support performed in Iraq under the LOGCAP III contract arose from billions of dollars of undefinitized task orders. Because of the questionable costs charged by the company, the DCAA sought to withhold hundreds of millions of dollars from contract payments.

**Defense (Army) LOGCAP III undefinitized contracts**—During 2003-2005, the U.S. Army awarded KBR numerous LOGCAP III task orders in Iraq on an undefinitized basis to supply accelerated services, despite the unpreparedness of both the officials and the contractor. Moreover, the task orders remained undefinitized even after delivery of billions of dollars in services. DCAA attributed the delay in definitizing the contracts to proposals by KBR that did not have sufficient specifics for negotiation and to insufficient staffing on the part of the agency.<sup>26</sup>

DCAA recommended, and the Army contracting officer agreed, to withhold 15 percent of the contract value under the regulations regarding undefinitized contracts. However, this was overruled by higher officials.

**\$2.5 billion Defense (USACE) fuel importing task orders**—In March 2003, U.S. Army Corps of Engineers (USACE) awarded the Restore Iraqi Oil contract to KBR. USACE considered the \$2.5 billion cost-plus award-fee-type contract requirement to be urgent, so the contracting officer directed KBR to begin work before definitive contract terms, specifications, and pricing could be negotiated.

KBR completed work and incurred virtually all costs on each of 10 task orders before Defense and KBR reached agreement on terms and conditions in the wake of changing requirements, funding challenges, and inadequate KBR proposals. DCAA questioned \$221 million in excess KBR fuel payments. Eventually, Defense paid virtually all these costs, since the funds had already been expended by the contractor. Defense did, however, reduce the cost basis for the award fee by half the cost figure questioned by DCAA.

#### **Shortfalls in managing contractor performance**

Agency management and oversight of contractor performance is critical even in peacetime conditions. In contingency operations, problems in the early stages of the contracting process, such as inadequate planning and changing requirements, make agency management and oversight doubly important for controlling waste and achieving mission objectives. In Iraq and Afghanistan, performance problems

26. April G. Stephenson, Director, DCAA, Commission hearing, transcript, August 11, 2009, 12, 16-17.

were compounded because agencies failed to assign sufficient resources for management and oversight.

Agencies' failure to effectively monitor and correct poor contractor performance was widespread in both Iraq and Afghanistan. Lessons learned were not applied because U.S. personnel rotated frequently in and out of theater, staff at remote locations knew little about conditions on the ground, hundreds of contracts were involved, and for too long U.S. officials did not understand the importance of contingency-contracting activities.

**\$119 million Defense (USFOR-A) for vehicle leasing—**

Operating units on bases throughout Afghanistan require four-wheel drive vehicles. U.S. Forces-Afghanistan (USFOR-A) conducted a survey and determined that military units in country were leasing about 3,000 vehicles at an annual cost of \$119 million. Because these vehicles are not centrally leased, managed, or maintained, the regional contracting commands are burdened with hundreds of small-dollar value leases that recur every year.

Worse still, vendors in Afghanistan were charging grossly exorbitant lease rates for the vehicles. According to USFOR-A, "we have driven the [vehicle] lease market into a state where vendors are able to charge rates that allow them to recoup almost 80% of the procurement cost during the first year of the lease."<sup>27</sup>

To its credit, USFOR-A took steps to get the costs under control, while also improving fleet management. In May 2010, USFOR-A began working with the General Services Administration (GSA) on a vehicle-lease program and determined that they could lease and maintain 1,000 vehicles for about \$19 million per year. USFOR-A hopes to have the GSA-leased vehicles and centralized motor pools in place by November 2011. While laudable, the solution is being implemented 10 years after U.S. operations began in Afghanistan.

Still, USFOR-A's preferred approach was to purchase the vehicles, and not lease them at all. Appropriations law requires that operation and maintenance funds be used for vehicle leases, and that procurement funds be used for vehicle purchases. But USFOR-A

**In Iraq and Afghanistan, performance problems were compounded because agencies failed to assign sufficient resources for management and oversight.**

**Vendors in Afghanistan were charging grossly exorbitant lease rates for vehicles.**

27. USFOR-A, "Letter of Justification for CJOA-A Non-Tactical Vehicle Lease and Theater Motor Pool Maintenance and Repair Services," May 6, 2011, 1-2.

was unable to access procurement funds to purchase the vehicles and had no choice but to lease the vehicles it needed.

Two instances in the Iraq war illustrate how poor planning and inadequate oversight lead to higher than necessary levels of contractor personnel costs.

**Defense (Army) LOGCAP III vehicle-maintenance task order**—In 2009 a Defense IG report revealed that the U.S. Army paid for underutilized contractor personnel at Joint Base Balad, Iraq who were responsible for tactical-vehicle field maintenance. From September 1, 2008, through August 31, 2009, the actual utilization rate was just 10-15 percent of the requirement. KBR alerted only low-level government officials that the actual labor utilization was far below that of the contractor personnel being paid. The government did not act on this information. The Commission has estimated that for a particular category of labor services, almost \$400 million paid to KBR was wasted through underutilization.

**\$193 million Defense (Army) LOGCAP III contractor drawdown**—DCAA issued a report in October 2009 critical of KBR for not preparing a drawdown plan. The agency projected \$193 million in savings through August 2010 if KBR were to reduce contractor personnel commensurate with the military drawdown.<sup>28</sup>

KBR accounted for about half of contractor personnel in Iraq. When bases closed and its personnel left those bases, KBR merely transferred some of them to other bases and continued to bill for their support.

In response to the DCAA report, in November 2009, the U.S. Army directed KBR to develop a drawdown plan. A February 2010 Commission trip to Iraq and a March 2010 Commission hearing revealed that KBR was slow to reduce its Iraq workforce. Moreover, the U.S. Army did not instruct KBR to promptly reduce its contractor workforce. The executive director of the U.S. Army's Rock Island Contracting Center testified at a Commission hearing that there was no contractual requirement against which to hold KBR accountable for the delay.<sup>29</sup>

### **Inadequate oversight of construction**

In a counterinsurgency operation, contracting performance is particularly vulnerable to poor oversight. There may be a shortage of experienced and well-qualified contracting officer's representatives. Insecure conditions may make it

28. DCAA Audit Report 2131-2009R10502001, "Report on Audit of Labor Operations Relating to the Military Drawdown in Iraq," October 26, 2009, 2.

29. Commission hearing, March 29, 2010, transcript, 3, 17, 21, 32.

## CHAPTER 3

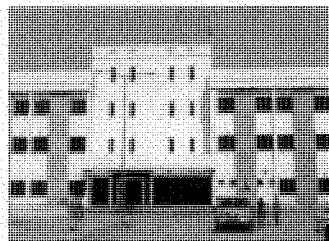
hard for them to check performance on-site. Contractors who are particularly likely to perform poorly may obtain contingency contracts or subcontracts due to flaws in the awarding process. And contractors may see any slackening of oversight as an opportunity to charge more or relax performance standards.

A substantial subcategory of the instances of poor oversight is construction contracts. The work occurs in the field and typically involves numerous subcontractors, many of them third- or host-country nationals with cultural differences from U.S. subcontractors.

Poor oversight may even mean rewarding bad work.

**\$62 million Defense construction of Baghdad Police College**—Despite major problems with the work by Parsons Delaware, Inc., on a construction contract for Baghdad Police College, Parsons was paid \$62 million for the work and received \$5.3 million in award fees.

Baghdad Police College. (SIGIR photo)



**\$700 million State construction of Baghdad Embassy**—State awarded a construction contract to First Kuwaiti General Trading and Contracting Company in July 2007 for the new embassy compound in Baghdad. State bypassed its traditional contracting office. Over \$43 million in construction deficiencies occurred due to failure to comply with specifications, improper construction and installation, and use of sub-standard materials and equipment, among other defects.<sup>30</sup> In late 2009, the State IG recommended recovering \$132 million from First Kuwaiti. State took no steps to recover the sum and continued to award contracts to First Kuwaiti through its U.S. partner.<sup>31</sup> In response to Commission questions, State said it may seek the \$132 million as a response to claims by First Kuwaiti.

30. Department of State IG Report AUD/IGQ-09-25, "Audit of the Design and Construction of the New Embassy Compound in Baghdad, Iraq," October 2009, 1-4.

31. Commission hearing, June 6, 2011, transcript, 16.

### Poor oversight of diverse services

Poor oversight of services creates different kinds of problems than those that occur in construction.

**\$2 billion Defense (DLA) fuel supply contract**—Huge fuel purchases by the Defense Logistics Agency (DLA) pose a challenge because of their large scale and the role such purchases play in the political dynamics of Central Asia. DLA contracted for fuel supplies at a key air-transport node for Afghanistan in the Kyrgyz Republic. DLA and the American embassy ignored the political risk generated by local perceptions that the contracts abetted corruption under two successive governments.<sup>32</sup>

**\$189 million State Kabul Embassy security contract**—State's oversight efforts over two years did not apply enough pressure to stop the many blatant failings of Armor Group North America, contracted to protect the Kabul embassy. Examples were revealed in a September 2009 Commission hearing.<sup>33</sup>

**\$92 million USAID bank-supervision mentoring contract**—Since 2003, USAID advisers BearingPoint, and later Deloitte, which acquired BearingPoint, provided capacity-building support at the Afghanistan Central Bank. The Central Bank supervised Kabul Bank, then Afghanistan's largest private bank, with supposed assets of \$900 million that included a high percentage of worthless loans. USAID believes the advisers had several indications and opportunities to notify the agency, contractors, and other interested parties of fraudulent activities at Kabul Bank during the two years prior to its collapse. Evidence included death threats to the advisers, lack of onsite examinations, and continuous allegations of impropriety at the bank.<sup>34</sup>

USAID staff learned of serious bank problems from reading about them in the *Washington Post*. Deloitte never notified the agency. The USAID inspector general found the oversight by the contracting officer's technical representative to be weak.<sup>35</sup> Subsequently, USAID terminated the contract with Deloitte, but not for default.<sup>36</sup>

Contractors in such a position of trust should know that their duty to warn the government of impending crises overrides most other considerations.

32. U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, "Mystery at Manas: Strategic Blind Spots in the Department of Defense's Fuel Contracts in Kyrgyzstan," December 2010, 1.

33. Patrick F. Kennedy, Under Secretary of State for Management, Commission hearing, September 14, 2009, transcript, 36, 43.

34. USAID IG Report F-306-11-003-S, "Review of USAID/Afghanistan's Bank Supervision Assistance Activities and the Kabul Bank Crisis," March 16, 2011, 1.

35. *Ibid.*

36. *Ibid.*, 4, 10, 13.

### Property and safety issues pose challenges for oversight

U.S. policy attaches great importance to property and safety issues. Rules require rigorous control of inventories and protection of government property. Yet in contingencies, the government must entrust large amounts of property to contractors in situations rife with numerous threats to the condition of property and the problem of keeping track of it in a dynamic wartime setting. The Commission has found serious deficiencies in current property handling in Afghanistan, despite some instances of relatively vigorous oversight.

**The Commission has found serious deficiencies in current property handling in Afghanistan.**

**\$1.5 billion Defense (Army) LOGCAP IV property management**—In July 2009, DynCorp was awarded an Afghanistan task order. DCMA-Afghanistan performed a property-management system analysis of this contract 15 months later and issued a letter of concern in December 2010. Key elements deemed inadequate by DCMA included property management, acquisition, receiving/records management, physical inventories, equipment-utilization reports, and maintenance.<sup>37</sup>

In Iraq, flawed contractor performance in dealing with the billions of dollars in property accumulated during the length of the war and now requiring disposition could have been tracked and perhaps mitigated by DCMA.

**\$2.9 billion Defense (Army) LOGCAP III property disposition**—In Iraq, the Defense IG identified systemic issues concerning the management and disposition of government-furnished property items located at KBR's property yards. The Defense IG estimated that KBR could not account for 3 percent of its government-furnished property, roughly 18,000 line items with a potential value of up to \$100 million.<sup>38</sup>

**Defense (Army) LOGCAP IV electrical repairs**—In Afghanistan, DynCorp was not adequately staffed to make the enormous volume of electrical repairs needed to get buildings ready in a short time. DynCorp categorized repairs as "complete" when the parts were on order but the repairs had not been made. In January 2011, DCMA issued a Letter of Concern to DynCorp. The Commission pursued the matter, and DynCorp gave assurances of correction.<sup>39</sup>

37. DCMA, "Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 7, 2011.

38. DoD IG Report No. D-2010-088, "Accountability and Disposition of Government Furnished Property in Conjunction with the Iraq Drawdown - Logistics Civil Augmentation Program," September 30, 2010, i, 1.

39. DCMA, "Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 7, 2011; DynCorp "Response to DCMA Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 31, 2011.

Logistics matters of life, health, and safety must receive the highest level of performance management and oversight.

Government oversight was not adequate to deal with the serious risks revealed during the Commission's trip to Spin Boldak, Afghanistan, in March 2011.

**\$86 million Defense (Army) LOGCAP IV fire protection**—The government-owned fire equipment from Iraq was transferred to Afghanistan and arrived in poor condition. Consequently, DynCorp, the LOGCAP IV contractor in Afghanistan, was not provided adequate fire equipment and was at risk of providing inadequate fire protection. The DynCorp-operated fire department at Forward Operating Base Spin Boldak had only 23 firefighters out of 30 authorized and was not equipped with a needed "pumper" fire truck. Instead, the base relied on a limited-capacity pickup truck. Based on equipment status and staffing inadequacies, the DCMA subject-matter expert (SME) rated the contractor's level of performance at 10 percent. The poor condition of the equipment received from Iraq gave the SME great concern about the adequacy of future equipment deliveries throughout southern Afghanistan.

Military interpreter and Afghan contractor discuss a project, Helmand province, Afghanistan. (U.S. Navy photo)



**\$204 million Defense (Army) LOGCAP III electrical construction and repairs**—In January 2008, an Army soldier in Iraq was electrocuted while showering. The Defense IG attributed his death in Iraq to multiple systems and organizational failures on the part of both the U.S. Army and KBR.<sup>40</sup>

DCMA advised KBR of a Level III Corrective Action Request (CAR), DCMA's most stringent criticism reserved for extraordinary contractor failures, identifying serious deficiencies in KBR's inspection system.<sup>41</sup>

KBR's poor rating in this instance lowered the evaluation of its past performance during the "best value" competition for LOGCAP IV task orders in Afghanistan and was a factor in its loss of that award.

40. Department of Defense IG Report, "Review of Electrocution Deaths in Iraq: Part I - Electrocution of Staff Sergeant Ryan D. Maseth, U.S. Army," January 24, 2009, I-iv.

41. DCMA, "Level III Corrective Action Request (CAR) HQ-08-LOGCAP-QA-001-LIII," September 11, 2008, 2.

## CHAPTER 3

### Contingency-contract fraud undermines defense, diplomatic, and development missions

Fraud associated with federal government contracts in Iraq and Afghanistan has been widespread, especially at the beginning of these conflicts when oversight was weak and internal controls nonexistent.

Fraud includes such activities as bribery, gratuities, kickbacks, and conflicts of interest, as well as false claims and statements, cost/labor mischarging, bid rigging,

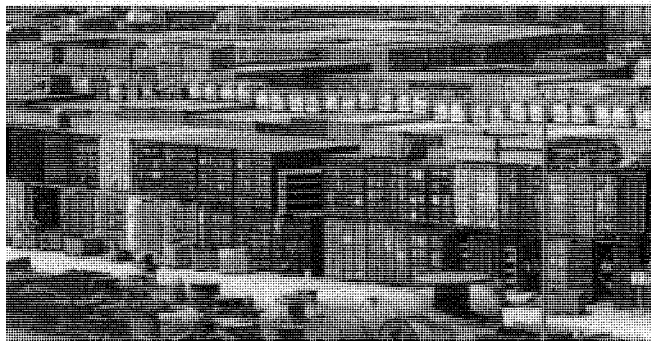
and undelivered, defective, and counterfeit products.

Fraud undermines programs, diverts money, and undermines public confidence in the U.S. government's fiduciary duty to spend taxpayer dollars wisely.

The Commission estimates that 5 percent to 9 percent of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud.

The Commission's estimate of a 5 percent to 9 percent fraud

rate would indicate that between \$10.3 billion and \$18.5 billion of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud. This estimate is consistent with the estimate of the Association of Certified Fraud Examiners, which has reported that 7 percent of commercial revenue is lost to fraud.<sup>42</sup>



Shipping containers, Bagram Airfield, Afghanistan. (Commission photo)



The Defense Criminal Investigative Service (DCIS) has investigated a total of 500 cases involving 1,503 subjects for fraudulent activities associated with overseas contingency operations in Iraq and Afghanistan.

As of June 1, 2011, 251 cases were still open. The table below shows the number of cases related to each type of fraud.

**Table 7. Number of open cases by type of fraud**

Type of case	Number of open cases
Public corruption	124
Procurement fraud	91
Theft and technology protection	28
Miscellaneous	8
<b>Total open cases</b>	<b>251</b>
Percent of total cases still open	51 percent

**Source:** DCIS Headquarters, OCO-JOC Program, International Operations Directorate Report, "Overseas Contingency Operations (OCO) Monthly Statistics Report," June 1, 2011, 6.

There is a direct relationship between the level of vulnerability to fraud and the phase of war, type of program, and type of contract. For example, contracts supporting large troop movements, programs requiring large cash payments, and poorly written, undefinitized, or poorly supervised cost-reimbursement-type contracts are especially vulnerable.

In Iraq and Afghanistan, bribery and kickbacks are a way of doing business. Despite this, contracting officers must quickly select and manage foreign contractors in Iraq and Afghanistan, many of whom have no prior experience in working for the U.S. government.

The International Contract Corruption Task Force (ICCTF), which is composed of nine U.S. criminal investigative organizations, told the Commission in June 2011 that its members have opened 876 cases related to wartime contracting. These cases include public corruption, procurement fraud, theft and technology protection, and other categories of fraudulent activities.

Few cases of wartime-contracting fraud are actually prosecuted.

The sheer number of contracts for Iraq and Afghanistan points to a high potential for fraud. However, of the 332 cases that the task force reported as being closed, the Department of Justice told the Commission that it charged only 150 individuals and companies. Few cases of wartime-contracting fraud are actually prosecuted. Many of the cases are closed for a variety of reasons including a lack of evidence, the difficulty of investigating them, and the cost of prosecution.

### **Abuses in contingency contracting undermine the United States' reputation abroad**

Contingency-contractor abuse of authority or position involves decisions made for personal financial gain, or gains by an immediate or close family member or business associate. Abuse does not necessarily involve fraud or the violation of law. But trafficking in persons does violate U.S. law and regulations.

U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit.<sup>43</sup> Their actions bring discredit to the United States and act as a barrier to building good diplomatic relations.

The globalization of the world economy has spurred the movement of people across borders, legally and illegally, especially from poorer countries, to fill low-skill jobs in support of the U.S. contingencies in Iraq and Afghanistan. Exploitation includes forced labor, slavery, and sexual exploitation.<sup>44</sup> Findings from one of the Commission's trips to Iraq in April 2009 include:

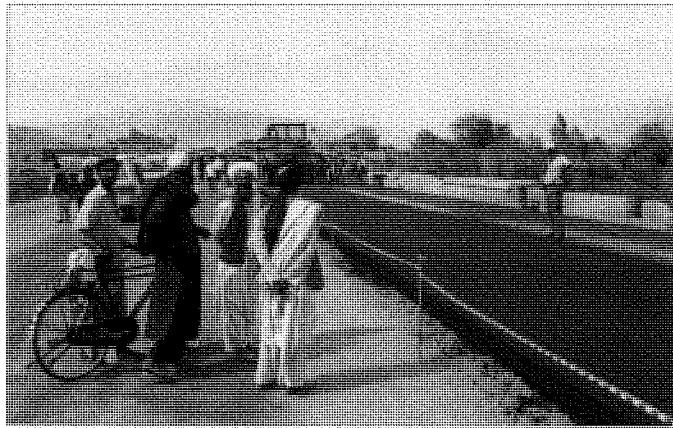
- A Ugandan security guard working for Triple Canopy at Forward Operating Base Delta committed suicide by shooting himself in the head. The guards at this base were often ill-equipped and without basic cold-weather gear such as gloves.
- Contractors withheld pay from third-country nationals until their contract term was completed, thereby preventing them from voluntarily returning to their homes of record.

43. Congressional Research Service Report RL34317, "Trafficking in Persons: U.S. Policy and Issues for Congress," August 4, 2010, 9.

44. United Nations Convention against Transnational Organized Crime and the Protocols Thereto, "Annex 11: Protocol to Prevent, Suppress, and Punish Trafficking in Persons; Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime," Article 3a, 2004.

- Though providing a power generator for guard towers was required in one of the security contracts, there was no requirement to ensure they were operable; and they actually sat idle during the most frigid weather.
- The third-country national guards worked unusually long tours, sometimes 12-hour shifts and 72-hour work weeks.
- The SABRE International prime contractor paid the Ugandan guards an average of \$700 per month, but the government paid SABRE \$1,700 per month for each guard. This \$1,000 difference exceeds even the most generous indirect contract costs.
- SABRE did not provide many of the third-country nationals with the 30-day vacation they were promised. The base-contracting officer's representatives said they had no one with experience to consult on these labor-related matters. There was no community-of-interest on the secure portal where they could communicate, and no recurring telecommunication with the installation-security program stakeholders.

Kabul-to-Kandahar  
road construction,  
2003. (USAID photo)



## CHAPTER 3

The Commission learned of a number of other cases of exploitation during a trip to Afghanistan in August 2010:

- Third-country nationals were lured with promises of work in Kuwait at good wages, and upon arrival were routed to Afghanistan and paid wages lower than promised.
- Numerous Philippine nationals arrived at Kandahar Air Field, but only two had jobs lined up. Others stayed on the military base looking for work. The air field commander told the Commission that when he first arrived, "a couple thousand" unauthorized third-country nationals were on base.
- Living conditions were substandard for third-country nationals at Warrior Village at Bagram Air Field.
- Third-country nationals at Forward Operating Base Delaram II complained of poor living conditions and unfair pay provided by DynCorp's subcontractor, Renaissance.

### Root causes of contingency-contract waste, fraud, and abuse persist

After 10 years of contingency contracting in Iraq and Afghanistan, the root causes of waste, fraud, and abuse persist. These existed well before the contingency-contracting process began and only worsened as it progressed.

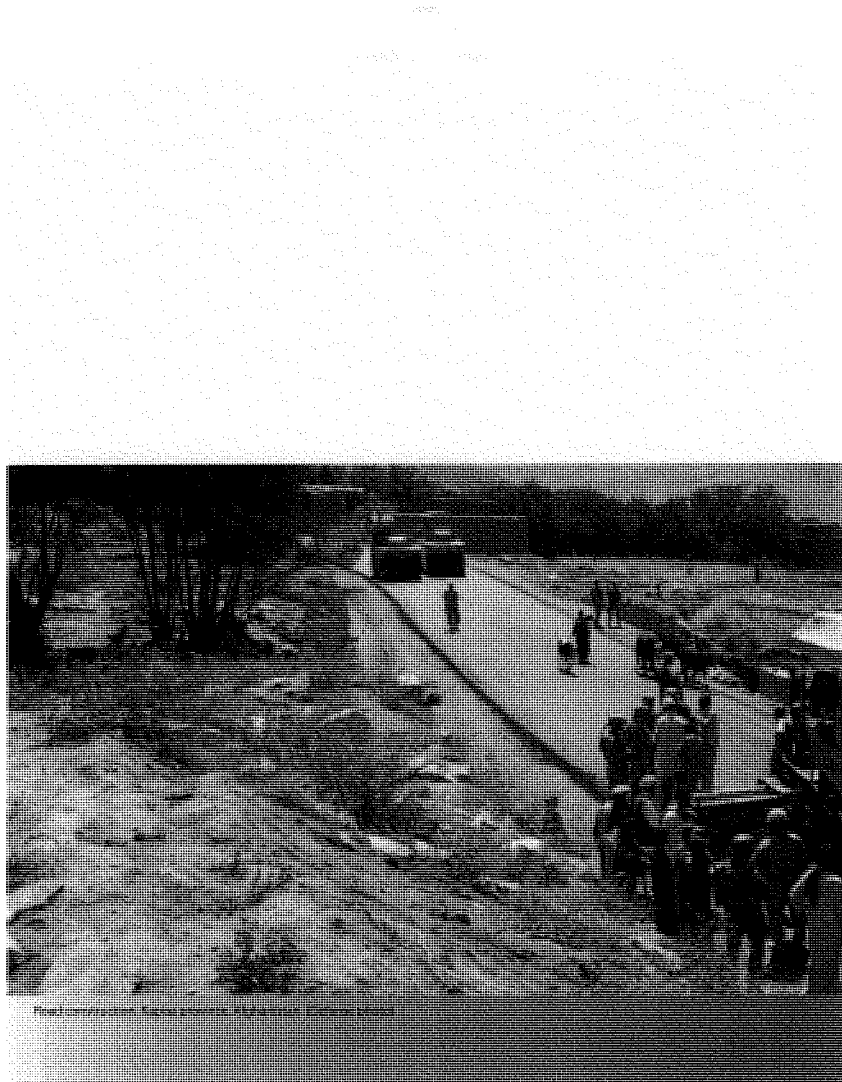
After 10 years of contingency contracting in Iraq and Afghanistan, the root causes of waste, fraud, and abuse persist.

The Commission's observations of the contingency-contracting function revealed significant shortcomings in organizational leadership and alignment, management of human resources, application and enforcement of policies and procedures, management of budgets and resources, and management of knowledge and information.

These interrelated causes of the recurring contingency-contracting problems were discussed in Chapter 2, and will be further developed in Chapters 4, 5, 6, and 7.

WASTE, FRAUD, AND ABUSE

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## Chapter 4

### Looming sustainment costs risk massive new waste



## CHAPTER 4

## Looming sustainment costs risk massive new waste

**W**ithdrawals of U.S. military forces from Iraq and Afghanistan are under way. Without effective action, ending the U.S. military presence and related contracting activities in those countries may reveal massive new waste if host nations are unable to operate and maintain projects and programs started and funded by the United States.<sup>1</sup>

The U.S. military presence in Iraq is scheduled to end by December 31, 2011. U.S. troops began leaving Afghanistan in July 2011, the first step in drawing down

the surge of 2009. "By 2014," the President has said, "this process of transition will be complete, and the Afghan people will be responsible for their own security."<sup>2</sup>

**Enduring costs risk wasting billions of dollars of American taxpayers' money—possibly dwarfing the tens of billions in waste already incurred.**

American troops are leaving, but a U.S.-funded presence will linger in both countries in the form of programs, schools, clinics, roads, power plants, barracks, hospitals, irrigation projects, prisons, training centers, and other efforts

undertaken through U.S. government contracts. These will remain in Iraq and Afghanistan, as will the armies and national police forces created and supported with U.S. funds, long after U.S. troops and major funding have disappeared.

What will *not* disappear is the cost of sustaining those projects and programs. As the World Bank said of Afghanistan:

These investments and programs are creating substantial expenditure liabilities for the future—roads will need to be maintained, teachers paid, and the sustaining costs of the Afghan National Army and other security services covered. The same will be true of investment programs in sectors like electric power and irrigation.<sup>3</sup>

1. The Commissioners concluded this emerging threat of waste from unsustainable efforts was serious enough to warrant a special report to Congress. Special Report 5, "Sustainability: hidden costs risk new waste," was issued June 3, 2011. This chapter expands and updates the report.

2. Remarks by President Barack Obama, Washington, D.C., June 22, 2011.

3. The World Bank, Afghanistan Public Finance Management Project, Report No. 34582-AF, "Afghanistan: Managing Public Finances for Development," December 22, 2005, 8.



These enduring costs risk wasting billions of dollars of American taxpayers' money—possibly dwarfing the tens of billions in waste already incurred—if funding from the Iraqi and Afghan governments or the international donor community cannot cover them.

### Large cash inflows distort host-nation markets

Another challenge to achieving project and program sustainability is dealing with the legacy of economic distortions induced by massive inflows of cash into a largely agricultural society with an underdeveloped financial infrastructure. In addition to concerns about the impact of particular flows of funds within an economy, difficulties can arise from the economy's overall "absorptive capacity"—its "ability to use additional aid without pronounced inefficiency of public spending and without induced adverse effects."<sup>4</sup>

Afghanistan's inflation-adjusted gross domestic product (GDP) grew at a 22.5 percent rate in 2009-2010, the World Bank reports, driven by "the security economy that generates demand for goods and services, equipment and operations and maintenance of the national army, as well as higher spending by donors, and their large off-budget contributions."<sup>5</sup> Such rapid growth, starting from a low base in a country lacking a modern financial and technological infrastructure, inevitably risks creating disruptions and distortions in the economy.

Iraq faces challenges similar to Afghanistan's, but Iraq has a more developed infrastructure, more diversified markets and trade access, and substantial revenue-producing potential from its large oil reserves.

Pouring large sums of money into less-developed economies with limited absorptive capacity creates both short-term and long-lived distortions. As a recent U.S. Senate committee staff report notes, "Foreign aid, when misspent, can fuel corruption, distort labor and goods markets, undermine the host government's ability to exert control over resources, and contribute to insecurity."<sup>6</sup> For example:

Street scene,  
Juykhoja,  
Afghanistan.  
(U.S. Air Force  
photo)



4. World Institute for Development Economics Research, Research Paper No. 2006/47, "Absorptive Capacity and Achieving the MDGs [Millennium Development Goals]," May 2006, 1.

5. The World Bank, "Growth in Afghanistan," updated February 2011.

6. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 2.

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- Foreign-funded contractors in urgent need of fuel, concrete, timber, wire, or other goods can bid up prices in local markets, creating hardship for local citizens and firms.
- Competition for skilled local workers can lure people out of Afghan government jobs, companies, or skilled trades, causing staffing and capability shortfalls that can affect normal economic activity and output for years.
- Foreign money flooding into a culture of widespread acceptance of bribes and kickbacks can raise transaction costs and impede competition on merit.

If a host country has limited absorptive capacity, influxes of external aid may reach a point at which the net benefit of additional funds turns *negative* as economic distortions proliferate and grow.<sup>7</sup>

As the Special Inspector General for Iraq Reconstruction testified at the Commission's first hearing:

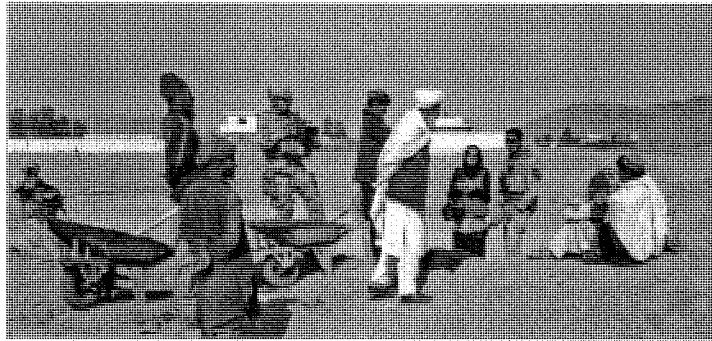
Absorptive capacity is a key issue to think about in deciding how much aid to offer. ... Iraq did not have the absorptive capacity for \$25 [billion] or \$18 billion ... because as I said, their army was fired, most of the senior government was fired. It was essentially a U.S.-driven endeavor subcontracted out, and that required capacity building, not a focus of the IRRF [the \$18 billion Iraq Relief and Reconstruction Fund, created by Congress in 2003] ...

How it applies to Afghanistan? Hugely important question, because this is a country that does not have the kind of bureaucracy or operations or resources that Iraq has and, therefore, will have a much more gradual or much lower absorptive capacity.<sup>8</sup>

The Commission sees no indication that Defense, State, and USAID are making adequate plans to ensure that host nations will be able to operate and maintain U.S.-funded projects on their own. Nor are they effectively taking sustainability risks into account when devising new projects or programs.

7. See, for example, Paolo De Renzio, "Increased Aid vs. Absorptive Capacity: Challenges and Opportunities towards 2015," *Institute of Development Studies Bulletin* 36.3 (2005), 20-27.

8. Stuart Bowen, Jr., Special Inspector General for Iraq Reconstruction (SIGIR), Commission hearing, February 2, 2009, transcript, 115.



Afghan men working on USAID canal restoration project, Taktehpol, Afghanistan. (U.S. Air Force photo)

### Threats of unsustainability can be hard to assess

Spotting and assessing the threat of waste from an unsustainable project or program is not as simple as examining construction quality, performance of services, schedule compliance, or the accuracy of labor and materials billings. An investment may be carefully planned, well executed, and economical, but still *become* wasteful if the host nation cannot provide trained staff, afford parts or fuel, perform necessary maintenance, or produce intended outcomes.

U.S.-funded contingency operations in Iraq and Afghanistan have presented and will continue to present numerous opportunities for well-conceived and well-executed projects and programs to turn into waste.

- In Iraq, U.S. contractors built and equipped 133 primary health-care centers for about \$345 million. The U.S. paid a contractor to operate and repair the facilities for one year, but failed to build the capacity of the Iraqi Ministry of Health to sustain the facilities.
- In Afghanistan, the United States has contracted for schools and clinics that lack adequate personnel, supplies, and security; a large power plant that the host country cannot maintain or operate unassisted; roads that will need substantial and continuing maintenance; and security-force training and support whose costs exceed Afghan funding capabilities.

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The threat of billions of dollars in new waste through unsustainability stems from, among other things:

- inadequate assessment of host-country needs and capabilities,
- overly ambitious or inappropriate plans,
- contractors' inability or willful failure to perform,
- projects selected for political/military impact rather than for long-term feasibility,
- weak interagency coordination for including multi-national partners,
- poor planning and weak coordination for transition hand-off, and
- inadequate follow-through by federal officials.

The threat of waste stems from failure to apply realistic analysis and effective acquisition discipline in the stress of a contingency setting.

In short, the threat of waste stems from failure to apply realistic analysis and effective acquisition discipline in the stress of a contingency setting.

In overseas contingencies that require funding for contracts, planning for projects and programs must take into account the host country's technical and financial capabilities to operate and maintain them once international donors' support is gone. Failure to do so not only wastes U.S. taxpayers' funds, but undermines local-government credibility and impedes progress in reconstruction and stabilization.

### Iraq faces unsustainability issues

The United States has committed more than \$60 billion to reconstruction activities in Iraq since 2003—an average of \$17 million a day.<sup>9</sup> Projects range from universities to rural health clinics, and from rule-of-law programs to training Iraqi security forces.

Iraqis face a major transition after 2011, when (barring any changes in the U.S.-Iraqi arrangements) only a limited number of U.S. military advisers will remain in the country, and the U.S. Department of State will take over from the Department of Defense as the most conspicuous American presence. Iraqis will also face the challenge of paying for the operation and maintenance of many hundreds of projects and facilities launched with U.S. funding—sometimes against their wishes.

9. SIGIR Quarterly Report to the United States Congress, April 30, 2011, 3.

In June 2006, the U.S. government terminated for default a contract with Parsons Delaware, Inc. to build the Kahn Bani Sa'ad Correctional Facility in Diyala Province, Iraq, northeast of Baghdad. After awarding three additional contracts to complete the prison, the U.S. government cited security concerns and terminated all remaining work in June 2007, leaving more than \$1.2 million in materials on site.<sup>10</sup>

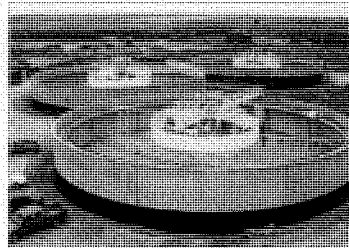
The United States unilaterally transferred the Kahn Bani Sa'ad Correctional Facility to the government of Iraq on August 1, 2007, even though that country's Ministry of Justice had made clear it had no intention of completing, occupying, or securing the \$40 million project, which was still unfinished and had major construction deficiencies documented by the U.S. Army Corps of Engineers.<sup>11</sup>

The prison project, intended to house 3,600 inmates, remains unused and unsecured. It is perhaps the ultimate instance of unsustainability: a project that not only might be unusable or unsustainable by the host government, but one that the host government didn't even *want*.



Kahn Bani Sa'ad Correctional Facility, Iraq, at the time of Parsons' termination, 2006. (U.S. Army Corps of Engineers photo)

In another example, the Iraqi government has sought American technical and financial assistance for the \$277 million, U.S.-funded Nassiriya water-treatment plant, which was built without an assured source of electric power, is frequently off-line, and produces murky water that many locals refuse to use. A Special Inspector General for Iraq Reconstruction (SIGIR) report noted, "Dissatisfaction with the quality of the water of the Nassiriya WTP is so profound that only 14 percent use it as their main source of drinking water; the remaining 86 percent either purchase water or use water from rivers and streams."<sup>12</sup>



Nassiriya water-treatment plant, Iraq, 2007. (U.S. Army Corps of Engineers photo)

Considering that the Nassiriya plant is the largest single U.S.-funded reconstruction project in Iraq, and that its goals included

10. SIGIR Audit Report PA-08-138, "Kahn Bani Sa'ad Correctional Facility, Kahn Bani Sa'ad, Iraq," July 25, 2008, i.

11. *Ibid.*, ii.

12. SIGIR Review EV-1002, "Review of Major U.S. Government Infrastructure Projects in Iraq: Nassiriya and Ibrah Water Treatment Plants," October 28, 2010, i.

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improving public health, building Iraqis' confidence in their government, and supporting U.S. counter-insurgency efforts, this outcome is a major disappointment. The decidedly mixed results rest on causes that include sustainability issues:

A SIGIR inspection cited the inability of the GOI [Government of Iraq] to provide reliable power, improve the old distribution network, remove illegal taps in the transmission line, and provide a qualified and motivated staff to attend O&M [operations and maintenance] training as the main reasons for the water system's poor overall performance.<sup>13</sup>

On a smaller scale, the story of a \$1 million attempt to provide a water park for the citizens of Baghdad again illustrates the threat of waste from unsustainability. In early 2008, a U.S. Army general ordered an empty lagoon to be refilled and turned into a water park using money from the Commander's Emergency Response Program (CERP). New pumps were installed and new amenities put in place. The park drew large crowds at first, but the local power supply fell off, the pumps stopped working, and required maintenance was not performed.

Park managers refused to commit to keeping the facility operational. As of early 2011, more than two years after the park's opening ceremony, "the Baghdad park is nearly waterless ... Much of the compound is in ruins, swing sets have become piles of twisted steel, and the personal watercrafts' engines have been gutted for spare parts."<sup>14</sup>

Finally, lack of host-country commitment threatens the future of the Iraqi International Academy, a \$26 million-contract project led by U.S. Forces-Iraq. The Academy, under construction on a site near Baghdad's International Zone, is intended to train Iraqi security forces and officials in English and other subjects, and to function as a "regional center of excellence" offering instruction in international relations, public administration, and related topics.<sup>15</sup>

The Academy is due to be turned over to the Government of Iraq upon completion (scheduled for September 2011), but the SIGIR has reported that the Iraqi government "has no plan to fund the operation of the [Academy]," and that an

13. Ibid., 16.

14. "Demise of Iraqi water park illustrates limitations, abuse of U.S. funding program," *The Washington Post*, January 3, 2011.

15. SIGIR letter to Commander, U.S. Central Command, SIGIR 11-009, "Iraqi Government Support for the Iraq International Academy," January 26, 2011, 1.

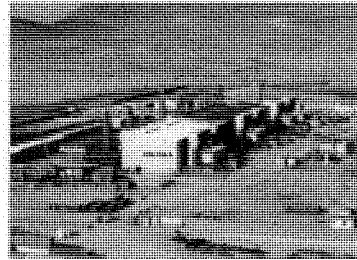
Iraqi Ministry of Defense official "simply assumed the United States would fund the operation ... for at least a year."<sup>16</sup>

Providing additional examples would simply belabor a hard truth: the threat of major waste in Iraq is daunting. But circumstances in Afghanistan make the risk of emerging, enormous new waste there especially severe.

### Sustainment challenges in Afghanistan are daunting

A prime example of unsustainability stands in Kabul, Afghanistan. American taxpayers' dollars paid for building the \$300 million Tarakhil Power Plant, also known as the Kabul Power Plant. The plant is completed. But it is seldom used, and the cost to operate and maintain it is too great for the Afghan government to sustain from its own resources.

USAID, having agreed to support U.S. political and military objectives, awarded contracts to build the plant so that reliable electric power could promote economic growth and improve the quality of life in the Kabul area. The Afghan government committed in April 2007 to pay for the plant's fuel and operating costs starting a year after its completion, but later advised that it could not afford fuel and would need assistance with operating costs.<sup>17</sup>



Kabul Power Plant,  
Afghanistan, 2010.  
(SIGAR photo)

By November 2009, however, an audit by USAID's inspector general found:

The host government may not be able to afford to operate the Kabul power plant once it is completed. Specifically, the host government may not be able to meet its commitment to pay for diesel fuel to operate the plant because of the rising cost of diesel fuel and the government's inability to collect revenue for the generated electricity.<sup>18</sup>

Part of the problem was that the plant was designed as dual-fueled, able to burn either diesel or heavy fuel oil. But diesel fuel is very costly in Afghanistan, while

16. Ibid., 4.

17. SIGAR Audit Report 10-6, "Contract Delays Led to Cost Overruns for the Kabul Power Plant and Sustainability Remains a Key Challenge," January 20, 2010, 10-11; USAID IG Audit Report 5-306-10-002-P, "Audit of USAID/Afghanistan's Power Sector Activities under its Afghanistan Infrastructure Rehabilitation Program," November 10, 2009, 14.

18. USAID IG Report 5-306-10-002, "Audit of USAID/Afghanistan's Power Sector Activities under its Afghanistan Infrastructure Rehabilitation Program," November 10, 2009, 2.

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using the alternative heavy fuel oil entails greater wear and tear on the generators. Further, the dual-fuel technology itself complicates maintenance.

Meanwhile, the Afghan government negotiated electricity purchases from neighboring Uzbekistan at a fraction of the cost of Tarakhil energy. The unsustainable Tarakhil Power Plant, intended as a reliable, round-the-clock facility, will instead serve as a costly peaking or back-up facility—and as a textbook case of poor planning and waste.<sup>19</sup>

A 2011 USAID contract to build a diesel-fueled power plant in Kandahar faces similar sustainability challenges, even if it promotes geopolitical and military stabilization objectives. In addition, financing plans have not been made for the transmission-and-distribution grid that would make the plant a useful source of energy. Power-plant sustainability challenges in Afghanistan include not only the challenge of the Afghan government's ability to pay for fuel, operations, and maintenance, but the more fundamental difficulties that it faces in collecting payments from customers and finding technically competent staff.<sup>20</sup>

**A huge generator transported in pieces through a bitter firefight with insurgents remains unassembled and rusting, partly because the concrete needed for its foundation was never delivered.**

A different USAID-funded project to upgrade the Kajaki Dam on the Helmand River is years behind schedule. A huge generator transported in pieces through a bitter firefight with insurgents remains unassembled and rusting, partly because the concrete needed for its foundation was never delivered. In addition, completing the power-plant upgrade will require modernizing the local transmission-and-distribution system. Here again is a project that will require large outlays to complete, operate, and maintain.

As a Special Inspector General for Afghanistan Reconstruction report warns:

Years of neglect cannot be overcome until the Afghanistan government has the capability to recover costs, expand its capabilities, and conduct operations and maintenance of the energy sector. Until that time, Afghanistan will continue to rely

19. SIGAR Audit Report 10-6, "Contract Delays led to Cost Overrun for the Kabul Power Plant and Sustainability remains a Key Challenge," January 20, 2010, note 5, 2. Note: As criticism of the project has grown, some U.S. officials have claimed the plant was intended only as a back-up or peaking facility. However, the Afghanistan Infrastructure and Rehabilitation Program website, which carries a copyright notice for contractors Black & Veatch and Louis Berger Group as well as a note about USAID support, contains a legacy page as of mid-July 2011 saying, "Upon completion, the 100 MW power plant will provide the people of Kabul with reliable, sustainable power"—not a characterization one would expect to be made for a peaking plant. Additionally, the SIGAR report stated at page 2, note 5, "USAID officials noted that the Kabul Power Plant will be used sparingly when cheaper sources of power are available, while potentially running 24 hours a day, seven days a week when lower cost options are not available (for example, during the winter months when water levels are low and hydro electric power is less plentiful)"—that is, it would be a base-load plant for months at a time.

20. SIGAR Audit Report 10-4, "Afghanistan Energy Supply Has Increased but An Updated Master Plan Is Needed and Delays and Sustainability Concerns Remain," January 15, 2010, 2-5.



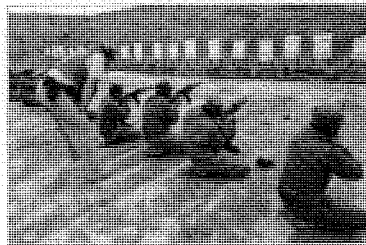
heavily on donor funds in order to ensure that investments do not fall to waste.<sup>21</sup>

### The Afghan security force is undermined by financial insecurity

Another formidable example of potential waste is the U.S.-funded contracting for training of, and facilities construction for, the Afghan National Security Forces (ANSF), comprising the Army, Border Police, and National Police.

Between FY 2006 and FY 2011, Congress appropriated nearly \$39 billion to set up and maintain the ANSF; the fiscal year 2012 budget request would add almost \$13 billion to that total. Nearly half of the FY 2012 request—over \$5 billion—would go toward clothing, equipping, and paying the ANSF.<sup>22</sup>

Prospects for the Afghan government's sustaining the ANSF are dubious. The entire country's gross domestic product (GDP) for FY 2011 is about \$16 billion at the official exchange rate, and the national government's domestic revenues are about \$2 billion.<sup>23</sup> The Afghan Ministry of Finance budget proposal for 2011-2012 indicates that given the increased security costs from the increase in size of the ANSF, the Afghan government is expected to continue to depend on donor grants for up to 30% of its operating budget.<sup>24</sup>



Expenditures maintain security  
Afghan National  
Police recruits. (U.S.  
Air Force photo)

The outlook for sustaining the Afghan army and national police is complicated by several factors:

- The ANSF, currently numbering about 305,000 personnel, is growing toward a newly authorized strength of 352,000, which will increase sustainment costs.

21. Ibid., 16.

22. Office of the Secretary of Defense, "DoD Budget for FY 2012: Justification for FY 2012 Overseas Contingency Operations Afghanistan Security Forces Fund (ASFF)," February 2011, 2.

23. Islamic Republic of Afghanistan, Ministry of Finance, "1390 National Budget Statement Draft" [1390 is the solar Islamic calendar equivalent of years 2011-2012 in the Gregorian calendar], February 2011, 2.

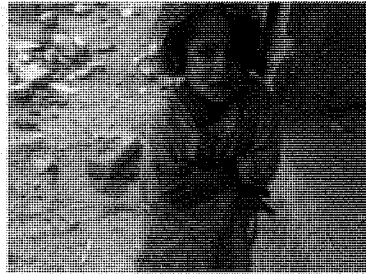
24. Ibid.

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- The Commission has received a preliminary U.S. military estimate of ANSF sustainment costs for just the period 2014-2017 in the neighborhood of \$30 billion.
- The International Monetary Fund has concluded that the Afghan government will be incapable of paying ANSF costs until at least 2023.<sup>25</sup>
- Donor-community support depends upon unpredictable political decisions that may be heavily influenced by severe fiscal pressure on most developed countries' budgets.

Meanwhile, Afghanistan's potential to bolster its own revenues in the near future suffers from the facts that Afghanistan:

- is one of the world's most underdeveloped countries, with a per capita gross domestic product (GDP) of about \$900, a 70 percent illiteracy rate, and an average life expectancy of 45 years;<sup>26</sup>
- lacks the petroleum and natural-gas riches of Iraq; and
- is building from a dismal baseline of no effective central government, no basic public services, no developed financial system, and no consistent rule of law.



Afghan girl asking for food, Kandahar province, Afghanistan. (U.S. Army photo)

Senior U.S. officials have publicly acknowledged that Afghanistan cannot sustain its own security budget. Then-Secretary of Defense Robert Gates said in February 2011:

Let's not kid ourselves. We are the only ones paying for this in any significant way. How long can we sustain it? The Afghan ability to sustain a force would be a fraction of what they already have.<sup>27</sup>

25. International Monetary Fund, *Islamic Republic of Afghanistan: Sixth Review Under the Arrangement Under the Poverty Reduction and Growth Facility, Request for Waiver of Nonobservance of a Performance Criterion, Modification and Performance Criteria, and Rephasing and Extension of the Arrangement*, Country Report No. 10/22: January 2010, 11.

26. Central Intelligence Agency, "World Factbook for Afghanistan," 2010.

27. American Forces Press Service (DoD), "Gates: U.S. Must Consider Sustainability of Afghan Forces," February 17, 2011.

In a similar vein, the Acting Special Inspector General for Afghanistan Reconstruction told the Commission, "The Government of Afghanistan has never had the financial resources to sustain ANP [Afghan National Police] salaries at either the current or projected levels."<sup>28</sup>

Besides spending billions on contracts to train, clothe, and equip the ANSF, the United States has also committed \$11.4 billion since 2005 to build bases, police stations, border outposts, and other facilities for the ANSF. In addition, the U.S. Army Corps of Engineers awarded two contracts in 2010 for ITT Corporation to provide \$800 million in operation-and-maintenance services for 663 ANSF facilities over a five-year period.

**"The Government of Afghanistan has never had the financial resources to sustain ANP [Afghan National Police] salaries at either the current or projected levels."**

— SIGAR

The Afghan government has already indicated that it cannot pay such costs from its resources.<sup>29</sup> The Special Inspector General for Afghanistan Reconstruction told the Commission at its January 24, 2011, construction hearing that "the entire \$11.4 billion [in construction spending] is at risk," and "both contracts are expected to exhaust their funding well before [the end of] their five-year performance period."<sup>30</sup>

### Examples can only hint at potential unsustainability waste

Because some threats of waste through sustainability have not yet risen to detectable levels, there can be no complete tally at this time. But the variety and impact of unsustainability risks can be inferred from examples such as these:

- Funding outside of the Afghan government's control, including 16,000 Commander's Emergency Response Program (CERP) projects totaling \$2 billion from the U.S. military, has created thousands of projects that lack plans for sustaining them.<sup>31</sup> CERP project files often lack required letters committing local officials to funding, and officials often cannot collect the taxes needed to meet their commitments.

28. Herbert Richardson, Acting Special Inspector General for Afghanistan Reconstruction (SIGAR), statement, Commission hearing, April 25, 2011, 4.

29. SIGAR Audit Report 11-6, "Inadequate Planning for ANSF Facilities Increases Risks for \$11.4 Billion Program," January 27, 2011, 9.

30. Herbert Richardson, Acting Special Inspector General for Afghanistan Reconstruction, (SIGAR), statement, Commission hearing, April 25, 2011, 5.

31. SIGAR Audit Report 11-7, "Commander's Emergency Response Program in Laghman Province Provided Some Benefits, but Oversight Weaknesses and Sustainment Concerns Led to Questionable Outcomes and Potential Waste," January 27, 2011.

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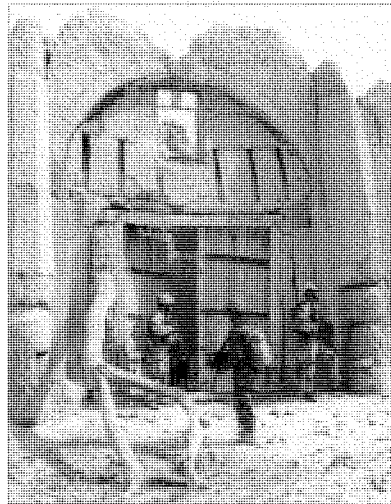
- Over the past five years, the State Department has spent about \$2 billion on counter-narcotics programs in Afghanistan, including support for two compounds near the Kabul airport and in Kunduz province. The U.S. objective is to transfer the compounds to the Afghan government, but State's Inspector General says the department "has not addressed how and when the Afghan Government will be able to assume control and sustain day-to-day operations."<sup>32</sup>

Without immediate and effective attention to these and other sustainability problems, the United States faces a vast new toll of waste in Iraq and Afghanistan. Beyond the potential direct waste of U.S. taxpayers' money lie both the opportunity cost of the foregone projects that might otherwise have been completed with the funds and the political cost to U.S. interests if local nationals feel betrayal or resentment when promised improvements to their lives do not materialize.

A recent congressional staff review summarized the imperative for change after a review of Afghan projects and programs, but its advice could apply anywhere that U.S.-funded contingency projects are to be taken over by a host government: "We should follow a simple rule: *Donors should not implement projects if Afghans cannot sustain them.*"<sup>33</sup>

The only alternatives to making effective plans for sustainment with the host government are to abandon projects in part or whole, or to continue tapping U.S. taxpayers for an indefinite future—a course that may simply postpone abandonment if budget stress and voter discontent snap the checkbook shut.

Counternarcotics  
operation,  
Zabul province,  
Afghanistan, 2010.  
(U.S. Navy photo)



32. State IG Audit Report MERO-I-11-02, "Performance Evaluation of PAE Operations and Maintenance Support for the Bureau of International Narcotics and Law Enforcement Affairs' Counternarcotics Compounds in Afghanistan," February 2011, 7.

33. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 4-5.

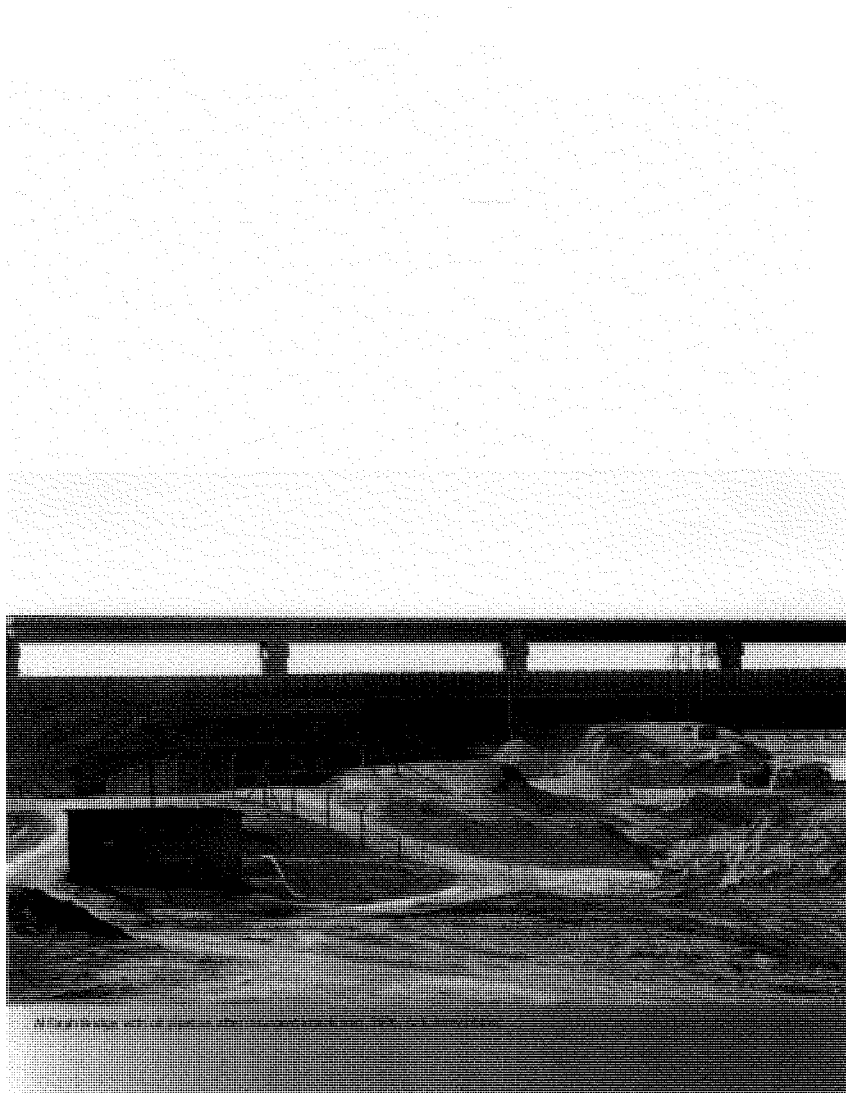
Avoiding or mitigating such waste requires prompt and effective measures.

► **RECOMMENDATION 5**

**Take actions to mitigate the threat of additional waste from unsustainability**

Officials at Defense, State, and USAID should:

- examine both completed and current projects for risk of sustainment failure and take appropriate action to cancel or redesign programs and projects that have no credible prospect of being sustained;
- ensure that any new requirements and acquisition strategies for contingency contracts for projects or services to be handed over to a host nation include a detailed assessment of long-term costs and of host nations' ability and willingness to meet those costs; and
- report to Congress, by December 31, 2011, and annually thereafter, their analysis and proposed actions for mitigating sustainability risks.



## Chapter 5

### **Agencies have not institutionalized acquisition as a core function**



## Agencies have not institutionalized acquisition as a core function

The Commission's second interim report to Congress, "At what risk? Correcting over-reliance on contractors in contingency operations," argued for changes in how the U.S. government organizes, plans, trains for, and executes contractor support for contingency operations. The report cited the Defense policy that contractors are an integral part of the total force and emphasized that the country cannot undertake large and sustained contingency operations without contractor support.

The number of contractors has grown faster than the government's ability to effectively manage and oversee them and their contracts. The government's ad hoc response to the expansion of contracting is ineffective, and agency leaders have not recognized the extent of the problem. While noting that some

initiatives for improvement are under way, the Commission warned of shortfalls in policy, doctrine, resources, planning, and training the federal workforce in ways appropriate for supporting contingencies.

The government's ad hoc response to the expansion of contracting is ineffective, and agency leaders have not recognized the extent of the problem.

Agencies must fully accept contracting as a core function if only because of the sheer numbers of contingency contracts, their value, and the adverse financial, political, and operational impacts of failure.

Acquisition organizations and independent observers have long recognized that while contracting has grown in importance, agencies have not taken the steps needed to elevate contracting internally.<sup>1</sup> The Commission has found that agencies engaged in contingency contracting are not organized to promote cross-agency communication, to accommodate contractor support in strategic and operational force planning and preparation, to foster cost-consciousness, or to address acquisition issues and challenges at the highest leadership levels.

Many military and civilian acquisition professionals believe that significant benefits would accrue if a committed and centralized leadership were to provide effective

1. Defense Science Board Task Force, "Improvements To Services Contracting," March 2011, 9; Commission on Army Acquisition and Program Management in Expeditionary Operations, "Urgent Reform Required: Army Expeditionary Contracting," October 21, 2007, 21-22, 29, 47; Center for a New American Security, "Contracting in Conflicts: The Path to Reform," June 2010, 20-21.



guidance and support for contingency contracting. As a senior combatant command logistics (J4) director told the Commission, "I would like ... contracting to be a separate directorate. ... Two CENTCOM planners are not enough. ... They are flying the airplane as they build it."

The Commission's interim report called for contingency contracting to be designated as a core function because:

- Policy and doctrinal issues on when and where, and questions of how to use contractors extend beyond individual contingencies and must be considered holistically, because they cut across agency missions.
- Advanced and continuous acquisition planning will lead to efficiencies.
- Restructuring within each agency involved is needed to develop an acquisition workforce that is ready for and responsive to contingencies when they occur.

Agencies engaged in contingency contracting are not organized to promote cross-agency communication, to accommodate contractor support in strategic and operational force planning and preparation, to foster cost-consciousness, or to address acquisition issues and challenges at the highest leadership levels.

The Commission's recommendations for addressing these problems would elevate the role of contingency contracting within Defense, State, and USAID, thus recognizing acquisition as a strategic element and giving contracting a seat at the table. For Defense, the report called for elevating contracting from a subordinate role within the Joint Staff's logistics directorate (J4) by establishing a J10 directorate. This would raise contingency contracting to the level of other Joint Staff functions like intelligence, plans, and operations.

Since the Commission's February 2011 interim report, numerous agency and military leaders have acknowledged that organizational changes are needed.<sup>2</sup> Yet agency leaders have not yet taken steps to address cultural changes needed at their agencies.

This is where leadership is required and bureaucracy must step aside.

2. Robert M. Gates, Secretary of Defense, Senate Committee on Armed Services hearing, January 27, 2009, transcript, 10-11; Patrick F. Kennedy, Under Secretary of State for Management, statement, Commission hearing, June 6, 2011, 4-7; Dr. Rajiv Shah, Administrator, United States Agency for International Development, Senate Committee on Foreign Relations hearing, April 13, 2011; Dr. Ashton B. Carter, Under Secretary of Defense for Acquisition, Technology and Logistics, Commission hearing, March 28, 2011.

## CHAPTER 5

### The need for cultural change

To effect cultural change within an organization, leaders must accept and promote it. To achieve cultural change in acquisition, leadership must recognize that acquisition is no longer merely a support function, then communicate the importance of acquisition as essential to the agency's mission. Then concrete steps must be taken to institutionalize the change throughout.

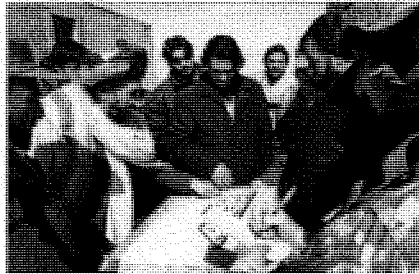
**To achieve cultural change in acquisition, leadership must recognize that acquisition is no longer merely a support function, then communicate the importance of acquisition as essential to the agency's mission.**

Cultural change affecting acquisition is needed at the strategic and operational levels of Defense, State, and USAID. The outcomes of contracts depend not only on contractors' performance, but also on the government officials who establish requirements, write and award the contracts, and administer them while overseeing performance. Assigning responsibility, allocating resources, and demanding accountability are all critical tools for ensuring cultural change.

Urgent needs and an inadequate number of agency contracting personnel create pressure to operate without specific contract requirements. Failure to provide clear requirements, including requirements that are based on evaluation of program or project sustainability, can invite wasted effort and frustrate imposing accountability.

The past decade has demonstrated that failure to recognize the importance of acquisition and failure to elevate it within each agency perpetuates poor planning, aggravates the shortage of trained professionals, and contributes to runaway costs through inattention and poor and inconsistent decision making.

Prison planning,  
Paktia, Afghanistan.  
(Defense photo)



#### Agencies do not adequately plan for operational contract support

More than two decades of budgetary pressure have left Defense, State, and USAID with reduced capabilities to manage and oversee contracts even as their missions and contract workload have grown. Many related duties and responsibilities were

contracted out. But the increase in services contracting was not accompanied by proportional growth in government's oversight and management capability.

Decisions to surge military personnel in Iraq and Afghanistan were made with little consideration for the extent of contractor support that would be needed. Field commanders were unprepared to provide adequate housing and workspace to the growing contractor workforce. Diplomatic missions lost programmatic control of major projects.<sup>3</sup> Camp "mayors" who administer bases struggled to accommodate contractors' needs for space, energy, and communications, and balance them with military requirements.<sup>4</sup>

#### Services contracting is not seen as an attractive career for advancement to senior levels

Acquiring services dominates agencies' contingency contracting. More than half of the Defense Department's annual contract expenditure is for services contracts.<sup>5</sup>

For the contingencies in Iraq and Afghanistan, services contracts accounted for 66 percent of total contract value awarded since FY 2010. The corresponding FY 2010 proportions of services in total contracting were 94 percent for State and over 99 percent for USAID.<sup>6</sup> These high proportions underscore the importance of attending to the special challenges of managing services contracts.

Services contracting is different from weapon systems contracting.

Services contracting is different from weapon systems contracting. Yet agencies act as though nuanced skills, tradecraft, and professional experience are not needed for services contracting. Agencies provide avenues of career progression for personnel engaged in weapon-systems programs. They have not, however, emphasized the importance of services contracting by providing focused training, education, and on-the-job opportunities that would prepare contracting officers for the complex and large-scale services contracts they will encounter during a contingency.

Another difference is that weapon-systems contracting has a well-established and clearly defined management structure with program offices, milestones, and defined decision points. Services-contracting offices have not been structured and managed in the same fashion. After the Commission's April 19, 2010, hearing on

3. William J. McGlynn, Principal Deputy Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, statement, Commission hearing, January 24, 2011.

4. In its interim report, the Commission recommended that the Army's Installation Management Command manage bases and base-support contractors in contingencies.

5. Defense Science Board Task Force, "Improvements to Services Contracting," March 2011, vii.

6. Commission analysis of FPDS-NG data as of June 12, 2011.

## CHAPTER 9

this subject, the Office of the Secretary of Defense and the Army began standing up program offices for service contracts, as the Air Force had done earlier.

Many in-theater contract management roles for military and civilian personnel during contingencies are temporary or transitory assignments. In Iraq and Afghanistan, agencies rely on emergency funds to hire temporary personnel and make temporary assignments to fill staffing gaps. This is neither a long-term nor sustainable solution: it does not allow for having permanent government staff on hand to manage and oversee contractors and contracts prior to, during, and following a contingency.

**Now that contractors have become a key component of U.S. military and diplomatic strategies, cultural change is needed at the core of government planning for and execution of a contingency operation.**

Short deployment cycles in theater also put military and civil-service contract managers at a disadvantage vis-à-vis contractors, who are likely to have more continuity of knowledge of contracts and programs.

Insufficient training and lack of program management in services contracting, coupled with short personnel-assignment cycle times, leads to inconsistency in managing programs and administering contracts. This also creates a high risk of mismanaging funds and failing to meet program requirements.

#### There is no focus on the cost of requirements in a contingency

"Mission needs" too often trump consideration of cost consciousness, practical evaluation of project necessity and sustainability, or attention to long-term project and program investment. Opportunities for waste thereby increase. For example, in Operation Iraqi Freedom, launched in 2003, significant waste was caused by a large number of undefinitized contracts, the slow transition from LOGCAP III to LOGCAP IV, lack of adequate preparation for the Restore Iraqi Oil (RIO) program, difficulties in training Iraqi security forces, and problems in other large reconstruction projects.<sup>7</sup>

7. SIGIR, "Hard Lessons: the Iraq reconstruction experience," February 2009, 137-138, 175; Lt. Gen. James Pillsbury, Army Materiel Command Deputy Commander, Commission hearing, March 29, 2010, transcript, 58.

### Department of Defense and Joint Chiefs of Staff

In the 2010 Quadrennial Defense Review (QDR), Defense reported that the number of its acquisition professionals had declined by 10 percent over the previous decade, while contractual obligations had tripled. The QDR added, "To operate effectively, the acquisition system must be supported by an appropriately sized cadre of acquisition professionals with the right skills and training to successfully perform their jobs," and promised that Defense will "increase the number of acquisition personnel by 20,000 positions by 2015."<sup>8</sup>

The Commission endorses this contemplated increase—currently threatened by budget pressures—and believes Defense must commit resources to ensure that sufficient services-acquisition personnel are available to meet contingency-contracting needs.

In its second interim report, the Commission recommended that a contingency-contracting directorate be established in the Joint Staff. This would elevate the critical role of contingency contracting by establishing a new J10 directorate, led by a flag officer with the contracting experience and training necessary to promote better visibility, planning, and coordination of operational contractor support issues.

Defense awards contingency contracts for intelligence support, translation services, communications, construction, security, training, and other non-logistics services. The placement of contracting within J4 reflects outdated thinking that contracting is only a method to achieve logistical support—not a full spectrum of operational contract support. And too many logistics officers who rise to flag rank lack contracting experience and are unfamiliar with the broad range of roles

The placement of contracting within J4 reflects outdated thinking that contracting is only a method to achieve logistical support—not a full spectrum of operational contract support.

Soldiers with contractors, Zabul province, Afghanistan. (U.S. Air Force photo)



8. Department of Defense, "Quadrennial Defense Review Report," February 2010, 76.

## CHAPTER 3

contractors play in supporting military operations. Contracting should no longer be subordinate to logistics.

In response to the J10 recommendation, the Joint Staff said it does not believe that a new organizational construct would enhance the current effort to institutionalize operational contract support (OCS), and that command and control is strengthened by using established, well-understood staff structures. Further, the Joint Staff said, the current effort to reduce manpower, including flag officers, makes it infeasible to add new structure and a flag officer to the Joint Staff.

A Defense Department analysis identifying operational contract support issues listed a number of factors that impede institutionalizing OCS, including:

- insufficient awareness and appreciation for the potential significance and complexity of OCS;
- inability to fully integrate OCS into task planning, operational assessments, force development, training, readiness reporting, and lessons learned; and
- lack of leadership oversight and awareness to address issues surrounding risks and opportunities, resources, communications, transitions, and issues that arise between contingencies.

**The size of the contractor force—more than one-half of our total force in theater—requires leadership, planning, and training beyond a J4 logistics focus.**

To correct these deficiencies, the director of the Joint Staff issued a memo directing staff to take specific steps to integrate and coordinate operational contract support and the Civilian Expeditionary Workforce program within the Joint Staff.<sup>9</sup> Yet, these steps are not sufficient. The importance of contracting to Defense and the sheer number and dollar value of contracts underscore the need to formally elevate contracting to a J10 directorate within

the Joint Staff from which similar positions would “flow down” to the combatant commands and the military services. Operational dependence upon contractors demands more than an ad hoc response. The size of the contractor force—more than one-half of our total force in theater—requires leadership, planning, and training beyond a J4 logistics focus.

9. Office of the Chairman, Joint Chiefs of Staff, memorandum, “Implementation of SecDef Memorandum on Strategic and Operational Planning for Operational Contract Support (OCS) and Workforce Mix,” June 1, 2011.

The combatant commanders are understaffed and not organized to follow up and maintain the changes in the new OCS doctrine and incorporate them into planning. Currently, U.S. Pacific Command has no dedicated staff for operational contract support; it uses three logistics officers assigned part-time. U.S. Southern Command has assigned responsibility for the doctrine to three civilian staff in its finance group (J8). In U.S. African Command, two officers are assigned part-time, but are frequently unavailable due to deployments. And U.S. Central Command, which has arguably the largest and most pressing need, has only five personnel assigned within its J4 contracting staff.

Clearly, there is a disconnect between realizing the importance of contracting in operations and taking concrete steps to integrate contracting into contingency planning.

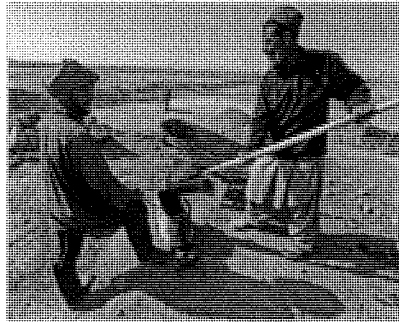
As the Joint Staff works through and implements changes in support of future priorities (such as reallocating flag officers and eliminating the J6 directorate), now is the time to institutionalize progress made in operational contract support and enhance the importance given to contingency contracting.

The J10 directorate proposed by the Commission would give contracting visibility in discussions on the future, developing doctrine and policy, reviewing planning and training, and coordinating plans. Creating a J10 position would prompt "flow down" establishment of similar positions at the combatant commands and the military services with a "G10" (or equivalents) at operational headquarters. Acquisition planning, control, and execution would be firmly institutionalized within Defense and would open the door to contractors becoming truly and fully a part of the total force—more than two decades after that policy was announced.

Without institutionalizing a J10 directorate within the Joint Staff and establishing similar staff positions within combatant commands and military services, changes made for contingency contracting risk being ephemeral and subject to budget reductions as in the past. The Joint Staff's effort to institutionalize operational contract support would be greatly enhanced by a dedicated directorate which, with similar acquisition directorates, would coordinate through the services and unified commands at all levels.

**The Joint Staff's effort to institutionalize operational contract support would be greatly enhanced by a dedicated directorate.**

Afghan men working on USAID canal restoration project, Taktehpol, Afghanistan. (U.S. Air Force photo)



## CHAPTER 4

## Department of State

In its 2010 Quadrennial Diplomacy and Development Review (QDDR), State recognized a need for change, noting that contracting for both State and USAID has expanded while staffing levels stagnated: "These dual trends have resulted in reliance on fewer, larger awards that cover a broad range of activities, with less oversight."<sup>10</sup>

State's Under Secretary for Management testified at a Commission hearing that the department has made numerous changes in:

- contract management;
- the number of acquisition professionals, which has increased; and
- incorporating lessons learned into growing and evolving missions in Iraq and Afghanistan.<sup>11</sup>

The changes at State are welcome, but as at Defense, they do not go far enough in addressing the structural deficit within the executive management structure.

In a response to the Commission's recommendation to establish an office of contingency contracting, the Under Secretary of State for Management said the award from Washington, D.C., of "master contracts" for services with subsequent task orders for specific contingencies is a more efficient and responsive method to address the department's needs when responding to a contingency.

State has experienced significant problems with contingency-contract waste in both Iraq and Afghanistan in areas such as police training, construction of the new embassy compound in Baghdad, and the Pol-i-Charkhi prison in Kabul.

In its second interim report, the Commission recommended establishing offices of contingency contracting at Defense, State, and USAID, and appointing senior-level officials to facilitate planning,

preparedness, and resource allocation. These individuals would also be the focal point for interagency communications and coordinate contracting during contingencies.

10. Department of State, "Leading Through Civilian Power: The First Quadrennial Diplomacy and Development Review," December 15, 2010, 180-181.

11. Patrick F. Kennedy, Under Secretary of State for Management, Commission hearing, June 6, 2011.



State disagreed with the recommendation, saying that its centralized structure for acquisition is the most effective and efficient model and that a separate office for contingency contracting is not needed. In State's current configuration, the operational acquisition function reports to a Deputy Assistant Secretary, while the Chief Acquisition Officer (CAO) is an Assistant Secretary of State.

State views establishing a cadre of contracting personnel with experience in contingency contracting as inefficient and unnecessary. The department told the Commission that it can fund a surge capacity to dedicate resources to specific contingency operations. State also said training specifically for contingency contracting is unnecessary, as it can assign unique training requirements to adapt to new needs.

The Commission notes, however, that State has experienced significant problems with contingency-contract waste in both Iraq and Afghanistan in areas such as police training, construction of the new embassy compound in Baghdad, and the Pol-i-Charkhi prison in Kabul.<sup>12</sup> And in July 2011, Defense recommended that State's contracting officer's technical representatives (COTRs) receive additional training prior to transitioning contracts in Iraq.<sup>13</sup> These are not reassuring signs that a robust and effective capability to deal with contingency-support needs is in place at State.

While centralized contracting may be a workable organizational structure for State, the Commission believes the department is not set up in a way that reflects the importance of contracting to State's mission. Operational acquisition is buried within the department as part of logistics management within the Bureau of Administration. Operational acquisition is four levels below the Secretary of State—an outdated construct if contracting has truly become a mission enabler and is indeed a core function.

A telling marker of the status of acquisition at the State Department is that of approximately 200 Senior Executive Service and senior Foreign Service Officers under the authority of the Under Secretary for Management authority, only two are acquisition professionals.

12. William J. McGlynn, Principal Deputy Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, statement, Commission hearing, January 24, 2011; Joint Audit by the Inspectors General of Department of State and Department of Defense, DoD Report No. D2001-080 and DoS Report No. AUD/CG-11-30, "DoD and DoS Need Better Procedures to Monitor and Expend DoD Funds for the Afghan National Police Training Program," July 7, 2011, 1; Department of State IG Report No. AUD/IQO-09-25, "Audit of the Design and Construction of the New Embassy Compound in Baghdad, Iraq," October 2009, 1-4.

13. Defense Procurement and Acquisition Policy, memorandum, "Contracting Officer's Representative Designation - Iraq," July 11, 2011.

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#### U.S. Agency for International Development

USAID has made procurement reform part of its agency-wide improvement initiative. During a hearing before the Commission, the agency's administrator testified that USAID has initiated actions intended to achieve contracting reforms. Changes included replacing large multi-year contracts with one-year or 18-month contracts to improve competition.

He also stated that USAID has increased its staff by six contracting officers, increasing the capacity for management and oversight of programs in Afghanistan. Through integration of programs, the agency contract managers have more visibility into subcontractors and fewer layers to deal with.

The USAID administrator said procurement reform is central to the agency's success and that funding from budget requests for FY 2012 would enable improvements in contracting, oversight, and procurement management.

The Commission has recommended establishing an office dedicated to contingency contracting and appointing a senior official to facilitate planning, preparedness, and resource allocation, as well as serving as a focal point for interagency communications and coordination. The USAID administrator declined to endorse the Commission's recommendations:

USAID seeks to ensure that each and every officer has the capability to serve in a country that tomorrow may become our next contingency operation. We therefore require all of our contracting and agreement officers to maintain the capability to work in a contingency environment. At headquarters, we maintain an operations unit for foreign operations within the Office of Acquisition and Assistance. Our preference is to strengthen this office before devoting resources elsewhere.<sup>15</sup>

The Commission applauds USAID's self-assessment and its efforts to effect procurement reform. Development in both Iraq and Afghanistan has been seen as an essential pillar of U.S. long-term goals in both countries and as a key element in counterinsurgency (COIN) strategy, and in this USAID plays a crucial role. But

14. Patrick F. Kennedy, Under Secretary of State for Management, Commission hearing, June 6, 2011.

15. Dr. Rajiv Shah, Administrator, USAID, letter to Commission, July 8, 2011.

with the current pressure for cuts in federal spending, achieving this necessary reinforcement of USAID's capabilities will be a severe challenge.

As with Defense and State, the cultural change within USAID must go to the top of the organization. While requiring all contract-management personnel to maintain the capability to work in a contingency is laudable, the decentralized structure has not served the agency well. The gravest example is the fallout from the collapse of the Kabul Bank, showing that processes and rules that work elsewhere may be unsuitable in the midst of wartime operations.<sup>16</sup> Problems include over-reliance on contractors, missteps in developing requirements, lack of oversight of projects, inability to conduct quality assurance in a hostile environment, funds wasted, and schedules slipped.

As USAID reformulates procurement practices and builds its contracting workforce, the Commission believes this is an ideal time to adjust the way contracts and grants are awarded and managed, and to elevate the role of acquisition within the agency to better advise the administrator, as well as allow smoother coordination and communication with other agencies.

Contingency contracting, especially in an interagency operation, greatly benefits from contract managers and support staff who are experienced in meeting requirements in a restrictive and dangerous environment. The limitations in transportation and sources of supply, the lack of a trained local-contractor workforce, and the need for carefully vetted and armed security personnel may be addressed and mitigated through planning, preparation, and training.

USAID and U.S.  
Department of  
Agriculture officials  
with villagers near  
Qalat, Afghanistan.  
(U.S. Air Force photo)



16. Tim Cox, OIG/Afghanistan Director, USAID memorandum, "Review of USAID/Afghanistan's Bank Supervision Assistance Activities and the Kabul Bank Crisis," March 16, 2011.

## CHAPTER 5

Without adequate staffing and training, significant waste and possible failures can be expected as State faces the daunting task of the transition in Iraq and

Without a focus on contingency contracting in both State and USAID, skill sets, tradecraft, and knowledge gleaned from lessons learned will be soon forgotten and the benefit of any staffing gains will be lost.

future transition in Afghanistan. USAID also faces uncertainty if it is once again tasked with accomplishing its development mission in a war zone. Without a focus on contingency contracting in both State and USAID, skill sets, tradecraft, and knowledge gleaned from lessons learned will be soon forgotten and the benefit of any staffing gains will be lost.

### Acquisition as a core function

As noted, Defense, State, and USAID are resistant to changing the status quo by elevating acquisition within each agency. And the Joint

Staff has resisted calls to elevate contingency contracting from its niche within J4 (logistics) to a new J10 directorate.

The Services Acquisition Reform Act of 2003 established the position of the chief acquisition officer (CAO) at agencies other than Defense that are required to have chief financial officers.<sup>17</sup> The Act provided that the CAO shall be a "non-career employee" and shall:

- (A) have acquisition management as that official's primary duty; and
- (B) advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

The Act assigns authority and functions that include monitoring performance in acquisition, responsibility for related decision-making within the agency, managing the direction of policy, and assessing the skills of acquisition personnel.

The Act also clarified the role of the senior procurement executive (SPE), who will either be the CAO or report directly to the chief acquisition officer "without intervening authority."

The committee report for the Act indicated the CAO position was created to "eliminate stovepipes and serve as a focal point for acquisition in day-to-day

17. National Defense Authorization Act for FY 2004, sec. 1421, P.L. 108-136, codified at 41 U.S.C. 1702.

operations as well as in agency-wide strategic planning and performance evaluation processes.”<sup>18</sup> Yet departmental stovepipes persist.

At State, the assigned CAO is the Assistant Secretary of State for Administration. That official is responsible for procurement—but procurement is just one item in a grab-bag of unconnected duties and functions that include records management, supply, transportation, logistics, language services, and diplomatic-pouch service, among others.

At USAID, the CAO is a career employee, serves as senior procurement executive (SPE), and reports to the Bureau for Management. The Bureau also oversees the chief information officer (CIO) and the chief financial officer (CFO), both of whom have “dotted-line” reporting relationships to the agency administrator.

**The Commission believes that a CAO should have full-time, primary responsibility for acquisition, not simply have acquisition as one more duty in a long list of unrelated functions.**

The CAO/SPE is the director of the Office of Acquisition Assistance, a career employee within USAID, who has significant acquisition experience in the agency. The CAO reports to the Director of the Bureau for Management, who also has a background in procurement. While this arrangement seems in line with the Act, having 20 direct-report personnel within an organization appears managerially unwieldy and procedurally inefficient.

As provided in the Services Acquisition Reform Act of 2003, the chief acquisition officers for State and USAID should be appointed and properly placed within the agencies in order to effectively “advise and assist the head of the executive agency.” The position is responsible for widely varying duties, one being procurement, that impact both the headquarters staff and posts around the world. The CAO at State is currently positioned three levels below the agency head, within the Assistant Secretary of State for Administration’s organization. This position has in the past been occupied by persons without acquisition experience.

The Commission believes that a CAO should have full-time, primary responsibility for acquisition, not simply have acquisition as one more duty in a long list of unrelated functions. In addition, the CAO needs an extensive background in acquisition to carry out the duties and responsibilities the law requires. Contingency contracting would then be a key responsibility of this renewed position.

18. U.S. House of Representatives, Committee on Oversight and Government Reform, House Report 108-117, Part 1, May 19, 2003, 32.

Within Defense, State, and USAID, acquisition management must be given the same level of importance as agency offices and directorates dealing with finance, information technology, and human capital. Contingency contracting is central to an agency's ability to carry out its mission and pursue U.S. national strategic interests. This calls for making sure that agencies' acquisition executives are well positioned and properly staffed to advise and assist the agency head.

Meaningful progress towards achieving cultural change by recognizing that acquisition is a mission enabler will be limited as long as agencies resist major reforms that would serve to elevate the role of contracting. Cultural change will not occur without being embraced and actively promoted at the highest levels.

#### RECOMMENDATION 6

##### **Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID**

- The Commission endorses the House version of the National Defense Authorization Act for FY 2012, H.R. 1540, sec. 967, which would amend section 138(b) of Title 10 U.S.C., stating in part:
  - (a) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Contingency Contracting. The Assistant Secretary of Defense for Contingency Contracting is the principal adviser to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on matters relating to planning, funding, staffing, and managing contingency contracting of the Department of Defense.
  - (b) Requirement to Establish Office of Contingency Contracting - The Secretary of Defense shall rename and expand the Office of Program Support in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics as the Office of Contingency Contracting. The Office of Contingency Contracting shall be headed by the Assistant Secretary of Defense for Contingency Contracting and shall be responsible for planning, funding, staffing, and managing contingency contracting in the Department of Defense.<sup>19</sup>
- To elevate the role of contingency contracting at the Department of State, supporting the department's mission and ensuring that acquisition is viewed as a full business partner and not a back-room administrative function, State should:
  - establish a separate Bureau of Acquisition led by an assistant secretary for acquisition who has a background as a qualified acquisition

<sup>19</sup> H.R. 1540, sec. 967 (112<sup>th</sup> Congress).

professional and who would be designated as the agency's chief acquisition officer,

- ensure that the new bureau would have acquisition as its singular focus and primary mission, and
- establish additional Senior Executive Service positions to support the bureau's work.

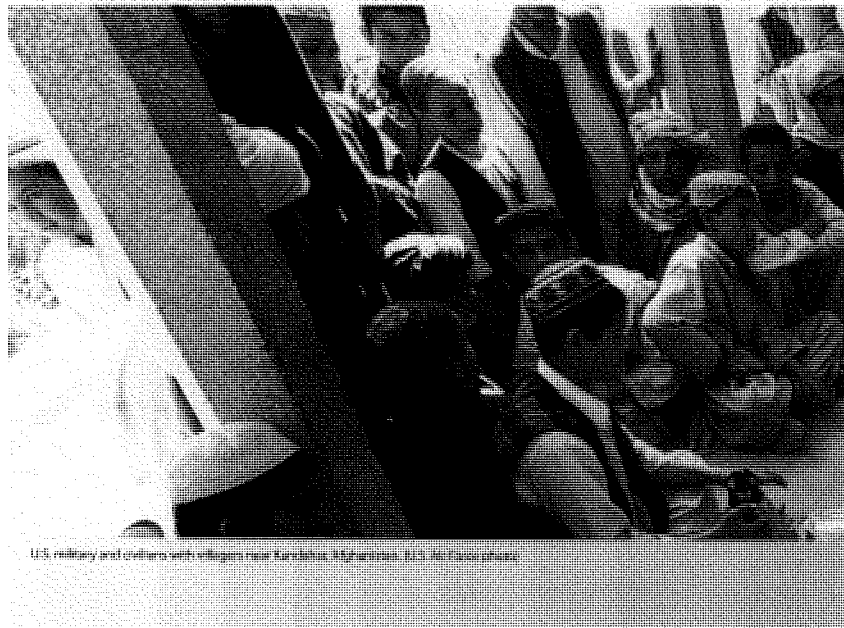
- The chief acquisition officer within USAID should be a non-career appointment at an organizational level so as to facilitate advising and assisting the agency head.
- In addition, Congress should amend 41 U.S.C. 1702 to provide that the CAO's duties include managing policy and monitoring contingency contracting.
- To elevate the role of contingency contracting within USAID, the CAO should be identified as a "direct adviser" to the Administrator, a similar position to that of the chief financial officer and the chief information officer.

#### ► RECOMMENDATION 7

#### **Elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, the combatant commanders' staffs, and in the military services**

Defense should:

- extract operational contract support and other contract-support duties and responsibilities from J4 (Logistics) and create a J10 Directorate of Contingency Contracting at the Joint Staff in order to better support contracting in other directorates and missions such as intelligence, communications, linguistic support, and security; and
- create functional alignment by establishing similar J10 organizations at the combatant commands and in the four military services.





## Chapter 6

### Agency structures and authorities prevent effective interagency coordination



## Agency structures and authorities prevent effective interagency coordination

**C**ontingencies involve interagency operations. For Iraq and Afghanistan, those operations have been poorly managed in Washington and in the field. The result has been failed and costly contract implementation. Government agencies have taken on responsibilities for which they were not prepared—through new missions, expansion of traditional missions, or both—and often have carried them out with only a cursory regard for what other agencies were doing.

Mission responsibilities have not been matched to resources. Blurred roles and demanding timelines for contracting support of expanded missions have contributed to unsatisfactory outcomes. Too often, contracts have been awarded without advance knowledge of specific requirements and without recognition of the importance of having adequate government resources for management and oversight.

Without more rational assignment of responsibilities and distribution of resources, agencies' stark differences—in philosophies, approaches to contingency tasks, management structures, and resource allocations—will continue to spill over into the contracting arena, wasting dollars and losing opportunities. Moreover, without an integrated audit and investigative capability, much of this waste will likely go undetected.

### The contingency mission stretches core competencies

Defense, State, and USAID have built their core competencies over decades, but the Iraq and Afghanistan contingencies have presented new demands on these competencies in type, tempo, and especially in order of magnitude. In both Iraq and Afghanistan, traditional civilian and military missions and core competencies have collided.

**USAID has struggled to adapt its longer-term development practices to the military's shorter-term objectives and timelines.**

Defense has become heavily engaged in stabilization and reconstruction—tasks seen as more akin to development than warfighting. USAID has struggled to adapt its longer-term development practices

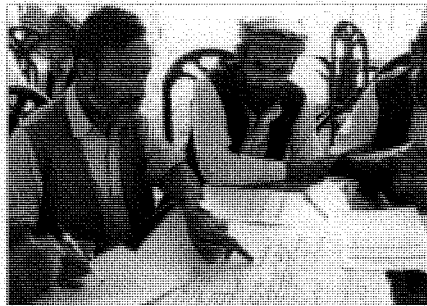
to the military's shorter-term objectives and timelines. And State's diplomatic and governance missions have called for costly and substantial contingency-contracting programs such as police training and major wartime construction, the scopes of which are well beyond its in-house experience base.

The following discussion outlines some of the "contingency unique" activities undertaken in Iraq and Afghanistan by Defense, USAID, and State.

### Department of Defense

Defense views contingency challenges through a short-term prism, filling any and all perceived needs as they are identified. It has a highly centralized management structure beginning in Washington and branching regionally through the combatant commands. Since 2001, in Afghanistan and Iraq, Defense's engagement in governance, reconstruction, and development is substantial, far-reaching, and extends beyond its core mission:

- **Commander's Emergency Response Program (CERP)**—Conceived as a program of modest, community-focused activities to fund immediate humanitarian relief and reconstruction needs, CERP appropriations since 2003 are approaching \$6.5 billion for Iraq and Afghanistan.<sup>1</sup> CERP has financed activities from small-scale community activities costing a few hundred dollars to large-scale power-generation and maintenance programs costing hundreds of millions of dollars. In the first quarter of fiscal year 2011 alone, Defense programmed more than 4,000 projects in Afghanistan costing \$67 million dollars.
- **Task Force on Business Stability Operations/Iraq (TFBSO)**—As the "de facto primary tactical economic development resource for the U.S. mission in Iraq," TFBSO deployed more than 600 business specialists to work throughout Iraq. The task force has promoted private investment,



Afghan district and provincial leaders at a CERP workshop, Nangarhar Province. (U.S. Army photo)

1. Special Inspector General for Iraq Reconstruction (SIGIR) 11-012, "Letter for the U.S. Secretary of Defense Director, Office of Management and Budget, subject: Commander's Emergency Response Program Obligations Are Uncertain," January 31, 2011, 1; Special Inspector General for Afghanistan Reconstruction (SIGAR) Audit Report 11-7, "Commander's Emergency Response Program in Laghman Province," January 27, 2011, 1.

re-started industrial and agricultural production, strengthened banking networks, and reformed budget and procurement policies.<sup>2</sup>

- **National Guard Agri-business Development Teams (ADT)**—National Guard units from nine states are mobilizing hundreds of soldiers each year to provide agricultural expertise in a dozen key Afghan provinces.
- **Village Stability Operations**—The special-operations command in Afghanistan is contracting for a multi-million dollar effort to field civilian agriculture experts in support of its teams seeking to establish security and promote stability and governance in key villages.
- **AfPak Hands**—A 250-strong cadre of career military officers who serve multiple tours in theater, some as embedded civilian advisers to senior Afghan civil servants, operates completely outside of the military's traditional civil-affairs mission.

Defense's engagement in governance, reconstruction, and development is substantial, far-reaching, and extends beyond its core mission.

### U.S. Agency for International Development

In contrast to Defense, USAID's principal focus has been humanitarian relief and long-term, sustainable development. It is highly decentralized, normally operating at the country level. It is severely resource-constrained and thinly staffed both in Washington and in the field. Consequently, it generally seeks to focus and concentrate its efforts within a given country. In Iraq and Afghanistan, USAID's traditional development approaches have been severely distorted in those fast-paced, highly insecure contingency environments.

- **Afghan Vouchers for Increased Production in Agriculture (AVIPA)**—In urgent need of a large stabilization capacity to support the troop surge, USAID dramatically expanded a modest \$60 million food-security initiative to provide seed and fertilizer into an extensive \$360 million stabilization project that included equipment purchases, cash for work, and community development in 2009. As noted in Chapter 3, the consequence was rampant waste and fraud.<sup>3</sup>

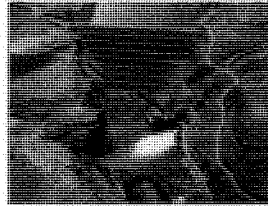
In Iraq and Afghanistan, USAID's traditional development approaches have been severely distorted in those fast-paced, highly insecure contingency environments.

2. Task Force for Business Stability Operations, "Enabling Security through Economic Opportunity: Iraq Final Impact Summary," January 31, 2011, 1.

3. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 11-12.

▪ **Strategic Provincial Roads (SPR)**—In contrast to its normal practice of not undertaking development projects in insecure areas, USAID launched SPR in 2008 as its component of an interagency counterinsurgency (COIN) effort to strengthen security and promote stability in marginal and insecure areas by engaging communities and using Afghan contractors to construct gravel roads. Three years and \$270 million later, the program is being closed down, having completed only a third of the planned 1,500 kilometers of roads, due mostly to the challenges of a steadily deteriorating security environment.<sup>4</sup>

▪ **Kajaki Dam**—The restoration activity was conceived and launched during the 2003-2005 period of relative calm and stability. Since then, a dramatic deterioration in security has essentially brought progress at the dam site to a halt.<sup>5</sup>



Kajaki Dam, Helmand Valley, Afghanistan, 2004. (U.S. Army photo)

Because Defense, State, and the International Security Assistance Force (ISAF) coalition deemed progress on the dam a vital COIN interest, USAID has been spending millions of dollars in an attempt to keep the project moving forward. By the time it is completed, USAID will have spent a substantial amount of money trying to maintain project momentum: paying for helicopters to fly in heavy construction materials and equipment, fielding numerous armed guards, and sustaining a barebones construction crew on site, all in addition to what was budgeted for the entire project at its inception.

### Department of State

State, while maintaining strong central direction, operates with a country focus, and often establishes special representatives to lead contingency efforts (for example, the Special Representative for Afghanistan and Pakistan). Its resources in people and funds, however, fall well short of the levels it seeks from Congress.

In Iraq and Afghanistan, State's core governance and diplomacy competencies have been severely stretched, being tasked to undertake training and capacity-building contracts, award and oversee high-dollar construction contracts, and manage large numbers of security contractors. While State has performed all of these tasks world-wide for years, the efforts in Iraq and Afghanistan are

4. USAID, Strategic Provincial Roads-Southern and Eastern Afghanistan (SPR-SEA) Program presentation, March 21, 2011, 1.

5. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 10.

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considerably larger than those it usually takes on. The following projects in the two theaters illustrate these concerns:

- **Pol-i-Charkhi Prison**—One of Afghanistan's main detention facilities, this construction project valued at \$24 million has been plagued by faulty requirements preparation, poor subcontractor selection, and problematic performance by the State Contracting Officer's Representative.<sup>6</sup>
- **Iraq Police Training Contract**—In June 2004, State awarded DynCorp a \$188.7 million task order for police training and support equipment. State paid \$43.8 million to manufacture, store, and provide security for trailers that were not used, and \$36 million for weapons and training equipment that could not be accounted for.<sup>7</sup>
- **Kabul Embassy New Housing and Office Expansion Construction**—The 1,000-plus civilians who were part of the 2009 U.S. surge—and the temporary housing and work space to accommodate them—are a mission-critical element of the U.S. transition strategy for Afghanistan. Unfortunately, due to poor contractor performance, the housing has only recently become available, roughly one year late and 18 months after the civilian surge began.

**When interagency operations are built upon a divergent understanding of roles and missions, failure and waste often follow.**

### Broken interagency processes hamper operations

The previous examples show Defense, State, and USAID extensively engaged in activities beyond their core competencies and capacities, and struggling to perform

many of them. Even more serious are interagency operations, where two or more agencies are working in concert to accomplish a COIN objective. When interagency operations are built upon a divergent understanding of roles and missions, failure and waste often follow.

6. Narcotics Affairs Section (NAS)/Bureau of International Narcotics and Law Enforcement (INL), "NAS/INL Construction Overview," November 16, 2010, 9; William J. McGlynn, Principal Deputy Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, statement, Commission hearing, January 24, 2011, 3.

7. SIGIR Audit Report 6-029, "Review of DynCorp International, LLC, Contract Number S-LMAQM-04-C-0030, Task Order 0338, for the Iraqi Police Training Program Support," January 30, 2007, F-II.

### Police training in Iraq and Afghanistan

This mission is claimed by both Defense and State, but each views it differently. In Iraq, Defense's short-term view has emphasized completing the mission and deploying 135,000 trained and equipped Iraqi police officers as quickly as possible. State has viewed police training as a subset of long-term criminal-justice and rule-of-law development. The departments' metrics for success could not be more different. Defense focused on "hitting the numbers," while State stressed integrating the effort into overall development of Iraqi government capacity.<sup>8</sup>

In reality, the Iraq requirement has been for both objectives, yet neither Defense nor State has brought the full package of capabilities to the table. Defense had the lead for police training, but lacked significant capabilities in nation building and civil governance. It depended on State to fulfill this role through sizeable police-training contracts.

State struggled to manage these contracts effectively. An Assistant Secretary of State said the mission in Iraq had "often outstripped our staffing and oversight capabilities, both domestically and in the field."<sup>9</sup> Moreover, no mechanisms have existed that could effectively integrate the planning and management of the overall police training program. Numerous audits and reviews have documented the ineffective contracting and waste that ensued.<sup>10</sup>

In Afghanistan, training the police is a monumental task due to high attrition rates, corruption, illiteracy, and sustainability challenges. Adding to the complexity, Defense and State initially spread these responsibilities across three contracts: training conventional police, training border police, and building capacity at the Ministry of Interior.



Iraqi police trainees, Basra, Iraq, 2011. (U.S. Army photo)

8. Department of State, Report No. ISP-IQO-05-72, and Department of Defense, Report No. IE-2005-002, "Interagency Assessment of Iraq Police Training," July 15, 2005, 3, 43-45.

9. Ambassador Anne Patterson, Assistant Secretary of State, Bureau for International Narcotics and Law Enforcement Affairs, House Committee on Armed Services, Subcommittee on Oversight and Investigations hearing, April 25, 2007, 4-5.

10. Department of State, Report No. ISP-IQO-05-72, and Department of Defense, Report No. IE-2005-002, "Interagency Assessment of Iraq Police Training," July 15, 2005, 43-45.

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In 2009, faced with a challenge to dramatically expand the size of the police force, Defense moved to consolidate these disjointed contracts into a single program that it would manage and execute itself. Despite this effort to rationalize the contracts, Defense's flawed acquisition strategy resulted in a protest and sole-source extension to the State contract, and in a lengthy delay in mobilizing the new contract, all costly and detrimental to the mission.<sup>11</sup>

### The Defense-to-State transition in Iraq

In two special reports and two congressional hearings, the Commission signaled its concern about lack of progress in the Iraq transition from Defense to State, while emphasizing that the rapidly approaching transition in Iraq is vital to stability in the region.

Expanding and sustaining State's presence in Iraq would be a huge undertaking in the best of circumstances. But circumstances are not the best, or even good. Iraq is a heavily damaged country confronting challenges that include a dynamic insurgency and substantial turmoil in the region. A pressing need is to complete arrangements for handing over the many support functions that the U.S. military

**Expanding and sustaining State's presence in Iraq would be a huge undertaking in the best of circumstances. But circumstances are not the best, or even good.**

has been performing as part of its mission. Many of these duties will continue to be required after the U.S. military's scheduled departure from Iraq by the end of December 2011, but as part of State's mission.

State has turned to contracting in the face of this huge new security, governance, and development mission. It is struggling to resolve budget issues and prepare requirements for awarding a large number of contracts, along with mobilizing the

many U.S. government civilians needed to effectively manage these contracts. This transition faces continuing challenges due to the magnitude and speed with which the handover is approaching, plus the uncertainty created by the possibility that a new intergovernmental agreement may extend some U.S. military presence beyond 2011.

11. Commission hearing, December 18, 2009, transcript, 16-17, 35, 63, 88, 95-96; GAO Report B-402349, "DynCorp International, LLC protest," March 15, 2010.



### Other examples of broken interagency processes

#### Kabul–Kandahar highway bridges

In summer 2008, insurgents destroyed numerous bridges on the Kabul–Kandahar Ring Road constructed by USAID. Three years after an interagency consensus on the counterinsurgency imperative of reconstructing the bridges as soon as possible, agreement on using CERP for funding, and on USAID serving as the executing agency, none of the bridges is complete. The promise of this interagency consensus was frustrated by the slow transfer of funds from Defense to USAID, among other problems.

#### Private security contractor oversight

Agencies have been working for many months to address the problem of vetting, training, and registering private security contractors and sub-contractors. The lack of common protocols for sharing resources and responsibilities among Defense, State, and USAID entails the risk of thousands of Afghan nationals receiving weapons without proper vetting, training, registering, or effective oversight.

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#### Counterinsurgency contracting

Throughout the spring of 2010, numerous U.S. and International Security Assistance Force entities and the Afghan government began to question how best to stem the leakage of funds from badly written and poorly overseen logistics, security, and reconstruction contracts.

After more than a year, agencies are finally beginning to arrive at a consistent interagency approach to contractor and subcontractor vetting, stronger contract clauses regarding contractor behavior, and limits on the layers of subcontracting, among other steps. In the meantime, however, hundreds of millions of dollars have flowed out to the networks of warlords, criminals, and insurgents, at huge cost to the COIN mission.<sup>12</sup>

12. USAID, "Accountable Assistance for Afghanistan white paper," June 21, 2011; GAO Report 11-355, "U.S. Efforts to Vet Non-U.S. Vendors Need Improvement," June 2011, 1; GAO Report 11-7711, "Operational Contract Support, Actions Needed to Address Contract Oversight and Vetting of Non-U.S. Vendors in Afghanistan," June 30, 2011.

### Challenges of in-country coordination

Effective in-country coordination requires clear delineation of roles and responsibilities for achieving mission objectives, effective interagency processes, and sufficient staff to perform the coordination tasks.

#### Roles and responsibilities are poorly defined

The government has recently devoted much effort to identifying, clarifying, and implementing agency and personnel roles and responsibilities. One strategic-level success in this effort is the Interagency Agriculture Strategy for Afghanistan, which clearly identified the roles and responsibilities of the U.S. Department of Agriculture (USDA), USAID, National Guard Agri-business Teams and the Afghan government.<sup>13</sup>

Other key development sectors, however, do not have such well-delineated strategies, whether developed outside or inside Afghanistan, for economic growth, infrastructure, health, education, or democracy and governance. Nor is interagency coordination effectively implemented in theater. Nevertheless, agencies plan, award, and manage high-dollar acquisitions in these sectors every month in Afghanistan.

#### The coordination process is exceedingly complex

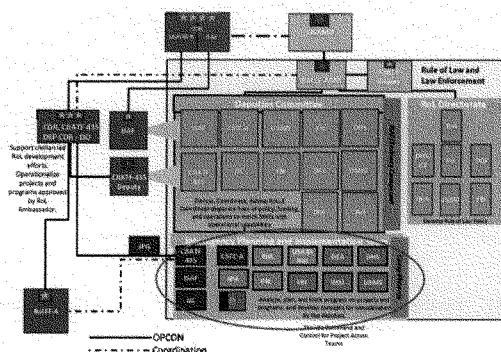
The need for interagency coordination, particularly among Defense, State, and USAID, is not new. Processes exist that can execute interagency contingency operations during the early stages of a humanitarian contingency such as the recent earthquake in Haiti. However, facing the fast operational tempo and timelines of a military contingency, and absent a deployable cadre, the various entities create their own processes from scratch. The result is a proliferation of ad hoc, complex, and time-consuming inter-agency and civilian-military coordination groups.

In a typical U.S. embassy, the USAID mission director—along with small attaché offices for Treasury, Agriculture, Justice, and other agencies—normally serves under the aegis of the deputy chief of mission. With the advent of the spring 2009 Afghanistan surge, though, the Kabul embassy became responsible for planning, coordinating, managing, and reporting on an interagency portfolio of several billion dollars of stabilization, governance, and development programs. It was charged with overseeing the day-to-day operations of 14 federal agencies, four regional platforms in the battlefield, and more than 1,000 new civilians arriving as part of the surge. In addition, the embassy faced a massive challenge in

13. USAID, "The US–Afghan Agriculture Partnership," November 2010, 5, 10.

For almost all of the entities involved, this was a dramatically new way of doing business. Unfortunately, at the outset the embassy did not have either the personnel or standard operating procedures for taking on such a complex coordination role, and much valuable and expensive time was lost.

**Figure 2. U.S. Rule of Law structure in Afghanistan**



The U.S. ROL group is not an isolated case. Each development sector—economic growth, health, education, infrastructure, democracy, and governance—has its interagency working group. Additional groups have been created to coordinate critical cross-cutting issues, such as COIN contracting, anti-corruption, threat finance, stabilization, major

crimes, Afghan First, the Afghan Presidential Decree 62, and the 2014 ISAF-to-Afghan government transition.

Moreover, none of these efforts includes the interagency coordination required to manage the efforts of the 49 participants in the NATO/ISAF mission, or relations with the multilateral donors or the Afghan government.

More daunting yet is the fact that most interagency-coordination elements in theater may or may not be mirrored by counterparts in Washington. This raises the possibility that the interagency-coordination structure may be marred by gaps, duplications, and cross-purposes. Further, a score of immature interagency-coordination mechanisms can easily become costly drains on personnel and financial resources.

### Essential elements for effective interagency coordination are missing

Chapter 5 stressed the urgency of strengthening contingency contracting capabilities and capacities at the agency level, and called for elevating the authority and responsibility to place them much closer to the agency heads. This is a necessary but not a sufficient step toward better coordination.

Agency heads perform strategic functions in their separate venues, but a single point of interagency-coordination authority with accountability is lacking. It is at this level that the essential elements for effective interagency coordination can be enforced and ensured by providing:

- a clear policy that identifies the accountable authority for overseeing interagency coordination and planning preparedness;
- a delineation of agency roles, responsibilities, and contingency core competencies, as well as a dispute resolution mechanism and associated funding commitments;
- an effective interagency contingency-planning process; and
- a mechanism for institutionalizing interagency coordination capability, through dedicated funding and a set of standard operating procedures.

In the absence of these elements, interagency coordination will remain ineffective.

### Policy and authorities

Strategic direction must be provided by one individual to and through an interagency structure. Officials from each of the agencies constituting that structure need to perform the same strategic function within their own agencies.

In addition, officials need to translate strategic direction into operational direction for the field. A field-based structure therefore must be created to ensure parallel integration and coordination. That field-based structure, created with appropriate authority, must also have the resources necessary to manage the process.

Defense uses a common operating picture to ensure unity of command and purpose as the basis for its operations in the field. A field-based common operating picture for all agencies can enhance the interagency and multilateral process as well, particularly the effective and efficient use of contracted resources.

### Roles and responsibilities

Effective interagency coordination demands that roles and responsibilities be clearly defined and assigned to the appropriate agency or mix of agencies. In both Washington and the field, interagency operations need to be staffed with the appropriate mix of civilian and military personnel. Yet no existing interagency process can assess arguments for or against substantial involvement of organizations operating in virtually identical spheres of activity. With billions of taxpayer dollars involved, this is a situation ripe for overlaps or gaps and the waste that comes with them.

With billions of taxpayer dollars involved, this is a situation ripe for overlaps or gaps and the waste that comes with them.

Clearly delineating roles and responsibilities may involve reallocating resources, authorities, and responsibilities among agencies. Military and civilian staffing should include not only enough resources to conduct assigned missions, but equally important, enough to manage and oversee the contractors hired to fill government gaps.

Much of the wasteful contracting in Afghanistan and Iraq can be attributed to poor interagency planning.

### Effective interagency planning

Much of the wasteful contracting in Afghanistan and Iraq can be attributed to poor interagency planning. Effective interagency planning takes time to arrive at a consensus, yet each of these contingencies was marked by little advance planning, ad hoc decision-making, and hurried implementation.

In the absence of an overriding policy and body of operating procedures, members of the interagency community are doomed to re-create processes and procedures once a new contingency begins.

The existing planning vehicle in the Afghanistan theater is the *Integrated Civilian-Military Campaign Plan*, the first version of which was signed in August 2009 after months of preparation. Immediately after signing it, the principals launched an update process, coordinated by a seasoned military planner. In February 2011, they signed the *Integrated Civilian-Military Campaign Plan, Revision 1*, and immediately launched the planning process for Revision 2.

Having an integrated plan is commendable, assuming that it is disseminated, understood, and faithfully executed. What is troubling from the viewpoint of interagency coordination is that it took nearly eight years from the start of U.S. military operations in Afghanistan to get to an agreed-upon plan, then another year and a half to make the first revision.

#### Institutionalizing the interagency capability

The previous examples also contain the seeds of improvement for interagency operational readiness for the current contingencies and for those to come. Lessons can be harvested as they emerge from the Afghan and Iraq contingencies. In the absence of an overriding policy and body of operating procedures, however, members of the interagency community are doomed to re-create processes and procedures once a new contingency begins.

There are substantial opportunities both to deploy the resources of the whole of the U.S. government more effectively and to avoid repeating past contracting failures. But in a time of shrinking budgets and tight competition for resources, sustaining the hard-won interagency capability will be a challenge. A dedicated funding stream, a core set of standard operating procedures, and a central decision-making authority are essential to institutionalizing these capabilities.

#### ► RECOMMENDATION 8

##### **Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction**

Congress should create a position in the Administration for a single dual-hatted official to:

- Serve at OMB and on the NSC staff.
- Ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission.

and that agencies' budgets are complementary rather than duplicative or conflicting. In OMB, this official should be a deputy director and thus a presidential appointee confirmed by the Senate.

- Oversee and ensure coordination of interagency contingency operations, including contracting-related matters. At the NSC, this senior official shall attend and participate in the meetings of the NSC as the principal advisor to the NSC on interagency contingency operations. This official should be a deputy national security adviser and deputy assistant to the President.

### Oversight agencies—a special challenge in interagency coordination

Audit and investigative oversight is a critical component of effective contingency contracting. Given the dramatic increases in resources, personnel, and contingency contracts being deployed in the two theaters, no agency operating in Afghanistan and Iraq has sufficiently bolstered its audit and investigation capabilities.

**Table 8. Federal agencies and departments supporting contingency operations in Iraq and Afghanistan through contracts and grants**

1. Department of Defense	7. Department of the Interior	13. Peace Corps
2. Department of State	8. Department of Homeland Security	14. Social Security Administration
3. U.S. Agency for International Development	9. Department of the Treasury	15. Department of Commerce
4. Department of Justice	10. Department of Agriculture	16. Department of Veterans Affairs
5. Department of Health and Human Services	11. Department of Transportation	17. Environmental Protection Agency
6. General Services Administration	12. Broadcasting Board of Governors	

Source: [www.USAspending.gov](http://www.USAspending.gov), last updated February 15, 2011.

Given the plethora of federal agencies and departments spending money for contracts and grants to support operations in Iraq and Afghanistan, it is a challenge to coordinate the efforts of five inspectors general, the Army Audit Agency, Defense Contract Audit Agency (DCAA), Defense, and service investigative agencies (Defense Criminal Investigative Service, Naval Criminal Investigative Service, among others), and the Government Accountability Office (GAO).

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None of these audit or investigative agencies, except GAO, has the authority to look at all aspects of contingency operations, and the coordination mechanism mandated by Congress has been ineffective.<sup>14</sup> In addition, when uncoordinated oversight occurs it leads to overlapping requests to the overseen entities for information, interviews, meetings, and reports. A permanent contingency inspector general could reduce the burden on entities operating in-country of multiple and duplicative requests for information and support.

Representatives of the audit community meet regularly in Washington and Afghanistan to share audit schedules and other matters. This has served primarily as an information-sharing meeting, and is insufficient to the task at hand.

Audits and investigations oversight requirements in Afghanistan and Iraq are mission-critical, given the scope, scale, and impact of waste and corruption in the two theaters and their pernicious effects on the U.S. mission. Civilian and military program managers acknowledge the critical value-added of the audit and investigative oversight, and seek timely feedback on what they might be doing better; all they ask is that they get the feedback in a timely manner so they can catch problems early.

The special inspectors general for reconstruction in both Iraq and Afghanistan, unlike the other inspectors general, have an interagency mandate. They have helped focus oversight attention and resources on contingency reconstruction problems. But their mandates do not include other important areas such as logistics or language services. Moreover, these offices did not exist at the beginning of the wars, were slow to get started, had problems in recruiting trained

personnel with experience in a war zone, and operate under a statutory mandate for closing down.

**The work of the Special Inspector General for Iraq Reconstruction and other audit organizations has demonstrated the value of having oversight capabilities and a visible presence in theater.**

Contingencies present unique risks and challenges to the oversight community requiring interagency-specific expertise in: contractor vetting, overseas investigations, the civilian-military interface, multi-lateral and coalition complexities, and host-nation relations. Given the heightened risk of waste, fraud, and

abuse in contingencies, ensuring proper oversight has the potential to reduce vulnerabilities, save dollars, and hasten the accomplishment of the mission.

14. Sec. 842, National Defense Authorization Act for FY 2008, P.L. 110-181.



No entity exists with sufficient resources, experience, and audit and investigative capabilities to transcend departmental and functional stovepipes and develop experienced audit and investigative staff to ensure visibility into contingency contracting waste, fraud, and abuse. In addition, no Inspector general organization has been able to deploy and execute operations at the outset of contingency. The work of the Special Inspector General for Iraq Reconstruction and other audit organizations has demonstrated the value of having oversight capabilities and a visible presence in theater.

No entity exists with sufficient resources, experience, and audit and investigative capabilities to transcend departmental and functional stovepipes.

In addition, there are no standardized certification requirements and training for auditors and investigators in contingency operations. A central office within a permanent inspector general that develops, plans, and delivers training for auditors and investigators who may be required to work in contingencies could help resolve this problem.

#### ► RECOMMENDATION 9

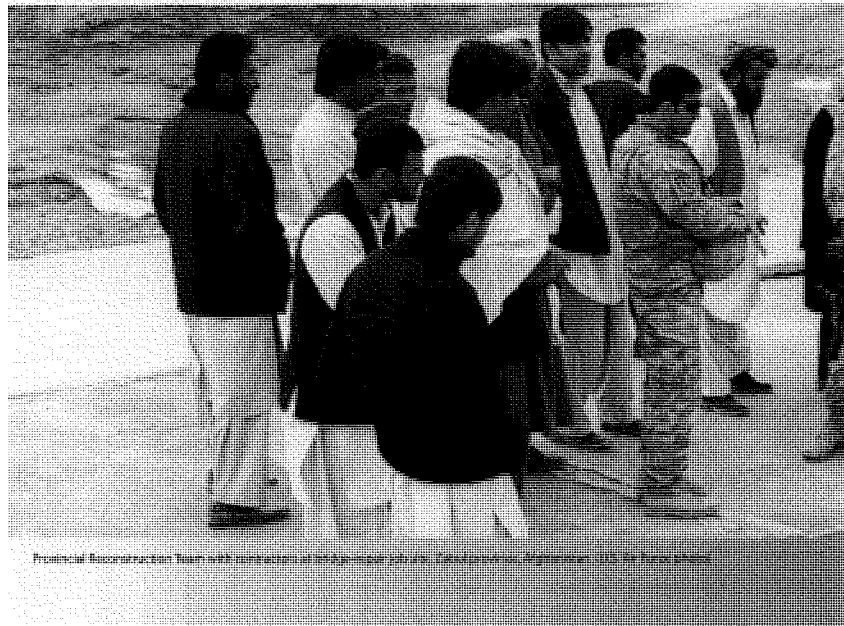
#### Create a permanent office of inspector general for contingency operations

Congress should establish and fund a permanent inspector general for contingency operations to:

- Operate with a small staff in collaboration with agency inspectors general to regularly assess the adequacy of agency planning and readiness for contingencies, to be ready to deploy at the outset of a new contingency, and to expand as necessary.
- Exercise audit and investigative authority over all functions (such as logistics, security, and reconstruction) and across Defense, State, USAID, and other agencies participating in contingency operations.
- Develop, plan, and, as appropriate, deliver investigative and oversight training targeted to contingency operations.

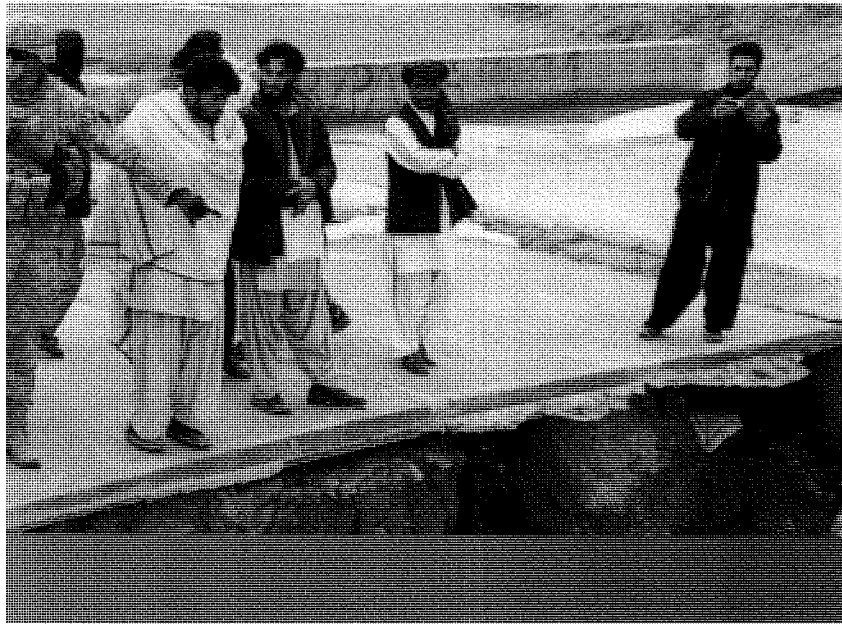
Advisors from Departments of State and Agriculture meet with Afghan locals, Panjshir Province, Afghanistan. (U.S. Army photo)





## Chapter 7

### **Contract competition, management, and enforcement are ineffective**



## Contract competition, management, and enforcement are ineffective

**A**gencies have faced unique challenges in trying to make peacetime practices regarding contract competition, management, and enforcement apply in Iraq and Afghanistan. They will likely face the same challenges in future contingencies. The need to accomplish missions in Iraq and Afghanistan with constrained resources has led to the award of contracts using procedures that have not resulted in effective competition.

The federal-procurement system is founded on three fundamental tenets that are as relevant in contingency contracting as in peacetime operations:

- full and open competition under which all responsible firms are allowed to participate;
- transparency through public notice of the U.S. government's requirements and awards; and
- process-integrity that is consistently enforced through policies and laws on ethical behavior, timely audits, and contract oversight.

Acquisition managers, overloaded with work, have not focused on recording and using contractor-performance evaluations as they might in peacetime, with the consequence that local, third-country, and U.S. contractors performing in Iraq and Afghanistan may escape agency oversight and law enforcement. The current contingencies have created a number of distinct problems:

- Unprecedented reliance upon a single-award task-and-delivery-order contract—such as the Logistics Civil Augmentation Program (LOGCAP) III contract—often undermines effective competition. Unless multiple contractors compete for task orders, it is difficult to obtain the best pricing or performance.
- The Defense Contract Audit Agency (DCAA) has accumulated a backlog of billions of dollars in unaudited contingency-contract costs.
- Portions of contract payments made to Afghan subcontractors were diverted to the insurgency—a problem that U.S. enforcement efforts are not yet equipped to handle.

Acquisition managers, overloaded with work, have not focused on recording and using contractor-performance evaluations as they might in peacetime.

- Agencies' failure to record contractor-performance assessments has serious consequences. Without the necessary insight into contractor performance, the risk of agencies' awarding contracts to habitual poor performers increases.
- For contractors performing in Iraq and Afghanistan, the United States may have no tool better than effective use of the suspension or debarment process; however, full-scale suspension and debarment procedures cannot be applied effectively in contingency environments.

In its second interim report and again here, the Commission recommends a number of improvements to contingency contracting to promote adherence to the fundamental tenets of the procurement process.

### Contingency-contracting competition is ineffective

Dynamic contingency operations generate rapidly changing support requirements that must be met within short timeframes. Effective competition motivates contractors to provide fair pricing, best value, and quality performance. On the other hand, the tension between a contractor's motivation to make a profit and the demand for good performance still exists.

The lessons from contingency contracting in Iraq and Afghanistan are that agencies have not effectively employed acquisition-management strategies that balance the United States' interests with contractors' competing objectives.

Afghan contractors registering so they can compete for contracts, Lashkar Gah, Afghanistan. (U.S. Marine Corps photo)



### Policies and practices hamper competition

Several policies and practices hamper competition in a contingency environment. Despite a more mature contracting environment in Iraq and Afghanistan today, Defense, State, and USAID still do not consistently emphasize competitive-contracting practices. Some of the agencies' procurement and acquisition strategies have restricted competition and favored incumbent contractors, even those with demonstrated performance deficiencies.

Agencies have repeatedly:

- awarded long-term task orders that were not recompeted when competitive conditions improved;
- extended contracts and task orders past their specified expiration dates, increased ceilings on cost-type contracts, and modified task orders and contracts to add extensive new work;
- favored using existing task- and delivery-order contracts like LOGCAP over creating more competitive and targeted contract vehicles;
- used cost-reimbursable contract types even though simpler, fixed-price contracts could expand the competitive pool; and
- failed to record incumbent contractors' performance assessments in the federal past-performance database.

**Defense, State, and USAID still do not consistently emphasize competitive-contracting practices. Some of the agencies' procurement and acquisition strategies have restricted competition and favored incumbent contractors, even those with demonstrated performance deficiencies.**

Federal agencies often rely on pre-existing task-order contracts and non-competitive awards to meet urgent, mission-critical needs. Agencies award "base" contracts for an indefinite quantity or schedule of work, then issue task orders against the contracts that include specific requirements and detailed terms and conditions. Inadequate competition is the result of awarding both the base contracts and the task orders issued against these contracts.

Contracting officers and contractors alike find it convenient to award task orders even though they often are awarded with inadequate competition, involve non-competitive sole-source contract modifications that extend the period of performance, and are awarded after only a single acceptable offer.

Much of the contingency-support requirements in Iraq and Afghanistan and in future contingencies will be met through the use of task- and delivery-order

contracts. Failure to maximize the use of multiple-award task- and delivery-orders rather than single-award contracts and to establish requirements that increase the ability of more than one contractor to compete meaningfully is simply inefficient.

### Competition advocates have not effectively enhanced contingency-contract competition

As contingency operations have stabilized, agencies have not adequately revised their traditional contingency-contracting approaches to introduce competition into many long-term support contracts.

- In Afghanistan, the Army twice modified its 2007 contract for interpreters instead of recompeting new requirements worth billions of dollars.<sup>1</sup> Contracting officers' ad hoc decisions to extend contracts demonstrated a failure to consider overall competition goals.
- Under State's critical Iraq police training contract, the agency circumvented the requirement for "fair opportunity" by awarding task order 1436, worth \$1.4 billion, without competition.
- Under the terms of the multiple-award LOGCAP IV contract, task orders are awarded for five-year periods (a base year plus four one-year options). Although DynCorp, KBR, and Fluor compete for task orders under the contract, the competition is limited and inadequate. The LOGCAP IV acquisition strategy provides little incentive for contracting officers to break out subcontracts or separately compete new requirements.
- For many years, the U.S. Army used the LOGCAP III contract for its logistics support in Iraq. LOGCAP III was a competitively awarded contract that was awarded to a single firm. Under this long-term contract, agencies' requirements were met through non-competitive task orders. Single-award task order contracts and frequent exceptions to competition illustrate the need to set and meet competition goals for contingency contracts.

As contingency operations have stabilized, agencies have not adequately revised their traditional contingency-contracting approaches to introduce competition into many long-term support contracts.

Agency competition advocates are responsible for monitoring and reporting aggregate rates of competition. Yet current reporting requirements do not carve out separate categories for contingency construction, services, or supplies. Combining these categories for measurement purposes misstates the true extent

1. The Federal Business Opportunities website has posted justification and approval documents for both extensions.

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of competition and prevents officials from focusing on those areas that need improvement.

Competition can be enhanced by looking for opportunities to transition cost-type to fixed-price contracts that may broaden the pool of qualified contractors to include those whose business systems do not meet the standards for a cost-type contract. The prospect of enhanced competition can motivate contractors to continuously improve their performance.

The House of Representatives, in its version of the National Defense Authorization Act for FY 2012, H.R. 1540, included key Commission competition recommendations regarding the establishment of competition goals and measures, as well as reviews and reports on competition levels. The Senate Armed

Services Committee's version of the Act for FY 2012, S. 1253, section 821, also included a provision addressing the Commission's recommendations concerning past performance. The Office of Federal Procurement Policy also supports the Commission's competition recommendations.

**Competition that is merely illusory undermines the U.S. government's ability to obtain the best value for taxpayers' money and to foster excellent contractor productivity and performance innovation.**

State and USAID have recognized the merits of the Commission's competition recommendations, but

both agencies questioned the practicality of applying the procedures during contingency operations. Therefore, the Commission re-emphasizes the need for competition reform. Prompt development of acquisition strategies along the lines of the Commission's reform proposals will lead to greater competition during contingencies.

Competition that is merely illusory undermines the U.S. government's ability to obtain the best value for taxpayers' money and to foster excellent contractor productivity and performance innovation. Defense recognized that it had not been taking advantage of the potential savings and performance improvements provided by effective competition. In September 2010, Defense implemented reforms to reduce the incidence of one-offer competitions. Other agencies have yet to place a similar emphasis on competition policy.



Accordingly, the Commission reiterates its previous recommendations for congressional direction to agency heads:

**► RECOMMENDATION 10**  
**Set and meet annual increases in competition goals for contingency contracts**

Agency heads should:

- require competition reporting and goals for contingency contracts;
- break out and compete major subcontract requirements from omnibus support contracts;
- limit contingency task-order performance periods;
- reduce one-offer competitions; and
- expand competition when only one task-order offer is received.

Because of agencies' failure to conduct contractor-performance assessments or record them in government-wide databases, agencies lack the necessary insight into contractor performance and have an increased risk of awarding contracts to habitual poor performers.

**Current contract enforcement tools are inadequate to protect government interests**

Agencies can improve their ability to conduct meaningful contract competitions if they consistently conduct and record contractors' performance assessments in the federal past-performance database, and use the performance information when making source-selection or suspension-and-debarment decisions.

**Agencies do not effectively use past-performance data in contingencies**

A Commission hearing in early 2011 confirmed its earlier conclusion that the required performance assessments are not completed and that contractors' performance in a contingency is not adequately shared across agencies.<sup>2</sup> Because of agencies' failure to conduct contractor-performance assessments or record them in government-wide databases, agencies lack the necessary insight into contractor performance and have an increased risk of awarding contracts to habitual poor performers.

2. Commission hearing, February 28, 2011.

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Contractor appeals of performance assessments distract contracting officers in contingencies and effectively discourage candid evaluations. Senior leaders have failed to enforce the requirement to conduct or record contractor assessments.

After considering comments received from contractors and agency officials, the Commission reiterates its previous recommendations that Congress direct agency heads to:

► **RECOMMENDATION 11**

**Improve contractor performance-data recording and use**

- Allow contractors to respond to, but not appeal, agency performance assessments.
- Align past-performance assessments with contractor proposals.
- Require agencies to certify use of the past-performance database.

**Agencies do not use suspension-and-debarment processes to full effect**

Suspension and debarment can be powerful tools to protect the government's interest in doing business only with contractors capable of performing their contractual obligations and maintaining acceptable standards of behavior. The opportunity costs of a suspension or debarment are very high for government contractors.

Nevertheless, agencies sometimes do not pursue suspensions or debarments in a contingency environment, preferring instead to enter into administrative agreements. In November 2010, the Louis Berger Group entered into a deferred-prosecution agreement with the Department of Justice after allegations of massive fraud. USAID did not suspend the firm. Instead, the agency entered into an administrative agreement which allowed the firm to continue competing for federal contracts.

When agencies fail to suspend contractors from participating in the federal marketplace despite chronic misconduct, criminal behavior, or repeated poor performance, the deterrent threat is lost.

Agency officials cite the complexity of suspension-and-debarment procedures as a reason for not using the tools as often as they could. In some circumstances, regulations provide contractors who have been proposed for suspension or debarment the opportunity to request a hearing on disputed facts before the agency takes final action. The Commission found that it is extremely difficult, if not impossible, to locate and

present witnesses and essential evidence in support of a suspension or debarment based on disputed facts in a contingency environment.

In addition, when officials determine that a recommendation to suspend or debar a contractor will not be pursued, they often do not record their justification. Documenting determinations and findings is not a burden, and is standard practice for most agencies. Further, the requirement for a written justification for not taking action applies only to official recommendations such as those by inspectors general or contracting officials.

### U.S. government has limited jurisdiction over criminal behavior of foreign contractors

Contingency operations and programs that expend huge sums of money over a short period of time have not employed effective tools and oversight techniques to minimize contract waste, fraud, and abuse. Contingency operations in Afghanistan are under special pressure to control the diversion of funds from contractors or subcontractors to insurgents.

In contingencies, the government depends on foreign contractors to a degree never seen in normal contracting, yet lacks the strong legal tools to deal with them. At a Commission hearing in June 2011, the Under Secretary of State agreed to pursue recovery of \$132 million from the firm First Kuwaiti for deficiencies in contracts for the design and construction of the new embassy compound in Baghdad. This was first reported in 2009. State's failure to recover the money points to a need for stronger tools for dealing with foreign contractors.

The government has not made full use of its recently developed system for vetting contractors to determine if they have known connections with the insurgency. The current Joint Contingency Contracting System tracks prime contracts, but not subcontractors. Subcontractors in Afghanistan are often small Afghan firms that pose a risk of being connected with "bad actors."

Termination of contracts and subcontracts with insurgent-connected firms without further payments being made to them is difficult. However, the House



Afghan contractors, Musa Qa'leh, Afghanistan. (U.S. Marine Corps photo)

## CHAPTER 2

of Representatives has included a provision in its version of the National Defense Authorization Act for FY 2012, H.R. 1540, section 821, that would void contracts with such entities. The Senate Armed Services Committee's version of the Authorization Act, S. 1253, contains a similar provision at section 861.

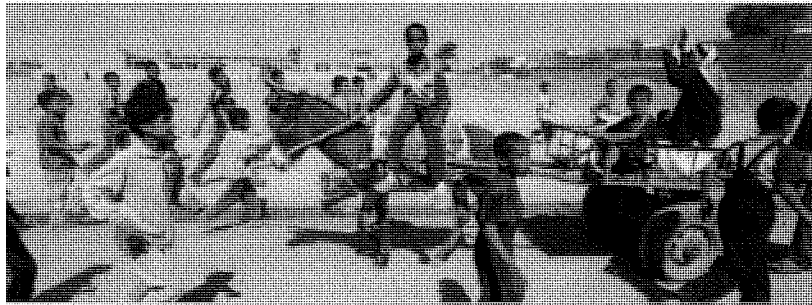
**Claims against foreign prime contractors and subcontractors have gone unaddressed because the U.S. courts lack personal jurisdiction over the foreign defendants.**

Investigating and prosecuting procurement-related crimes and other misconduct serve as powerful deterrents to contingency-contract waste, fraud, and abuse. This deterrent effect is especially important in the early stages of a contingency, when contractors perform in a rapidly changing environment and under limited government oversight. Deterrence is especially critical in large-scale contingencies, such as

Afghanistan, where agencies need reliable investigation and prosecution tools to deal with a number of big contractors whose inadequate business systems put large-scale contracts at risk.

Claims against foreign prime contractors and subcontractors have gone unaddressed because the U.S. courts lack personal jurisdiction over the foreign defendants. Without establishing personal jurisdiction, attempts by the United States and other parties to recoup damages for civil-contract claims, and for private parties to recover on tort claims arising out of conduct related to government contracts, are protracted and expensive for all parties involved. Foreign courts may

Iraqi children surround donkey cart, Blaj, Iraq. U.S. Navy photograph



be unavailable, unreliable, or otherwise unable to hear these claims. United States criminal jurisdiction over non-Defense contractors and subcontractors operating overseas also remains uncertain.

Contributing to the difficulty of prosecuting procurement-related crimes is the challenge of gathering evidence in contingency environments. The chaotic conditions of war zones often impede quick investigative responses. Investigative agencies are often unable to access information, physical evidence, and witnesses in a timely manner.

Contracting officers need a full array of tools for dealing with foreign or local contingency subcontractors. These firms come from an entirely different culture than that of the United States and they perform in a chaotic and unpredictable environment. Contracting officers need better visibility into subcontractor performance, as well as tools for intervening to avoid contract waste and fraud such as these:

**\$400 million Defense (Army) LOGCAP III contract**—The Tamimi subcontractor-kickback scandal detailed in Chapter 3 provides a strong example of the difficulties of investigating foreign subcontractors.

**\$17.6 million Defense (AFCEE) infrastructure project**—The Air Force subcontractor, ENCORP, failed to pay its second-tier subcontractors, and the ENCORP owner fled the country with around \$2 million. As detailed in Chapter 3, poor oversight and management of foreign subcontractors resulted in a delay of this important project for more than a year.

### Exploitation of persons in contingency contracting remains a serious problem in Iraq and Afghanistan

At many times during its travels and hearings, the Commission uncovered tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of contingency contractors.<sup>3</sup> Existing prohibitions on such trafficking have failed to suppress it. Labor brokers or subcontractors have an incentive to lure third-country nationals into coming to work for United States contractors, only to be mistreated or exploited.

Some prime contractors, although not themselves knowingly violating the prohibitions on trafficking, have not proactively used all their capacities to supervise their labor brokers or subcontractors. For such prime contractors,

3. Commission hearing, July 26, 2010.

agencies have not effectively applied positive and negative incentives in the contracts they award.

The Commission identified the need for a number of important changes to foster competition, improve contract management, and assure compliance in a contingency environment. If implemented, these changes will save billions of dollars and lead to more effective contingency contracting and accountability.

Accordingly, the Commission reiterates several recommendations from its second interim report and offers two new recommendations to strengthen contract-enforcement tools.

#### ► RECOMMENDATION 12 Strengthen enforcement tools

- Facilitate the increased use of suspensions and debarments for contingency contractors by revising regulations to lower procedural barriers and require a written rationale for not pursuing a proposed suspension and debarment.<sup>4</sup>
- Make consent to U.S. civil jurisdiction a condition of contract award.
- Expand the power of inspectors general.
- Amend acquisition regulations to require contracting-officer consent for the award of subcontracts valued at or above \$300,000 to foreign companies when performance will predominantly be conducted overseas in support of contingency operations.
- Direct agencies to incentivize contingency contractors to end trafficking in persons by labor brokers and subcontractors by requiring prime contracts to include performance incentives, such as award fees, and mandate that an assessment of contingency contractors' management of trafficking in persons be included in performance assessments.

4. In its February 2011 interim report, the Commission recommended mandatory suspension for contractors indicted on contract-related charges. Following additional research and deliberation, the Commission has withdrawn that provision from its recommendations to strengthen enforcement.

### **Contract management and administration resources are insufficient to conduct overseas-contingency operations**

Contingency-contract management problems extend far beyond contract auditing within a single department. As previously established in Chapter 2, affected federal agencies do not have adequate and deployable contracting capabilities. They continue to struggle with an absence of strategic planning and the lack of a dedicated budget to support related human-resources and information-systems requirements. Significant monetary returns will be realized by investment in additional staff and resources to conduct contingency contracting.

### **Contractor business systems and access to contractor records are ineffectual**

Following a Commission hearing and special report in 2009, Congress in the National Defense Authorization Act for FY 2011 authorized Defense to withhold payment to contractors with inadequate business systems as a means of protecting U.S. government interests and compelling contractor compliance. Still, the new rules under that Act cannot serve as a meaningful incentive unless payments are actually withheld upon the recommendation of auditors.

Authorizing civilian agencies to take similar measures regarding payment withholds would promote a government-wide approach to addressing problems related to contractor business systems. Withholds in defense and civilian agencies alike would also motivate contractors to shift priorities and make necessary business-system investments to assure agencies that contractor costs are accurate and reliable.

Access to contractor records and review of contractor business systems can also serve the government well in overseeing contractors, an always-challenging task in the chaos of contingencies.

In addition, expanding access to contractor records will help ensure that government audits are performed more efficiently and effectively and are directed at areas of greatest risk to the government in contingencies. Auditors could use such information to reduce the amount of labor-intensive audit-testing required to accept contractor costs. Benefits would include reducing resource requirements for both government and industry, as well as reducing the potential for contract waste and fraud.

**Significant monetary returns will be realized by investment in additional staff and resources to conduct contingency contracting.**

## CHAPTER 2

### DCAA and DCMA are understaffed to support operations in Iraq and Afghanistan

The benefit of conducting contingency-contractor performance oversight more effectively was reported recently by the Defense Contract Audit Agency (DCAA): a net savings of \$2.9 billion that equates to a return on investment of \$5.30 for every \$1 invested in the agency.

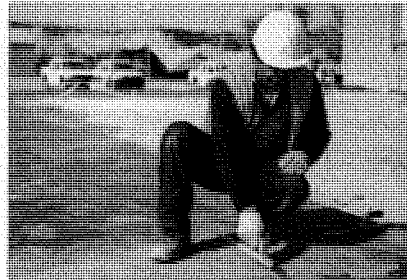
The current unaudited backlog stands at \$558 billion, having risen sharply from \$406 billion in only nine months. At current staffing levels, DCAA has reported that the backlog will "continue to grow virtually unchecked" and will exceed \$1 trillion in 2016.<sup>5</sup>

DCAA reports that long delays in performing audits increase the difficulty of locating the documentation necessary to conduct incurred-cost audits and further postpones the recovery of any unjustified payments on behalf of the taxpayers. Contractors are also concerned by long delays as the burden falls on them to maintain and produce records covering many years, and complicates their own cash management because of potential future outlays that may result from long-overdue audits. Since the historical return on incurred cost audits ranges from 0.2 percent to 0.4 percent of total dollars audited, reducing the entire \$558 billion backlog would save \$1.1 billion to \$2.2 billion.

**At current staffing levels, DCAA has reported that the backlog will "continue to grow virtually unchecked" and will exceed \$1 trillion in 2016.**

A recent independent study by the Army Force Management Support Agency recommended that DCAA would need a total workforce of 6,250 by 2015 to accomplish its mission. Defense is committed to fund additional staff for DCAA by that date, which would bring its total workforce to 5,700 personnel, of which 5,100 would be auditors. These increases would help reduce the backlog by providing the additional auditors who would be needed in a contingency environment. Nevertheless, Defense has not funded these increases for fiscal year 2012;

Civilian contractor, Al  
Raqia Air Base, Iraq.  
U.S. Marine Corps  
photo.



5. Defense Contract Audit Agency Manpower Study, 9.



moreover, the contemplated increases still appear to be insufficient to meet DCAA's needs, and funding could be reduced as a result of any future cuts in the Defense budget.

State and USAID have well-documented requirements for additional contingency staff to perform program management, contract oversight, and related activities. They rely upon their existing resources and in some cases on DCAA and Defense Contract Management Agency (DCMA) for operational contract support.

DCMA needs more deployable administrative contracting officers, contract administrators, quality-assurance representatives, and other technical personnel to effectively meet their customers' requirements. Given the current environment, in which the career workforce is shrinking, it will be necessary to draw military and civilian contracting officers, contract specialists, cost and price analysts, and procurement attorneys from various acquisition commands and U.S.-based procurement organizations to fill critical slots overseas.

Executive agency and military leadership, with the support of Congress, must effectively address contingency contracting as a core function and provide the requisite management changes and funding support for all agencies participating in the national-security mission. The initiatives set forth in this chapter represent a substantial investment in capabilities for future operations for all affected agencies and organizations. To reach full effect, these changes should be made from a whole-of-government standpoint, increasing each element's ability to support the other. A piecemeal approach will result in piecemeal solutions that will not bring about meaningful change.

#### ► RECOMMENDATION 13

##### **Provide adequate staffing and resources, and establish procedures to protect the government's interests**

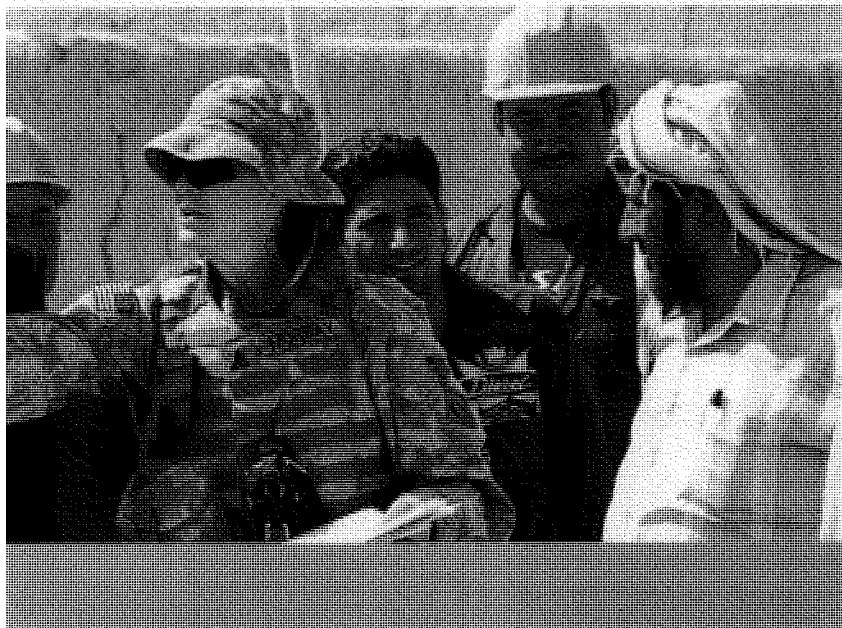
- Strengthen authority to withhold contract payments for inadequate business systems.
- Amend access-to-records authority to permit broader government access to contractor records.
- Increase agencies' staff and resources to enable adequate management of all aspects of contingency contracting: financial management, acquisition planning, business-system reviews, source selection, incurred-cost audits, performance management, property management, contract payment, and contract close-outs.



Afghan contractors and U.S. Army Corps of Engineers representative near Mazar-e-Sharif, Afghanistan. (U.S. Army photo)

## Chapter 8

### The way forward demands major reforms



## The way forward demands major reforms

**T**he United States was not prepared to go to war using contractors in Iraq and Afghanistan. As a result, tens of billions of dollars were lost to waste, fraud, and abuse.

Lulled by the quick success of the 1991 Gulf War and the Balkans deployments of the mid-'90s, we did not notice how great our reliance on contractors had become—or that some contractors themselves were so extensively involved in contract management.

Some members of the acquisition community and independent experts warned that the new pattern of heavy reliance could stress and break the contract management-and-oversight system operated by a depleted federal acquisition workforce.

The acquisition community, however, had no seat at the table in deciding whether to use contractors, and no voice in budgetary debates on how big the federal acquisition workforce should be to manage the hundreds of billions of dollars in contracts for which it was responsible. No serious reforms or resource commitments were made before the Iraq and Afghanistan contingencies laid bare the weakness.

**Much of the waste seen in Iraq and Afghanistan was preventable. Much that is occurring now can still be mitigated.**

Nearly a decade later, the importance of reform in contingency contracting still remains insufficiently appreciated. Meanwhile, the combined force of budgetary pressures and war

weariness threatens to push cost-control initiatives for contingency contracting into the background once again.

Much of the waste seen in Iraq and Afghanistan was preventable. Much that is occurring now can still be mitigated. And much that could occur in the future can be avoided. All it takes is the refusal to repeat mistakes, and the will to act.

### Reform will require resources and sustained effort

Despite some improvements in structures and practices, major problems exist, and much work remains to be done. The Commission's recommendations detail that work. Making these recommendations a reality, however, requires a collaborative, dedicated, and sustained effort by all participants in the process—contractors, Congress, the White House, and Executive Branch agencies including the Departments of Defense and State, USAID, the Office of Management and Budget, and the National Security Council.

Each participant in the contingency-contracting universe must recognize and take seriously its responsibility for supporting, implementing, or abiding by the reform recommendations that the government adopts. Contractors must act on the premise that they will truly be held accountable for their performance. Departments and agencies must realize that they need to do a better job of selecting projects and programs, defining the work to be done, coordinating their efforts, and managing the contractors they engage.



U.S. Army interpreter, Afghan national police officer, and contractors, Wardak province, Afghanistan. (U.S. Army photo)

The role of Congress is critical. The problems identified in this report will not fix themselves, and cannot be fixed for free, or even cheaply. It is not enough for Congress to say, "There are too many contractors," or "Some contractors are performing tasks reserved to the government," or "We need better oversight of contractors," or "We won't have another big contingency operation." Congress must direct and participate in serious reform.

Paying lip service to reform will not cure problems such as the Defense Contract Management Agency (DCMA) being under-staffed and at the mercy of temporary funding for many of its contract-management professionals. Nor will lip service help the Defense Contract Audit Agency (DCAA), whose backlog of incurred-cost contract audits has now grown to more than \$550 billion and will require years of work to reduce even if hundreds of new auditors were hired.

Unless Congress provides money and issues mandates for improved planning, management, and oversight capabilities there will be no significant change or real savings in contingency contracting. Given the current outlook for a crisis in

## CHAPTER 1

the federal budget, the temptation will be powerful to postpone the investments needed to support contingency-contracting reform and to avoid making hard choices.

Congress must resist that temptation and recognize that preparedness for contingency contracting is as much a national-security priority as procuring weapons systems.

► **RECOMMENDATION 14**

**Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission**

### Elements needed to be ready for the next contingency

The convergence of emergency responders in New York City and Washington after the 9/11 attacks, the speedy overthrow of the Taliban regime in Afghanistan that was harboring al Qaeda terror plotters, the response of U.S. military units to the Hurricane Katrina disaster, and other episodes in modern American history confirm that energy, ingenuity, and resolve can improvise solutions and cobble together working arrangements to tackle vast challenges.

Unfortunately, that ad hoc approach is costly, inefficient, and a threat to mission objectives. The Commission's work, reports by federal inspectors general, and congressional investigations have demonstrated that improvised arrangements risk duplication, gaps, delays, inadequate oversight, poor coordination, and threats to mission success that can carry harsh price tags in money and lives.

**The United States has at all times since 1988 been involved in at least one overseas military deployment.**

Considering that the United States has *at all times since 1988* been involved in at least one overseas military deployment (see Chapter 1), and that the country chronically faces unpredictable threats of national emergencies and international humanitarian disasters, the high cost of repeating ad hoc arrangements for contract support is unacceptable. In addition, a potentially large but hidden cost of recreating contingency-support arrangements

is the risk that lessons learned and institutional memory will dissipate between contingencies—another problem that the Commission's recommendations address.

Enactment or adoption of Commission recommendations presented in previous reports or introduced in this report would provide the United States with a ready-to-roll capability to address new contingencies from the outset. This capability would ensure better contract management and oversight, promote better selection and coordination of agencies' efforts, and avoid a great deal of waste. The reform recommendations creating this capability include:

- giving recognition to "total force" doctrine by including clear contracting guidance in planning, training, exercises, doctrine, and in policy documents like Defense's Quadrennial Defense Review and State's Quadrennial Diplomacy and Development Review;
- requiring metrics for readiness and performance reports for Defense, State, and USAID unit preparedness;
- applying risk-based staffing assessments to determine organic agency resources needed to preserve core capabilities, including managing contractors;
- creating a trained, experienced, expandable, and deployable cadre for contingency acquisition-support functions;
- preparing more competitive contract vehicles and better enforce rules for contracting;
- establishing a senior federal position responsible for overall strategic direction, mission alignments, and interagency coordination for contingency operations to provide a whole-of-government approach;
- establishing senior agency positions responsible for contingency contracting;
- elevating the role of contingency contracting by establishing a new J10 (operational contract support) directorate headed by a flag officer on the Joint Staff; and
- creating a permanent office of inspector general for contingency operations whose staff would be ready to deploy at the onset of a contingency, and who would monitor agencies' planning and preparedness activities between contingencies.



U.S. Marine guard  
Honorably Discharged (U.S. Navy  
photo)

## CHAPTER 3

The combined effect of these measures would be to create a pre-packaged set of capabilities so that, for example, plans for implementing operational contract support could be quickly adapted to local conditions, and so that contract managers and auditors would arrive in theater with operational personnel and contractors, not months or years later.

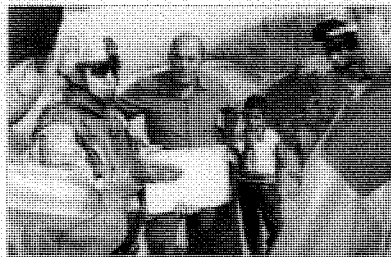
### A forcing function is needed

The Commission has offered a number of recommendations in this final report, as well as in its February 2011 second interim report and five special reports. Agencies have adopted some and are considering others. Lawmakers have supported a few, in whole or part, in proposed legislation. These are encouraging signs.

But the breadth and depth of problems in contingency contracting dash any hope of quick and easy fixes. Some needed reforms will take years of effort to arrange and implement—a time span that not only exceeds the life of this Commission, but probably the terms in office of many current decision makers.

Some agencies have recognized the need to document the lessons of Afghanistan and Iraq, and to make changes in the aspects of their doctrine and operations that they can influence. The U.S. Army and the U.S. Air Force have active lessons-learned centers, and USAID has taken some useful steps as well. The Army, for instance, has set up a Peacekeeping and Stability Operations Institute at the Army War College and an irregular Warfare Fusion Cell at its Combined Arms Center, among other initiatives. The challenge of preserving lessons learned and advocating change could also benefit from sustained attention from a federally funded research institute, an independent think tank, or similar entity.

The Center for Complex Operations at the National Defense University could be another logical nexus of thinking and advocacy for contingency-contracting reform. It has already published useful examinations of the impact of Provincial Reconstruction Teams, implications of the end of the nation-state monopoly on war, and other topics bearing on contingency operations.



U.S. Army soldier with contractors, Baghdad, Iraq. (Defense photo)



These initiatives are helpful and encouraging. Nonetheless, the main responsibility for driving change lies with the leadership of Congress and the Executive Branch. A forcing function is needed to ensure widespread and effective adoption of contingency-contracting reform.

Without a forcing function, agency inertia, resistance to change, sporadic attention, personnel turnover, and a lack of sustained and focused leadership will weave a heavy blanket that smothers progress. Effective implementation of reform requires establishing a method for periodic reporting on the status of Commission recommendations to keep the reform agenda in decision makers' field of vision.

► **RECOMMENDATION 15**

**Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform recommendations**

The legislation should require:

- The Secretaries of Defense and State and the Administrator of USAID to submit reports detailing their plans for implementation of Commission recommendations, commencing 180 days from enactment of the legislation, with annual reporting thereafter.
- Agencies' reports shall be submitted to congressional committees of jurisdiction (armed services, homeland security, government oversight, and foreign affairs); to the inspectors general of the Departments of Defense and State, and of USAID; and to the officials holding the proposed new positions at OMB/NSC and the permanent inspector general for contingency operations, all of whom would be required to review and validate the reports.
- Reporting requirements that include:
  - actions taken or planned to implement recommendations, including an implementation schedule with milestones and assignments of responsibility;
  - explanations for non-implementation of recommendations, including counter-measures for barriers to implementation; and
  - evaluation within 120 days by the Comptroller General of the United States and agency inspectors general (and the permanent contingency inspector general when available) of the agencies' reports and their compliance with requirements.

### The government cannot afford denial and complacency

American and allied involvement in hostilities in Iraq and Afghanistan is declining. But it would be the height of folly to suppose that the many documented difficulties with contingency contracting will decline and disappear as that involvement ends. If anything, as troop numbers decline, the number of contractors may *increase*, at least in the short term, for it may be many years—if ever—before the United States fully withdraws from operations in Iraq and Afghanistan.

Even if hostile forces, whether insurgents or terrorists, were to lapse into a prolonged period of inactivity, mass-casualty natural or humanitarian disasters such as floods, hurricanes, or earthquakes in the United States or elsewhere will surely require new contingency-contract support.

Still, the prospect of purely military contingencies recurring with little warning cannot be discounted or dismissed. The unexpected and swift development in spring 2011 of a campaign of United States and NATO suppression of Libyan government attacks on civilians is a recent case in point. It illustrates how quickly unanticipated responses that include contractor support may be required. Unrest in Somalia or Yemen, or the aftermath of the “Arab Spring” popular uprisings of 2011 could also present U.S. decision makers with conditions requiring consideration of a contingency response.

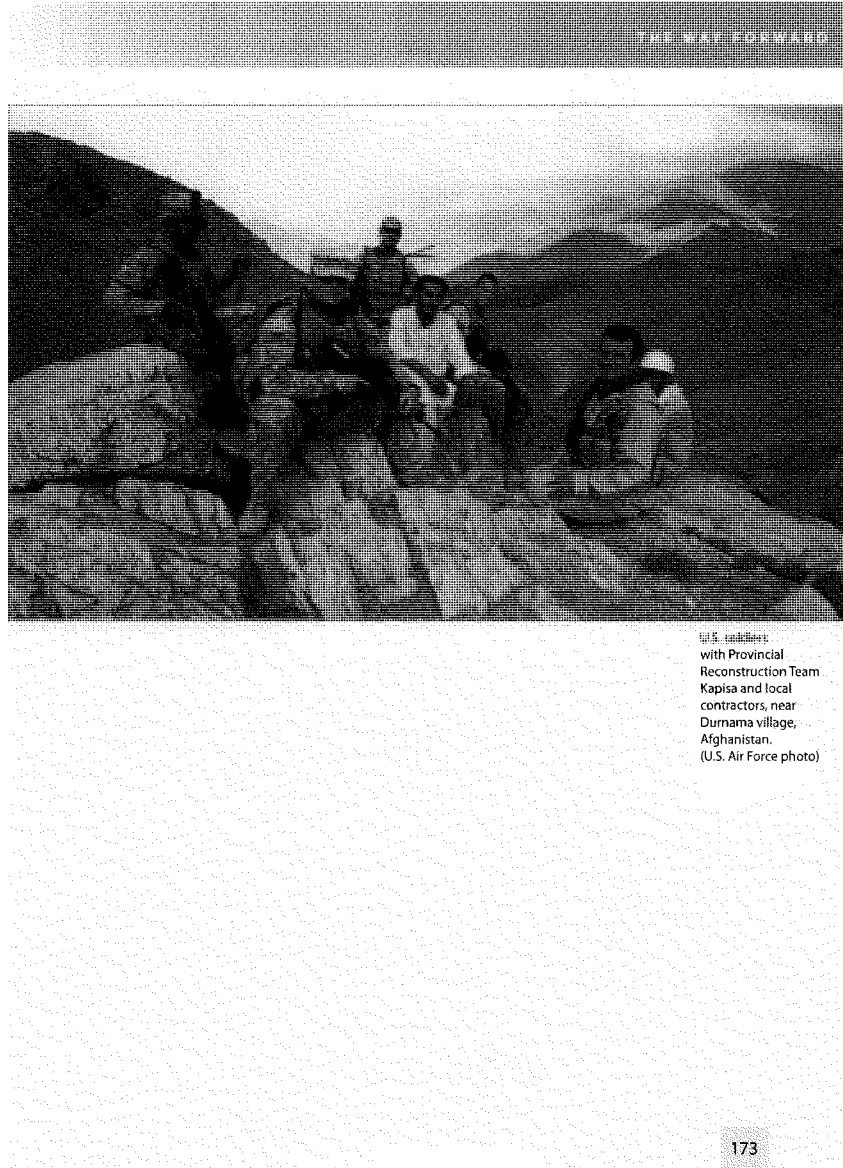
**The United States will not be able to conduct large or sustained contingency operations without major contractor support.**

The United States will not be able to conduct large or sustained contingency operations without major contractor support. Avoiding a repetition of the waste, fraud, and abuse seen in Iraq and Afghanistan requires either a great increase in agencies’ ability to perform core tasks and

to manage contracts effectively, or a disciplined reconsideration of plans and commitments that would require intense use of contractors.

Failure by Congress and the Executive Branch to heed a decade’s lessons on contingency contracting from Iraq and Afghanistan will not avert new contingencies. It will only ensure that additional billions of dollars of waste will occur and that U.S. objectives and standing in the world will suffer. Worse still, lives will be lost because of waste and mismanagement.

The nation’s security demands nothing less than sweeping reform.



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Commissioners at April 19, 2011 meeting. Left to right: Robert H. Rosen, David S. Rosen, David S. Rosen, Christopher Shays, Michael T. Pappas, Katherine Kuhlman, Carl K. Smith, and George J. Taylor.

## Appendixes



## Appendix A

# Commission recommendations

In addition to this final report, the Commission's second interim report, "At what risk? Correcting over-reliance on contractors in contingency operations," and its five special reports included recommendations for improving contingency contracting.

Summaries of these reports are found in Appendix C. All Commission reports are available on its public website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov).

An overview of all Commission recommendations follows. Note that some of the recommendations made in the second interim report are repeated in this final report.

### FINAL REPORT

#### Transforming Wartime Contracting: Controlling costs, reducing risks

The key recommendations in the Commission's final report, arranged by chapter, are:

#### RECOMMENDATIONS

##### Chapter 1. Agencies over-rely on contractors for contingency operations

*This chapter contains no recommendations.*

##### Chapter 2. 'Inherently governmental' rules do not guide appropriate use of contractors in contingencies

1. Use risk factors in deciding whether to contract in contingencies
2. Develop deployable cadres for acquisition management and contractor oversight
3. Phase out use of private security contractors for certain functions
4. Improve interagency coordination and guidance for using security contractors in contingency operations

##### Chapter 3. Inattention to contingency contracting leads to massive waste, fraud, and abuse

*This chapter contains no recommendations.*

##### Chapter 4. Looming sustainment costs risk massive new waste

5. Take actions to mitigate the threat of additional waste from unsustainability

##### Chapter 5. Agencies have not institutionalized acquisition as a core function

6. Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID
7. Elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, the combatant commanders' staffs, and in the military services

**Chapter 6. Agency structures and authorities prevent effective interagency coordination**

8. Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction
9. Create a permanent office of inspector general for contingency operations

**Chapter 7. Contract competition, management, and enforcement are ineffective**

10. Set and meet annual increases in competition goals for contingency contracts
11. Improve contractor performance-data recording and use
12. Strengthen enforcement tools
13. Provide adequate staffing and resources, and establish procedures to protect the government's interests

**Chapter 8. The way forward demands major reforms**

14. Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission
15. Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform recommendations

**SECOND INTERIM REPORT****At what risk? Correcting over-reliance on contractors in contingency operations**

ISSUED FEBRUARY 24, 2011

In this report, the Commission made recommendations to address the underlying causes of poor outcomes in contracting and to institutionalize changes for lasting effect.

**Section I. Contractors have become the default option**

1. Grow agencies' organic capacity
2. Develop a deployable contingency-acquisition cadre
3. Restrict reliance on contractors for security

**Section II. Agencies do not treat contingency contracting as a core function**

4. Designate officials with responsibility for cost consciousness
5. Measure senior military and civilian officials' efforts to manage contractors and control costs
6. Integrate operational contract support into plans, education, and exercises
7. Include operational contract support in readiness and performance reporting
8. Establish a contingency-contracting directorate in the Offices of the Joint Chiefs of Staff
9. Establish offices of contingency contracting at Defense, State, and USAID
10. Direct the Army's Installation Management Command to manage bases and base-support contractors in contingencies

**Section III. Interagency organizational structures do not support contingency operations**

11. Establish a new, dual-hatted position at the OMB and the NSC to provide oversight and strategic direction for contingency operations
12. Create a permanent office of inspector general for contingency operations
13. Establish interagency certification requirements and training curricula for contingency acquisition personnel
14. Create a committee to integrate the individual authorities, resources, and oversight of contingency operations

**Section IV. Policies and practices hamper contingency competition**

15. Require competition reporting and goals for contingency contracts
16. Break out and compete major subcontract requirements from omnibus support contracts
17. Limit contingency task-order performance periods
18. Reduce one-offer competitions
19. Expand competition when only one task-order offer is received
20. Allow contractors to respond to, but not appeal, agency performance assessments



- 21. Align past-performance assessments with contractor proposals
- 22. Require agencies to certify use of the past-performance database

**Section V. Enforcement policies and controls fail to ensure contractor accountability**

- 23. Require a written rationale for not pursuing a proposed suspension or debarment
- 24. Increase use of suspensions and debarments
- 25. Revise regulations to lower procedural barriers to contingency suspensions and debarments
- 26. Make consent to U.S. civil jurisdiction a condition of contract award
- 27. Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas
- 28. Establish a permanent organization to investigate international-contract corruption
- 29. Expand the power of inspectors general
- 30. Raise the ceiling for access to the Program Fraud Civil Remedies Act
- 31. Strengthen authority to withhold contract payments for inadequate business systems
- 32. Amend access-to-records authority to permit broader government access to contractor records

## Recommendations in special reports

### **SPECIAL REPORT 1**

#### **Defense agencies must improve their oversight of contractor business systems to reduce waste, fraud, and abuse**

ISSUED SEPTEMBER 21, 2009

The Commission learned that unreliable data from business systems produced billions of dollars in contingency-contract costs that government auditors often could not verify. The Commission recommended that:

1. DoD needs to ensure that government speaks with one voice to contractors
2. DoD needs to improve government accountability by rapidly resolving agency conflicts on business systems
3. Defense Contract Audit Agency (DCAA) needs to expand its audit reports to go beyond rendering a pass/fail opinion
4. Defense Contract Management Agency (DCMA) needs to develop an effective process that includes aggressive compliance enforcement
5. DCAA and DCMA need to request additional resources and prioritize contingency-contractor oversight workload

### **SPECIAL REPORT 2**

#### **Lowest-priced security not good enough for war-zone embassies**

ISSUED OCTOBER 1, 2009

The Commission urged that Congress change a statutory restriction on the State Department's ability to choose security contractors for its overseas Foreign Service buildings. The Commission recommended that Congress:

1. Amend the law to permit best-value competition

### **SPECIAL REPORT 3**

#### **Better planning for Defense-to-State transition in Iraq needed to avoid mistakes and waste**

ISSUED JULY 12, 2010

The Commission found that planning for transitioning vital functions in Iraq from the Department of Defense to the Department of State was not adequate for effective coordination of billions of dollars in new contracts, and recommended that:

1. The Departments of Defense and State accelerate, intensify, and better integrate their joint planning for the transition in Iraq
2. All levels of Defense and State immediately initiate and complete planning with the Government of Iraq to address critical security functions now performed by Defense
3. State use, on a reimbursable basis, DoD's LOGCAP IV contract
4. Congress immediately provide additional resources to State to support its increased contracting costs and personnel needs

**SPECIAL REPORT 4****Iraq—a forgotten mission?****The United States needs to sustain a diplomatic presence to preserve gains and avoid waste as the U.S. military leaves Iraq**

ISSUED MARCH 1, 2011

The Commission recommended that:

1. Congress ensure adequate funding to sustain State Department operations in critical areas of Iraq, including its greatly increased need for operational contract support
2. The Department of State expand its organic capability to meet heightened needs for acquisition personnel, contract management, and contractor oversight
3. The Secretaries of State and Defense extend and intensify their collaborative planning for the transition, including executing an agreement to establish a single, senior-level coordinator and decision-maker to guide progress and promptly address major issues whose resolution may exceed the authorities of departmental working groups

**SPECIAL REPORT 5****Sustainability: hidden costs risk new waste****Preparations for ending U.S. military presence and contracting activities in Iraq and Afghanistan must include action to avoid waste from host nations' inability to operate and maintain projects and programs**

ISSUED JUNE 3, 2011

The Commission recommended that:

1. Officials at the Department of Defense, the Department of State, and USAID examine both completed and current projects for risk of sustainment failure and pursue all reasonable strategies to mitigate risks
2. Officials ensure that any *new* requirements and acquisition strategies regarding contingency contracts for projects or services to be handed over to a host nation include a detailed assessment of that host nation's ability and will to meet the out-year costs essential for long-term success
3. Officials take appropriate action to cancel or redesign projects or programs that have little or no realistic prospect for achieving sustainability
4. Officials report to Congress by December 31, 2011, and annually thereafter, their analysis of current and proposed projects and their planned actions for mitigating sustainability risks

## Appendix B

## Authorizing statute and extension

## NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FISCAL YEAR 2008

[110th Congress, Public Law 110-181, Section 841 (January 28, 2008)]

## SEC. 841. COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the “Commission on Wartime Contracting” (in this section referred to as the “Commission”).

(b) MEMBERSHIP MATTERS.—

(1) MEMBERSHIP.—The Commission shall be composed of 8 members, as follows:

(A) 2 members shall be appointed by the majority leader of the Senate, in consultation with the Chairmen of the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Foreign Relations of the Senate.

(B) 2 members shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairmen of the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Foreign Affairs of the House of Representatives.

(C) 1 member shall be appointed by the minority leader of the Senate, in consultation with the Ranking Minority Members of the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Foreign Relations of the Senate.

(D) 1 member shall be appointed by the minority leader of the House of Representatives, in consultation with the Ranking Minority Member of the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Foreign Affairs of the House of Representatives.

(E) 2 members shall be appointed by the President, in consultation with the Secretary of Defense and the Secretary of State.

(2) DEADLINE FOR APPOINTMENTS.—All appointments to the Commission shall be made not later than 120 days after the date of the enactment of this Act.

(3) CO-CHAIRMEN.—The Commission shall have two co-chairmen, including—

(A) a co-chairman who shall be a member of the Commission jointly designated by the Speaker of the House of Representatives and the majority leader of the Senate; and

(B) a co-chairman who shall be a member of the Commission jointly designated by the minority leader of the House of Representatives and the minority leader of the Senate.

(4) VACANCY.—In the event of a vacancy in a seat on the Commission, the individual appointed to fill the vacant seat shall be—

(A) appointed by the same officer (or the officer’s successor) who made the appointment to the seat when the Commission was first established; and

(B) if the officer in subparagraph (A) is of a party other than the party of the officer who made the appointment to the seat when the Commission was first established, chosen in consultation with the senior officers in the Senate and the

House of Representatives of the party which is the party of the officer who made the appointment to the seat when the Commission was first established.

(c) DUTIES.—

(1) GENERAL DUTIES.—The Commission shall study the following matters:

- (A) Federal agency contracting for the reconstruction of Iraq and Afghanistan.
- (B) Federal agency contracting for the logistical support of coalition forces operating in Iraq and Afghanistan.
- (C) Federal agency contracting for the performance of security functions in Iraq and Afghanistan.

(2) SCOPE OF CONTRACTING COVERED.—The Federal agency contracting covered by this subsection includes contracts entered into both in the United States and abroad for the performance of activities described in paragraph (1).

(3) PARTICULAR DUTIES.—In carrying out the study under this subsection, the Commission shall assess—

- (A) the extent of the reliance of the Federal Government on contractors to perform functions (including security functions) in Iraq and Afghanistan and the impact of this reliance on the achievement of the objectives of the United States;
- (B) the performance exhibited by Federal contractors for the contracts under review pursuant to paragraph (1), and the mechanisms used to evaluate contractor performance;
- (C) the extent of waste, fraud, and abuse under such contracts;
- (D) the extent to which those responsible for such waste, fraud, and abuse have been held financially or legally accountable;
- (E) the appropriateness of the organizational structure, policies, practices, and resources of the Department of Defense and the Department of State for handling program management and contracting for the programs and contracts under review pursuant to paragraph (1);
- (F) the extent to which contractors under such contracts have engaged in the misuse of force or have used force in a manner inconsistent with the objectives of the operational field commander; and
- (G) the extent of potential violations of the laws of war, Federal law, or other applicable legal standards by contractors under such contracts.

(d) REPORTS.—

(1) INTERIM REPORT.—On March 1, 2009, the Commission shall submit to Congress an interim report on the study carried out under subsection (c), including the results and findings of the study as of that date.

(2) OTHER REPORTS.—The Commission may from time to time submit to Congress such other reports on the study carried out under subsection (c) as the Commission considers appropriate.

(3) FINAL REPORT.—Not later than two years after the date of the appointment of all of the members of the Commission under subsection (b), the Commission shall submit to Congress a final report on the study carried out under subsection (c). The report shall—

- (A) include the findings of the Commission;
- (B) identify lessons learned relating to contingency program management and contingency contracting covered by the study; and
- (C) include specific recommendations for improvements to be made in—
  - (i) the process for defining requirements and developing statements of work for contracts in contingency contracting;
  - (ii) the process for awarding contracts and task or delivery orders in contingency contracting;
  - (iii) the process for contingency program management;
  - (iv) the process for identifying, addressing, and providing accountability for waste, fraud, and abuse in contingency contracting;
  - (v) the process for determining which functions are inherently governmental and which functions are appropriate for performance by contractors in a contingency operation (including during combat operations), especially whether providing security in an area of combat operations is inherently governmental;
  - (vi) the organizational structure, resources, policies, and practices of the Department of Defense and the Department of State for performing contingency program management; and
  - (vii) the process by which roles and responsibilities with respect to management and oversight of contracts in contingency contracting are distributed among the various departments and agencies of the Federal Government, and interagency coordination and communication mechanisms associated with contingency contracting.

(e) OTHER POWERS AND AUTHORITIES.—

- (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any portion thereof, may, for the purpose of carrying out this section—
  - (A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths (provided that the quorum for a hearing shall be three members of the Commission); and
  - (B) provide for the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents; as the Commission, or such portion thereof, may determine advisable.
- (2) INABILITY TO OBTAIN DOCUMENTS OR TESTIMONY.—In the event the Commission is unable to obtain testimony or documents needed to conduct its work, the Commission shall notify the committees of Congress of jurisdiction and appropriate investigative authorities.
- (3) ACCESS TO INFORMATION.—The Commission may secure directly from the Department of Defense and any other department or agency of the Federal Government any information or assistance that the Commission considers necessary to enable the Commission to carry out the requirements of this section. Upon request of the Commission, the head of such department or agency shall furnish such information expeditiously to the Commission. Whenever information or assistance requested by the Commission is unreasonably refused or not provided, the Commission shall report the circumstances to Congress without delay.

(4) **PERSONNEL.**—The Commission shall have the authorities provided in section 3161 of title 5, United States Code, and shall be subject to the conditions set forth in such section, except to the extent that such conditions would be inconsistent with the requirements of this section.

(5) **DETAILEES.**—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(6) **SECURITY CLEARANCES.**—The appropriate departments or agencies of the Federal Government shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(7) **VIOLATIONS OF LAW.**—

(A) **REFERRAL TO ATTORNEY GENERAL.**—The Commission may refer to the Attorney General any violation or potential violation of law identified by the Commission in carrying out its duties under this section.

(B) **REPORTS ON RESULTS OF REFERRAL.**—The Attorney General shall submit to Congress a report on each prosecution, conviction, resolution, or other disposition that results from a referral made under this subparagraph.

(f) **TERMINATION.**—The Commission shall terminate on the date that is 60 days after the date of the submittal of its final report under subsection (d)(3).

(g) **DEFINITIONS.**—In this section:

(1) **CONTINGENCY CONTRACTING.**—The term “contingency contracting” means all stages of the process of acquiring property or services during a contingency operation.

(2) **CONTINGENCY OPERATION.**—The term “contingency operation” has the meaning given that term in section 101 of title 10, United States Code.

(3) **CONTINGENCY PROGRAM MANAGEMENT.**—The term “contingency program management” means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating personnel for the management of a specific acquisition program or programs during contingency operations.

**NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FISCAL YEAR 2010**

[111th Congress, Public Law 111-84, Section 822 (October 28, 2009)]

**SEC. 822. EXTENSION AND ENHANCEMENT OF AUTHORITIES ON THE COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN.**

(a) **DATE OF FINAL REPORT.**—Subsection (d)(3) of section 841 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 230) is amended by striking ‘two years’ and inserting ‘three years’.

(b) **ASSISTANCE FROM FEDERAL AGENCIES.**—Such section is further amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

(f) **Assistance From Federal Agencies—**

(1) **DEPARTMENT OF DEFENSE.**—The Secretary of Defense shall provide to the Commission administrative support for the performance of the Commission's functions in carrying out the requirements of this section.

(2) **TRAVEL AND LODGING IN COMBAT THEATERS.**—The administrative support provided the Commission under paragraph (1) shall include travel and lodging undertaken in combat theaters, which support shall be provided through funds made available for that purpose through the Washington Headquarters Services or on a non-reimbursable basis, as appropriate.

(3) **OTHER DEPARTMENTS AND AGENCIES.**—In addition to the support required by paragraph (1), any department or agency of the Federal Government may provide to the Commission such services, funds, facilities, staff, and other support services for the performance of the Commission's functions as the head of such department or agency considers advisable, or as may otherwise be authorized by law.



## Appendix C

# Summary of Commission reports

In addition to this final report, the Commission has issued two interim reports to Congress and five special reports. Each special report addresses an issue that the Commission believed required immediate attention.

All Commission reports are available on its public website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov). Capsule summaries follow.

### FIRST INTERIM REPORT

#### At what cost? Contingency contracting in Iraq and Afghanistan

ISSUED JUNE 10, 2009

This report described the Commission's operations during its first year, identified areas for research, and flagged eight issues of immediate concern for lawmakers to consider. The eight issues included the risk of potential waste to be incurred by the drawdown of U.S. forces in Iraq; the critical shortage of qualified contract-management personnel in theater; the lack of competition in the transition from LOGCAP III to IV; inadequate contractor business systems; the need for greater accountability in the use of subcontractors; the failure to apply lessons learned in Iraq to Afghanistan; the lag in plans to establish a Defense Department contracting command in Afghanistan; and the need to ensure that contractors providing security for operating bases are well trained and equipped.

### SECOND INTERIM REPORT

#### At what risk? Correcting over-reliance on contractors in contingency operations

ISSUED FEBRUARY 24, 2011

In this report, the Commission made recommendations that it believed addressed the underlying causes of poor outcomes in contracting, and had the potential of institutionalizing changes for lasting effect. The recommendations included growing agencies' organic capacity; developing a deployable contingency-acquisition cadre; restricting reliance on contractors for security; and establishing a contingency-contracting directorate in the Office of the Joint Chiefs of Staff, as well as Offices of Contingency Contracting at Defense, State, and USAID.

Other major recommendations included asking the President and Congress, respectively, to establish a new, dual-hatted position at the Office of Management and Budget and the National Security Council to provide oversight and strategic direction for contingency operations, and create a permanent office of inspector general for contingency operations. Efforts to encourage competition were central to one set of recommendations. Finally, another set of recommendations focused on improving the suspension-and-debarment processes.

### SPECIAL REPORT 1

#### Defense agencies must improve their oversight of contractor business systems to reduce waste, fraud, and abuse

ISSUED SEPTEMBER 21, 2009

At a hearing on August 11, 2009, the Commission learned that unreliable data from business systems produced billions of dollars in contingency-contract costs that government auditors often could not verify. The government's ability to detect contract cost errors and material misstatements was seriously impeded by contractors' inadequate internal controls over their business systems. Further,

the two primary government agencies involved, the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA), were not working together effectively to protect government interests.

The Commission recommended that: (1) Defense needs to ensure that government speaks with one voice to contractors; (2) Defense needs to improve government accountability by rapidly resolving agency conflicts on business systems; (3) DCAA needs to expand its audit reports to go beyond rendering a pass/fail opinion; (4) DCMA needs to develop an effective process that includes aggressive compliance enforcement; and (5) DCAA and DCMA need to request additional resources and prioritize contingency-contractor oversight workload.

#### **SPECIAL REPORT 2**

##### **Lowest-priced security not good enough for war-zone embassies**

ISSUED OCTOBER 1, 2009

This report urged that Congress change a statutory restriction on the State Department's ability to choose security contractors for its overseas Foreign Service buildings based on any considerations other than lowest price and technical acceptability (LPTA). The Commission believed that the unintended consequences of the mandate were illustrated in poor contract performance and widely publicized misconduct by guards for the embassy in Kabul. The State Department is on record saying that contractor performance endangered the embassy and its personnel. The report urged allowing use of the "best-value" standard for evaluating contractors' offers. (Congress responded by enacting a temporary lifting of the LPTA mandate in Iraq and Afghanistan.)

#### **SPECIAL REPORT 3**

##### **Better planning for Defense-to-State transition in Iraq needed to avoid mistakes and waste**

ISSUED JULY 12, 2010

Planning for transitioning vital functions in Iraq from the Department of Defense to the Department of State was not adequate for effective coordination of billions of dollars in new contracts, and risked both financial waste and undermining U.S. policy objectives.

The Commission recommended that Defense and State accelerate, intensify, and better integrate their joint planning for the transition in Iraq; that all levels of Defense and State immediately initiate and complete planning with the Government of Iraq to address critical security functions now performed by Defense; that State use, on a reimbursable basis, Defense's LOGCAP IV contract; and that Congress immediately provide additional resources to State to support its increased contracting costs and personnel needs.

#### **SPECIAL REPORT 4**

##### **Iraq—a forgotten mission?**

##### **The United States needs to sustain a diplomatic presence to preserve gains and avoid waste as the U.S. military leaves Iraq**

ISSUED MARCH 1, 2011

State's Iraq mission after 2011 will require using thousands more contractors. Yet State is short of needed funding and program-management staff. Very little time remains for State to develop requirements, conduct negotiations, and award competitive contracts for work that must begin at

once. Inadequate support risks waste of funds and failure for U.S. policy objectives in Iraq and the region.

The Commission recommended that Congress ensure adequate funding to sustain State's operations in critical areas of Iraq, including the Department's greatly increased needs for operational contract support. The Commission recommended that the State Department expand its organic capability to meet heightened needs for acquisition personnel, contract management, and contractor oversight; and the Secretaries of State and Defense extend and intensify their collaborative planning for the transition, including executing an agreement to establish a single, senior-level coordinator and decision-maker to guide progress and promptly address major issues whose resolution may exceed the authorities of departmental working groups.

#### SPECIAL REPORT 5

##### **Sustainability: hidden costs risk new waste Preparations for ending U.S. military presence and contracting activities in Iraq and Afghanistan must include action to avoid waste from host nations' inability to operate and maintain projects and programs**

ISSUED JUNE 3, 2011

Billions of U.S. taxpayers' dollars will be wasted in Iraq and Afghanistan if the host-nation governments cannot take over the operation, maintenance, and security of efforts undertaken to reconstruct, stabilize, and develop those countries. Potential waste from unsustainable projects exceeds \$11 billion for just one program in Afghanistan—facilities construction for the national security forces. But time is growing short. Without prompt and decisive action, the biggest waste in Iraq and Afghanistan may be yet to come.

The Commission recommended that officials at Defense, State, and USAID examine both completed and current projects for risk of sustainment failure and pursue all reasonable strategies to mitigate risks; that officials ensure that any *new* requirements and acquisition strategies regarding contingency contracts for projects or services to be handed over to a host nation include a detailed assessment of the host nation's ability and commitment to meet the out-year costs essential for long-term success; that officials take appropriate action to cancel or redesign projects or programs that have little or no realistic prospect for achieving sustainability; and that officials report to Congress by December 31, 2011, and annually thereafter, their analysis of current and proposed projects and their planned actions for mitigating sustainability risks.

## Appendix D

# Hearings, travel, and meetings

## Hearings

The Commission conducted 25 public hearings on Capitol Hill on a range of contingency-contracting issues, hearing sworn testimony from and conducting discussions with witnesses from Defense, State, and USAID, including acquisition and oversight-agency officials, as well as high-level administrators from these and other federal agencies. Other hearings featured contractors, scholars, and experts from think tanks. In addition, Commissioners appeared as witnesses at three congressional hearings.

### 2009 Commission hearings

#### February 2: Lessons from the inspectors general: improving wartime contracting

Panel 1: Senator James Webb, Senator Claire McCaskill, and Senator Susan Collins

Panel 2: Special Inspector General for Iraq Reconstruction

Panel 3: Inspectors general of Defense, State, and USAID

#### May 4: LOGCAP: Support-contracting challenges in Iraq and Afghanistan

Panel: Director, U.S. Army Contracting Command; Director, Defense Contract Management Agency; Director, Defense Contract Audit Agency; LOGCAP Program Manager, U.S. Army Logistics Civil Augmentation Program Office

#### August 11: Contractor business systems

Panel 1: Executive Director, Defense Contract Management Agency; Director, Defense Contract Audit Agency; Executive Director, U.S. Army Contracting Command

Panel 2: President and CEO, DynCorp International LLC; Executive Director of Compliance, Fluor Corporation's Government Group; Senior Vice President of Compliance, KBR

#### August 12: Linguist support services

Panel 1: Director, Defense Contract Audit Agency; Deputy Director of Contracting, U.S. Army Intelligence Security Command

Panel 2: General Manager, Global Linguist Solutions, LLC; Vice President, Northrop Grumman Technical Services; General Counsel, L-3 Communications Services Group

#### September 14: State Department oversight and contractor-employee conduct

Panel 1: Under Secretary of State for Management

Panel 2: A private citizen; Executive Director, Project on Government Oversight

Panel 3: President, International Peace Operations Association; President and CEO, DynCorp International LLC; Vice President of Homeland and International Security Services, Wackenhut Services, Inc.

#### November 2: Counting contractors: where are they and what are they doing?

Panel 1: Deputy J-4, Department of Defense, U.S. Central Command; a director, Government Accountability Office; Assistant Deputy Under Secretary of Defense for Program Support

Panel 2: a director, Government Accountability Office; Vice Director for Logistics, Joint Staff; Executive Director, U.S. Army Logistics Civil Augmentation Program Office  
 Panel 3: Acting Deputy, Defense Procurement and Acquisition Policy; Director, Defense Contract Management Agency; Director, Defense Contract Audit Agency

**December 18: Contractor training of Afghan National Security Forces**

Panel 1: Assistant Inspector General for Special Plans and Operations, Department of Defense  
 Panel 2: Former Commanding General, Combined Security Transition Command-Afghanistan; Assistant Secretary of State for International Narcotics and Law Enforcement; Program Executive, Department of Defense Counter Narcoterrorism Technology Program Office  
 Panel 3: Vice President and Program Manager, DynCorp International LLC; Executive Vice President of Contracts and Sales, Xe Services LLC (formerly Blackwater Worldwide); Program Manager, MPRI, a division of L-3 Communications

**2010 Commission hearings**

**February 22: An urgent need: coordinating reconstruction and stabilization in contingency operations**

Panel 1: Special Inspector General for Iraq Reconstruction; Special Inspector General for Afghanistan Reconstruction  
 Panel 2: Director, U.S. Institute of Peace; Senior Vice President, International Crisis Group; Senior Political Scientist, RAND Corporation

**March 1: An urgent need: coordinating reconstruction and stabilization in contingency operations, continued**

Panel: Executive Director of the Afghanistan-Pakistan Task Force, U.S. Agency for International Development; Coordinator for Reconstruction and Stabilization, Department of State; Deputy Assistant Secretary, Department of Defense

**March 29: Rightsizing and managing contractors during the Iraq drawdown**

Panel 1: Deputy Commanding General, U.S. Army Materiel Command; Director, Defense Contract Audit Agency; Executive Director, U.S. Army Rock Island Contracting Center  
 Panel 2: Vice President of Operations, KBR

**April 19: Oversight of service contracts**

Panel 1: Director, Defense Procurement and Acquisition Policy; Principal Military Deputy to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Deputy Assistant Secretary of the Army for Procurement  
 Panel 2: Senior Vice President, CACI International, Inc.; Chief Operating Officer, AECOM Government Services

**May 24: How good is our system for curbing contract waste, fraud, and abuse?**

Panel 1: Assistant Inspector General, Special Inspector General for Afghanistan Reconstruction; Deputy Inspector General, Special Inspector General for Iraq Reconstruction; Assistant Director, Criminal Investigative Division of the Federal Bureau of Investigation; Deputy Inspector General for Investigations, Defense Criminal Investigative Service  
 Panel 2: Inspector General, U.S. Agency for International Development; Deputy Inspector General for Auditing, Department of Defense; Deputy Inspector General, Department of State

**June 18: Are private security contractors performing inherently governmental functions?**

Panel: President, Jefferson Solutions; Professor and Director of the Rohatyn Center for International Affairs, Middlebury College; President and CEO, Professional Services Council; Executive Director, Project on Government Oversight; Professor and Director of the Center for Research on International and Global Studies, University of California, Irvine; President, Center for a New American Security

**June 21: Private security contractors in Iraq: where are we going?**

Panel 1: Assistant Deputy Under Secretary of Defense for Program Support; Deputy Assistant Secretary of the Army for Procurement; Deputy Assistant Secretary for International Programs, Department of State; Chief, International Security Programs Division, Office of Security, U.S. Agency for International Development; Director, Office of Security, U.S. Agency for International Development

Panel 2: Vice President and Program Manager of Civilian Police Programs, DynCorp International LLC; President, Aegis Defense Services LLC; Director and CEO, Triple Canopy, Inc.

**July 12: Total force policy, the Quadrennial Defense Review, and other Defense and operational planning: why does planning for contractors continue to lag?**

Panel: Deputy Under Secretary of Defense for Strategy, Plans, and Forces; Director for Logistics, Joint Staff; Director of Requirements, Office of Secretary of Defense for Personnel and Readiness; Assistant Deputy Under Secretary of Defense for Program Support

**July 26: Subcontracting: who's minding the store?**

Panel 1: Deputy Assistant Secretary of the Army for Procurement; Director, Defense Contract Audit Agency; Director, Acquisition Management, Department of State; Acting Assistant Administrator for Management, U.S. Agency for International Development

Panel 2: Global Director Procurement and Supply Management, KBR; Vice President and Government Business Executive, Fluor Corporation; Senior Vice President, Business Administration, DynCorp International LLC; CEO, Mission Essential Personnel, LLC

Panel 3: President, Government Facilities Infrastructure, CH2M HILL Constructors, Inc.; Manager and Ethics Committee Director, Tamimi Global Company, Ltd; CEO, Symbion Power LLC; COO, McNeil Technologies, Inc.; CFO, The Diplomat Group LLC; President and CEO, Torres Advanced Enterprise Solutions, LLC

**September 16: The contingency acquisition workforce: what is needed and how do we get there?**

Panel 1: Professor, Center for Public Policy and Private Enterprise, School of Public Policy, University of Maryland; Administrator, Office of Federal Procurement Policy; Deputy Associate Director for Employee Services, Office of Personnel Management; Acting Deputy Under Secretary of Defense for Civilian Personnel Policy; Acting President, Defense Acquisition University

Panel 2: Director, Defense Contract Management Agency; Director, Defense Contract Audit Agency; Principal Military Deputy to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Military Deputy to the Assistant Secretary of the Air Force for Acquisition; Commanding General, U.S. Army Corps of Engineers; Executive Director, U.S. Army Contracting Command

**2011 Commission hearings****January 24: Recurring problems in Afghan construction**

Panel 1: Special Inspector General for Afghanistan Reconstruction

Panel 2: Deputy Commanding General, Military and International Operations, U.S. Army Corps of Engineers; Deputy Assistant Administrator, Afghanistan Pakistan Task Force, U.S. Agency for International Development; Deputy Director, Air Force Center for Engineering and the Environment; Principal Deputy Assistant Secretary, International Narcotics and Law Enforcement Affairs, Department of State

**February 14: Recurring problems in Afghan construction, continued**

Panel: President, Government, Environmental & Nuclear Division, CH2M HILL Constructors, Inc.; Executive Vice President, AMEC Earth and Environmental, Inc.; President, Black & Veatch Special Projects Corporation; Regional Director, United Nations Office for Project Services

**February 28: Ensuring contractor accountability: past performance and suspensions and debarments**

Panel 1: Commander, Defense Contract Management Agency, International; Deputy Inspector General for USAID; Commanding Officer, Naval Sea Logistics Center; General Counsel, Project on Government Oversight

Panel 2: Administrator, Office of Federal Procurement Policy; Deputy Director, Contingency Contracting and Acquisition Policy, Defense Procurement Acquisition Policy; Procurement Executive, Department of State; Chief Acquisition Officer, U.S. Agency for International Development; U.S. Navy Associate Counsel and Chair, Interagency Suspension and Debarment Committee; Director, Office of the Judge Advocate General, U.S. Army

**March 28: Better buying power in Defense spending**

Witness: Under Secretary of Defense for Acquisition, Technology, and Logistics

**April 1: USAID plans for improved contracting performance**

Witness: Administrator of U.S. Agency for International Development

**April 11: Non-governmental organizations' lessons for contingencies**

Panel: Country Manager, Catholic Relief Services; Vice President, International Rescue Committee; Regional Program Director for South Asia, Mercy Corps; Vice President, Save the Children; Director of Intergovernmental Affairs, U.S. Institute of Peace

**April 25: Implementing improvements to Defense wartime contracting**

Panel 1: Professor, Center for Public Policy and Private Enterprise, School of Public Policy, University of Maryland; Managing Director for Acquisition and Sourcing Management, Government Accountability Office

Panel 2: Special Inspector General for Iraq Reconstruction; Deputy Inspector General for Auditing, Department of Defense; Acting Special Inspector General for Afghanistan Reconstruction

**June 6: State Department contracting, response to Commission recommendations, and transition effort in Iraq and Afghanistan**

Witness: Under Secretary of State for Management

## Travel

Commissioners, accompanied by professional staff, made numerous trips to Iraq, Afghanistan, and Kuwait over the last three years, as well as several trips to Europe and Canada. Our work in theater was supplemented by a "forward team"—two professional staff members based in Baghdad and two in Kabul serving as eyes and ears on the ground, coordinating travel in theater, and managing requests for information from our home office. In addition, the Commission traveled to numerous government venues, contractor locations, training centers, and think tanks throughout the United States.

### Overseas trips

In overseas travel, the Commission focused on theater contracting issues, construction projects, organizational alignment and structure, requirements generation, interagency coordination, and lessons learned. The Commission also traveled to NATO and coalition-partner countries to learn about best practices and issues those governments faced similar to those of the United States in managing contracts in a contingency environment.

#### 2008

December 2–8: Afghanistan and Iraq

#### 2009

March 30–April 11: Afghanistan and Iraq

June 14–19: Kuwait and Iraq

July 19–August 1: Iraq and Kuwait

August 23–September 2: Afghanistan

October 30–November 6: Kuwait and Iraq

November 30–December 8: Afghanistan

December 14–16: Canada

#### 2010

February 8–15: Kuwait and Iraq

May 13–22: Iraq and Kuwait

July 17–23: United Kingdom, Switzerland, and Denmark

August 7–16: Afghanistan

August 20–28: Kuwait and Afghanistan

October 8–15: Turkey and England

November 8–18: Afghanistan

November 30–December 8: Iraq

December 5–10: Germany

#### 2011

January 22–28: Afghanistan

March 5–10: Qatar

March 14–26: Afghanistan and Kuwait



## Domestic trips

## 2009

Lowell, Massachusetts, *Defense Contract Audit Agency*  
 Dallas, Texas, *Defense Contract Audit Agency*  
 Rock Island, Illinois, *U.S. Army Logistics Civil Augmentation Program*  
 Indianapolis, Indiana, *Defense Finance and Accounting Service*  
 Orlando, Florida, *Department of Defense Procurement Conference*  
 Atlanta, Georgia, *U.S. Army Central Command, G-7*  
 Tampa, Florida, *U.S. Central Command*  
 Orlando, Florida, *Program Executive Office for Simulation, Training, and Instrumentation*  
 Baton Rouge, Louisiana, *Triple Canopy, Inc.*  
 Irving, Texas, *Defense Contract Audit Agency*  
 Ft. Worth, Texas, *DynCorp International LLC*  
 Rock Island, Illinois, *U.S. Army Rock Island Contracting Center*  
 Philadelphia, Pennsylvania, *Defense Logistics Agency (Troop Support)*  
 Tampa, Florida, *U.S. Central Command*  
 Atlanta, Georgia, *Defense Contract Management Agency*  
 Huntsville, Alabama, *U.S. Army Aviation and Missile Command*  
 Warren, Michigan, *U.S. Army Tank and Automotive Command*  
 San Antonio, Texas, *Air Force Center for Engineering and the Environment*  
 Panama City, Florida, *Air Force Contract Augmentation Program*  
 Moyock, North Carolina, *Xe Services LLC*  
 Ft. Monmouth, New Jersey, *U.S. Army Communications and Electronics Command*  
 Ft. Leavenworth, Kansas, *U.S. Army Combined Arms Center, School of Command Preparation*  
 Houston, Texas, *Defense Contract Audit Agency*

## 2010

Tampa, Florida, *U.S. Central Command*  
 Tampa, Florida, *U.S. Special Operations Command*  
 Springfield, Virginia, *Defense Contract Management Agency*  
 Houston, Texas, *KBR*  
 San Antonio, Texas, *U.S. Air Force Air Education and Training Command Contracting Squadron*  
 San Antonio, Texas, *Joint Contracting Command-Iraq/Afghanistan Contract Closeout Task Force*  
 Daytona Beach, Florida, *Defense Contract Management Agency*  
 San Diego, California, *National Contract Management Association Conference*  
 Las Vegas, Nevada, *DoD Past-Performance Conference*  
 Ft. Leavenworth, Kansas, *U.S. Army Combined Arms Center, Center for Army Lessons Learned*  
 Orlando, Florida, *Department of Defense Procurement Conference*  
 Monterey, California, *Naval Postgraduate School*  
 Carlisle, Pennsylvania, *U.S. Army War College, U.S. Army Peacekeeping and Stability Operations Institute*

Rock Island, Illinois, *U.S. Army Rock Island Contracting Center*  
 Monterey, California, *Naval Postgraduate School*  
 Philadelphia, Pennsylvania, *Defense Logistics Agency (Troop Support)*  
 Burlingame, California, *Environmental Chemical Corporation*  
 Chambersburg, Pennsylvania, *3rd Expeditionary Sustainment Command, U.S. Army*  
 Kettering, Ohio, *U.S. Air Force Institute of Technology*  
 San Antonio, Texas, *Air Force Center for Engineering and the Environment*  
 Englewood, Colorado, *CH2M HILL, Inc.*  
 Suffolk, Virginia, *U.S. Joint Forces Command*  
 Springfield, Virginia, *Defense Contract Management Agency*  
 Ft. Lauderdale, Florida, *National Contract Management Association*  
 Ft. Drum, New York, *U.S. Army Battle Command Training Center*  
 Tampa, Florida, *U.S. Central Command J4 Contracting*  
 San Francisco, California, *American Bar Association*  
 Chantilly, Virginia, *National Contract Management Association Legislative Update*  
 Ft. Bragg, North Carolina, *U.S. Army 18th Airborne Corps*  
 Philadelphia, Pennsylvania, *National Procurement and Grant Fraud Conference*

#### 2011

Ft. Leavenworth, Kansas, *U.S. Army Combined Arms Center, Command and General Staff College*  
 Rock Island, Illinois, *U.S. Army Sustainment Command*  
 Scott Air Force Base, Illinois, *U.S. Transportation Command*  
 Rock Island, Illinois, *U.S. Army Logistics Civil Augmentation Program*  
 Scottsdale, Arizona, *Professional Services Council Conference*  
 Huntsville, Alabama, *U.S. Army Materiel Command*  
 Miami, Florida, *U.S. Southern Command*  
 Orlando, Florida, *Department of Defense Procurement Conference*  
 Monterey, California, *Naval Postgraduate School Acquisition Research Symposium*  
 Grapevine, Texas, *Society of American Military Engineers Conference*

### Additional meetings and briefings

Commissioners and professional staff participated in more than 1,000 meetings and briefings with officials from agencies engaged in contingency contracting, with think tanks, scholars and experts, and with contractors and representatives of the contracting community. We invited representatives of federal agencies with a stake in contingency contracting to meet monthly and review and discuss tentative findings.

Contractors and professional associations with whom the Commission met to discuss their experiences and observations included:

AECOM Government Services; Aegis Defense Services LLC; Agility Defense & Government Services, Ltd.; AMEC Earth & Environmental, Inc.; ANHAM; ArmorGroup North America, Inc.; Black & Veatch Special Projects Corporation; Blackwater Worldwide; CACI International, Inc.; CH2M HILL, Inc.; Compass Integrated Security Solutions; Contrack International; DAI; The Diplomat Group LLC; DynCorp International LLC; Environmental Chemical Corporation; Fluor Corporation; General Dynamics Information Technology; Global Linguistic Solutions, LLC; International Stability Operations Association; ITT Systems Corporation; KBR; L-3 Communications Services Group; Lakeshore Engineering Services, Inc.; The Louis Berger Group, Inc.; ManTech International Corp.; McNeil Technologies, Inc.; Mission Essential Personnel, LLC; MPRI; Nathan Associates, Inc.; National Association of Government Contractors; Northrop Grumman Corporation; Professional Services Council; RA International Services; Raytheon Company; Red Sea Company; Red Star Enterprises; Sabre International; Serco Inc.; Serka Construction; Shee Atika, Inc.; Supreme Group; Symbion Power LLC; Tamimi Global Company, Ltd; Stanley Baker Hill, LLC; Technologist, Inc.; Tetra Tech, Inc.; Torres Advanced Enterprise Solutions, LLC; Triple Canopy, Inc.; Xe Services LLC; Zafer Construction Co.

## Appendix E

# Military and contractor headcounts and contract data

This appendix is divided into three broad parts—military and contractor headcounts, supplier data, and contract-characteristics data.

The headcount data indicate the number of contractor personnel employed in Iraq and Afghanistan to accomplish contract requirements pursuant to awards made by the U.S. government. We compared the number of Defense contractor personnel with the corresponding number of military in theater (boots on the ground) and found approximately as many of the former as the latter. Further, the number of Defense contractor personnel varies directly with the number of military personnel, indicating the supporting nature of Defense contractors. Currently, contractor personnel are predominantly third-country nationals (TCNs) in Iraq and local nationals (LNs) in Afghanistan. Our data also include the functions performed by contractor personnel.

The data indicate that at least \$192.5 billion was obligated for contracts and grants in support of the contingencies in Iraq and Afghanistan from FY 2002 to the end of the second quarter FY 2011. We project FY 2011 second-half spending will increase total obligations and grants since FY 2002 to a total of \$206 billion.

The contract awards were heavily concentrated. Out of over 7,000 companies, the top 23 account for approximately 75 percent of the contract dollars.<sup>1</sup> The top 15 product or service categories account for approximately 75 percent of contract obligations. Logistics-support services account for approximately 25 percent of contract obligations.

The final section on contract characteristics reinforces the notion of concentration. For example, in FY 2010, the largest 1.3 percent of total actions accounted for 80 percent of total contract spending in Iraq and Afghanistan. The dominant form of contract awards is delivery orders placed under indefinite-delivery contract vehicles. Our analysis of the statistics also includes the use of various contract vehicles, the number of offers received, and the extent of competition.

1. The 23 include one multi-vendor entry coded as "miscellaneous foreign contractors."

## SOURCES OF DATA

Unless otherwise noted, the sources for the data in this appendix are:

### Continuously updated headcount sources

- Military Boots on the Ground—Congressional Research Service Request for Boots-on-the-Ground (BOG) for Iraq/Operation New Dawn (OND) and Afghanistan/Operation Enduring Freedom (OEF), prepared by Office of the Chairman, Joint Chiefs of Staff.
- Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan, prepared by Deputy Assistant Secretary of Defense (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.
- State/USAID Contractors—U.S. Government Accountability Office (GAO) Reports 10-1 and 11-1, "Contingency Contracting: DOD, State and USAID Continue to Face Challenges in Tracking Contractor Personnel and Contracts in Iraq and Afghanistan," October 2009 and October 2010.

### One-time headcount studies

- Brig. Gen. William N. Phillips, Commanding General, Joint Contracting Command–Iraq/Afghanistan, memorandum, "Contractor Support of Multi-National Force–Iraq (MNF–I) Operations," July 17, 2009.
- Chairman of the Joint Chiefs of Staff (CJCS), Dependence on Contractor Support in Contingency Operations Task Force report, "An Evaluation of the Range and Depth of Service Contract Capabilities in Iraq and Implications for OCS [Operational Contract Support] Planning," presented to Commission by CAPT Pete Stamatopoulos, Supply Corps, U.S. Navy JS J-4 Chief, Logistics Services Division, March 24, 2010, 21.

### Contracts data

- Federal Procurement Data System–Next Generation (<https://www.fpds.gov/fpdsng.cms/>). Data extracted on June 12, 2011 for actions where place of performance equaled Afghanistan, Iraq, Kuwait, Bahrain, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Dates of actions include FY 2002 through the end of the second quarter FY 2011.

### Grants data

- USAspending.gov (<http://www.usaspending.gov/>). Data extracted on June 12, 2011 for actions where place of performance equaled Afghanistan and Iraq. Dates of actions include FY 2002 through the end of the second quarter FY 2011.

All dollar values are in then-year dollars.

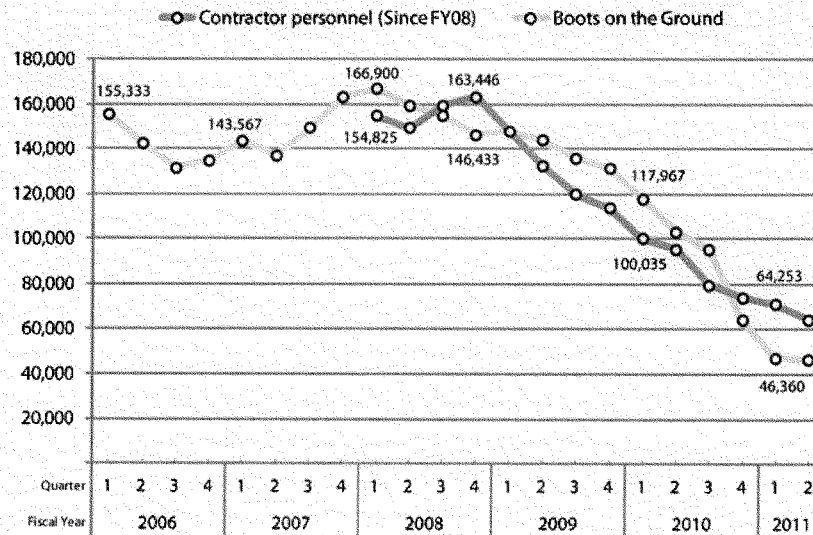
## Part I: Military and contractor headcounts

### IRAQ

#### “Boots on the Ground” vs. contractor personnel in Iraq

For Iraq, Figure E-1 depicts the number of U.S. military personnel (Boots on the Ground—BOG) and the number of Defense contractor personnel, both on a quarterly fiscal-year basis. Reporting of contractor census began in the first quarter FY 2008. As can be seen from the figure, Defense military personnel and contractor personnel closely track one another, in nearly a 1:1 ratio, although in the last few quarters as the number of military has drawn down, contractor personnel have declined at a slower pace, so now they substantially outnumber the military personnel.

Figure E-1. Boots on the Ground vs. contractor personnel in Iraq<sup>2</sup>



**Source:** Military Boots on the Ground—Congressional Research Service Request for Boots-on-the-Ground (BOG) for Iraq/OND and Afghanistan/OEF, prepared by Office of the Chairman, Joint Chiefs of Staff (JCS). Final two BOG data points are for January 10, 2011 and May 11, 2011 as reported by Defense, Joint Staff, Summary and Monthly Boots on the Ground Reports to Congress; Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan, prepared by DASD (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.

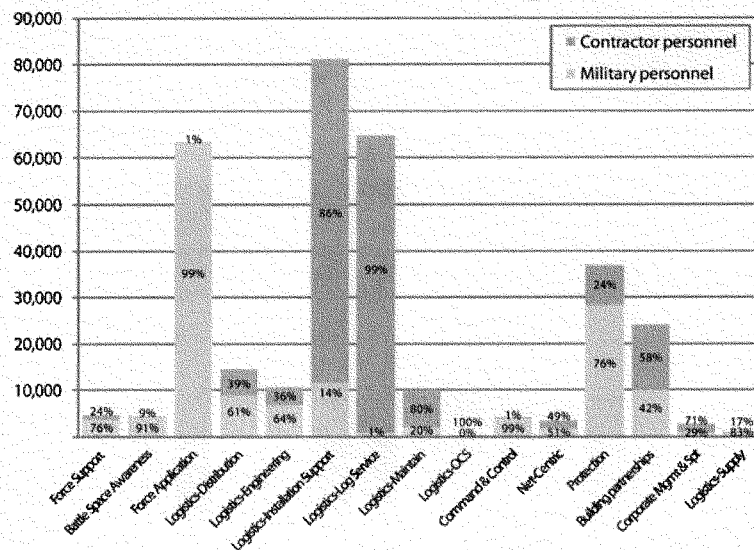
2. “Boots on the Ground” denotes a series of monthly data reports sent to Congress by the Department of Defense since 2008.

### JCS military and contractor personnel by function in Iraq

Third quarter FY 2008

Figure E-2 shows the results of a one-time Joint Chiefs of Staff (JCS) study of reliance on Defense contractor personnel. It compares the number of military and Defense contractor personnel performing each of 15 functions during the third quarter FY 2008. Clearly the number of Defense contractor personnel is much higher than the number of military personnel in Logistics Services, Installation Support, Maintenance, and Corporate Management and Support. Defense contractors are also significant percentages of the total workforce in Building Partnerships, Net-Centric, Distribution, and Engineering.

Figure E-2. JCS military and contractor personnel by function in Iraq  
Third quarter FY 2008

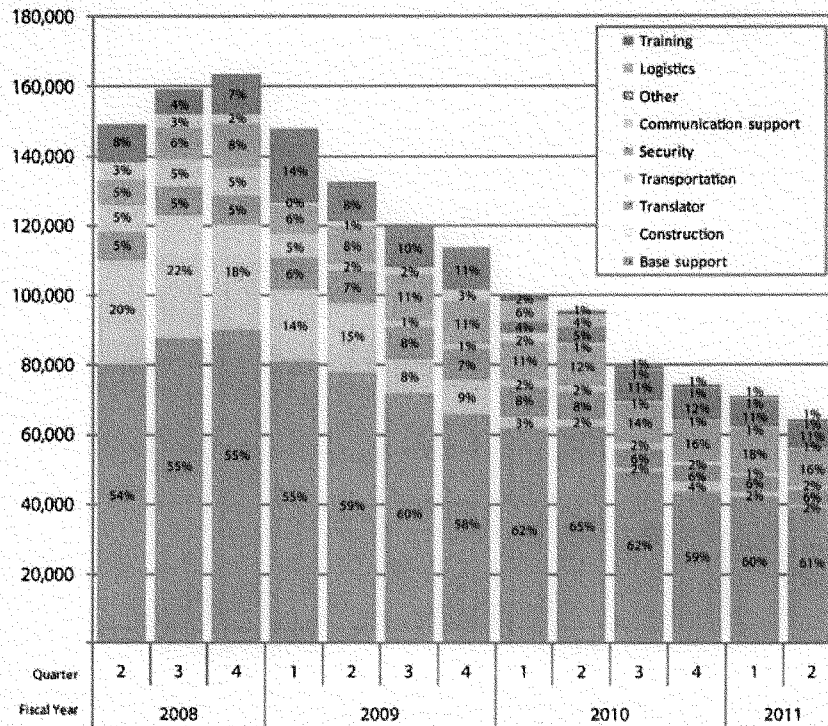


**Source:** JCS Dependence on Contractor Support in Contingency Operations Task Force Report, "An Evaluation of the Range and Depth of Service Contract Capabilities in Iraq and Implications for OCS Planning," presented to Commission by CAPT Pete Stamatopoulos, Supply Corps, U.S. Navy JS J-4 Chief, Logistics Services Division, March 24, 2010, 21.

### Defense contractor personnel by function in Iraq

Figure E-3 depicts the breakdown by type of work performed by Defense contractor personnel in Iraq. These breakouts have been available quarterly since the second quarter FY 2008. It shows that the bulk of Defense contractor workforce, between about 55 and 65 percent, has been providing base-support services. Construction workers have declined in number and as a percentage of the workforce. The number and percentage of security workers, however, generally has risen.

Figure E-3. Defense contractor personnel by function in Iraq



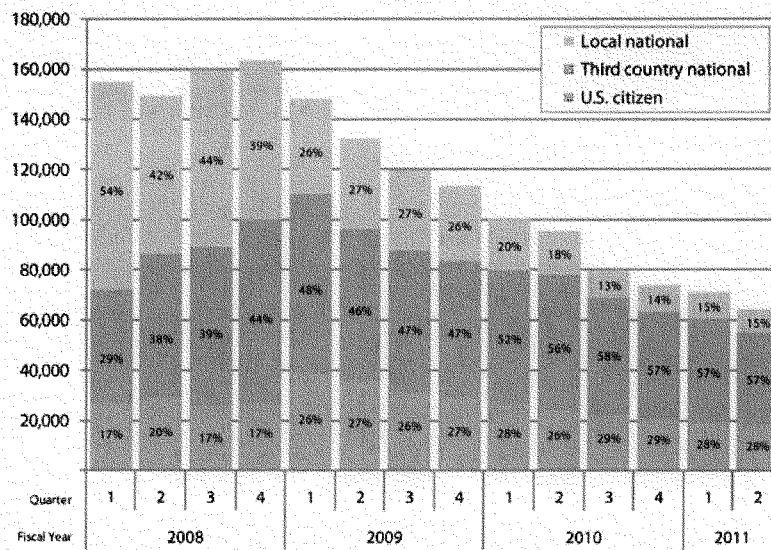
**Source:** Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan, prepared by Deputy Assistant Secretary of Defense (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.



### Defense contractor personnel by nationality in Iraq

Figure E-4 depicts Defense contractor personnel by nationality in Iraq starting with the first quarter FY 2008 census. While the number of U.S. citizens has remained relatively constant over the period, their percentage has increased as other workers have left during the drawdown of troops. In particular, the number and percentage of LNs has dropped fairly dramatically both in number and as a percentage of the workforce.

Figure E-4. Defense contractor personnel by nationality in Iraq



**Source:** Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan, prepared by DASD (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.

### Workforce nationality by activity performed in Iraq

Table E-1 is a one-time-only snapshot of the workforce in Iraq as of June 20, 2009. While it shows that U.S. citizens work in all areas, they are dominant in maintenance, training, communications support, and other, although the overall percentage of U.S. citizens is only 26 percent. Nearly half the workforce is TCNs, who primarily work in base support and security. LNs dominate in construction, as translators/interpreters, and in transportation. Note that the division of personnel by nationality in this June 20, 2009 breakout conforms closely to that shown for the third quarter FY 2009 in Figure E-4.

**Table E-1. Workforce nationality by activity performed in Iraq**

As of June 20, 2009

Mission Category	Total (% of total)	U.S.	TCN	Iraqi LN
Base life support	71,783 (60%)	18,093	43,821	9,869
Security	13,145 (11%)	773	8,686	3,686
Construction	10,090 (8%)	184	1,609	8,297
Translators/interpreters	9,128 (8%)	2,390	0	6,738
Log/maintenance	3,800 (3%)	2,778	708	314
Training	2,694 (2%)	2,397	243	54
Communications support	2,183 (2%)	2,070	65	48
Transportation	1,616 (1%)	28	224	1,364
Other	5,267 (4%)	2,828	769	1,670
<b>Total</b>	<b>119,706</b>	<b>31,541 (26%)</b>	<b>56,125 (47%)</b>	<b>32,040 (27%)</b>

**Source:** Brig. Gen. William N. Phillips, Commanding General, Joint Contracting Command—Iraq/Afghanistan, memorandum, "Contractor Support of Multi-National Force-Iraq (MNF-I) Operations," July 17, 2009.

### Civilian agency contractor and assistance personnel in Iraq

Table E-2 lists the headcount of contractor and assistance personnel in Iraq for USAID and State. USAID and State contractor and assistance personnel have remained nearly constant.

**Table E-2. Civilian agency contractor and assistance personnel in Iraq**

Fiscal Year	USAID	State
<b>2010*</b>	3,409	9,591
<b>2009</b>	3,347	10,606
<b>2008</b>	2,707	-----

\*USAID and State numbers as of March 31, 2010.

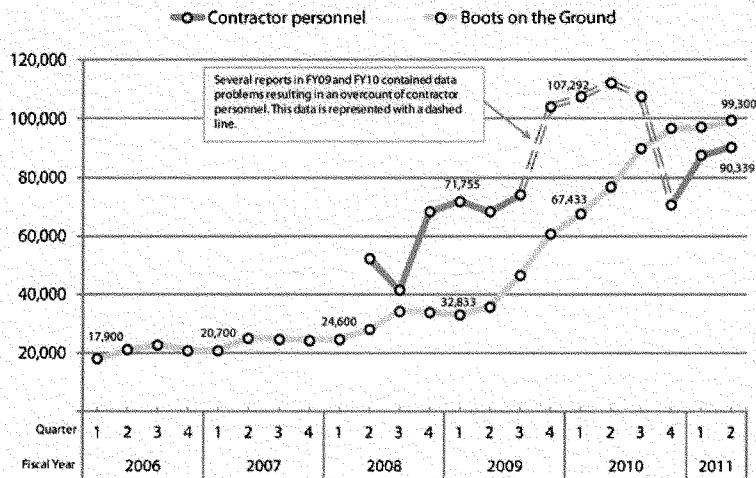
**Source:** GAO Report 11-1, "Iraq and Afghanistan: DOD, State, and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel," October 2010, 44-45; GAO Report 10-1, "Contingency Contracting: DOD, State, and USAID Face Challenges in Tracking Contractor Personnel and Contracts in Iraq and Afghanistan," October 2009, 13.

## AFGHANISTAN

**"Boots on the Ground" vs. contractor personnel in Afghanistan**

For Afghanistan, Figure E-5 depicts the number of U.S. military personnel and the number of Defense contractor personnel, each on a quarterly fiscal-year basis. The contractor census data for Defense started in the second quarter FY 2008. For several reports in FY 2009 and FY 2010, data problems resulted in an over-count of Defense contractor personnel. The numbers displayed here for that period contain the over-count since there is no way for Defense to correct the error. We believe that the values reported in the last three quarters are correct.

Figure E-5. Boots on the Ground vs. contractor personnel in Afghanistan

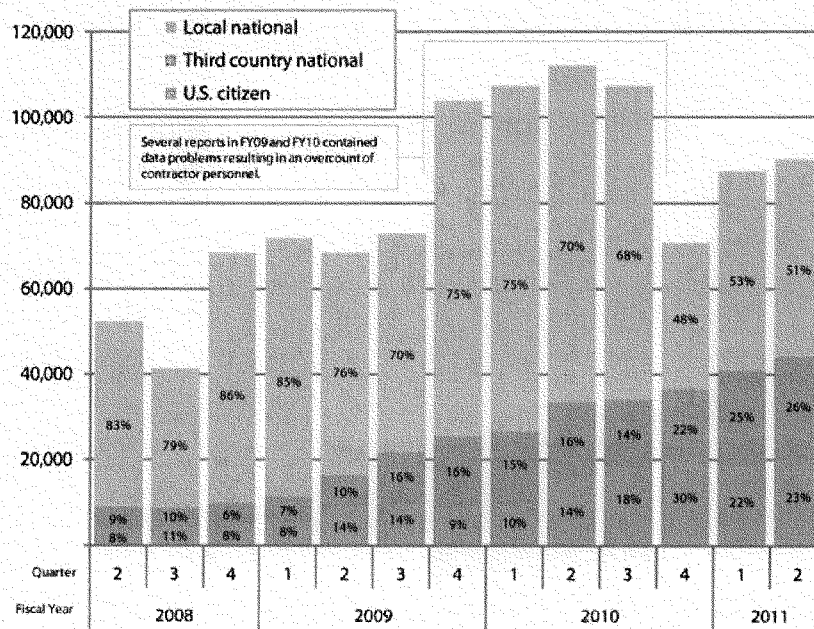


**Source:** Military Boots on the Ground—Congressional Research Service Request for Boots-on-the-Ground (BOG) for Iraq/OND and Afghanistan/OEF, prepared by Office of the Chairman, JCS; Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of Responsibility, Iraq and Afghanistan, prepared by DASD (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.

### Defense contractor personnel by nationality in Afghanistan

Figure E-6 depicts Defense contractor personnel by nationality in Afghanistan starting with the second quarter FY 2008 census. As noted above, for several reports in FY 2009 and FY 2010, data problems resulted in an unknown over-count of Defense contractor personnel and are displayed as reported. The numbers and percentage of the workforce of U.S. citizens and of TCNs has grown from period to period, with the number of LNs remaining somewhat more constant.

Figure E-6. Defense contractor personnel by nationality in Afghanistan



**Source:** Defense Contractor employees—Contractor Support of U.S. Operations in the USCENTCOM area of responsibility, Iraq and Afghanistan, prepared by DASD (Program Support) quarterly February 2009 to present, prepared by Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) prior to February 2009.

### Civilian agency contractor and assistance personnel in Afghanistan

Table E-3 lists the headcount of contractor and assistance personnel in Afghanistan for USAID and State. Growth in USAID contractor and assistance personnel since 2008 has been substantial.

**Table E-3. Civilian agency contractor and assistance personnel in Afghanistan**

Fiscal Year	USAID	State
<b>2010*</b>	32,359	9,719
<b>2009</b>	34,237	8,846
<b>2008</b>	12,955	---

\*USAID and State numbers as of March 31, 2010.

**Source:** GAO Report 11-1, "Iraq and Afghanistan: DOD, State, and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel," October 2010, 44-45; GAO Report 10-1, "Contingency Contracting: DOD, State, and USAID Face Challenges in Tracking Contractor Personnel and Contracts in Iraq and Afghanistan," October 2009, 13.

## Part II: Supplier data

The data presented in the next two sections were obtained from the Federal Procurement Data System-Next Generation (FPDS-NG) and USAspending.gov.

FPDS-NG is the single authoritative repository for federal procurement-award data and USAspending.gov is a searchable website which includes information on grants and cooperative agreements. We used FPDS-NG to identify contract actions undertaken in support of contingency operations in Iraq and Afghanistan. We extracted contract-action data covering the time period October 1, 2001 through March 31, 2011 (FY 2002–first half of FY 2011) for those actions coded as place of performance in Iraq, Afghanistan, Kuwait, Bahrain, and Qatar, as well as Pakistan, Uzbekistan, Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan, which are referred to later in this section as “other.”

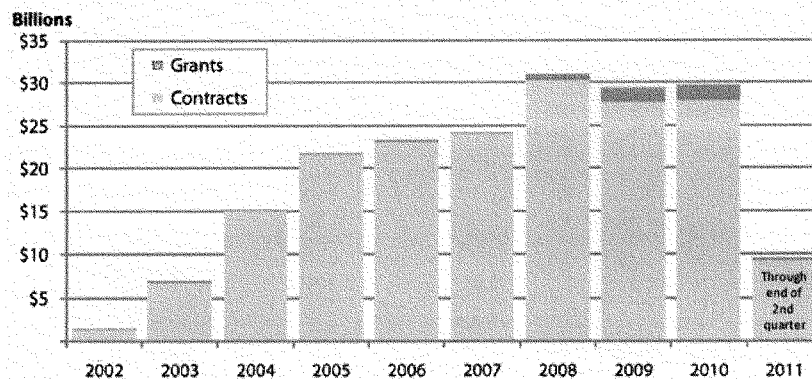
### Obligations and grants

Figure E-7 shows annual contract obligations from FPDS-NG. It is based on the place of performance in one of the aforementioned countries during FY 2002 through the end of the second quarter FY 2011. While some spending in the countries outside of Afghanistan and Iraq would be for indigenous support, the bulk of the obligations during this time period are believed to have resulted from support to Iraq and Afghanistan, and therefore we included these obligations. Figure E-7 also depicts grants data from USAspending.gov, where the place of performance was indicated as Iraq or Afghanistan. Grants and assistance performed outside of Iraq and Afghanistan are not included in the grants value shown.

Note that our estimate of spending in support of contingency operations in Iraq and Afghanistan is based on actions with place of performance in Iraq, Afghanistan, or the other neighboring countries indicated above. This estimate is conservative because it omits spending elsewhere, where some or all of the spending was for contingency support. For example, mine-resistant, ambush-protected (MRAP) vehicles and tethered-aerostat radar systems for surveillance that are produced in the U.S. but used in Iraq and/or Afghanistan would not be included in our total spending estimate using this methodology.

Defense, State, and USAID contract and grant spending total about \$192.5 billion, of which about \$187.2 billion is contracts and \$5.3 billion is grants and assistance by State and USAID.

Figure E-7. Summary of contract obligations and grants in support of Afghanistan and Iraq



Source: FPDS-NG and USAspending.gov, FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Top contractors

As shown in Table E-4 below, the top 23 companies (out of over 7,000), each with more than \$1 billion in obligations, account for approximately 75 percent, or \$139 billion, of the \$187.2 billion obligated on contracts from FY 2002 through the end of the second quarter FY 2011 as reported in the FPDS-NG (not including \$5.3 billion in grants). The "Miscellaneous Foreign Contractors" category, which is second largest, represents an unknown number of individual companies. This category is often used for the purpose of obscuring the identification of the actual contractor. Where possible, we consolidated company totals to take into account misspellings or different spellings that occur in FPDS-NG. For example, DynCorp; DynCorp International; DynCorp Technical Services, Inc.; DynCorp International Limited Liability Company; DynCorp International LLC; and DynCorp Intl were various "vendor names." They were consolidated to arrive at a total award amount for the company.

Table E-4. Top contractors

Contractor	Obligations
Kellogg Brown & Root	\$40,809,523,872
"Miscellaneous Foreign Contractors"	38,469,964,913
Agility	8,997,331,923
DynCorp	7,400,931,324
Kuwait Petroleum Corporation	4,996,816,548
Fluor Intercontinental, Inc.	4,980,491,549
The Bahrain Petroleum Company	4,972,411,826
Combat Support Associates	3,574,716,549
ITT Federal Services International	3,373,303,718
The Louis Berger Group Inc.	2,334,985,976
International Oil Trading Company, LLC	2,132,465,619
Readiness Management Support, LC	2,025,615,609
L-3 Communications	1,724,298,992
Red Star Enterprises LTD	1,662,505,265
IAP Worldwide Services, Inc.	1,512,551,618
Environmental Chemical Corporation	1,496,535,802
Perini Corporation	1,475,913,905
Blackwater Lodge and Training Center, Inc.	1,457,774,831
Contrack International Inc.	1,357,523,598
Triple Canopy Inc.	1,167,982,337
DAI/Nathan Group LLC	1,092,399,269
Washington Group International	1,082,488,343
BearingPoint, LLC	1,029,116,382
<b>Total</b>	<b>\$139,127,649,771</b>

Source: FPDS-NG FY 2002 through end of second quarter FY 2011; data extracted June 12, 2011.

### Top goods and services purchased

Table E-5 below shows the 15 largest categories of products and services bought in support of operations in Iraq and Afghanistan from FY 2002 through the end of the second quarter FY 2011. The \$139.7 billion in obligations represented by these top products and services as reported in FPDS-NG add up to approximately 75 percent of the total obligations. Such data can provide a useful guide for future planning purposes. The use of product or service code "9999" by government contracting personnel for miscellaneous items has been widely used and limits our ability to accurately portray all categories of war spending.

**Table E-5. Largest categories of products and services acquired for Iraq and Afghanistan**

Code	Product or service code description	Obligations	% of Total obligations
R706	Logistics support services	\$46,501,547,395	25%
9999	Miscellaneous items	25,732,014,855	14%
9130	Liquid propellants or fuel-petroleum base	16,652,161,060	9%
Y199	Construction of miscellaneous buildings	10,463,213,899	6%
8910	Dairy foods and eggs	6,623,554,123	4%
R421	Technical assistance	5,503,840,044	3%
R499	Other professional services	5,237,673,990	3%
S206	Guard services	3,806,774,413	2%
Z111	Maintenance, repair, or alteration of office buildings	3,526,532,535	2%
Y111	Construction of office buildings	2,991,904,074	2%
X300	Lease or rental of restoration of real property	2,782,985,687	1%
9140	Fuel oils	2,689,797,800	1%
S216	Facilities operations support services	2,469,785,092	1%
R408	Program management/support services	2,371,459,280	1%
J023	Maintenance and repair of ground effect vehicles, motor vehicles, trailers, and cycles	2,369,125,809	1%
<b>Largest categories of products and services acquired for Iraq and Afghanistan, total</b>		<b>\$139,722,370,056</b>	<b>74.6%</b>

**Source:** FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.



### Concentration ratios for top four contractors by product or service code

Table E-6 below shows the concentration of vendors as measured by the percentage of total awards to the top four firms in each product or service code listed. Concentration ratios showing the market share of the top firms are often used as an indication of market power when considering the competitive characteristics of a market. A concentration ratio of over 80 percent by the top four firms indicates a very highly concentrated market. As noted below, many of the top product or service-code categories are highly concentrated with the top four firms receiving over 80 percent of the contracts in each category. In some cases a single firm alone has over 80 percent of the market share.

Table E-6. Concentration ratios for top four contractors by product or service code

Code	Product or service code description	FY 2002-end of 2nd Quarter FY 2011 Obligations	Low concentration	Moderate concentration	High concentration
R706	Logistics support services	\$46,501,547,395			X <sup>1</sup>
9999	Miscellaneous items	25,732,014,855			
9130	Liquid propellants or fuel-petroleum base	16,652,161,060		X	
Y199	Construction of miscellaneous buildings	10,463,213,899		X	
8910	Dairy foods and eggs	6,623,554,123			X <sup>2</sup>
R421	Technical assistance	5,503,840,044		X	
R499	Other professional services	5,237,673,990		X	
S206	Guard services	3,806,774,413		X	
Z111	Maintenance, repair, or alteration of office buildings	3,526,532,535		X	
Y111	Construction of office buildings	2,991,904,074		X	
X300	Lease or rental of restoration of real property	2,782,985,687			X <sup>3</sup>
9140	Fuel oils	2,689,797,800			X
S216	Facilities operations support services	2,469,785,092			X <sup>4</sup>
R408	Program management/support services	2,371,459,280		X	
J023	Maintenance and repair of ground-effect vehicles, motor vehicles, trailers, and cycles	2,369,125,809			X <sup>5</sup>

1. One vendor accounts for 79 percent of the obligations.
2. One vendor accounts for 92 percent of the obligations.
3. One vendor accounts for 99 percent of the obligations.
4. One vendor accounts for 73 percent of the obligations.
5. One vendor accounts for 67 percent of the obligations.

**Note:** Based on obligations to the top four companies. "Low Concentration" indicates top four firms account for less than 20 percent of obligations. "Moderate Concentration" means top four firms have 20 to 80 percent. "High Concentration" means top four firms have more than 80 percent.

**Source:** FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Largest contracts

Tables E-7 through E-9 depict the largest contracts in support of Iraq and Afghanistan. Consolidating all the actions (delivery orders, task orders, and modifications) under the contract to which they relate shows the high dollar value of a few contracts. For example, the largest 15 contracts in Iraq account for over 48 percent of the total contract dollars obligated in Iraq.

Table E-7. Largest 15 contracts in Iraq

Iraq					
IDV/contract #	Code	Product or service code description	Contractor	Product or service code subtotal	IDV/contract total
DAAA0902D0007	AD23	Services (advanced)	Kellogg Brown & Root	\$576,026	
	R706	Logistics support services		30,272,068,379	
<b>DAAA0902D0007 Total</b>					<b>\$30,272,644,405</b>
DACA6303D0005	3835	Petroleum production-dist eqpt	Kellogg Brown & Root	(3,195,723)	
	X300	Lease-rent of restoration		2,779,891,885	
	Y300	Construct/restoration		5,322,398	
	Z299	Maint, rep/alter/all other		244,800,000	
	Z300	Maint, rep-alt/restoration		(942,737)	
<b>DACA6303D0005 Total</b>					<b>\$3,025,875,823</b>
SLMAQM04C0030	AD25	Services (operational)	DynCorp	58,398,484	
	R408	Program management/support services		789,477,225	
	R499	Other professional services		1,293,398,272	
	Z169	Maint-rep-alt/other residential bldg		1,406,636	
<b>SLMAQM04C0030 Total</b>					<b>\$2,142,680,617</b>
SP060007D0483	9130	Liquid propellants-petroleum base	International Oil Trading Company Limited		1,081,175,104
W91GXX05D0001	9999	Miscellaneous items	Miscellaneous Foreign Contractors		1,068,938,580
SP060009D0515	9130	Liquid propellants-petroleum base	International Oil Trading Company Limited		1,051,290,515
W91GY005D0001	9999	Miscellaneous items	Miscellaneous Foreign Contractors		1,036,119,038
SAQMPD05D1098	S206	Guard services	Blackwater Lodge and Training Center, Inc.		976,971,154

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Table E-7. Largest 15 contracts in Iraq (continued)

W912ER04D0004	AD25	Services (operational)	Fluor Intercontinental, Inc.	8,028,049	
	Y199	Construct/misc bldgs		387,948,951	
	Z299	Maint, rep/alter/all other		448,532,115	
<b>W912ER04D0004 Total</b>					<b>\$844,509,116</b>
FA890304D8672	C119	Other buildings	Environmental Chemical Corporation	10,193,659	
	C130	Restoration		3,332,433	
	C219	Other architects & engin gen		142,290,826	
	Y199	Construct/misc bldgs		38,505,763	
	Z111	Maint-rep-alt/office bldgs		619,648,232	
<b>FA890304D8672 Total</b>					<b>\$813,970,913</b>
W91GXY05D0001	9999	Miscellaneous items	Miscellaneous Foreign Contractors		713,018,409
W912ER04D0008	Y112	Construct/conf space & facilities	Perini Corporation	25,385,608	
	Y159	Construct/other industrial bldgs		184,085,287	
	Y199	Construct/misc bldgs		503,341,340	
	Z199	Maint-rep-alt/misc bldgs		(304,336)	
<b>W912ER04D0008 Total</b>					<b>\$712,507,899</b>
AIDDFDI000500221	R421	Technical assistance	Management Systems International, Inc.		633,766,006
W91GDW07D7001	9999	Miscellaneous items	Miscellaneous Foreign Contractors		596,142,189
SAQMPD05D1100	S206	Guard services	Triple Canopy Inc.		587,587,401
<b>Largest 15 contracts in Iraq, total</b>					<b>\$45,557,197,168</b>

Source: FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

Similarly, Table E-8 shows that the largest 15 contracts in Afghanistan represent 35 percent of the total contract obligations there.

Table E-8. Largest 15 contracts in Afghanistan

Afghanistan					
IDV/contract #	Code	Product or service code description	Contractor	Product or service code subtotal	IDV/contract total
DAAA0902D0007	R706	Logistics support services	Kellogg Brown & Root		\$3,289,414,148
W52P1J07D0008	R706	Logistics support services	Fluor Intercontinental, Inc.		3,148,524,268
SLMAQM04C0030	R408	Program management/ support services	DynCorp	614,914,064	
	R499	Other professional services		1,025,555,185	
	R699	Other administrative support services		294,415,830	
	R706	Logistics support services		35,199,129	
	U003	Reserve training (military)		27,025,878	
	<b>SLMAQM04C0030 Total</b>				<b>\$1,997,110,086</b>
W52P1J07D0007	R706	Logistics support services	DynCorp		1,838,598,750
SP060008D1017	9130	Liquid propellants-petroleum base	Red Star Enterprises LTD		1,288,961,591
F3460197D0425	J015	Maint-rep of aircraft	L-3 Communications AeroSpace LLC	637,066,104	
	J016	Maint-rep of aircraft components		457,218,165	
	<b>F3460197D0425 Total</b>				<b>\$1,094,284,269</b>
AID306I000600517	AD66	Construction (management/support)	The Louis Berger Group Inc.	112,107,761	
	C123	Electric power generation (EPG)		12,476,186	
	C214	A&E management engineering services		2,542,200	
	R421	Technical assistance		851,455,607	
	R425	Engineering and technical services		7,886,941	
	R499	Other professional services		7,040,000	
	<b>AID306I000600517 Total</b>				<b>\$993,508,695</b>
W912ER04D0003	R799	Other management support services	Contrack International Inc.	13,638,172	
	Y124	Construction of airport runways		2,242,231	

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Table E-8. Largest 15 contracts in Afghanistan (continued)

	Y129	Construct/other airfield structures		5,702,355	
	Y199	Construct/misc bldgs		692,178,813	
	W912ER04D0003 Total				\$713,761,571
AID306C000700508	R421	Technical assistance	BearingPoint, LLC		597,114,315
W9113M07D0006	AC23	R&D-missile & space sys - advanced dev	Lockheed Martin Integrated Systems Inc.		528,784,882
W912BU05D0004	C123	Electric power generation (EPG)	Inglett & Stubbs, LLC	423,123,517	
	C124	Utilities		22,039,134	
	S112	Electric services		31,544,664	
	Y127	Construct/elct & comms systems facilities		14,391,473	
	Y249	Construction of other utilities		5,046,427	
	W912BU05D0004 Total				\$496,145,214
W91CRB05D0014	R499	Other professional services	MPRI, Inc.		471,952,442
FA890306D8505	Y111	Construction of office buildings	Lakeshore Engineering Services	0	
	Y199	Construct/misc bldgs		320,216,734	
	Z111	Maint-rep-alt/office bldgs		116,100,017	
	FA890306D8505 Total				\$436,316,751
SAQMMA10C0255	Y111	Construction of office buildings	Caddell Construction Co., Inc.		416,029,000
SLMAQM04C0033	6910	Training aids	PAE Government Services Inc.	52,196,215	
	R408	Program management/ support services		168,156,608	
	R421	Technical assistance		83,742,733	
	R499	Other professional services		103,118,225	
	SLMAQM04C0033 Total				\$407,213,781
Largest 15 contracts in Afghanistan, total					\$17,717,719,763

Source: FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

Finally, Table E-9 shows the largest five contracts in Kuwait, Bahrain, Qatar, and "other." The majority of the contracts are for fuel or liquid propellants-petroleum base.

Table E-9. Largest five contracts in Kuwait, Bahrain, Qatar, and other

Kuwait, Bahrain, Qatar, and other						
Place of Performance	IDV/contract #	Code	Product or service code description	Contractor	Product or service code subtotal	IDV/PIID Total
Kuwait	DASA0299C1234	M199	Oper of govt misc bldgs	Combat Support Associates	\$68,331,285	
		R706	Logistics support services		3,506,385,264	
		<b>DASA0299C1234 Total</b>				<b>\$3,574,716,549</b>
Kuwait	SPM30008D3196	8910	Dairy foods and eggs	Agility	2,377,326,181	
		8920	Bakery and cereal products		350,190,025	
		<b>SPM30008D3196 Total</b>				<b>\$2,727,516,206</b>
Kuwait	DAAA0902D0007	R706	Logistics support services	Kellogg Brown & Root		2,501,808,816
Kuwait	W91RUS06C0002	D304	ADP svcs/telecomm & transmission	ITT Federal Services International		1,293,597,404
Kuwait	W52P1J05D0003	J023	Maint-rep of vehicles-trailers-cycles	ITT Federal Services International		1,234,539,376
Bahrain	SP060009D0453	9130	Liquid propellants-petroleum base	The Bahrain Petroleum Company		1,750,998,108
Bahrain	SP060008D0455	9130	Liquid propellants-petroleum base	The Bahrain Petroleum Company		533,399,399
Bahrain	SP060006D0453	9140	Fuel oils	The Bahrain Petroleum Company		391,156,700
Bahrain	SP060007D0461	9130	Liquid propellants-petroleum base	The Bahrain Petroleum Company		380,279,157
Bahrain	SP060005D0454	9140	Fuel oils	The Bahrain Petroleum Company		295,697,846
Qatar	SP060008D1033	9140	Fuel oils	Qatar Fuel		405,688,867
Qatar	DAAA0902D0007	R706	Logistics support services	Kellogg Brown & Root		277,947,505
Qatar	SP060003D0455	9130	Liquid propellants-petroleum base	National Oil Distribution Comp		219,749,735

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Table E-9. Largest five contracts in Kuwait, Bahrain, Qatar, and other (continued)

Qatar	F0863702D6999	S202	Fire-protection services	Readiness Mgt Support	128,205	
		S216	Facilities-operations support svcs	Readiness Mgt Support	212,470,358	
		<b>F0863702D6999 Total</b>				<b>\$212,598,563</b>
Qatar	SP060002D0454	9130	Liquid propellants-petroleum base	National Oil Distribution Comp		178,003,450
Pakistan	SAQMMA10C0284	Y111	Construction of office buildings	BL Harbert International LLC		487,282,331
Kyrgyzstan	SP060007D1007	9140	Fuel oils	Mina Corp LTD		354,025,588
Kyrgyzstan	SP060011D1000	9130	Liquid propellants-petroleum base	Mina Corp LTD		315,180,960
Pakistan	SP060008D0484	9130	Liquid propellants-petroleum base	Nordic Camp Supply ApS		221,575,373
Pakistan	SP060005D0496	9130	Liquid propellants-petroleum base	Shell Aviation LTD		128,514,940
<b>Largest five contracts in Kuwait, Bahrain, Qatar, and other, total</b>						<b>\$17,484,276,875</b>

Source: FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Part III: Contract characteristics

FPDS-NG enables us to describe a number of the characteristics of the contracts in support of operations in Iraq and Afghanistan. The characteristics measured include an analysis of the concentration of contract actions, a separate analysis of contract types, contract methods, number of offers received, and extent competed. Generally we note that there are high concentrations of dollars in most areas.

#### Concentration analysis

Table E-10 shows the spending by place of performance for each year, as well as the number of actions and values that represent 80 percent of total spending. For example, in FY 2010 there were 17,224 contract actions reported in Iraq totaling nearly \$7.7 billion, but only 255 of those actions (1.48 percent) accounted for 80 percent of the dollars obligated (about \$6.1 billion). The same calculation annually for each place of performance shows that this pattern is fairly typical. In FY 2005-FY 2007, there is a reporting difference that could not be explained, but the overall finding is of extremely heavy concentration of dollars in a tiny fraction of the actions. Also note that a "record" in FPDS-NG may contain more than a single contract action.



Table E-10. Proportion of contract actions accounting for 80 percent of dollar obligations in Iraq and Afghanistan

Iraq						
Fiscal Year	# of FPDS-NG records	Total		80% of Dollars		
		Actions	Obligations	Actions	Obligations	% of Actions
2011 (End of 2 <sup>nd</sup> qtr.)	3,202	3,210	\$2,308,956,728	119	\$1,849,043,783	3.71%
2010	16,184	17,224	7,671,900,609	255	6,137,520,487	1.48
2009	16,899	17,926	11,153,301,471	127	8,927,882,099	0.71
2008	27,185	27,920	16,224,162,355	409	12,979,483,463	1.46
2007	20,894	31,432	14,292,190,498	5,602	11,445,562,753	17.82
2006	9,755	15,440	14,177,539,877	3,076	11,345,131,907	19.92
2005	2,702	17,874	15,693,369,788	5,448	12,553,417,248	30.48
2004	979	979	9,761,432,534	74	7,820,128,426	7.56
2003	184	201	3,598,256,148	11	2,899,502,303	5.47
2002	4	4	43,062	1	32,702	25.00
<b>Grand total</b>	<b>97,988</b>	<b>132,210</b>	<b>\$94,881,153,070</b>	<b>15,122</b>	<b>\$75,957,705,171</b>	<b>11.44%</b>

Afghanistan						
Fiscal Year	# of FPDS-NG records	Total		80% of Dollars		
		Actions	Obligations	Actions	Obligations	% of Actions
2011 (End of 2 <sup>nd</sup> qtr.)	16,151	16,173	\$5,020,984,358	218	\$4,017,309,090	1.35%
2010	30,950	32,745	13,549,009,354	391	10,839,492,854	1.19
2009	21,733	22,618	8,863,512,182	411	7,093,279,759	1.82
2008	14,564	15,474	7,713,535,401	225	6,173,744,559	1.45
2007	10,753	14,873	4,224,077,192	1,926	3,380,470,849	12.95
2006	5,360	12,905	3,101,921,547	4,521	2,484,023,289	35.03
2005	992	7,809	2,267,422,186	6,480	1,820,071,625	82.98
2004	444	444	998,376,485	37	801,341,438	8.33
2003	274	274	493,715,724	25	395,300,989	9.12
2002	31	31	146,785,849	2	124,391,000	6.45
<b>Grand total</b>	<b>101,252</b>	<b>123,346</b>	<b>\$46,379,340,278</b>	<b>14,236</b>	<b>\$37,129,425,452</b>	<b>11.54%</b>

Source: FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

Note: Data do not include grants of under \$500 million in Iraq and nearly \$5 billion in Afghanistan.

### Contract types

Table E-11 shows that the vast bulk of contract actions are fixed price, but the small number of contract actions that are cost-type account for a disproportionate amount of the dollars obligated. For example, in Iraq over 93 percent of the actions are fixed price, but they only represent 46 percent of the dollars, while only 3 percent of the actions are cost-type contracts and they also represent 46 percent of the dollars.

**Table E-11. Contract type by place of performance**

Place/contract type	Total actions	Obligations	% of actions	% of obligations
<b>Iraq</b>	<b>132,210</b>	<b>\$94,881,153,070</b>		
Fixed	123,322	44,005,960,544	93.28%	46.38%
Cost	4,234	43,968,769,624	3.20	46.34
Time and materials	961	3,417,970,079	0.73	3.60
Combination	685	1,999,100,088	0.52	2.11
Labor hour	669	1,432,789,136	0.51	1.51
(Blank)	2,316	33,190,703	1.75	0.03
Other	23	23,372,896	0.02	0.02
<b>Afghanistan</b>	<b>123,346</b>	<b>\$46,379,340,278</b>		
Fixed	117,677	27,079,281,409	95.40	58.39
Cost	2,193	13,776,023,410	1.78	29.70
Time and materials	659	2,372,816,813	0.53	5.12
Combination	440	1,968,678,001	0.36	4.24
Labor hour	149	1,203,154,950	0.12	2.59
Other	19	72,888,385	0.02	0.16
Order dependent	2	13,740,388	0.00	0.03
(Blank)	2,207	(107,243,077)	1.79	-0.23
<b>Other</b>	<b>157,640</b>	<b>\$45,961,057,913</b>		
Fixed	141,755	33,372,872,577	89.92	72.61
Cost	3,031	11,755,559,493	1.92	25.58
Combination	413	530,398,985	0.26	1.15
Time and materials	375	158,531,434	0.24	0.34
(Blank)	11,292	93,477,858	7.16	0.20
Labor hour	743	49,596,501	0.47	0.11
Other	31	621,065	0.02	0.00

**Source:** FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Contract methods

Table E-12 depicts the contract methods used from FY 2002 through the end of the second quarter FY 2011 and shows that the vast bulk of them were delivery orders against indefinite-delivery vehicles (IDVs). The next biggest category as measured by actions is purchase orders, which are typically used for lower-value obligations. In Iraq, for example, 40 percent of actions were completed by purchase order, but these actions only represented 4 percent of the dollars obligated.

**Table E-12. Actions and dollars by award type and place of performance**

Place/award type	Total actions	Total obligations	% of actions	% of total obligations
<b>Iraq</b>	<b>132,210</b>	<b>\$94,881,153,070</b>		
Delivery order	59,074	76,244,664,906	44.68%	80.36%
Definitive contract	16,916	14,435,561,970	12.79	15.21
Purchase order	52,767	4,119,258,556	39.91	4.34
BPA call	3,453	81,667,637	2.61	0.09
<b>Afghanistan</b>	<b>123,346</b>	<b>\$46,379,340,278</b>		
Delivery order	50,076	32,864,923,266	40.60	70.86
Definitive contract	18,707	10,797,334,364	15.17	23.28
Purchase order	47,927	2,176,077,903	38.86	4.69
BPA call	6,636	541,004,745	5.38	1.17
<b>Other</b>	<b>157,640</b>	<b>\$45,961,057,913</b>		
Delivery order	113,866	33,171,469,990	72.23	72.17
Definitive contract	5,954	10,265,792,650	3.78	22.34
Purchase order	21,885	2,494,607,739	13.88	5.43
BPA call	15,935	29,187,533	10.11	0.06

**Source:** FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Number of single offers received

Table E-13 displays the number of times single offers were received and the extent of competition for definitive contracts as reported in FPDS-NG for FY 2002 through the end of the second quarter FY 2011. Data are presented for each agency and for the grand total on an action-count basis. We count only definitive contracts that are initial-award actions and exclude actions that represent modifications to initial awards. Also excluded are the large volume of delivery orders and other awards made as purchase orders and Blanket Purchase Agreements (BPAs).

Table E-13 shows there are 19,666 initial-award definitive contracts by Defense over this period. Of this total, 16,232 (or 82.5 percent) were awarded based on Defense receiving only a single offer. Yet, 15,778 out of the 16,232 single offers were coded as full and open competition because a competitive process was followed. [Note: We do not know whether the benefits of following a competitive process are realized by the government when only a single offer is received.]

**Table E-13. Number of single offers received and competitive status of new definitive contracts**

Department/ initial award (Mod = 0) number of offers received = 1	Completed under simplified acquisition procedures (SAP)	Follow on to com- peted action	Full and open compe- tition	Full and open com- petition after exclu- sion of sources	Not available for com- petition	Not com- peted	Not com- peted under SAP	Blank	Total initial awards - definitive contracts- 1 offer received	Total initial awards- definitive contracts
<b>USAID</b>	1	47	54	19	1	196			318	828
<b>Defense</b>	10	3	15,778	112	86	234	8	1	16,232	19,666
<b>State</b>	10		20	8	10	56	17		121	508
<b>Grand total</b>	21	50	15,852	139	97	486	25	1	16,671	21,002

Source: FPDS-NG FY 2002 through end of second quarter FY 2011, data extracted June 12, 2011.

### Contract method and extent of competition

Table E-14 shows the contract methods and extent of competition from FY 2002 through the end of the second quarter FY 2011, as reported in FPDS-NG. Notable is the large dollar-value of delivery orders that are reported as full and open competition. This is the result of a reporting convention that reported all delivery orders under an IDV based on the way the original IDV was reported. So, if a cost-type IDV was originally competed, then each cost-type delivery order under that IDV would also be reported as full and open competition, although the benefits of competition may not have accrued to each delivery order.

Now newer coding conventions—competitive delivery order (CDO) and non-competitive delivery order (NDO)—are to be used. The CDO code is used when firms under a multiple-award IDV are given a fair opportunity to compete on a delivery order. Until the new coding is widely implemented, the true extent of delivery order competition will be hard to determine.

Table E-14. Extent of competition by contract method and by place of performance (obligations)

Place/contract method	Competed under simplified acquisition procedures (SAP)	Competitive delivery order	Follow on to completed action	Full and open competition	Full and open competition after exclusion of sources	Non-competitive delivery order	Not available for competition	Not completed	Un-specified	Grand Total
<b>Iraq</b>	\$97,279,585	\$2,462,132,024	\$115,261,989	\$79,939,453,733	\$2,735,764,083	\$2,064,635,501	\$405,526,427	\$6,457,531,871	\$58,030,955	\$94,881,153,070
Delivery order	23,258,384	2,462,132,024	109,839,403	64,594,271,887	1,765,237,958	2,064,635,501	33,733,971	4,684,447,264	507,108,412	76,244,664,906
Definitive contract	16,474,980		4,367,664	11,457,419,292	903,663,500		357,863,323	1,688,659,529	684,450	14,435,561,970
Purchase order	46,694,255		1,037,405	3,887,496,553	66,862,595		11,597,293	84,242,746	69,550	4,119,258,556
BPA call	10,711,966		17,717	266,000			1,931,840	382,233	37,674,518	81,667,637
<b>Afghanistan</b>	\$686,291,601	\$3,964,704,486	\$6,057,563	\$35,199,473,932	\$1,466,105,751	\$1,060,426,723	\$876,643,674	\$2,517,476,885	\$464,860,708	\$46,379,340,278
Delivery order	7,090,358	3,964,704,486	5,400,064	23,939,839,557	1,171,361,900	1,060,426,723	734,298,571	1,884,419,638	127,378,950	32,864,923,266
Definitive contract	63,092,604			9,203,442,295	2,588,752,257		123,195,835	579,692,700	35,672	10,797,334,364
Purchase order	43,284,894		3,390	2,025,493,198	35,868,594		16,626,957	48,325,547	647,5324	2,176,077,903
BPA call	3,823,745		654,110	60,698,883			2,522,311	39,000	458,346,591	541,004,745
<b>Other</b>	\$928,473,541	\$178,732,988	\$52,227,768	\$37,618,912,866	\$1,271,553,682	\$47,570,237	\$786,750,703	\$5,017,816,464	\$41,256,690	\$46,961,057,913
Delivery order	4,042,626	178,732,988	40,399,315	27,696,937,019	926,679,952	47,474,653	112,800,604	4,126,994,683	35,448,850	33,171,469,990
Definitive contract	18,587,821		4,509,576	9,157,175,191	320,086,368	77,789	146,325,431	602,039,756	7,990,718	10,265,792,650
Purchase order	894,232,617		7,318,877	7,597,156,16	15,808,462	17,795	519,898,369	288,317,845	927,0572	2,494,607,739
BPA call	11,610,277			3,085,040			77,263,301	464,180	580,052	29,182,533
<b>Grand total</b>	<b>\$1,712,044,727</b>	<b>\$6,605,569,499</b>	<b>\$173,547,320</b>	<b>\$152,757,840,531</b>	<b>\$5,473,423,487</b>	<b>\$3,172,632,461</b>	<b>\$2,068,920,805</b>	<b>\$13,987,835,221</b>	<b>\$729,092,575</b>	<b>\$187,221,551,260</b>

Source: FPDS-NG FY 2002 through end of second quarter FY 2011 data, extracted June 12, 2011.

## Appendix F

# Comparing costs of contingency-support services performed by military service members, federal civilians, and contractors

One factor in determining the optimal workforce mix for providing support services in a contingency is the incremental cost of using military service members, federal civilians, and private-sector contractors. But cost-comparison methodologies are controversial and often yield disparate results.

This appendix presents an analysis of the comparative costs of these support options under a number of possible circumstances, including who performs the function, the characteristics of the function, and the characteristics of the particular contingency operation. The analysis leads to three general conclusions:

**1. For contingency operations that can be supported by standing military capabilities, the military is generally the most cost-effective solution.**

This follows since regular pay and benefits of deployed military service members are "sunk" costs—that is, they must be paid whether the person is deployed on contingency duty in Haiti or is training in Alabama.

They are not an addition to the overall cost of the contingency mission. Transport costs and special pay and benefits are incremental costs of the mission. In contrast, the full cost incurred for contractors or new federal civilian hires supporting a contingency operation would be included in the cost of the contingency.

**2. For larger, prolonged contingencies that would require recruiting and hiring additional civilian personnel or increasing military-force strength to meet support needs, contractors are generally more cost effective when employing lower wage local- or third-country nationals.**

For example, in Iraq about 60 percent of contractor personnel perform life- and installation-support work, and another 25 percent or more are engaged in security or construction, or act as translators/interpreters. The vast majority of these personnel are local or third-country nationals (LNs, TCNs), not U.S. citizens. The comparatively low pay and benefits for LNs and TCNs, as compared to military or U.S. national federal civilians, enable contractors to be less costly than government in such settings.

**3. In other instances, when contractors rely on U.S. citizens to acquire specialized skills or meet other requirements not available from LNs or TCNs, contractor and federal civilian personnel costs are roughly comparable.**

In these circumstances, criteria other than costs will influence the preferred workforce mix between private-sector contractors and federal civilian personnel. Because military "dwell-time" costs—the cost of maintaining back-up personnel to rotate into and out of the contingency area—must be recognized when a contingency is prolonged, the U.S. military will be the most expensive option.

**NOTE:** This research appendix makes no recommendation for or against using contractors. It addresses only the question of *comparing costs* between contractors and government personnel. It notes that such comparisons involve distinctions among the types of costs compared, the duration of the contingency, local labor markets, and other factors. The analysis is based on critical assumptions, and in some cases, limited availability and utility of important data elements.

This appendix does *not* address policy or legal restrictions, risks, appropriateness, mission criticality, organizational efficiency and effectiveness, desired levels of federal control, or other considerations that either could or must take precedence over straightforward cost comparisons.

## Background and introduction

This analysis of the incremental costs incurred to support warfighters in a contingency operation compares the costs of using full-time equivalent (FTE) military members, federal civilians, and contractor personnel. Incremental costs are added costs at the margin, not sunk costs that are included in program or budget totals. Because contingencies are not the same, the composition of incremental costs is not the same either. The costs depend not only on the function to be performed, but also on who performs it, the duration and intensity of the operation, and the force structure available when the contingency begins.

Relatively small-scale/short-lived contingencies, such as the recent contingency in Haiti, can use support capabilities that exist within available expeditionary forces. That is, the lowest-cost solution is to use existing military forces.

The incremental costs of deploying an available military-support capability include transportation, hazardous-duty pay, and other operating costs, but exclude regular pay and benefits. Pay and benefits already incurred by the government are sunk costs: they will not change if deployment for a short contingency is required.

After initial deployment, the military continues to be the lower-cost option if combat-support capability is already available within the military. The incremental operating cost to deploy a military member is estimated to be about \$10,000 per year, depending on distance traveled and family status. Table F-1 shows the incremental costs to deploy a military member. This is far less than hiring a new federal civilian or obtaining support from a contractor.

**Table F-1. Annual incremental costs to deploy a military service member**

Transportation	Hostile fire/ imminent- danger pay	Family separation allowance (if service member has dependents)	Hardship-duty pay: Location, mission, involuntary extension in Iraq	Total
\$2,500	\$2,700	\$3,000	\$2,000	\$10,200

**Source:** Summary of Commission calculations based on Defense data as of July 29, 2011, <http://militarypay.defense.gov>.

Larger-scale/prolonged contingencies, such as those in Iraq and Afghanistan, require recruiting and hiring additional civilian personnel or growing the military force structure because support requirements exceed available government resources. In these cases, contractors are generally more cost-effective. Military and civilian pay and benefits for new recruits/hires under these circumstances are included in incremental government costs. Dwell or rotation costs for the military would also be included to the extent that additional recruitment of personnel is required to fill those positions as the contingency extends beyond established rotation times.

Contractors are especially cost-effective when performing basic life-support functions if lower-priced LNs or TCNs constitute most of a contractor's workforce.<sup>1</sup> In Iraq, for example, three quarters of the contractor workforce consists of LNs and TCNs, who provide nearly all contracted life- and installation-support, security, and construction services.

1. The use of FTE cost comparisons assumes that government and contractor organizations are equally efficient in their use of personnel and other necessary resources. In other words, if a function required 100 military or 100 federal civilian employees to perform, we assume it would require 100 contractor employees. This assumes equivalent skill sets and task proficiency, which is not necessarily true. For example, suppose guarding a forward base requires 100 highly skilled and proficient U.S. military troops. If skill sets or proficiency differ, to provide the same or a comparable level of security, the same function may require 75 or 300 contractor employees (numbers are for illustration only).

Table F-2 summarizes the study findings. For lower- and mid-level-worker skills, contractors employing local or third-country nationals are less costly than military or federal civilian employees. However, when contractors employ U.S. citizens in higher-skill positions (as may be the case with communications support and professional services), their costs are roughly equivalent to military and federal civilians in comparable grade levels. The military is substantially more expensive when the contingency extends beyond rotation cycles and dwell costs are recognized.

Table F-2. Annual cost comparison for larger scale/prolonged contingency

Skill level	Work example	Contractor billing rate	Military FTE costs	Federal civilian FTE costs
<b>Lower</b>	Food service	LN = \$35,700 TCN = \$67,600	E-3 (Private 1/C) = \$86,671 (\$251,758 with dwell)	WG (wage-grade, \$13/hr base) = \$81,189
<b>Middle</b>	Construction: plumber, electrician	LN = \$35,700 TCN = \$67,600	E-4 (Corporal) = \$97,439 (\$283,037 with dwell)	WG (\$22/hr base) = \$137,397
<b>Higher</b>	Communications support	U.S. citizen = \$185,700 to \$231,600	O-3 (Army Captain) = \$175,335 (\$509,309 with dwell)	GS-12, Step 5 = \$178,502

Source: Contractor billing rate, see Table F-7; Military FTE costs, see Table F-4; Federal civilian FTE costs, see Table F-5.

Conclusions are based on the comparative cost of FTE workers supporting a large-scale/prolonged contingency. Comparative costs for military, federal civilian, and private-sector contractor FTEs are an approximation for the total organizational cost of performance for an activity. Data to compare the total organizational cost of performance, which depends on relative overall efficiency, are generally not available.

Cost differences can be substantial in their impact and are very sensitive to Defense's practice with regard to deployment times and refresh/training times at home, termed "dwell times," as discussed below.

### Methodology: Cost-concepts and scenarios

Our general concept for measuring support costs associated with a contingency is to count those incremental costs that would be incurred in supporting a contingency operation—costs that would otherwise be absent. Costs included in this concept depend on the nature of the contingency, particularly its intensity and duration. Two possible scenarios are set out below.

- **Small-scale/short contingency:** Here the contingency can be carried out by deployment of available government resources (military and federal civilians) and even if rotation of original personnel/units occurs, replacement personnel/units are available in the existing force. In this scenario, incremental costs for government personnel include transportation, hazardous-duty pay, and post-differential/danger/overtime pay for civilians, but *exclude* normal military and civilian salary and benefits. Salary and benefits for existing military and civilians are incurred irrespective of whether there is a contingency operation.

Substituting contractors would imply incurring incremental costs representing the full personnel costs involved (salary and benefits), plus overhead and profit, the cost of contract administration, and operating costs similar to those incurred by the government. In this situation, the use of government-only deployable resources without contractor support would be the most



cost-effective alternative for support during the contingency. Of course, when no contingency exists, peacetime costs of the government forces would continue to be incurred.<sup>2</sup>

- **Large-scale/prolonged contingency:** The contingency operation in this second scenario is so extensive that the available force structure would have to be augmented by new recruits, civilian hires, or contractors to meet the support requirement.

First, the operation would be sufficiently long that stateside rotation of military personnel to fulfill dwell requirements becomes necessary and thus substantial dwell costs would be incurred. Dwell costs depend on the length of deployment, rotational time at home, and the length of the contingency. For example, one-year deployments followed by a two-year rotation require three FTEs to support a contingency lasting three years or more.

Extending deployments and reducing rotation time reduces dwell costs but creates issues for retention, recruiting, and morale. Also, using personnel during stateside rotation to satisfy requirements that otherwise would require a new hire reduces dwell costs. Calculations were made using a dwell-multiple of three assuming a one-year deployment followed by a two-year rotation.

Second, in the case of the federal civilian solution, incremental costs include salary and benefits of the new civilian hires required to backfill the deployed civilian's position at home. Civilian costs would also include overtime, post differential, and danger pay.

The third alternative would be to contract for the required support. The cost of this alternative would include contractor personnel pay and benefit costs, overhead, profit, and contract administration costs incurred by the government.

## Findings

The following cost analysis applies to a large-scale/prolonged-contingency scenario. It is based on current policy that the combat-support and combat service-support portion of standing military forces be maintained at a low level (to avoid high peacetime costs and maximize combat capabilities) and augmented as needed by contractors. Under this policy, providing support services by using government personnel (military or civilian) would require increasing the force structure or hiring additional civilian employees, or both. All cost elements (especially pay and benefits) would be incurred for the contingency and are thus used in our comparisons.

## Military costs

Determining the cost of military personnel is complex because of the variety of special-pay categories—benefits that extend beyond the affected military department, even beyond Defense, and family situations of military members. Military compensation is unusual in that a high proportion is paid in the form of benefits—some paid out for a lifetime—rather than cash. The cash-compensation portion is relatively modest, so the actual cost used in comparative analysis depends heavily on which benefits are included. In general, military personnel receive base pay according to their rank and years of service. They also receive allowances for subsistence and housing (adjusted for locality), and may also be entitled to other special types of pay.

2. An exception to this concept would be the deployment of Guard and/or Reserve units. Their personnel would be paid on a full-time basis as opposed to much lower pay and benefit expenses during non-active status. Thus, most of their pay and benefits would be incremental in a contingency operation.

There are several alternatives typically used to determine the cost of a military member: cash compensation, regular military compensation, composite (also called programmed) rate, and the full cost to the government. In 2007, the Congressional Budget Office (CBO) summarized the most common methods of determining military compensation.<sup>3</sup> The most comprehensive method was used in this study: the full cost to the government.

**Cash compensation:** This typically includes basic pay, plus the basic allowance for subsistence, plus the basic allowance for housing (based on location and dependent status).

**Regular military compensation:** This includes basic pay, housing, and subsistence allowances, plus the tax advantages (foregone government revenue) on those allowances. This can also be extended to include state and local tax benefits. Benefits are added to these cash amounts. According to the CBO, "Data suggest that military personnel receive about 50 percent of their total compensation in such benefits."<sup>4</sup>

**Composite Rate (or Programmed Amount):** This consists of average basic pay plus retired-pay accrual, Medicare-Eligible Retiree Health Care (MERHC) accrual, basic allowance for housing, basic allowance for subsistence, incentive and special pay, permanent change of station expenses, and miscellaneous pay. It includes a per capita cost of \$5,560 of MERHC accrual.<sup>5</sup> These rates are summarized in the Annual Defense Composite Rate (also known as the Programmed Amount).<sup>6</sup>

**Full cost to Defense:** Directive-Type Memorandum (DTM) 09-007 adds other factors to the composite rate to present a fuller accounting of the cost of military personnel. It adds costs for recruitment and advertising, training, subsidized groceries (commissaries), education assistance, child-development services, and other costs that are incurred through the provision of non-monetary benefits to military members.<sup>7</sup> This equates to the full cost to Defense.

**Full cost to the government:** The referenced DTM 09-007 defines full cost to the government by adding other departments' costs to those shown above. Included are:

- Department of Education for impact aid to schools,
- Department of Labor for training and employment of veterans,
- Department of the Treasury payments into the Military Retirement Fund, and
- Department of Veterans Affairs for veterans' benefits.<sup>8</sup>

3. Congressional Budget Office Pub. No. 2665, "Evaluating Military Compensation," June 2007, 2.

4. Ibid.

5. Office of the Under Secretary of Defense, Program/Budget, memorandum, "Department of Defense (DoD) Military Personnel Composite Standard Pay and Reimbursement Rates FY 2009."

6. Office of the Secretary of Defense, Cost Assessment and Program Evaluation, Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support," January 29, 2010, 23.

7. Ibid., 24.

8. Ibid., 24-25.

These military cost concepts are summarized in Table F-3.

**Table F-3. Summary of cost concepts for military members**

<b>Military Cost Concept</b>	<b>Definitions</b>
Cash compensation	Basic pay, basic allowance for housing (BAH), basic allowance for subsistence (BAS)
Regular military compensation	<i>Adds to above:</i> Federal-tax advantage on BAH, BAS
Composite Rate	<i>Adds to above:</i> Retired-pay accrual, MERHC accrual, incentive and special pay, permanent change-of-station expenses, and miscellaneous pay <i>Deletes from above:</i> Federal tax advantage on BAH, BAS
Full cost to Defense	<i>Adds to above:</i> Costs for recruitment and advertising, training, subsidized groceries (commissaries), education assistance, child-development services, and other costs that are incurred through the provision of non-monetary benefits to military members
Full cost to the government	<i>Adds to above:</i> Department of Education for impact aid to schools, Department of Labor for the training and employment of veterans, Department of the Treasury payments into the Military Retirement Fund, and Department of Veterans Affairs for veteran's benefits

**Sources:** Office of the Secretary of Defense, Cost Assessment and Program Evaluation, Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support," January 29, 2010, 24-25; Congressional Budget Office Pub. No. 2665, "Evaluating Military Compensation," June 2007, 2.

The total amount of overhead cost, such as that for headquarters operations, incurred by the government for each service member is not included in any of the cost definitions above. While presumably small for each individual, it is an unknown factor when comparing military to contractor costs, where all such costs are included in the contractor's billing rates. OMB Circular A-76, in the computations program COMPARE, uses a factor of 12 percent for overhead for government employees. We have adopted this rate as a starting point in our analysis.

Although none of the basic costing methodologies discussed above focus on the special-pay rates that are likely applicable in contingency operations, we need to include them in our discussion. In certain areas, a member of the uniformed services may be entitled to Hostile Fire/Imminent Danger pay at the rate of \$225 per month.<sup>9</sup> This would be \$2,700 over 12 months.

A service member with dependents who serves an unaccompanied tour of duty may be entitled to a family-separation allowance (FSA) of \$250 per month. FSA accrues from the day of departure from the home station and ends the day prior to arrival at the home station.<sup>10</sup> This would total \$3,000 over 12 months.

Military Hardship Duty Pay (HDP) is based on several considerations. HDP based on location (HDP-L) is intended to recognize extraordinarily arduous living conditions, excessive physical hardship, or unhealthy conditions, and ranges from \$50 to \$150 per month based on the level of hardship. HDP based on mission (HDP-M) is paid for performing designated hardship missions. HDP of \$200 per month based on involuntary extension in Iraq is paid to those serving beyond a 12-month deployment. The maximum total of all three HDPs cannot exceed \$1,500 per month.<sup>11</sup>

9. Office of the Under Secretary of Defense, Personnel and Readiness, Military Compensation, "Hostile Fire/Imminent Danger Pay (HFP/IDP)," as of July 29, 2011, <http://militarypay.defense.gov>.

10. Office of the Under Secretary of Defense, Personnel and Readiness, Military Compensation, "Family Separation Allowance," as of July 29, 2011, <http://militarypay.defense.gov>.

11. Office of the Under Secretary of Defense, Personnel and Readiness, Military Compensation, "Hardship Duty Pay (HDP)," as of July 29, 2011, <http://militarypay.defense.gov>.

In its military-compensation study, CBO added about 5 percent to total pay for these special pay rates, and we are adopting the same approach.

Based on the above, we recommend estimating military pay as shown in Table F-4. This starts with the readily available Annual Defense Composite Rate. It adds the adjustments to calculate the cost to Defense and the overall cost to the government for the military member. Then we add the factors for overhead and special-pay rates typical of a contingency operation. We did not include any treatment of the revenue consequences for the government of not taxing military benefits.

A major factor in the cost of the military is dwell time, or the time spent between deployments. This time is necessary for rest, recovery, and family time following a combat deployment, and for training and preparation time for the next deployment. At times, for example, the Army's goal has been to have 12-month deployments with 24 months of dwell time, or a 1-to-2 dwell ratio. In order to always have a unit deployed, an additional two units are required to provide sufficient dwell time. However, the Army has sometimes only been able to achieve a 1-to-1.2 dwell ratio and has said that in the future it wants to have a 1-to-2.5 dwell ratio. The calculations below used the 1-to-2 dwell ratio, but the total cost changes considerably if either 1-to-1.2 or 1-to-2.5 were used. In addition to length of deployment and dwell time, dwell costs are reduced if personnel are used during home rotation to satisfy home-based requirements that would otherwise require a new hire or a private contractor.

**Table F-4. Example of military FTE cost estimates**

	<b>O-3</b> (Army Captain)	<b>E-4</b> (Corporal)	<b>E-3</b> (Private 1/C)
Annual Defense Composite Rate (2010 dollars)	\$122,616	\$56,378	\$47,221
Adjustments from DTM 09-007 for Defense costs (2008 dollars)*	16,997	16,997	16,997
Additional adjustments from DTM 09-007 for other costs to the government (2008 dollars)**	12,659	12,659	12,659
Overhead (12 percent on Composite Rate)	14,715	6,765	5,667
<b>Total FTE cost in United States</b>	<b>\$166,987</b>	<b>\$92,799</b>	<b>\$82,544</b>
Contingency special pay (5 percent)	8,349	4,640	4,127
<b>Total FTE cost for year deployed</b>	<b>\$175,335</b>	<b>\$97,439</b>	<b>\$86,671</b>
Total with dwell ratio at 1-to-2***	\$509,309	\$283,037	\$251,758

**Notes:** \*Adjustments include costs for health care, education assistance, discount groceries, child development, training, recruitment and advertising, defense education activity and family assistance, manpower management, and other personnel support.

\*\*Child education-impact aid (\$928), Veterans' employment and training (\$9), Treasury contribution to retirement (\$7,119), Treasury contribution for concurrent receipts (\$1,236), Veterans' benefits (\$3,367), totaling \$12,659.

\*\*\* Total costs include special pay for the one year deployed.

**Sources:** Office of the Under Secretary of Defense, Program/Budget, memorandum, "FY 2009 Department of Defense (DoD) Military Personnel Composite Standard Pay and Reimbursement Rates," August 18, 2008; Office of the Secretary of Defense, Cost Assessment and Program Evaluation, Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support," January 29, 2010.

### Federal civilian costs

Federal civilian employee costs in an overseas contingency are primarily driven by six factors: grade/step/salary, benefits, post differential, danger pay, overtime hours, and overhead. We used all six factors to develop the total cost to the government for federal civilian employees.

The grade and step of federal civilian employees under the General Schedule (GS) establishes their basic pay rates. When stationed overseas, they are to receive the base pay for their current grade and step.<sup>12</sup> For personnel stationed in the United States, those rates often have locality pay added. When a person is overseas on a temporary basis or may still have dependents living in the United States, employees may still draw locality pay based on the rate for their home station.

Some blue-collar employees in the United States are under the federal wage system of the Office of Personnel Management, which sets their pay based on pay in their local area as determined by the Department of Labor. This group would typically include such trades as plumbers and electricians, and its members are often referred to as wage-grade (WG) employees.

Benefits for federal civilian workers including retirement, health care, Medicare, and insurance are 36.25 percent of an employee's base pay.<sup>13</sup>

When overseas, a federal civilian employee is entitled to post-differential pay established by the Department of State. Typically, the highest rate—35 percent—will apply to a post in a contingency area. Danger pay at 35 percent, also set by the Department of State, will typically apply in a contingency area. An employee may also receive a post cost-of-living allowance; however, there currently is no additional amount for Iraq or Afghanistan.<sup>14</sup>

Overtime pay for work above a regular 40-hour work week is also a part of the compensation for some federal civilian employees. In the early days of a contingency operation, the number of hours may be established as a programmed amount. This may be as high as 40 hours of overtime per week. Overtime is usually paid at a rate of time-and-a-half for the employee, but is capped at the GS-9 step 5 rate of \$32.90 (2010) or the person's regular hourly rate, whichever is more.<sup>15</sup>

It is reasonable to count as an incremental contingency-related cost all of the federal civilian's full salary and benefits while deployed, as the work being done prior to deployment must presumably be done by those remaining, possibly using overtime hours. Funds may be provided to replace the federal civilians at their home stations, but such backfills are problematic because of the difficulties of the federal hiring system and the difficulty of finding new hires with the right skills. If such backfills do occur, we assume the cost of this new hire would generally be the same as the cost of the person replaced. Given this assumption, the deployed civilian's salary and benefits are attributable to the cost of the contingency. As noted, OMB Circular A-76 uses a factor of 12 percent for overhead for government employees.

Finally, because federal civilian employees' compensation is subject to federal income tax, a recoupment of 20 percent (the average tax rate according to the Internal Revenue Service), should be deducted from the compensation costs of these employees to place federal civilian employees on a basis comparable to U.S.-citizen contractor employees or military personnel.

12. Office of Personnel Management, Salary Table 2010-GS, as of July 29, 2011, <http://www.opm.gov>.

13. Office of Management and Budget memorandum M-08-13, "Update to Civilian Position Full Fringe Benefit Cost Factor, Federal Pay Raise Assumptions, and Inflation Factors used in OMB Circular No. A-76, 'Performance of Commercial Activities,'" March 11, 2008.

14. Department of State, "Summary of Allowances and Benefits for U.S.G. Civilians under Department of State Standardized Regulations (DSSR)," as of August 3, 2009, <http://aoprals.state.gov>.

15. Office of Personnel Management, Salary Table 2010-GS, as of July 29, 2011, <http://www.opm.gov>.

Note: Another factor to consider is that these special-payment situations are likely to drive the employee's total compensation above the level of the salary of the Vice President of the United States, \$230,700 for 2010, which is not normally allowed. However, in a contingency operation, it may be likely that this limitation will be waived by Congress, at least for Defense employees. Otherwise, a federal civilian employee reaching this ceiling would have to be replaced in theater with a comparable employee with resulting disruption and additional relocation costs. These costs are not considered in our analysis.

In Table F-5 below we provide some examples of total government costs for federal civilian workers using the above assumptions. The GS-12 step 5 is treated as a skilled journeyman-level grade in and among the general-schedule workers. The wage-grade base-pay examples are typical hourly rates the government is currently offering for plumbers, electricians, and food-service workers.<sup>16</sup>

**Table F-5. Examples of total costs for federal civilians in contingency operations**

Row	Item	GS-12, step 5	Wage grade at \$22/hour (plumber/ electrician)	Wage grade at \$13/hour (food service)
1	Annual salary (base)	\$68,310	\$45,914	\$27,131
2	40 hours of overtime (50 weeks)	65,800	66,000	39,000
3	Post differential pay (35 percent)	23,909	16,070	9,496
4	Danger pay (35 percent)	23,909	16,070	9,496
5	Benefits (36.25 percent of row 1)	24,762	16,644	9,835
6	Overhead (12 percent of row 1)	8,197	5,510	3,256
7	<b>Total</b>	<b>\$214,887</b>	<b>\$166,208</b>	<b>\$98,214</b>
8	Deduct federal taxes recouped (rows 1 to 4 at 20 percent)	(\$36,385)	(\$28,811)	(\$17,025)
9	<b>Total after taxes</b>	<b>\$178,502</b>	<b>\$137,397</b>	<b>\$81,189</b>

**Source:** Office of Personnel Management, Salary Table 2010-GS, as of July 29, 2011, <http://www.opm.gov>.

### Contractor costs

The cost of contractor support depends critically on the skill level needed, location, labor-market supply, and other characteristics of the particular contingency operation. Those characteristics influence how much a contractor pays to attract U.S. citizens, as well as the cost and availability of local and third-country nationals. Our comparisons are based on the government's actual experience for obtaining contractor support in Iraq.

**Workforce Composition:** In Iraq, about 25 percent of the contractor workforce consists of LNs. Approximately 25 percent of the workforce are U.S. citizens and the remaining 50 percent TCNs. The vast majority of the contractor workforce (60 percent) is engaged in base-support activities, mainly under the LOGCAP program. Another large portion, nearly 30 percent, divides roughly evenly among security, construction, and translation services.<sup>17</sup>

**Services Performed:** The contract workforce involved in providing support functions tends to be concentrated in one of the nationality categories. Third-country nationals dominate life-support and security services. Iraqi nationals dominate construction and translation services. U.S. citizens dominate

16. Office of Personnel Management, Salary Table 2010-GS, as of July 29, 2011, <http://www.opm.gov>.

17. Brig. Gen. William N. Phillips, Commanding General, Joint Contracting Command-Iraq/Afghanistan, memorandum, "Contractor Support of Multi-National Force-Iraq (MNF-I) Operations," July 17, 2009; Brig. Gen. John F. Wharton, Chief of Staff, U.S. Army Materiel Command, briefing to Commission, January 12, 2009.

communications support. See Table F-6 below for data on headcounts as of June 20, 2009. Shaded cells indicate the numerically dominant value.

**Table F-6. Contractor workforce by activity performed in Iraq**  
As of June 20, 2009

<b>Mission Category</b>	<b>Total (% of total)</b>	<b>U.S. citizen</b>	<b>Iraqi LN</b>	<b>TCN</b>
Base life support	71,783 (60%)	18,093	9,869	43,821
Security	13,145 (11%)	773	3,686	8,686
Construction	10,090 (8%)	184	8,297	1,609
Translators/interpreters	9,128 (8%)	2,390	6,738	0
Logistics/maintenance	3,800 (3%)	2,778	314	708
Training	2,694 (2%)	2,397	54	243
Communications support	2,183 (2%)	2,070	48	65
Transportation	1,616 (1%)	28	1,364	224
Other	5,267 (4%)	2,828	1,670	769
<b>Total</b>	<b>119,706 (100%)</b>	<b>31,541 (26%)</b>	<b>32,040 (27%)</b>	<b>56,125 (47%)</b>

**Note:** Shaded cells represent the leading source of the workforce in each category.

**Source:** Brig. Gen. William N. Phillips, Commanding General, Joint Contracting Command-Iraq/Afghanistan, memorandum, "Contractor Support of Multi-National Force-Iraq (MNF-I) Operations," July 17, 2009, 1.

Table F-7 displays data on contractor FTE costs in Iraq—both direct-labor only, and fully loaded and billed. Billable rates per FTE are broken out by workforce nationality, but are reported only for a single point in time and are based on a sample of 1,000 contracts. Billable rates are a representation of the contractor's full cost to the government and include the contractor's overhead, other direct costs, and fee. Thus, billable rates are the best basis to compare contractor costs to our computation of military and federal-civilian FTE costs.

**FTE Costs:** Cost information is based on actual contract data on two alternative FTE cost measures: direct-labor cost per FTE and billing-cost per FTE.

The first, direct-labor cost per FTE, comes from the Army Contractor Manpower Reporting Application, where contractors are required to report direct-labor costs per FTE, exclusive of benefits, overhead, general and administrative, and other direct costs.<sup>18</sup> These costs are self-reported by the contractors and vary widely, with an unknown amount for the benefits that would make them more comparable to costs used elsewhere in our analysis. As a result, full use of these data was not possible.

The second measure, billing-cost per FTE, is taken from a July 17, 2009 memorandum from the Commanding General, Joint Contracting Command-Iraq/Afghanistan (JCC I/A) and are partially reproduced in a briefing presented to the Commission by the Chief of Staff, U.S. Army Materiel Command. Billing costs per FTE are based on a data sample of 1,000 contracts compiled by the Theater Financial Management Cost Team. The values presented by these sources coincide, with the exception of the FTE billing costs for U.S. citizens. For U.S. citizens, the two reported values, depending on the source, are \$185,700 or \$231,600.<sup>19</sup>

**Table F-7. Contractor costs in Iraq**

As of June 20, 2009

	U.S. citizen	Iraqi LN	TCN	All
Direct labor costs per FTE (excludes benefits, overhead, general and administrative, and other costs)	NA	NA	NA	\$66,709 = FY 2008 \$78,228 = FY 2009
Contract billing costs per FTE	\$185,700 or \$231,600	\$35,700*	\$67,600	NA

\* To the extent that LNs live off base and depend on the local economy for housing and subsistence rather than having government-furnished housing, they represent an even lower relative cost to the government.

**Sources:** Brig. Gen. William N. Phillips, U.S. Army, Commanding General, Joint Contracting Command-Iraq/Afghanistan, memorandum, "Contractor Support of Multi-National Force-Iraq (MNF-I) Operations," July 17, 2009, 1; Brig. Gen. John F. Wharton, Chief of Staff, U.S. Army, U.S. Army Materiel Command, briefing to Commission, January 12, 2009.

18. U.S. Army, "FY 2009 Inventory of Contracts for Services."

19. Tyler Stopa and Karl Kalb, Calibre, Theater Financial Management Cost Team, telephone interview with Commission, March 9, 2010.



## Conclusions

Based on the cost assumptions and data analyses presented above, heavy reliance on local nationals and third-country nationals (especially for logistics services and installation support) leads to considerable cost savings compared to the military, federal government civilians, or U.S. citizens used by contractors. Local and third-country nationals also offer significant cost advantages.

For the balance of activities that rely on contractor support using U.S. citizens, the cost advantages of contracting versus performing the function using military or federal civilians is less clear.

- For longer-term contingency operations where dwell costs are recognized, contractors are more cost-effective than military personnel.
- U.S. citizens employed by contractors are cost-comparable with the use of federal employees in similar skill or occupational categories. The relative advantage of one over the other would rest on factors other than FTE (labor) cost. The relative efficiency of the government or contractor organization performing the work in question would determine the more cost-effective source.

## Appendix G

# Commissioners

**Michael J. THIBAUT**, Co-Chair. Appointed by Speaker of the House. Jointly designated as Co-Chairman by Speaker of the House and Senate Majority Leader. Director, Navigant Consulting, 2007–2008; Chief Compliance Officer, Unisys Federal Systems, 2005–2006; Deputy Director, Defense Contract Audit Agency, 1994–2005. BA, Southern Oregon; MA, Central Michigan, 1984; CPA (retired); U.S. Army, 173<sup>rd</sup> Airborne Brigade, 1965–1968.

**Christopher SHAYS**, Co-Chair. Appointed by House Minority Leader. Jointly designated as Co-Chairman by House Minority Leader and Senate Minority Leader. Member, U.S. House of Representatives, for Connecticut's 4th District, 1987–2009. Formerly Chairman, then Ranking Member, Subcommittee on National Security and Foreign Affairs of the Oversight and Government Reform Committee; member, Committees on Homeland Security and Financial Services. Representative, Connecticut General Assembly, 1975–1987. Peace Corps volunteer, 1968–1970. BA, Principia College; MBA, MPA, New York University.

**Clark Kent ERVIN**. Appointed by Speaker of the House. Director, Homeland Security Program, Aspen Institute, 2005–present; appointed by Secretary of Homeland Security Janet Napolitano to Homeland Security Advisory Council; Member, Board of Directors, Clear Path Technologies, LLC; Inspector General, United States Department of Homeland Security, 2003–2005; Inspector General, United States Department of State, 2001–2003; Deputy Attorney General and General Counsel of Texas, 1999–2001; Assistant Secretary of State of Texas, 1995–1999; Locke, Liddell, & Sapp, LLP, Lawyer, 1993–1995; Associate Policy Director, White House Office of National Service, 1989–1991; Vinson & Elkins, LLP, Lawyer, 1985–1989. AB, Harvard; MA, Oxford; JD, Harvard.

**Grant S. GREEN**. Appointed by the President. Chairman, 2005–present, Chairman and President, 1996–2000, Global Marketing and Development Solutions Inc.; President, "America Supports You Fund," 2007–2009; Under Secretary of State for Management, 2001–2005; Executive Vice President and Chief Operating Officer, major consulting and marketing company, 1989–1996; Assistant Secretary of Defense, 1988–1989; Special Assistant to the President, Executive Secretary for the National Security Council, 1986–1988; senior management positions, Sears World Trade, 1983–1986. BA, Arkansas; MS, George Washington, 1979. Retired colonel, U.S. Army. Formerly Acting Co-Chair of the Commission.

**Robert J. HENKE**. Appointed by Senate Minority Leader. Assistant Secretary for Management (Chief Financial Officer and Chief Acquisition Officer), Department of Veterans Affairs, 2005–2009; previously, Principal Deputy Under Secretary of Defense (Comptroller); Professional Staff Member, U.S. Senate Committee on Appropriations, Subcommittee on Defense; Presidential Management Intern with the Office of the Assistant Secretary of the Navy (Financial Management & Comptroller); General Electric Company; U.S. Navy. BA, Notre Dame; MPA, Syracuse.

**Katherine V. SCHINASI**. Appointed by Senate Majority Leader, 2010, replacing Linda J. GUSTITUS, who served 2008–2009. Senior advisor to The Conference Board, a non-profit research organization, 2009–2010. Government Accountability Office, 1978–2009, retired as managing director for acquisition and sourcing management. Portfolio included operations in Departments of Defense, State, and Homeland Security, and cross-governmental acquisitions. Past lecturer at Defense Acquisition University, Industrial College of the Armed Forces, and Naval Postgraduate School. Appointed to federal Senior Executive Service, 1998. BA, government and politics, University of Maryland; MA, international relations, School of International Service, American University.

**Charles TIEFER**. Appointed by Senate Majority Leader. Professor of Law, University of Baltimore School of Law, 1995–present (government contracts, contracts, and legislation); U.S. House of Representatives, General Counsel (Acting), 1993–1994; Solicitor and Deputy General Counsel, 1984–1995; Assistant Senate Legal Counsel, U.S. Senate, 1979–1984; Trial Attorney, Civil Rights Division, U.S. Department of Justice, 1978–1979; Law Clerk, U.S. Court of Appeals for the D.C. Circuit, 1977–1978. BA, Columbia *summa cum laude*; JD, Harvard *magna cum laude*.

**Dov S. ZAKHEIM**. Appointed by the President. Senior Vice President, Booz Allen Hamilton, 2004–2010; Senior Fellow, CNA Corporation, 2010–present; Senior Advisor, Center for Strategic and International Studies, 2010–present; Under Secretary of Defense (Comptroller) and Chief Financial Officer, 2001–2004 (coordinator of Department of Defense civilian programs in Afghanistan, 2002–2004); Corporate Vice President, System Planning Corporation, and Chief Executive Officer, SPC International Corporation, 1987–2001; Deputy Under Secretary of Defense (Planning and Resources), 1985–1987; Department of Defense, various senior executive service positions, 1981–1985; Congressional Budget Office, 1975–1981. BA, Columbia; DPhil, Oxford.

Note: Appointing officials were those occupying office in 2008–2009.

## Appendix H

# Commission staff

**Robert B. Dickson**, *Executive Director* ■ **Jeffrey Brand**, *Deputy Executive Director*

Marshall Adame <i>Professional Staff Member</i>	Joe Graziano <i>Team Lead</i>	Kristen Nelson <i>Team Lead</i>
Jessica Baker <i>Program Analyst</i>	Gloria Greenhow <i>Executive Assistant</i>	Brendan Orsinger <i>Program Analyst</i>
Bill Barclay <i>Professional Staff Member</i>	Alicia Haley <i>Program Analyst</i>	Denis Orsinger <i>Professional Staff Member</i>
Steve Bassermann <i>Program Analyst</i>	Marian Harvey <i>Professional Staff Member</i>	Gregory Picur <i>Detailee-USAID</i>
Captain Tina Benivegna <i>Detailee-DCMA, Air Force</i>	William "Mike" Hatchett <i>Detailee-USACE</i>	David Reed <i>Professional Staff Member</i>
Richard Beutel <i>General Counsel</i>	Donna Heivilin <i>Professional Staff Member</i>	Frank Sailer <i>Technical Support</i>
Kathryn Bloomberg <i>Program Analyst</i>	Megan Herberger <i>Program Analyst</i>	Don Schlien <i>Professional Staff Member</i>
Cynthia Bodnar <i>Program Analyst</i>	Clark Irwin <i>Communications Director</i>	Major Benjamin Sherrill <i>Detailee-DCMA, Air Force</i>
Anthony Box <i>Professional Staff Member</i>	James Jeffery <i>Professional Staff Member</i>	Lane Smith <i>Professional Staff Member</i>
John Brosnan <i>Senior Counsel</i>	David Johnson <i>Detailee-DCAA</i>	Karen Sorber <i>Study Director</i>
Rosemary Byrd <i>Deputy Study Director</i>	Parker Laite <i>Program Analyst</i>	Steven Sternlieb <i>Team Lead</i>
Catherine Carrell <i>Detailee-DCAA</i>	Philip Lee <i>Legal Intern</i>	Ronald Straight <i>Professional Staff Member</i>
Tara Chapman <i>Program Analyst</i>	Denean Machis <i>Group Lead</i>	Jazather Thompson <i>Office Manager</i>
Marquittia Coleman <i>Executive Assistant</i>	Kevin Maloy <i>Team Lead, Detailee-Department of State</i>	Jo-Ann Thompson <i>Administration Assistant</i>
Morgan Cosby <i>Counsel</i>	Curt Malthouse <i>Detailee-DoD IG</i>	Adam Weaver <i>Counsel</i>
Gray Coyner <i>Team Lead</i>	Ambassador Gary Matthews <i>Professional Staff Member</i>	Diana White <i>Executive Administrator</i>
Robert Curtis <i>Professional Staff Member</i>	Robert Melby <i>Professional Staff Member</i>	Carmen Williams <i>Technical Support, Detailee-DoD IG</i>
Stephen Dillard <i>Professional Staff Member</i>	Anne McDonough <i>Research Librarian and Archivist</i>	Linda Williams <i>Professional Staff Member</i>
Norbert Doyle <i>Group Lead</i>	Zen McManus <i>Program Analyst</i>	Barbara Wolfson <i>Senior Editor</i>
James Durso <i>Team Lead</i>	Clark Mercer <i>Program Analyst</i>	Colonel Kel Wood <i>Group Lead, Detailee-Army</i>
David Fitzgerald <i>Group Lead</i>	George Mong <i>Professional Staff Member</i>	Anthony Wubbena <i>Program Analyst</i>
Garrett Golubin <i>Program Analyst</i>	Myron Myers <i>Professional Staff Member</i>	Susan Yarbrough <i>Detailee-USACE</i>

## Appendix I

# Acronyms

<b>ACOD</b>	Armed Contractor Oversight Division or Directorate	<b>DoD</b>	Department of Defense
<b>AFCEE</b>	U.S. Air Force Center for Engineering and the Environment	<b>FAR</b>	Federal Acquisition Regulation
<b>AMC</b>	U.S. Army Materiel Command	<b>FOB</b>	Forward Operating Base
<b>ANA</b>	Afghan National Army	<b>FPDS-NG</b>	Federal Procurement Data System–Next Generation
<b>ANP</b>	Afghan National Police	<b>FTE</b>	Full-time equivalent
<b>ANSF</b>	Afghan National Security Forces	<b>GAO</b>	Government Accountability Office
<b>APPF</b>	Afghan Public Protection Force	<b>GDP</b>	Gross domestic product
<b>CAO</b>	Chief Acquisition Officer	<b>ICCTF</b>	International Contract Corruption Task Force
<b>CENTCOM</b>	U.S. Central Command	<b>IDIQ</b>	Indefinite delivery/indefinite quantity
<b>CERP</b>	Commander's Emergency Response Fund	<b>IG</b>	Inspector General
<b>CFO</b>	Chief Financial Officer	<b>INL</b>	U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs
<b>CIO</b>	Chief Information Officer	<b>IMCOM</b>	U.S. Army Installation Management Command
<b>COCOM</b>	Combatant Command	<b>INSCOM</b>	U.S. Army Intelligence and Security Command
<b>COIN</b>	Counterinsurgency	<b>ISAF</b>	International Security Assistance Force
<b>CONOC</b>	Contractor Operations Center	<b>JCC-I/A</b>	Joint Contracting Command-Iraq/Afghanistan
<b>COR</b>	Contracting Officer's Representative	<b>LN</b>	Local national
<b>COTR</b>	Contracting Officer's Technical Representative	<b>LOGCAP</b>	Logistics Civil Augmentation Program
<b>CSTC-A</b>	Combined Security Transition Command–Afghanistan	<b>MEJA</b>	Military Extraterritorial Jurisdiction Act
<b>DCAA</b>	Defense Contract Audit Agency	<b>NSC</b>	National Security Council
<b>DCIS</b>	Defense Criminal Investigative Service		
<b>DCMA</b>	Defense Contract Management Agency		
<b>DLA</b>	Defense Logistics Agency		

## ACRONYMS

<b>OCI</b>	Organizational conflict of interest
<b>OCS</b>	Operational Contract Support
<b>OFPP</b>	Office of Federal Procurement Policy
<b>OMB</b>	Office of Management and Budget
<b>OTI</b>	USAID, Office of Transition Initiatives
<b>PSC</b>	Private security contractor
<b>QDDR</b>	Quadrennial Diplomacy and Development Review
<b>QDR</b>	Quadrennial Defense Review
<b>SIGAR</b>	Special Inspector General for Afghanistan Reconstruction
<b>SIGIR</b>	Special Inspector General for Iraq Reconstruction
<b>SME</b>	Subject-matter expert
<b>SPE</b>	Senior Procurement Executive
<b>SPOT</b>	Synchronized Predeployment and Operational Tracker
<b>TCN</b>	Third-country national
<b>TRANSCOM</b>	U.S. Transportation Command
<b>UCMJ</b>	Uniform Code of Military Justice
<b>USACE</b>	U.S. Army Corps of Engineers
<b>USAID</b>	U.S. Agency for International Development
<b>USFOR-A</b>	U.S. Forces-Afghanistan

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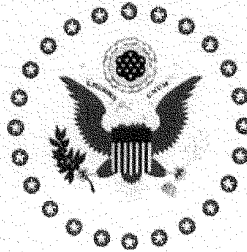
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- public hearing transcripts, testimony, and videos;
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COMMISSION ON WARTIME CONTRACTING  
IN IRAQ AND AFGHANISTAN

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