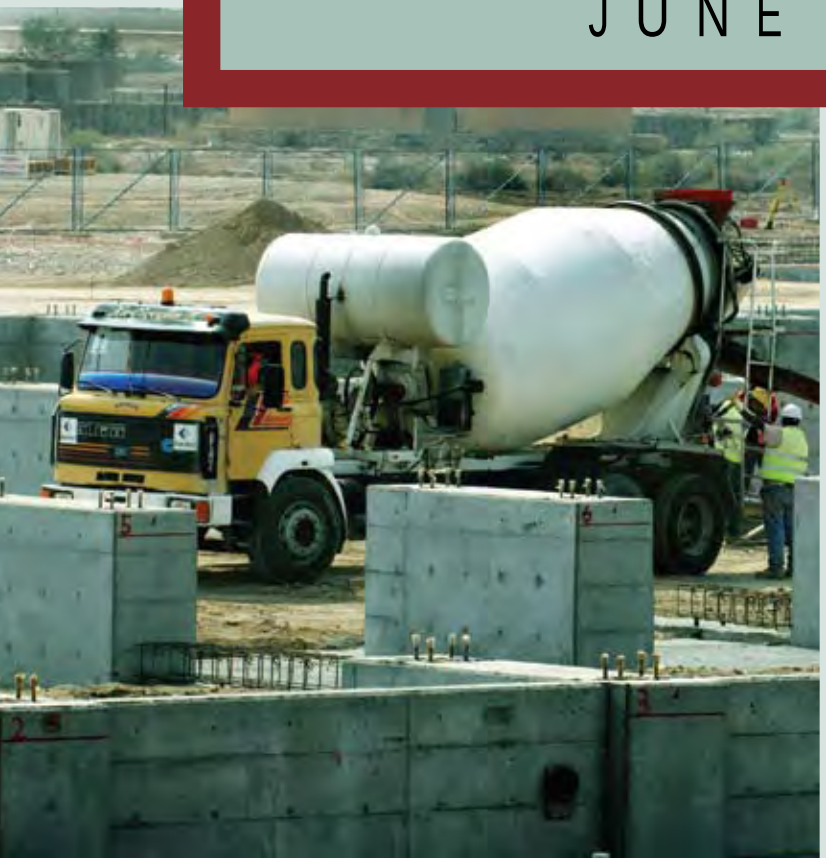
Commission on Wartime Contracting in Iraq and Afghanistan

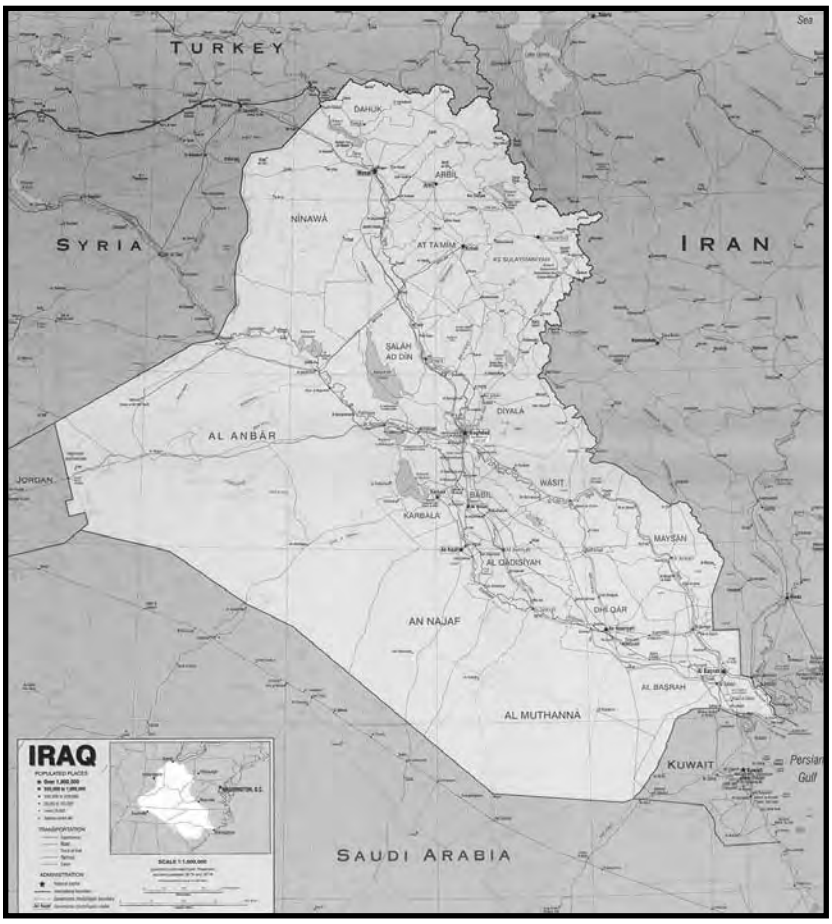
AT WHAT COST?

Contingency Contracting in Iraq and Afghanistan

Interim Report

JUNE 2009





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COVER PHOTOS

Clockwise from top: Vehicles at a U.S. base (Army Corps of Engineers photo); base security guards (Commission photo); construction project in Iraq (Commission photo).

At What Cost?

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Interim Report to Congress

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Acronyms

CENTCOM	U.S. Army Central Command
CERP	The Commander's Emergency Response Program
COR	Contracting Officer's Representative
DAU	Defense Acquisition University
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DFAC	Dining Facility
DFARS	Defense Federal Acquisition Regulation Supplement
DoD	Department of Defense
DoDIG	Department of Defense Inspector General
DoS	Department of State
FAR	Federal Acquisition Regulation
FOB	Forward Operating Base
FPDS-NG	Federal Procurement Data System - Next Generation
GAO	Government Accountability Office
IDIQ	Indefinite Delivery Indefinite Quantity
JCC-I/A	Joint Contracting Command - Iraq/Afghanistan
LOGCAP	Logistics Civil Augmentation Program
MEJA	Military Extraterritorial Jurisdiction Act
MNC-I	Multi-National Corps - Iraq
MNF-I	Multi-National Force - Iraq
PRT	Provincial Reconstruction Team
PSC	Private Security Contractor
QAR	Quality Assurance Representative
SIGAR	Special Inspector General for Afghanistan Reconstruction
SIGIR	Special Inspector General for Iraq Reconstruction
SPOT	Synchronized Pre-deployment and Operational Tracker
USACE	U.S. Army Corps of Engineers
USAID	U.S. Agency for International Development

Preface

In 2008 Congress established the Commission on Wartime Contracting in Iraq and Afghanistan in response to increasing indications of widespread waste, fraud, and abuse in government contracting. The eight-member Commission is a bipartisan, independent entity charged with evaluating and reporting on America's wartime contracting for logistics, reconstruction, and security.

The authorizing legislation directs the Commission to issue an Interim Report and a Final Report. This Interim Report to Congress describes the Commission's work to date, which includes hundreds of meetings and briefings, analysis of existing reports and audits, hearings on Capitol Hill, and fact-finding trips to the theaters of operation. This Report highlights some time-sensitive issues, especially given the challenges of the drawdown in Iraq and the buildup in Afghanistan.

The Commission's Final Report to Congress will reflect the results of all of the Commission's work. It will include lessons learned and specific, actionable recommendations for permanent improvement in wartime contracting.

More than 240,000 contractor employees currently provide critical support for U.S. contingency operations in the Southwest Asia area of responsibility, which includes Iraq and Afghanistan. Despite the difficulty of operating in these environments, military personnel, federal civilian employees, and private contractors have executed countless support tasks faithfully and well.

Many have paid a personal price. As of May 27, 2009, 4,973 men and women of America's military and at least 13 civilian employees of the Department of Defense have died in Iraq and Afghanistan. Less publicized is the fact that more than 1,360 contractor employees—Americans, Iraqis, and third-country nationals—have also died in the two war zones. Tens of thousands more have been wounded. Criticisms of the contingency-contract system and suggestions for reform in no way diminish their sacrifices.

The Commission on Wartime Contracting in Iraq and Afghanistan is committed to help ensure that contract support for future contingency operations is well planned, efficiently executed, and rigorously overseen so that it best supports America's military, diplomatic, and reconstruction efforts, and provides good stewardship of American taxpayers' dollars.

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Executive Summary

Since 2001, Congress has appropriated about $830 billion to fund U.S. operations in Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts related to those operations. More than 240,000 contractor employees—about 80 percent of them foreign nationals—now work in Iraq and Afghanistan, supporting the Department of Defense. Additional contractor employees support the Department of State and the U.S. Agency for International Development.

Contract employees manage dining facilities, wash uniforms, guard military bases, protect diplomats, transport supplies, and build everything from water-treatment plants to hospitals. Contractors are doing vital work, generally to good effect, but the sheer scale of their operations and weaknesses in the federal contract-management and oversight systems create plentiful opportunities for waste, fraud, and abuse.

The Commission will address nine focus areas in preparation of its Final Report. While these may be some of the most intractable issues, if successfully addressed they hold the greatest promise for significant reform in contingency contracting. They are:

- leadership, culture, and accountability within the key agencies responsible for contingency operations;
- staffing and training of the federal acquisition workforce;
- pre-deployment planning for contractor support and integration;
- policies related to inherently governmental functions;
- the process for defining contract requirements;
- contract pricing and competition;
- contractor performance and cost effectiveness;
- visibility into and accountability of subcontractors—in particular, foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

This Interim Report to Congress addresses problems in our system of framing, managing, and overseeing contracts that support American military, diplomatic, and reconstruction activities. Some of these problems, noted below as "Issues of Immediate Concern," require prompt attention as well as systematic study and ultimately recommendations for statutory, regulatory, or organizational change.

The report reviews long-standing issues such as shortages of trained acquisition personnel that still plague U.S. operations. It also addresses the heavy reliance on foreign subcontractors who may not be accountable to any American governmental

authority. It calls attention to new concerns such as the implications of hiring foreign contract workers to guard U.S. military bases. And it takes note of the inadequate plans and resources available to manage an enormous task of shipping property back to the United States or to other areas of U.S. operations, transferring it to the Iraqi government, or disposing of it as we leave Iraq and bolster operations in Afghanistan.

ISSUES EXAMINED IN THE INTERIM REPORT

The body of this Interim Report is organized into five chapters. The first, Management and Accountability, offers essential background on the government's use of contingency contractors and examines high-level, overarching issues of contract management, accountability, policy, and process that permeate the succeeding narratives. Chapters 2, 3, and 4 cover the major functional areas of the Commission's work: Logistics, Security, and Reconstruction. Each chapter lays out the work to date and the items on the agenda for the Commission's future work. The concluding chapter, On the Agenda, gathers the projected lines of investigation from each of the preceding chapters to outline an integrated framework for our path forward.

The chapters describe current knowledge and the results of fact-finding work. They review incidents, diagnose problems, and identify points for future inquiry and analysis. Some of the key issues discussed in these chapters include:

Management and Accountability

- Neither the military nor the federal civilian acquisition workforces have expanded to keep pace with recent years' enormous growth in the number and value of contingency contracts.
- Contracting agencies must provide better and more timely training for employees who manage contracts and oversee contractors' performance. In particular, members of the military assigned to perform on-site performance oversight as contracting officer's representatives often do not learn of the assignment until their unit arrives in theater, and then find insufficient time and Internet access to complete necessary training.
- Contract auditors are not employed effectively in contingency contracting.
- Contracting officials make ineffective use of contract withhold provisions recommended by their auditors, and many contract audit findings and recommendations are not properly resolved.
- The government still lacks clear standards and policy on inherently governmental functions. This shortcoming has immediate salience given the decisions to use contractors in armed-security and life-support tasks for military units.

Logistics

- Contractors provide critical support to U.S. military personnel in Iraq and Afghanistan, yet the Department of Defense cannot provide a complete accounting of all the contracted support it relies upon. The absence of definitive information affects commanders' ability to understand and make best use of the support they receive, and impedes policy makers' ability to address the appropriate balance between contractors and military personnel.
- The Department of Defense has failed to provide enough staff to perform adequate contract oversight. Inadequate oversight, poorly written statements of work, lack of competition, and contractor inefficiencies have contributed to billions of dollars in wasteful spending in the Army's largest contract for support services, the Logistics Civil Augmentation Program or LOGCAP contract.
- Contractors are playing a key role in the drawdown of U.S. military forces in Iraq. As military units withdraw from bases, the number of contractor employees needed to handle closing or transfer tasks and to dispose of government property will increase. Strong government oversight will be required, but preparations for this major shift out of Iraq and into Afghanistan or other areas are sketchy.

Security

- The Rules of Engagement for the military differ significantly from the Rules for the Use of Force for private security contractors. The Rules for the Use of Force for private security contractors guarding forward operating bases may not adequately protect military personnel.
- Documented problems with the selection, training, equipping, arming, performance, and accountability of private security-contractor employees will require policy and regulatory changes to provide more effective oversight.

Reconstruction

- Attempts to achieve unity of effort and more measurable results are hampered by weaknesses in the planning, organizing, coordinating, and oversight of reconstruction and development projects.
- Reconstruction, stabilization, and development activities in contingency-operation zones can involve numerous government agencies, private-sector, and nongovernmental organizations. Yet there is no locus of planning, coordination, and information—a situation that undermines the goals of the total effort, and one that should be corrected.
- The lack of coordination between USAID projects and the Department of Defense's Commander's Emergency Response Program funded projects is a serious problem that needs to be addressed to maximize capacity building and avoid cross-purpose efforts.

THE COMMISSION'S MANDATE

The Commission is investigating contingency contracting in a wartime environment.[1] Reliance on contingency contractors has grown for several reasons, including:

- the ease of engaging contractors rather than hiring new federal civilian employees,
- post-Cold War reductions in military personnel,
- federal civilian work force not keeping pace with demands,
- lack of adequate planning for extended contingency operations, and
- unplanned and untimely budgeting.

The combination of this growing reliance with a mixture of hasty decisions, lack of planning, day-to-day exigencies, and other factors—especially long-standing problems in staffing and training the federal civilian and military workforces that perform the work, as well as manage and audit contracts—has stressed our system of wartime contracting and generated widespread criticism. That is why Congress created the Commission.

In 2008, Congress established the Commission on Wartime Contracting in Iraq and Afghanistan. Lawmakers designed the Commission as an independent, bipartisan panel to assess a range of issues related to wartime contracting, including the extent of waste, fraud, abuse, and mismanagement of wartime contracts in Iraq and Afghanistan, and to make recommendations concerning contracting for reconstruction, logistical support, and security functions. Details from the authorizing language, Section 841 of Public Law 110-181, appear in an appendix to this Report.

Part of the Commission's mandate is to survey and assess—but not re-create—the work of others who have examined contracting issues. These include the Government Accountability Office, the Congressional Research Service, the Commission on Army Acquisition and Program Management in Expeditionary Operations (better known as the Gansler Commission), and academic and non-governmental organizations.

Another, especially important resource is the work of the Special Inspector General for Iraq Reconstruction, the Special Inspector General for Afghanistan Reconstruction, and

[1] As stated in 10 U.S.C. § 101(a)(13), the term contingency operation means "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."

the Inspectors General for the Department of Defense, the Department of State, and the U.S. Agency for International Development. Their investigations have been a vital input to this Commission's work. We will continue to monitor their reports and maintain our professional contacts with them. We are determined to capture the lessons of their valuable work in our Final Report to Congress and ensure that their recommendations are not overlooked or lost.

ISSUES OF IMMEDIATE CONCERN

Many issues appear in this Report. Some are already well defined and are receiving close attention for research and evaluation. Others—as previewed in Chapter 5, On the Agenda—have been flagged for scrutiny as the Commission proceeds on its work plan toward the Final Report to Congress.

We believe some issues, however, should not wait for complete analysis in our Final Report. Evidence already in hand makes it clear some issues of immediate concern require prompt action to avoid further undermining U.S. objectives and wasting more taxpayer money:

- The drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property.
- There is a critical shortage of qualified contract-management personnel in theater and those that are there are stretched too thin. In particular, the process for designating and training contracting officer's representatives to check contractor performance in theater is broken.
- The benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.
- Too many contractor business systems are inadequate and must be fixed.
- There is a need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of the work, but government has very little visibility into their operations.
- The effectiveness of contractor support of expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those about poor coordination among agencies.
- The Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case.
- The Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

CONCLUSION

This Interim Report is a snapshot of work in progress. In the months ahead, we will hold additional meetings with representatives of federal agencies, military, contractors, non-governmental organizations, and others, including scholars. We will conduct additional hearings, make additional trips to the theaters of operation, gather more information in stateside meetings with stakeholders, and further develop research strategies. When our investigations uncover possible violations of law or regulation, we will make additional referrals to law-enforcement and administrative officials.

Our aim is to diagnose specific problems, uncover systemic causes, and produce actionable recommendations for reform in our Final Report to Congress. Current projects may change to adapt to new findings or new developments, and new tasks will no doubt emerge. Throughout that process, we will be guided by our statutory mandate and by our professional determination to provide a roadmap for reforms that will assist our government and military to manage contingency operations.

We will also remember hindsight has 20/20 vision, and meticulous evaluations of past events can overlook the fog and friction that always mark combat operations. While we shine light on governmental and industry shortcomings to ready ourselves for our country's next engagement, we honor the efforts—at times heroic—of all those who provide support to the warfighters and government employees who carry out America's missions.

Chapter 1

Management and Accountability

During the past several months the Commission asked the federal acquisition community several fundamental contingency-contract management questions.

- Why did the contingency-contract management process used in Southwest Asia permit so many performance problems?
- Why have these long-standing problems not been fixed?
- Why have resources not been made available to adequately staff the acquisition workforce?
- Why is the contingency workforce not getting proper training?

The answers are complicated and interrelated:

- Strategic planning is lacking;
- Speed during contingency contracting takes priority over precision;
- Performance incentives are inadequate or counterproductive;
- Force-structure ceilings are imposed;
- Agency cultures fail to adapt; and
- Policy and budget decisions drive unintended consequences.

These issues are well documented, but the dilemmas they represent are also deeply rooted and resistant to change. The Commission is focusing on the root causes of these long-standing problems and on identifying methods to overcome barriers to improvement. We are analyzing the potential obstacles to successful adoption of previous audit-report recommendations, and are applying this insight to develop specific improvements and an actionable implementation plan.

Recurring management themes resonate through all phases of contingency contracting. Acquisition managers will recognize that these themes align closely with the essential management cornerstones that the Government Accountability Office identified in its *Framework for Assessing the Acquisition Function at Federal Agencies*.[2] These themes include:

- human capital management,
- knowledge and information systems execution,
- policy and process implementation, and

[2] GAO Report 05-218G, Framework for Assessing the Acquisition Function at Federal Agencies, September 2005.

- organizational leadership and alignment.

The Commission's work also includes an in-depth examination of contractor accountability, so we will address a fifth management cornerstone (one originally included in a draft version of the *Framework*): financial accountability.

This chapter explores elements of these five cross-cutting management themes. Succeeding chapters elaborate on some specific challenges within the context of the Commission's three functional contingency-contracting areas: Logistics, Security, and Reconstruction.

HUMAN CAPITAL

Comprehensive human-capital management lies at the heart of effective contract management. It demands a strategic, integrated approach to recruitment, training, development, and retention of the acquisition workforce. Agencies often must revise and implement appropriate doctrine and personnel policy to accomplish the goals of a strategic human-capital plan and align resources to mission requirements.

From fiscal years (FY) 2001 through 2008, the Defense Department's reported obligations on all contracts for services, measured in real-dollar terms, more than doubled—from roughly $92 billion to slightly over $200 billion. In fiscal year 2008, this figure included more than $25 billion for services to support contingency operations in Iraq and Afghanistan.[3] These figures do not include State and U.S. Agency for International Development (USAID) contracts. While the numbers and value of service contracts in Iraq and Afghanistan have risen dramatically, agencies have not increased the trained and skilled acquisition workforce in numbers sufficient to ensure that contractors are performing as required.

The Contingency Contracting Workforce Remains Understaffed

Understaffing is one of the most critical barriers to effective contract management. The shortage of properly trained acquisition professionals is evident in all phases of the acquisition process—from requirements generation to post-award execution and contract close-out. Understaffing affects other areas as well. Leadership seeks alternative solutions, and the path of least resistance has resulted in hiring contractors to fill the staffing void. This response to understaffing puts contractors in a position to potentially perform inherently governmental actions.

In May 2009, the Secretary of Defense announced a plan to bolster the acquisition

[3] GAO Testimony before the Defense Acquisition Reform Panel, Committee on Armed Services, U.S. House of Representatives, 09-643T, Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts, April 23, 2009, 1.

workforce by reducing staffing shortages. Under the fiscal 2010 budget request, the department would begin reducing its reliance on support-service contractors by replacing contractor personnel with approximately 13,800 government employees. By 2015, the acquisition workforce would grow by about 20,000.[4] This plan begins a fundamental overhaul of DoD's approach to contract management and will reduce some of the understaffing shortages in order to improve support to the contingency-contracting mission.

Contracting Officer's Representatives

Contracting officer's representatives (CORs) are important members of the acquisition workforce—perhaps especially important in a contingency environment, where the risk of failure has great consequences. CORs are appointed in writing by a contracting officer to perform a number of contract administration and oversight duties. They generally perform their contractor oversight role in addition to their primary job responsibilities. During Commission interviews with CORs in Iraq and Afghanistan, several CORs expressed concerns about the lack of sufficient time to properly oversee contractor performance. They recognize that monitoring a contractor's technical performance is one of the most important aspects of contract management. But so long as their performance is evaluated on their primary job responsibilities, their added COR responsibilities will always be considered a secondary priority.

Cracks in Kabul

During its April 2009 trip to theater, the Commission toured the New Kabul Compound, soon to be U.S. Forces Afghanistan headquarters.
We observed structural cracks, improper plumbing (and thus unusable bathrooms), an incorrectly sized sewage system, broken and leaking pipes, sinking sidewalks, and other construction defects.

The Army should not have accepted a building in such condition. At the Commission's request, the DoDIG agreed to perform a quick review of the situation. The resulting lessons learned could help preclude future shortcomings in contract oversight and hold contractors to a higher standard of accountability.

Simple and complex service contracts demand different levels of COR commitment. For example, a service contract with a short duration, a single service requirement, and low dollar value may need no COR oversight. However, a high-dollar-value contract with a broad scope of work requiring scientific or technical expertise where the risk of performance is high may require a full-time COR. Every complex service contract

[4] DoD Office of the Assistant Secretary of Defense (Public Affairs) News Release, DoD Releases Fiscal 2010 Budget Proposal, May 7, 2009.

requires a devoted COR.

Despite the acquisition communities' shared recognition of the importance of CORs in the contract-management process, there are often inadequate numbers of qualified CORs assigned to contractor oversight in Iraq and Afghanistan. There is a general lack of COR training, insufficient time for military CORs to perform duties, and improper alignment of COR skills to the types of service contracts they are required to monitor.

Improper contract oversight has been repeatedly documented in past audit reports, inspections, and testimony. In the Comptroller General's January 2008 testimony before the U.S. House of Representatives Committee on Armed Services, he specifically linked contractors' poor service-contract performance to the lack of CORs to oversee execution of contracts.[5] The Comptroller General testified again in March 2008, confirming that deficiencies in contractor-oversight personnel have cost the government money and hampered the process of ensuring that contractors are performing as required.[6] Interviews and briefings provided to Commission members as recently as April 2009 confirmed that problems with staffing CORs and monitoring contractor performance have changed very little.

> Without proper oversight, the government cannot confirm that contractors are performing in accordance with contract requirements, cannot support payment of award or incentive fees, cannot support the certification of invoices for services performed, and cannot ensure that services critical for the completion of our military and reconstruction missions are performed. Any one of these conditions invites waste and abuse. Taken together, they are a perfect storm for disaster.

COR Appointments Are Not Increasing with the Requirements

The drawdown of combat forces in Iraq and the simultaneous buildup in Afghanistan are two strategic military changes that will require an increase in service- and construction-contract oversight in both locations. As bases close in Iraq, military units and their military CORs are leaving. In an April 2009 interview at Camp Victory in Iraq, a Defense Contract Management Agency (DCMA) representative expressed concern over the agency's Central Iraq region, where military units have already moved out and left critical shortages in CORs overseeing remaining contractors in that area.

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[5] GAO Testimony before the Subcommittee on Readiness, Committee on Armed Services, U.S. House of Representatives, 08-621T, Defense Acquisition: Existing Guidance and Other Actions Needed to Improve DoD's Oversight and Management of Contractors in Future Operations, January 23, 2008, 9-10.

[6] GAO Testimony before the Subcommittee on Readiness, Committee on Armed Services, U.S. House of Representatives, 08-572T, DoD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight, March 11, 2008, 3.

The Commission shares the DCMA representative's concern that the drawdown of military service members may leave the U.S. government's interests in a vulnerable position as contractors perform with even less oversight. As future drawdown plans are developed, ensuring that adequate numbers of CORs are assigned will become even more important to providing proper contractor oversight.

KBR, Inc., (formerly Kellogg, Brown, and Root) still provides support services in Southwest Asia under the Army's single-award contract (LOGCAP III). The U.S. Army recently awarded a follow-on contract for its Logistics Civil Augmentation Program (LOGCAP) requirements. The new LOGCAP IV contract now has three vendors—KBR, DynCorp International, and Fluor Intercontinental—who must compete for task orders. The transition to LOGCAP IV and its mandatory task-order competitions will increase the level of contracting activity and likely increase the number of active task orders that require COR oversight.

In a similar scenario, a preference to use local national companies in Iraq and Afghanistan for a variety of service contracts will also increase the requirement for oversight personnel.[7] With the amount of contract activity and number of task orders set to multiply, the number of CORs to monitor the contractors will need to increase commensurately.

COR understaffing exists throughout the U.S. Army Central Command area of operations, so certified CORs are often vastly overworked. In April 2009, Combined Joint Task Force-101 in Afghanistan told the Commission that one of their CORs had 19 contracts to monitor; a COR from Task Force Warhorse said he is responsible for overseeing 15 contracts and conducting four performance reviews—all as extra duty after he completes his three primary duties. The average COR in the region had 3.55 contracts to monitor. The shortage of CORs has prompted contract-oversight solutions of questionable effectiveness. DCMA told the Commissioners that contractor "self policing" had been tried, but "did not work out." A military officer said he knew of contracts being performed in Afghanistan that were being "monitored" by CORs physically located in the United States.

Training For Military CORs Is Often Inadequate

Adequate training for CORs plays an essential role in building a capability to effectively monitor of services provided by contractors. The DoD Inspector General

> One soldier described the COR nomination and appointment process as a "Hey, you" pickup game.

[7] Section 886 of the 2008 National Defense Authorization Act authorized the set-asides; they are being implemented in part through the Iraqi First and Afghan First programs.

noted in a 2008 report that problems with sparse training of oversight personnel had persisted since FY 2003 for operations in Iraq and Afghanistan.[8] When The Commission visited Camp Hammer and Camp Delta in Iraq, military service members said they arrived with no prior information about COR requirements or contractor management responsibilities. Because military service members are not made aware of COR requirements before their arrival, one soldier described the nomination and appointment process as a "Hey, you" pickup game. The COR at Task Force Warhorse in Afghanistan said, "we were given a two-hour course and told to run with it."

This ad hoc "nomination" of untrained and inexperienced CORs has created a critical need for substantive, just-in-time COR training. Department of Defense CORs are required to complete the Defense Acquisition University (DAU) online COR training before appointment, but the interviewees in Iraq told the Commission that Web-based training is not easily accessible after arrival in theater because of information-technology infrastructure constraints and slow data-transmission rates. These constraints contribute to longer than necessary training periods, a harried experience for the COR nominee, and a gap in contractor oversight while training is pending. A pressing need remains for a better solution to the DAU COR training challenges.

The remote location of COR nominees and the need to reduce the time elapsed in appointing them makes it important to provide for DAU training through alternatives to instructor-led classes in the United States and Web-based training methods. These alternatives do not yet exist, even though the university has received more than 100 requests that COR training be distributed on a compact disc, according to the DAU Performance Learning Director interviewed by a Commission member in April 2009. Because COR training and certification is a prerequisite for appointment and the COR role is critical to contingency-contract management, in light of this unmet demand, the Commission intends to study the topic in more depth.

Nominating and appointing CORs for particular contracts is a continuous process because of the frequent rotations of personnel and constantly changing contingency-mission requirements. A Defense policy memorandum requires that COR assignments for contractor oversight be made prior to contract award, yet the advance appointment process does not provide a remedy for replacing CORs that rotate out of their assignments, leaving active contracts without government oversight.[9] The lack of collaboration among military and federal civilian employees involved in the contractor-oversight process makes the COR nomination and appointment process very

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[8] DoD Inspector General Report D-2008-086, Challenges Impacting Operations Iraqi Freedom and Enduring Freedom Reported by Major Oversight Organizations Beginning FY 2003 through FY 2007, July 18, 2008, 5-6.

[9] DoD, Secretary of Defense Memorandum, Monitoring Contract Performance in Service Contracts, August 22, 2008.

challenging.

> Without accurate and timely contract-transaction data, acquisition managers cannot make quality strategic-sourcing decisions or provide necessary acquisition-workforce and budgetary resources.

The Commission discovered positive changes in the stakeholders' approach to manage this shared responsibility. Contracting officials in the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) and DCMA have begun monitoring the redeployment dates of CORs assigned to their active contracts. This visibility allows contracting officers to identify the need for replacements earlier, provides nominees with an opportunity for advance training and familiarization, and ultimately avoids lapses in contractor oversight. However, the staffing and training of CORs remains a risk due to the ongoing absence of effective contract oversight. Immediate action by DoD leaders is necessary to ensure timely contract oversight while longer term staffing increases are being put in place.

Procurement and Contract Auditors

Lack of resources within the Defense Contract Audit Agency (DCAA) is a significant factor contributing to ineffective audit coverage. The Government Accountability Office (GAO) has raised serious concerns about the quality of some DCAA audits of contractors' business systems.[10] DCAA's overall staffing levels have remained relatively constant at roughly 4,000 since FY 2000, even though DoD contract transactions have increased by 328 percent—from 304,500 in FY 2000 to over 1.3 million in FY 2006.[11]

With this rapid and significant increase, DCAA audit managers are faced with difficult choices as they manage and prioritize their workload. More often than not, the important DCAA-initiated audits of contractor business systems are postponed or deferred to perform customer-initiated audits that always receive the highest priority. Auditor staffing challenges are particularly acute in theater. During our spring 2009 visit to Afghanistan, we learned that DCAA has only four people there, two at Bagram Air Base and two at Kandahar. This staffing posture clearly limits the service DCAA can provide to valuable contract-audit requirements, as the announced buildup in Afghanistan takes place.

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[10] GAO Report GAO-08-857, DCAA Audits – Allegations That Certain Audits at Three Locations Did Not Meet Professional Standards Were Substantiated, July 2008.

[11] Defense Business Board Report FY09-1, Independent Review Panel Report on the Defense Contract Audit Agency, October 2008, 5.

KNOWLEDGE AND INFORMATION SYSTEMS

Data Systems Are Inadequate to Measure Contingency-Contracting Activity

There are three common metrics for determining the level of contract activity: procurement transactions, budget appropriations, and contract disbursements. Determining the level of activity, the number of acquisition personnel to manage the activity, and where to assign the personnel are critical functions of contingency-contract management. Without accurate and timely contract-transaction data, acquisition managers cannot make quality strategic-sourcing decisions or provide necessary acquisition-workforce and budgetary resources. As a program or mission matures, acquisition managers must analyze contract-transaction data to glean information on a number of contract-management issues.

Fundamental data points that acquisition managers need for effective planning include:

- number of transactions,
- transaction values,
- contract type (for example, fixed-price or cost-reimbursement),
- classification of products and services being acquired, and
- locations of service-contract performance.

Reliable transaction information allows acquisition managers to make informed decisions about recruiting an adequate number of staff to manage the workload; identify appropriate skill levels for the acquisition team that will perform contract formation, administration, and oversight duties; and develop a budget forecast to accomplish the contract-management function.

The Federal Acquisition Regulation (FAR) requires executive agencies to collect and report their contract-transaction data to the Federal Procurement Data System-Next Generation (FPDS-NG) system.[12] Because it is extremely important that data contained in FPDS-NG are accurate, complete, and submitted in a timely manner, the Office of Management and Budget recently put additional emphasis on the data-collection process by requiring agencies to certify the results of a statistically valid data assessment and to report the accuracy and completeness of critical FPDS-NG data fields.[13]

Though the FPDS-NG database is much more comprehensive and accurate than it was even a few years ago, it still is not a reliable tool for determining the breadth and extent

[12] FAR, subpart 4.603.

[13] Office of Management and Budget Letter, Improving Acquisition Data Quality–FY 2008 FPDS-NG Data, May 8, 2008.

of current dollars obligated and current actions performed in support of operations in Iraq and Afghanistan.

In 2007, an audit of the FPDS-NG system revealed that it provided no method to distinguish procurement transactions of significant national interest from routine transactions.[14] The FPDS-NG system was then revised to include a national-interest-area field that can be used to designate the contingency or emergency to which it relates. The FPDS-NG system's national-interest-area field has been used increasingly to identify transactions that support domestic national emergencies, but it has not yet been used to track transactions supporting military contingencies.

Since the FPDS-NG system cannot be relied upon to produce accurate and timely information regarding the level of contingency contracting activity, acquisition managers often rely on information from alternative data systems as a measure of workload. The alternatives are budget appropriations and contract disbursements.

Budget appropriations, while common, are an imperfect metric. Contract obligations and performance often lag behind appropriated budget authority because only some portion of funds is obligated in the year appropriated. The time for planning and negotiating contracts makes annual procurement appropriations an unreliable indicator of workload and procurement activity in a given year.

Contract disbursements are also used to measure contracting activity. Contract payments made when goods and services are delivered would be a good measure of spending rates and actual performance activity, except that DoD does not track outlays for routine and contingency-related contracts separately. Without that differentiation, contract disbursements cannot be relied upon to accurately measure the level of contingency-contract activity.

Given the shortcomings of obligations, appropriations, and disbursements as measures of contingency-contracting activity, acquisition managers are left to the difficult task of analyzing some aspects of all three metrics to determine workload trends. The federal information systems' inability to provide reliable information has undoubtedly complicated contingency-contract management. The Commission will continue to analyze the information systems' limitations.

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[14] General Services Administration Inspector General Report A070101/Q/R/P07003, Limited Scope Audit of Disaster Reporting through the Federal Procurement Data System – Next Generation, March 30, 2007, 3.

Complete and Accurate Numbers for Contractor Support in Southwest Asia Are Unavailable

Contractors play a substantial role in supporting the United States' current military, reconstruction, and diplomatic operations in Iraq, accounting for a significant portion of the manpower and spending for those activities.[15] Aggregate data are available, but there is limited detail on the full array of contractor support—information that commanders and policymakers need to make mission-critical decisions.

There is no single, common operating picture of all contract support in the U.S. Army Central Command area of operations. In October 2007, DoD reported to Congress that functional oversight and control of the number of contractors who accompany U.S. forces to forward areas of operations in Southwest Asia had not been adequate because there was no capability for a centralized tracking and functional management process.[16] To address this issue, DoD designated the Synchronized Pre-deployment and Operational Tracker (SPOT) as the joint database for tracking contractor personnel, the active contracts on which they work, and other administrative information.

The DoD's alternative data source for contractor support personnel is the U.S. Army Central Command's quarterly census of contractors that tracks an aggregate number of contractor personnel. The raw data also include information on the number of contracts by the reporting contracting organization. The contractor-census report does not include contractor personnel working for agencies such as the Department of State or the U.S. Agency for International Development. The Commission has not located comparable data for these agencies.

In April 2008, DoD reported to Congress again, saying that SPOT would achieve 100 percent Web-based accountability of DoD contractors in the U.S. Army Central Command area of operations by the fall of 2008. As of April 29, 2009, the SPOT database reflects 159,579 active contractor records in SPOT, or approximately 66 percent of the number of contractors reported in U.S. Army Central Command's most recent census. The delay in achieving 100-percent accountability is due to several factors, including data-capture systems that do not link to one another and a lack of resources to deploy some data-capture systems.

U.S. Army Central Command's second-quarter fiscal year 2009 census reflected 242,657 active DoD contractor personnel in its Southwest Asia area of operations. This total includes 132,610 in Iraq, 68,197 in Afghanistan, and 41,850 in other Southwest Asia locations.

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[15] Congressional Budget Office, Contractors' Support of U.S. Operations in Iraq, August 2008.
[16] DoD Report to Congress, DoD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel During Contingency Operations, October 2007.

During its April 2009 trips to Iraq and Afghanistan, the Commission sought to identify the total picture of contractor support in those countries. Officials in both Iraq and Afghanistan told us that there was no central list of all contracts providing support. The Commission was unable to put together a complete footprint of the contracts being performed at the bases we visited. GAO has also been unable to identify complete and reliable data on contractor personnel in Southwest Asia. Only DoD provided data on the number of contractor personnel, but officials have told GAO that its census data were not routinely evaluated for accuracy or completeness.[17]

> There is still no clear picture of who the contractors in theater are, what services they provide, which contracts they perform, and what their support costs are.

At Camp Delta, one official said, "contractors directly or indirectly affect every mission on this [forward operating base]." Data were equally incomplete in Afghanistan. One base commander in Afghanistan said that other than LOGCAP, he had no idea of how many contractors were on and off his base daily. This lack of information affects many areas of a commander's oversight and planning responsibilities—not the least of which is a commander's responsibility for all personnel and activities under his or her area of operation.

Contingency-Contracting Lessons Learned Are Not Shared Effectively

The Commission's authorizing statute requires that its Final Report shall, among other things, "identify lessons learned relating to contingency program management and contingency contracting covered by the study." Lessons learned are harvested from experience: they are confirmed observations, but are more particularly observations that can be transmitted and used as policy, doctrine, or guidance for future action. Identifying, recording, and transmitting lessons learned is an important way to save time, lives, and money.

The U.S. government faces many of the same kinds of difficulties with contract management in Iraq and Afghanistan that were present in previous military operations. In 1997, the GAO's National Security and International Affairs Division recommended that the Department of Defense incorporate lessons learned from the Bosnia peacekeeping mission and other Balkans operations to improve the efficiency and effectiveness of the Army's LOGCAP contract.[18]

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[17] GAO Report 09-19, Contingency Contracting: DoD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan, October 1, 2008, 6.

[18] GAO/NSIAD Report 97-63, Contingency Operations: Opportunities to Improve the Logistics Civil Augmentation Program, February 11, 1997, 25.

In its 2003 report to the U.S. Senate Committee on Armed Services, GAO recommended that the department ensure that the method used to gather lessons learned incorporate four process elements: collection, verification, storage, and dissemination.[19] In 2006, when the GAO's Director of Defense Capabilities and Management completed the agency's review of long-standing problems, he reported that no organization or entity within DoD was responsible for developing procedures to systematically collect information on the use of contractors to support deployed forces or to share its institutional knowledge.[20]

The Defense Department has since taken steps to improve its institutional knowledge-sharing processes. In 2007, DoD reported creation of a Joint Contingency Contracting Community of Practice knowledge portal that is housed on the Defense Acquisition University Web site. The Community of Practice Web site serves as a repository for policy and guidance information, pre-deployment information, tools, and after-action reports for use by the contingency-contracting community.[21] The DoD directed each military service to identify a point of contact for contributing after-action reports and lessons learned to the Community of Practice.[22]

The department also hosts a number of Web sites with reference and training materials to address the lessons-learned void. Examples include the Web sites operated by the Office of Defense Procurement and Acquisition Policy, the U.S. Joint Forces Command, the U.S. Army Central Command, and the Army's Training and Doctrine Command (TRADOC). The lessons-learned Web site is only one aspect of TRADOC's knowledge-management program. The Command employs lessons-learned integrators at its school houses and provides a contracting officer's representative booklet sized to fit in a military uniform's cargo pocket. TRADOC has also published three pocket-sized, waterproof, smart cards: "Contracting Officer Representatives," "The Commanders' Emergency Response Program," and "Contracting Basics for Leaders."

The multiple methods of disseminating the Defense Procurement Acquisition and Policy's "Joint Contingency Contracting Handbook" are another good example of DoD's improved knowledge-sharing processes. The handbook serves as a resource in Defense Acquisition University's contingency-contracting training course, is available in a hard-

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[19] GAO Report 03-371, Information Technology: DoD Needs to Leverage Lessons Learned from its Outsourcing Projects, April 25, 2003, 28.
[20] GAO Report 07-145, High-Level DoD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 2006, 6.
[21] Defense Acquisition University, Acquisition Community Connection, https://acc.dau.mil/CommunityBrowser.aspx.
[22] Under Secretary of Defense, Defense Procurement and Acquisition Policy Memorandum, Points of Contact for After Action Reports and Lessons Learned - Contingency Contracting, June 12, 2007.

copy cargo-pocket booklet, and is posted as a Web resource. The handbook also contains e-mail addresses and telephone numbers of Defense Acquisition University instructors who can provide contingency-contracting advice.

DoD's efforts to improve the collection and publication of contingency-contracting lessons learned are welcome signs of increased attention to a serious need for knowledge sharing. However, identifying and publishing lessons is of little use if their distilled guidance is not reaching the people who could benefit from it.

During the Commission's spring 2009 visits to Iraq and Afghanistan, federal civilian employees and military service members spoke of difficulties with accessing relevant lessons-learned information. Interviewees said they sometimes benefited from their predecessors' lessons learned, but complained that the lack of Internet bandwidth impeded their access to a vast collection of lessons and information available only on Web sites. Even if there were no connectivity problems, the interviewees explained, their time available for Web use was limited after a typically long work day.

Military service members told the Commission their pre-deployment training did not include lessons learned, and the normal seven-day overlap with the departing unit did not allow adequate time for relaying all the lessons that could prove helpful. In general, interviewees faced challenges to sharing, collecting, and disseminating lessons learned before, during, and after performing their contingency-mission roles.

As with other aspects of the Commission's work, fulfilling the mandate of identifying lessons learned in Iraq and Afghanistan will involve a great deal of additional research and analysis. The Commission will continue to identify examples of successful lessons-learned programs and will conduct a thorough review of work already done in this area by the Department of Defense, the Department of State, the U.S. Agency for International Development, nongovernmental entities, and coalition and NATO allies.

POLICY AND PROCESS

The Commission's work has revealed a number of contingency-contracting policy and process issues to be investigated in more detail. Our research to date has focused on the outsourcing of contingency-operations support services and its implications regarding the performance of inherently governmental functions. A few of these implications are discussed here.

Outsourcing Increases the Risk of Contractors Performing Inherently Governmental Functions

As the military operations in Iraq and Afghanistan have progressed, the military services, defense agencies, and other stakeholder agencies supporting the reconstruction

mission continue to increase their reliance on contractors. Contractors are now literally in the center of the battlefield in unprecedented numbers. In previous wars, the military police protected bases and the battle space as other military service members engaged and pursued the enemy. Today, contractors often support base security operations, dining facilities, motor pools, aircraft maintenance shops, convoys, convoy protection, and other support functions.

> The increase in service contracting creates a need to define specific functions that are not appropriate for performance by contractors in a contingency operation.

The term "inherently governmental" is defined in various ways in statute, regulation, and the Office of Management and Budget (OMB) Circular A-76. Inherently governmental functions are those so closely related to the public interest that they must be performed by federal employees or service members. Activities that may not be appropriate for outsourcing to contractors include those that so closely support inherently governmental functions that they provide an opportunity to influence government decisions, and activities that are essential to the successful accomplishment of an agency's mission.

Guidance For Defining Inherently Governmental Functions Is Inadequate

Recent legislation requires the Office of Management and Budget to review the many definitions of "inherently governmental function."[23] OMB must determine whether the various definitions have sufficient clarity to ensure that only officers or employees of the federal government or members of the armed forces perform inherently governmental functions and other critical functions necessary for the mission success of a federal department or agency. The objective is to develop a single, consistent definition for the term.

The Commission's statutory authorizing language requires it to provide specific recommendations to improve the process of determining which functions are inherently governmental and which functions are appropriate for performance by contractors in a contingency operation. The Commission plans to explore the factors that brought the U.S. government to the point where agencies rely so heavily on contracting for services.

Contractors Have Always Supported Contingency Missions

From the days of the Revolutionary War, when the Continental Army hired wagon drivers and contracted with beef suppliers, the U.S. military has relied on contractors for some support of wartime activities. The ratio of contractors to military personnel is now

[23] Public Law 110-417, Title III, Section 321, Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, October 14, 2008.

roughly 1.1 to 1.[24] The figure below shows how the ratio of contractors to military personnel has changed over time, and lists types of services our military has come to rely on contractors to provide.

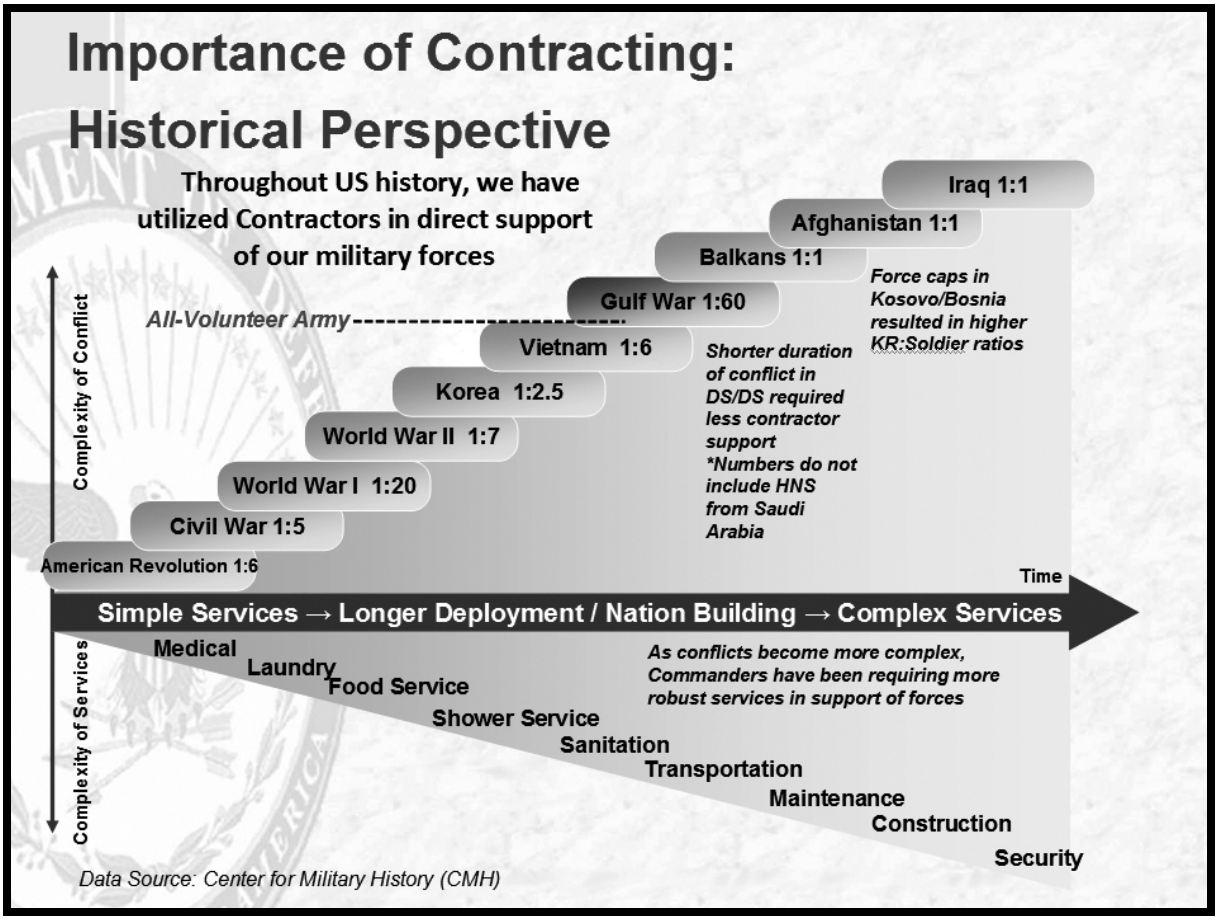

Chart provided to the Commission during a visit to DoD's Defense Procurement and Acquisition Policy office on February 25, 2009.

A number of institutional factors led the government to the current situation where contractor support has become critical to contingency mission success:

- lack of adequate contingency planning in advance of operations;
- lack of federal employees with the appropriate skills to perform the services;
- reduction of the military force structure and limits on the total number of military personnel authorized by Congress;
- requirements process for deciding the number of positions needed in the force structure; and
- relative ease of contracting for a service compared to the lengthy process of hiring civilian personnel.

[24] U.S. Army Central Command, CCJ4, Contracting Branch, May 11, 2009.

The Department of Defense reported to Congress in April 2008 that the missions in Iraq and Afghanistan are the first major contingency operations to reflect the full impact of the shift to heavy reliance on contractor personnel for critical support functions in forward operating areas.[25] Despite the key role of contractors in overseas operations, DoD lacks enough staff to provide adequate contract oversight. The State Department and the U.S. Agency for International Development also use significant levels of contractor support in Southwest Asia. The Commission will study and analyze the changes needed to prevent improper reliance on contractors in future contingency operations like Iraq and Afghanistan.

Identification Of Essential Contractor Support Services Is Ineffective

Responsibility for ensuring that all contractor services are reviewed annually, including new and existing contracts, and for determining which services are essential during crisis situations rests with the heads of DoD components. The components must also conduct an annual assessment of how the unexpected or early loss of essential contractor services would affect support to mobilizing and deployed forces, and incorporate the assessment results into their planning.

DoD Instruction 3020.37, "Continuation of Essential DoD Contractor Services During Crisis," issued in 1990 and updated in 1996, assigns responsibilities and prescribes procedures to implement plans that provide reasonable assurance that essential services will continue during crisis situations.[26] The Instruction includes direction for development of contingency plans to obtain essential services from alternative sources of supply when reasonable doubt about continuation of service exists.

> The Department of Defense recognizes the importance of ensuring continuity of essential services provided by contractors, but has done little to identify those services or to develop backup plans should contractors become unavailable.

In 2003, GAO reported that DoD had not fully included contractor support in its operational and strategic plans. According to the report, the department was aware as early as 1988 of the need to identify contractors providing essential services, but had done little to comply in the next 15 years. Despite the direction given in Instruction 3020.37—that DoD components identify essential services provided by contractors and develop plans to ensure service continuation should contractors become unavailable—the directed reviews had not been conducted. GAO also found little had been done in

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[25] DoD Report to Congress, DoD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel during Contingency Operations, April 2008.
[26] DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services During Crisis, January 26, 1996.

operational plans or as separate documents.[27]

Based on its discussions with the Joint Chiefs of Staff Logistics Directorate and the U.S. Army Central Command, the Commission confirmed that little has been done since the 2003 GAO report. Compliance with DoD's Instruction is not taking place or being enforced. In theory, ground commanders identify which of their requirements are mission-essential. In practice, commanders appear to treat *all* contractor support as mission-essential. However, in a setting of constant change and shifting requirements, effective management of contractor support requires some means of distinguishing between critical and routine support activity.

During a March 2009 meeting with the Joint Chiefs of Staff (JCS) Logistics Directorate (J4) staff, the Commission learned that J4 is not aware of any official identification of mission-essential contractor support. The Vice Chairman of the JCS has established the Dependence on Contractor Support in Contingency Operations Task Force to address the issue. According to the task-force charter, several factors have led to an ever-increasing reliance on contractors across the range of military operations:

- the continual introduction of high-technology equipment,
- force structure and manning reductions, and
- the intense pace of operations.

The JCS task force plans to assess dependence on contractor support, develop a report, and brief senior leadership in June 2009. U.S. Army Central Command J4 staff is providing the JCS task force with data on contractor-support activities in the Southwest Asia area of operations. Contracting officials and operation planners from the U.S. Army Central Command's Logistics Directorate told the Commission they have not undertaken or heard of any other efforts to identify which contractors provide mission-essential support outside of the current JCS task force initiative.

ORGANIZATIONAL LEADERSHIP AND ALIGNMENT

Failure To Align Contingency Missions And Resources Created The Need For Special Investigations

Special inspectors general (IGs) established in recent years have worked to expose contracting fraud and waste in the wake of a contingency or emergency. Congress has authorized establishment of the Special Inspector General for Iraq Reconstruction, the Special Inspector General for Afghanistan Reconstruction, and the Special Inspector General for the Troubled Asset Relief Program. The ranks of the Government

[27] GAO Report 03-695, Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DoD Plans, June 24, 2003.

Accountability Office, the Department of Defense IG, the Department of Homeland Security IG, and other audit organizations have grown as the number of at-risk federal programs has risen.

These organizations have issued numerous reports and held countless hearings on federal acquisition failures following contingencies and emergencies. The IGs are working to identify and hold accountable the persons responsible for abuse that can occur in the absence of effective organizational leadership and alignment. Despite the audit report findings and hearing testimony by acquisition leaders, time and again Congress appropriated supplemental budgets to acquire the equipment and services required to prepare for and recover from contingencies and emergencies without providing adequate resources to obtain the acquisition support services necessary for obligating and expending the funds during contract formation and execution.

> Effective acquisition leaders understand that professional staff, tools, resources, training, and incentives are necessary to ensure adherence to the fundamental deterrents of federal acquisition waste, fraud, and abuse: competition, transparency, and fairness.

Had the federal government committed adequate resources to contract-management and oversight functions, it would not need to spend as much now on special inspectors general to determine what went wrong in the acquisition process. The Commission will work to help ensure that future contingencies are adequately resourced to align the mission with the federal acquisition workforce necessary to support it.

Agencies Have Not Fully Implemented Prior Recommendations

One of the Commission's major objectives is to conduct a thorough assessment of the systemic problems identified with wartime contracting. Hundreds of reports related to wartime contracting have been published by research and oversight organizations. The 1,287 recommendations contained in these 537 reports reflect the extensive effort already conducted on problems identified in contingency contracting in Iraq and Afghanistan.[28]

The table below shows oversight-agency reports issued in the period FY 2003-FY2009 on contingency contracting and the number of relevant reports and recommendations.

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[28] They include reports by the Government Accountability Office, DoD Inspector General, Department of State Inspector General, U.S. Agency for International Development Inspector General, Army Audit Agency, Naval Audit Service, Air Force Audit Agency, Special Inspector General for Iraq Reconstruction (SIGIR), and Special Inspector General for Afghanistan Reconstruction (SIGAR).

Oversight Agency	No. of Reports Reviewed	No. of Recommendations Reviewed
Department of Defense, Office of Inspector General	68	174
Army Audit Agency	79	239
Naval Audit Service	1	2
Air Force Audit Agency	15	50
Special Inspector General for Iraq Reconstruction	135	302
Special Inspector General for Afghanistan Reconstruction	0	0
Department of State Office of Audits	13	42
United States Agency for International Development, Office of the Inspector General	71	180
Government Accountability Office	129	228
Congressional Budget Office	4	0
Congressional Research Service	18	0
Other	4	70
Total	**537**	**1,287**

We will analyze the recommendations made in each category. We will consider the extent to which the recommendations are implemented and what impedes implementation.

The Commission is building on this audit work on contingency contracting for Iraq and Afghanistan. Sometimes the recommendations are implemented and have fixed the identified problem. At other times, recommendations that have been accepted and implemented have not fixed the problem. Some recommendations have been made over and over. The follow-up processes are not always the same, nor are the standards for closing recommendations. Nevertheless, whether recommendations are closed or not, some of the same problems continue.

The Government Accountability Office and DoD, State, USAID, and the Special Inspectors General for Iraq and Afghanistan follow up on the status of the recommendations they make and classify them as open or closed. In addition, they report on this status in semi-annual reports. Some oversight organizations, such as the Congressional Budget Office or the Congressional Research Service, do not make recommendations. Some special entities, such as the State Department's Kennedy Panel and the Army's Gansler Commission, have made recommendations that are being

followed.[29]

Institutional barriers or situations may exist that are not being addressed or that prevent a recommendation from resolving the underlying issues. These barriers may or may not have been identified. In keeping with the Commission's authorizing legislation, we are identifying these situations and will select several of the most high-risk problems for future analysis.

The ongoing analysis includes a review of the reports related to contingency contracting published between FY 2003 and FY 2009. A number of themes surface in these reports, such as staffing issues, inadequate internal controls, and the need for more training of personnel with contracting responsibilities.

FINANCIAL ACCOUNTABILITY

The Defense Contract Audit Agency was among the first audit agencies to establish a sustained presence in theater. DCAA set up its Iraq Branch Office in May 2003 with the primary purpose of improving financial accountability by providing in-theater oversight of contingency contractors. During DCAA's six-year presence in Iraq, regional contracting commands made relatively few requests for its audit services. DCAA could provide a variety of pre- and post-award audit services to the contingency-contracting community, but other parties have not used its services to full advantage.

The Commission recognizes that without effective contractor oversight and accountability in a contingency environment, the contracting process is ripe for waste, fraud, and abuse. Our preliminary research revealed four major problems:

- ineffective contractor business systems,
- ineffective resolution of audit findings,
- ineffective use of DCAA resources in the contingency environment, and
- ineffective management of subcontractors.

The Commission's efforts to date have been limited to evaluating DoD contractor oversight activities based primarily on data obtained from DCAA, DCMA, and the many audits previously published. We have met with representatives from DCAA and DCMA during office calls in the United States, Iraq, and Afghanistan. Over the coming months, the Commission will expand its efforts by conducting additional visits to the

[29] Department of State, Report Of The Secretary of State's Panel on Personal Protective Security Services in Iraq, October, 2007; U.S. Army, Report Of The Commission On Army Acquisition And Program Management In Expeditionary Operations, Urgent Reform Required: Army Expeditionary Contracting, October 31, 2007.

agencies, various buying commands, and other organizations to assess the adequacy of actual oversight activity.

Ineffective Contractor Business Systems Increase the Likelihood of Waste

Based on an analysis of data covering some $43 billion in high-value awards to 15 contractors in Iraq and Afghanistan, we learned that roughly 30 percent of contractor business systems audited by the Defense Contract Audit Agency contained significant deficiencies. The same analysis reveals that contractor billing systems and estimating systems were deficient at even greater rates—50 and 42 percent, respectively. The table below reflects the adequacy of several categories of contractor business systems and the timeliness of DCAA's audits of the systems.

Status of Contractor Business System Audits for 15 of the Largest Contractors									
Business Systems	Is System Adequate?			Audit Completed Within Cycle?			DCAA Audit Completed Timely?		
	Yes	No	%No	Yes	No	%No	Yes	No	%No
Accounting	9	3	25	9	6	40	12	2	14
Billing	6	6	50	12	3	20	10	3	23
Budget	10	1	9	8	7	47	9	2	18
Compensation	5	5	50	9	6	40	7	4	36
EDP	11	2	15	10	5	33	12	1	8
Estimating	7	5	42	8	6	43	8	4	33
Indirect/ODC	7	3	30	10	5	33	6	4	40
Labor	8	3	27	10	5	33	8	4	33
Purchasing	6	3	33	7	8	53	7	2	22
TOTALS	69	31	31	83	51	38	79	26	25

Table Notes:
1. DCAA generally performs audits of 10 contractor business systems; however, our analysis was limited to the nine business systems identified.
2. For some contractors a specific business system audit may not have been completed or may be in process. Consequently, the Yes/No values associated with each system may not equate to 15, the number of contractors surveyed.

Significant deficiencies in contractor systems increase the likelihood that contractors will provide proposal estimates that include unallowable costs or that they will request reimbursement of contract costs to which they are not entitled or which they cannot support. Through fiscal year 2008, the DCAA has taken exception to over $13 billion in questioned and unsupported costs associated with the efforts in Iraq and Afghanistan.[30] A significant portion of these questioned and unsupported costs reflect problems with contractors' inconsistent and ineffective business management systems. Even though many cost questions are resolved with additional research and documentation, the rework represents time and effort that could be applied elsewhere if business systems were up to standard.

[30] Testimony of April Stephenson, Director, Defense Contract Audit Agency, before the Commission on Wartime Contracting, May 4, 2009, 4.

Provisions in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement require contractors to maintain effective and reliable business systems as a condition of contract award and/or cost-based contract financing.[31] Adequate business systems help to ensure compliance with contract terms and conditions and applicable laws and regulations.

The environment in Iraq and Afghanistan has been and continues to be susceptible to waste, fraud, and abuse because contractors generally do not have "accounting and business systems and systems of internal controls that were designed for the magnitude of effort required by the contingency contracts or for the conditions in which they were expected to operate."[32]

Business Systems Audits Are Not Conducted in a Timely Manner

As reflected in the table above, the Commission's preliminary analysis revealed that roughly 40 percent of DCAA's audits of business systems have not been performed within prescribed timeframes. DCAA policy requires contractor business systems (for example, accounting, billing, estimating, labor, and purchasing systems) that have a significant impact on contract costs be audited at least once every four years.[33] In addition, roughly 25 percent of the most recently completed business-system audits took longer than one year to complete, with several audits still in process after several years. Lack of timely audits increases the likelihood that significant deficiencies are not visible to contracting officers as they make contract-award and other contracting decisions. Lack of timely audits also creates an environment where contractors can be slow to implement improvements to their business systems. Without the proper incentives, some contractors may not improve internal-control processes to accommodate the volume of contingency-contracting activity and support the conditions in which they are operating.

Contract Auditors Are Not Employed Effectively In Theater

Under ordinary circumstances, contracting officers request auditor assistance in evaluating prospective-contractor systems to assess whether they are adequate for the type of contract contemplated; this is commonly referred to as a "contractor pre-award survey." Auditors may be asked to examine contractor proposals to ensure that estimated costs are reasonable, and to advise on the proposal's adequacy as a basis for negotiating a contract price. On flexibly priced contracts—contracts that allow reimbursement for actual costs incurred—auditors often provide continuing audit surveillance during performance to help contracting officers ensure that actual costs

[31] See FAR subparts 16.301-3 and 32.503-6, and Defense Federal Acquisition Regulation Supplement (DFARS) subpart 242.7501.
[32] Testimony of April Stephenson, 33.
[33] Defense Contract Audit Manual, subsection 5-103.1(a).

incurred are allowable under the terms of the contract. The absence of continuing audit surveillance at high-risk, remote locations is exacerbated by DCAA's limited travel to these locations. This is a serious issue because hundreds of millions of dollars are incurred and billed on cost-type contracts, especially LOGCAP and construction work.

Despite the high value of such audit services for contingency contracts—especially contracts with foreign-national companies whose accounting systems and pricing techniques often differ from those of U.S. companies—contracting officers have not made effective use of DCAA resources in Iraq and Afghanistan.

Without pre-award audits, the risk grows that contracts will be awarded to unqualified bidders and that contract prices may be unreasonably high.

Limited auditor oversight of contractor practices during contract performance also increases the risk of excessive charges against flexibly priced contracts.

Contract Audit Functions Require Additional Emphasis

Today, the DCAA and the Defense Contract Management Agency provide contract-audit, contract-oversight, and contract-administration services for DoD, using uniform policies and procedures. While DCAA was established primarily to support all of DoD and its contracting efforts, the agency also provides similar services to non-DoD entities including the U.S. Agency for International Development and the Department of State on a cost-reimbursable basis. DCMA is responsible for applying a uniform set of oversight procedures to ensure that DoD contractors are held accountable for failure to comply with laws, regulations, and contract terms and conditions.

Audit coverage for contractors performing in theater is provided by DCAA's Iraq Branch Office. Much of DCAA's work is commonly referred to as either "self-initiated" or "discretionary." Self-initiated audit services may be performed by the Iraq Branch Office, at the request of a stateside auditor. Examples of self-initiated audit services include audits of contractor business systems, audits of Cost Accounting Standards compliance, and audits of operational economy and efficiency. Discretionary audits are generally planned by the DCAA stateside office auditors, as opposed to being requested by the contracting officer.

Unlike the situation in Iraq and Afghanistan, DCAA stateside auditors are generally located close to where contractors maintain their books and records. The most common type of audit service provided by DCAA at the contract's place of performance is known as a "direct labor floor check." These floor checks are designed to determine whether contractor employees are physically present, are performing the required work, and are charging to the proper contracts and projects. Other observations that DCAA auditors make at the place of performance are designed to validate charges for direct materials

acquired and consumed in support of contractors' delivery of services or supplies.

Several aspects of contract economy-and-efficiency (operations) audits present a unique value to contract cost control. Contracting officers must remain especially alert to the prospect that because contingency-contracting procedures allow for exceptions to normal competitive-pricing requirements, contractors may incur unreasonable operating costs in a contingency environment. Also, the fast pace of operations often reduces the government's ability to effectively control costs. Audits of contractor operations conducted by DCAA auditors are a particularly helpful method for maintaining cost control on high-dollar, complex, non-competitively awarded, and/or cost-reimbursable contracts.

Department of Defense Joint Publication (JP) 4-10 establishes doctrine on planning, assessing, and conducting operational contract-support integration and contractor-management functions in support of joint contingency operations.[34] JP 4-10 emphasizes that commanders must address the method of cost control in their operations plans. With respect to DCAA, the publication states that "on-site auditors are responsible to identify practices needing improvement on a real-time basis and recommend cost avoidance opportunities to selected contingency contracts." JP 4-10 goes on to say that the sustainment phase of a contingency operation should be marked by a focus on cost reduction and establishing business efficiencies.

The Iraq Branch Office has in some cases made important cost-saving discoveries while inspecting contract work sites. For example, a contractor submitted questionable expenditures for housing units known as living containers and justified the costs by claiming the containers had special features and enhancements. DCAA auditors inspected containers at a number of locations in Iraq and determined these particular living containers did not have enhancements and thus were unreasonably priced. This is one example of the obvious value of employing auditors at the contract place of performance. Nevertheless, DCAA policies and practices in the contingency operating area have tended to inhibit travel by auditors outside their base of assignment for safety concerns.

Contingency-acquisition officials do not take full advantage of available audit services.

At the same time, DCAA is not aggressively self-initiating audits, especially on-site audits of contractor operations. The DCAA Director testified before the Commission that the agency will give greater priority to conducting on-site economy and efficiency (operations) audits, and generally agreed that there are opportunities for additional cost avoidance. At that same hearing, DCMA Director Williams committed the support of DCMA in assisting DCAA as appropriate

[34] Joint Publication 4-10, Operational Contract Support, October 17, 2008.

with the technical aspects of such reviews.[35] The Commission will continue to follow the agencies' progress on this initiative and analyze any actions taken. The Commission believes that this action is a critical and largely missing component to prevent waste, fraud, and abuse.

Contracting Officials Make Ineffective Use of Contract Withhold Provisions

The Defense Federal Acquisition Regulation Supplement requires the contracting officer to consider withholding a percentage of future payments when it is determined that contractor business systems contain significant deficiencies.[36] The contracting officer would generally implement withholds against Defense Department contracts after receiving a DCAA audit report with findings of significant business-system deficiencies.

In her May 2009 testimony, the DCAA Director stated that auditor-recommended withholds would normally be in the range of 10 percent; however, indications are that DCAA field auditors have been reluctant to make withhold recommendations. Given the lack of such recommendations, contracting officers often do not use the withhold provision or hold contractors accountable for the adequacy of their business systems.

> Our independent analysis of five of the 15 high-value contractors revealed that 24 of 39 business systems were determined by DCAA to contain significant deficiencies. These five contractors account for over $34 billion in cost-reimbursable contract awards.

Until recently, DCAA had not taken action to recommend withholds on future contract billings at these five contractor locations. Without the use of withholds, contractors have little incentive to adequately address the deficiencies. DCAA recognized the reluctance of its field personnel to recommend withholds and recently issued guidance reaffirming agency policy to do so when appropriate.[37] As a result, DCAA field personnel recently recommended withholds at four of the five contractor locations where completed audits determined the subject business system to be inadequate as a result of significant deficiencies.

The Commission believes that the use of withholds associated with future billings serves as a powerful incentive for contractors to improve their business systems. For example, in a case involving a contractor who provided translators and interpreters in Iraq and

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[35] Commission on Wartime Contracting, record of oral testimony, May 4, 2009.
[36] See DFARS subpart 242.7502.
[37] Defense Contract Audit Agency, Memorandum for Regional Directors 08-PAS-043(R), Audit Guidance on Significant Deficiencies/Material Weaknesses and Audit Opinions on Internal Control Systems, December 19, 2008.

Afghanistan, DCAA found the company's labor system inadequate and recommended that the contracting officer implement a withhold against future billings. The contracting officer agreed and roughly $43 million (representing approximately 10 percent of labor costs) was withheld from the February 2004 through January 2006 billings. As deficiencies were addressed, withholds were incrementally released, and by September 2007, the contractor had corrected all significant deficiencies and received all the funds withheld.

Without enforcement of strong penalties, contractors simply do not have an incentive to devote the resources necessary to improve their systems and often do not do so. For example, our analysis revealed that DCAA has cited certain contractors for the same system deficiency over several audit cycles, demonstrating that the contractor has not devoted the necessary resources to implement corrective actions as generally promised.

In her testimony before the Commission, the DCAA Director emphasized the agency's commitment to ensuring contractors are held accountable for maintaining adequate business systems by recommending that specific percentages of interim payments be withheld where appropriate.[38] The Commission recognizes that DCAA serves an advisory role and it is generally the Defense Contract Management Agency's administrative contracting officers that have the authority to implement DCAA recommendations. This is vitally important in resolving reported system deficiencies to effect contractor improvement.

The Commission believes greater consideration of DCAA recommendations and documentation of negotiation results by DCMA is required.

Both the DCAA and DCMA directors agreed to increase their personal coordination over the coming months. The Commission will monitor DCAA's implementation of its policy and DCMA's actions to ensure that contractors operating in Iraq and Afghanistan are held accountable for maintaining effective and reliable business systems.

Many Contract Audit Findings and Recommendations Are Not Properly Resolved

The Commission analyzed the Department of Defense Inspector General's (DoDIG) recent report on contract audit follow-up actions with respect to Iraq reconstruction contracts administered by the Defense Contract Management Agency.[39] In several cases, DoDIG found that audit findings had not been properly dispositioned in accordance

[38] Testimony of April Stephenson, 33.

[39] DoDIG Audit Report D-2009-6-004, Defense Contract Management Agency Actions on Audits of Cost Accounting Standards and Internal Control Systems at DoD Contractors Involved in Iraq Reconstruction Activities, April 8, 2009.

with DoD Instruction 7640.02.[40] They have had not been promptly processed, adequately justified and documented, and/or adequately coordinated with the Defense Contract Audit Agency. Two of the three DCMA offices reviewed by the DoDIG had not implemented adequate controls to ensure an effective contract audit follow-up function.

Although the Inspector General's report was limited to specific types of DCAA audit findings covered by the existing Instruction, the Commission has observed that contracting officers do not always adequately justify and document departures from auditor findings regardless of whether they are covered by the Instruction. Like the DoDIG, the Commission observed that contracting officers are often not resolving DCAA audit findings of deficient contractor business systems, which are covered by the Instruction. We also learned that contracting officers are not adequately documenting departures from audit recommendations regarding questionable costs on contractor proposal estimates, which are not covered by the existing Instruction. The Instruction apparently has little effect on the priority contracting officials place on resolving audit findings and recommendations.

A comparison of total questioned costs to questioned costs sustained or upheld during negotiations is a good indicator of contracting officers' acceptance of DCAA recommendations. In her May 4 testimony, DCAA Director Stephenson said that about 65 percent of the amounts questioned by DCAA is sustained by contracting officers. A briefing by DCAA to the Commission, however, indicated that less than 40 percent ($1.3 billion of $3.4 billion) of DCAA questioned amounts related to the contingency efforts in Iraq and Afghanistan have been sustained through August 2008.[41] Applying the DCAA average cost-sustainment rate to the questioned contingency-related contract costs would have produced nearly $1 billion in additional audit savings.

DCMA agreed with virtually all the DoDIG recommendations and is implementing improvements. The Commission intends to follow up within a reasonable timeframe to determine whether the reported deficiencies have been corrected. We also plan to examine contract audit follow-up practices at the Department of State and the U.S. Agency for International Development to determine if there would be some value from DCAA independently auditing their flexibly priced contingency contracts.

The Commission places a high value on the contract auditor's role in promoting contract economy and efficiency, and in combating waste, fraud, and abuse. The findings in the DoDIG report are significant and their recommendation to re-emphasize in policy and practice the requirement to perform thorough contract audit follow-ups will likely improve contracting officers' consideration of auditor opinions. Because resolution of

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[40] DoD Instruction 7640.02, Policy for Follow-up on Contract Audit Reports, August 22, 2008.
[41] Briefing to the Commission on Wartime Contracting by April Stephenson, DCAA Director, September 2008.

audit findings is so important, the Commission will explore extending the DoD Instruction 7640.02 policy requiring justification for departures from covered audit findings to include findings on questioned contractor-proposal costs and other significant contract-audit recommendations.

Subcontractor Cost-Control Management Is Ineffective

DCAA Director Stephenson testified before the Commission that subcontractor billings make up about 70 percent of the costs on prime contingency contracts.[42] DCAA found that prime contractors have not consistently monitored subcontractor performance against the negotiated statements of work and have not actively engaged subcontractors in cost-control activities or initiatives.[43]

> While prime-contractor performance is monitored by government officials, subcontractor performance may only be monitored by the prime contractor or a higher-tiered subcontractor.

The government has no privity of contract—no binding, mutual relationship—with the subcontractor and is limited to dealing with and through the prime contractor. When large elements of a contract are performed by subcontractors, fewer contract dollars are subject to direct government review.

The challenges of managing foreign subcontractors are compounded by barriers of language, culture, and business customs. Foreign subcontractors are generally not familiar with the unique requirements of U.S. government contracting and operate under different financial-reporting requirements and disciplines.

- Prime contractors operating in theater often rely on a large number of foreign subcontractors to accomplish the variety of services required by their contracts. This has two serious consequences. The first is the contracting officer's reduced insight into and oversight of the foreign subcontractor because of no contract privity and inadequate prime contractor business systems. When coupled with our observations of prime contractors' ineffective management of subcontractors' cost and performance, the lack of oversight becomes very risky.

- The second consequence arises from a subcontractor's failure to perform. Nearly 80 percent of the contractor personnel in the U.S. Army Central Command area of responsibility are foreign nationals, most working as subcontractors for American companies. The contract's most important terms and conditions apply to the subcontractors; however, the governments of Iraq or Afghanistan do not

[42] Testimony of April Stephenson, 27.
[43] Ibid.

> cooperate with the U.S. efforts to enforce federal procurement laws. The practical matter is that the United States has little remedy for a foreign subcontractor's unfair pricing and failures to perform.

Unfortunately, not much has changed to implement cost-control policy and procedures after several years of contingency operations. During a meeting with the Special Inspector General for Iraq Reconstruction (SIGIR) in March 2009, SIGIR representatives told the Commission that their auditors were continuing to encounter problems with foreign subcontractors. For instance, SIGIR investigators discovered information indicating that foreign subcontractors were involved in contract-kickback agreements, but their status as foreign entities made it difficult to investigate the offenses.

In the early stages of contingency operations, prime contractors' control systems (including subcontractor-oversight procedures) were not in place and contract requirements were not well defined. For example, DCAA auditors reported that internal controls for six of nine key business systems at KBR were less than adequate, particularly KBR's purchasing system. The use of an inadequate purchasing system to execute urgent projects using subcontractors, many of them foreign, contributed to ineffective contract management and increased the potential for waste, fraud, and abuse.

Many "fixed-price" contracts executed to support the missions in Iraq and Afghanistan actually vary with the contractor's level of effort; that is, the contracts may include fixed labor rates, but the contract price can vary depending on the level of effort the contractor actually expends. Since the contractors build their profit into the fixed labor rates, there is little incentive to limit labor hours. When subcontractor labor is used on these fixed-price, level-of-effort contract types, especially intense oversight is necessary to ensure that subcontractor labor is used efficiently and that hours charged are accurate and reasonable.

The government's interest in prime contractors' cost-control management systems extends to subcontractor performance. However, prime contractors often fail to audit the subcontractors' proposed and incurred costs for allowability, allocability, and reasonableness. The dilemma with managing subcontractors is to establish an appropriate process that will provide the government with more visibility into subcontractor operations without affecting the prime contractor's relationship and contractual responsibilities. The Commission will explore potential alternatives in its future research.

ON THE AGENDA

Solving systemic contingency-contract management challenges is critical, not only to prevent contracting waste, fraud, and abuse in Iraq and Afghanistan, but to effectively manage future contingency operations. The preceding discussion highlighted several

challenges the U.S. stakeholder agencies have struggled with since 2001 when contingency operations began in Afghanistan. We continue to face many of the same issues in 2009–a clear indication that our acquisition leaders have been unsuccessful in their attempts to manage the five cornerstones of an effective acquisition function: human capital management, knowledge and information systems execution, policy and process implementation, organizational leadership and alignment, and financial accountability.

The Commission will continue to study and analyze the management issues discussed in this Interim Report. We will identify and assess issues specifically related to government organizational structure, workforce and workload management, contractor accountability, and contingency management policy. Our Final Report will include actionable recommendations to improve the intractable management challenges discussed here and throughout the report that have yet to be resolved.

Human Capital

- Analyze the various agencies' efforts to develop a contingency contracting corps and the status of efforts to implement the inter-governmental corps authorized in Section 870 of the 2009 National Defense Authorization Act.
- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Evaluate barriers to deploying civilian employees in theater to support wartime contingency operations through directed assignments, adjustment of tour lengths, and compensation incentives.

Knowledge And Information Systems

- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Assess the process for collecting, verifying, sharing, and disseminating contingency contracting lessons learned by the Departments of Defense and State and by USAID.

Policy And Process

- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the inherently governmental issues raised when contractors oversee other contingency contractors.
- Analyze the appropriateness of reliance on contracts for services if the failure to perform would endanger mission success.

- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Assess the desirability of creating and implementing a single government-wide Contingency Federal Acquisition Regulation.
- Address the question of when sustainment contracting begins and contingency contracting ends.
- Determine the problems that arise from contingency contract requirements having been poorly defined and not definitized in a timely and effective manner.
- Investigate issues surrounding the lack of adequate competition and determine methods to improve the extent of competition to satisfy contingency contract requirements.

Organizational Leadership And Alignment

- Identify and assess the effectiveness of contracting lines of authority and organizational alignment of the acquisition function in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify political, institutional, funding, and other barriers to implementing reforms to contingency contracting.
- Identify the issues and methods to improve cooperation, communication, and collaboration among key stakeholders in determining contractor support requirements as part of military exercises for planning future contingency operations.
- Determine why prior recommendations from the audit community have not fixed significant contingency contracting problems.

Financial Accountability

- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.
- Identify methods for improving in-theater contractor oversight.

- Determine if the Department of State and the U.S. Agency for International Development are obtaining effective contract audit service support.

Chapter 2

Logistics

Despite the key role of contractors in logistical support of overseas operations, the Department of Defense lacks the staff to provide adequate contract oversight. Inadequate oversight, combined with poorly written statements of work, lack of competition, and contractor inefficiencies have contributed to billions of dollars in wasteful spending. The drawdown of U.S. forces in Iraq brings the risk of more waste. Money is being wasted on completing projects that are no longer needed. And poor control of U.S. government property in Iraq that must be moved, handed over to the Iraqis, or scrapped could cause even more waste.

PERVASIVE UNDERSTAFFING ADVERSELY AFFECTS LOGISTICS CONTRACT MANAGEMENT

Understaffing at all levels damages the ability of the U.S. government to effectively manage LOGCAP—the Army's Logistics Civil Augmentation Program—and all other logistics efforts. This understaffing increases the potential for waste, fraud, and abuse. For example, inadequate staffing can prevent determining whether requirements were properly set and whether contractors are efficiently providing what their contract requires.

LOGCAP, the dominant channel for contractor support to the military in theater, merits a bit of historical background. The LOGCAP program was established in 1985, primarily to plan for contingencies and to leverage existing civilian resources. In 2001, the third iteration of the program, LOGCAP III, was competitively awarded to KBR as sole provider. Under this contract, specific work requirements are awarded by government task order without further competition. LOGCAP III has been used mainly in support of operations in Iraq, Afghanistan, and Kuwait, as well as Djibouti, Jordan, Kenya, Uzbekistan, and Georgia.

LOGCAP IV, the fourth iteration of the program, is a multiple-award contract competitively awarded in April 2008 to DynCorp International LLC, Fluor Intercontinental, and KBR Services. Each contractor can receive up to $5 billion of work under the contract in a given year, so total spending over the possible 10-year life of the contract could be as high as $150 billion.[44] Meanwhile, work contracted under LOGCAP III continues, so a slow segue from one contract to another is under way.

Work under both LOGCAP III and IV is performed under discrete task orders. A new

[44] U.S. Army news release, Three Firms to Vie for LOGCAP Services in Theater, April 18, 2008. www.army.mil/-news/2008/04/18/8594-three-firms-to-vie-for-logcap-services-in-theater.

requirement under LOGCAP IV, however, is that each task order is competed among all three performance contractors, and each contractor must bid on every task order. Early transitioning work from LOGCAP III to IV indicates the potential for substantial savings. The first large-scale work to be transitioned was the task order for a wide array of services in Kuwait. Competition resulted in the Army awarding the task order to the contractor that proposed to do the work for $70 million—a $55 million or 44 percent saving over the $125 million charged for comparable work under LOGCAP III.

Contract work in Afghanistan is currently being performed under the new, competitive LOGCAP IV. As of the Commission's May 4, 2009 hearing, however, no task orders under LOGCAP IV had been competed for work in Iraq. The Commission is very concerned with the pace of this transition.

Every agency interviewed by the Commissioners, both stateside and in theater, has said that understaffing strains their ability to execute their LOGCAP-related missions. In his May 4, 2009, testimony before the Commission, the LOGCAP Program Executive Director said the program has grown over the years, but its organizational support structure has not kept pace with increasing mission demands. The Director of the Defense Contract Management Agency said at the same hearing that DCMA is short of staff, and that the agency's needs will be even greater as it takes on more contract oversight in Afghanistan and in the transition from the LOGCAP III to LOGCAP IV contracts.

The issue also surfaced in Government Accountability Office (GAO) testimony before the House Committee on Armed Services in February 2009. GAO noted "several cases in Iraq where [having] too few contract oversight personnel limited the Department of Defense's ability to identify savings, monitor contractor performance, or resolve contractor performance issues." These personnel shortfalls are a DoD-wide problem, GAO said, but "the more demanding contracting environment at deployed locations creates unique difficulties for contract oversight personnel." [45]

Although the Army is taking steps to increase its acquisition workforce, GAO noted in its House testimony that, "this will take several years, and in the interim, the problems posed by personnel shortages in Iraq and elsewhere are likely to become more significant in Afghanistan as we increase the number of forces and the contractors who support them there."

[45] GAO Report GAO-09-380-T, Iraq and Afghanistan: Availability of Forces, Equipment, and Infrastructure Should Be Considered in Developing U.S. Strategy and Plans, Statement of Janet St. Laurent, Managing Director Defense Capabilities and Management before the Committee on Armed Services, House of Representatives, February 12, 2009.

Both LOGCAP Program Management And Contracting Offices Have Been Chronically Understaffed

Senior LOGCAP management officials told us in March 2009 that their office must lead the largest transition of its kind since World War II—moving forces within and out of Iraq while at the same time transitioning from the single-contractor LOGCAP III contract to the three-contractor LOGCAP IV contract in Iraq, Afghanistan, and Kuwait. The LOGCAP office faces this prospect with an authorized staff of 23 government personnel, but with no more than 13 actually on board in recent years. The office has therefore augmented its staff with contractor personnel from its management-support contractor, Serco, Inc.

Another resource for the LOGCAP Program Office is the LOGCAP Support Unit. The Support Unit is an Army Reserve unit staffed with LOGCAP Support Officers (LSOs). They provide the interface between LOGCAP and units in the field that use its services, such as the 4th Infantry Division and the 82nd and 101st Airborne Divisions.

Because personnel in supported units continually rotate in and out of theater, they are not experienced in writing clear, concise requirements for services under LOGCAP. Numerous reports and audits have documented that constantly changing or inadequately drafted requirements are major cost drivers for LOGCAP and many other programs. Having an LSO embedded with the unit preparing requirements helps translate the requirements into a form that meets the government standard for generating a task order. The LSOs also help prepare statements of work, and evaluate the contractor's cost proposals.

The LOGCAP Support Unit, however, has been at half strength for several years and faces the prospect of losing its entire staff. Its staffing source, Army Reserve Command, notified the LOGCAP Support Unit that it would receive no more personnel to fill LOGCAP support billets as of April 2009. LOGCAP Program Office has raised this matter with the Department of the Army and is awaiting a decision. Meanwhile, personnel are rotating out of theater without being replaced. LOGCAP-Iraq officials told us the only way they can fill the personnel requirements is through in-theater recruiting. To mitigate the support-office shortfall, the LOGCAP Program Office plans to have the LOGCAP management support contractor, Serco, provide contractor personnel.

Support officers also work with local military units to identify contracting officer's representatives (CORs) who can monitor contracted services and work with the Defense Contract Management Agency to get them properly appointed. Even if the Army Reserve Command resumes supplying LSOs, problems are likely to persist. Because many of the LSOs are not properly trained acquisition professionals, the quality of their work does not always meet the need for generating clear and concise requirements or monitoring performance. In addition, the LOGCAP Program and Contracting Offices

told the Commission that it would be helpful if every LSO were a trained COR—not to act as a COR, but to advise the supported unit on what CORs do and give guidance. Finally, LSOs sometimes struggle to execute their assigned functions. One officer at Camp Phoenix in Afghanistan was assigned to assist seven forward operating bases, but often could not visit them due to travel constraints, so requirements statements suffered.

The LOGCAP Program Office is co-located in Illinois with the Rock Island Contracting Center, which also suffers from understaffing. Its executive director told the Commission that Rock Island is authorized 384 personnel to support its contracting mission, but as of February 2009 had only 279 on hand. The result is six-day work weeks of 10- to 12-hour workdays. Rock Island is working to hire additional staff to get up to 300, but training takes time. Meanwhile, staff shortages are becoming particularly critical at upper levels due to retirements of experienced personnel.

The Commission asked the LOGCAP Program and Contracting Offices to report how personnel shortages affect them. They reported in April 2009 that overall "program readiness [was] negatively impacted and in jeopardy, impacting Force Enabler capability to support the Army." The contract office was unable to deploy personnel to provide LOGCAP-specific expertise in support of current operations in Iraq and Afghanistan, while the program office was unable to conduct budget formulation and track program expenditures associated with the prime contracts.

Lack of Contracting Officer's Representatives Is Particularly Acute for LOGCAP

Another major area of understaffing for LOGCAP is the number of CORs assigned in Iraq and Afghanistan. CORs support contracting activities as the government's eyes and ears at the site where the contractor is performing the task.

> Without a COR to examine and report on LOGCAP work, the contracting officer has no information about the quality of contractors' work—or if it was performed at all.

When the Defense Contract Management Agency has been delegated contract management responsibility, as with the LOGCAP III and IV contracts, then its Administrating Contracting Officers have overall contract-management responsibility. They are supported by DCMA's quality assurance representatives (QARs), who in turn are supported by CORs provided by the units receiving LOGCAP support.

During its April 2009 visits to Iraq and Afghanistan, the Commission obtained information on LOGCAP COR shortages:

- In Afghanistan as of April 18, 2009, DCMA had a requirement of 516 CORs for

LOGCAP III/IV, but had only186 appointed—a 36 percent fill rate—with another 118 in training.

- Even with all those currently appointed and in training, only 59 percent of the required CORs will be in place for operations in Afghanistan.
- For Iraq and Kuwait LOGCAP CORs, as of March 30, 2009, DCMA had a requirement of 1,026 CORs with 722 appointed, a 70 percent fill rate.

Units receiving LOGCAP support in theater are responsible for identifying people to act as CORs. Getting them assigned and appointed is a joint responsibility of DCMA and the LOGCAP Program Offices in Iraq, Afghanistan, and Kuwait. A January 2009 Multi-National Force-Iraq Operation Order directed LOGCAP Support Unit personnel in those countries to help recruit CORs throughout the theater. Once they are identified, DCMA is responsible for ensuring that they are trained.

More Logistics Subject-Matter Experts Are Needed

Adequate staffing is particularly critical in technical areas, such as CORs who can provide technical support for the expansion in Afghanistan. A logistics working group has noted that CORs with special skill sets such as electrical or construction expertise will be required for the Army's planned growth and infrastructure buildup to be performed under LOGCAP.

The buildup will consist at first of 17,000 personnel and seven battalion-sized forward operating bases and will include temporary military construction. Personnel with a construction background will be needed to effectively monitor contractor compliance and performance. In February 2009, DCMA identified a shortfall of 170 CORs in the oversight of this buildup; this is in addition to the shortfall in LOGCAP CORs discussed earlier. DCMA asked the Afghanistan command logistics directorate for help with this unit-COR shortfall as well as other gaps in high-risk areas requiring specialized technical skills for evaluating contractor performance and compliance such as safety.

> In February 2009, DCMA identified a shortfall of 170 CORs for the Afghanistan buildup.

Discussions throughout Iraq revealed agreement that many CORs monitor contractors without having the specific skills and experience necessary for oversight. The Commission met with DCMA, in-country LOGCAP officials, camp "mayors" (the Army equivalent of facilities managers), military commanders, and personnel assigned as CORs. Subject-matter experts can fill this void by providing technical expertise to assist quality assurance representatives and CORs in evaluating whether contractors are properly performing services such as electrical installation and repair as well as working efficiently. QARs and CORs expressed concern that they cannot call on a government subject-matter expert for help in monitoring or to answer questions in specific instances.

This can leave contractors as the only sources of expert information—a situation that obviously puts the government at a disadvantage.

The Commission was told during its April 2009 trip to Iraq that the lack of government subject-matter experts allowed safety hazards and contractor inefficiencies to go undetected, sometimes for years. DCMA determined that 57 subject-matter experts are needed—36 in Iraq and 21 in Afghanistan—to guide and advise oversight personnel in monitoring contractor performance in accordance with contract requirements. The need includes 14 facilities inspectors, 11 fire specialists, five petroleum specialists, and eight water-treatment experts. DCMA has established a working group to find solutions to the shortfall of qualified CORs and technical experts. It comprises representatives from the Joint Staff Logistics Directorate (J4), the Army Material Command, U.S. Army Corps of Engineers (USACE), and DCMA.

Other Oversight Staffing Shortages Also Exist

The DCMA Director, in his May 2009 testimony before the Commission, acknowledged that his agency is also short of personnel. In Afghanistan, DCMA officials briefing the Commission said their total personnel requirement for logistics was 100, up from the previous 55. The shortage was particularly severe for quality assurance representatives: only 22 were assigned. A mission analysis led to approval of DCMA's request for additional QARs in March 2009. DCMA expects to reach its newly authorized full complement of 44 QARs by September 2009. The agency has also identified a requirement for 21 administering contracting officers (ACOs), a 50-percent increase from the current authorized strength of 14.

DCMA also has a shortfall in property administrators (PAs). DCMA officials think the ill effects of that shortage are likely to be compounded by the Iraq drawdown and by the transition from LOGCAP III to LOGCAP IV.

Currently, 16 DCMA Iraq personnel manage over 614,000 line items of LOGCAP property worth over $3 billion. Only three of those individuals are experienced property administrators that meet defense training and experience standards.

DCMA is using several property analysts from the LOGCAP management support contract to augment its staff of property administrators.

Although efforts are under way to hire additional personnel for the LOGCAP Program Management Office, the Rock Island Contracting Center, DCMA, and Defense Contract Audit Agency (DCAA), and to increase the number of CORs, staffing shortages impair the ability to execute many agency functions. Because it takes so long to hire and train the right people, this is a long-term issue that requires management attention to resolve.

One potential answer to the COR problem is to use only personnel from the units receiving contract support as CORs for a short period, perhaps six months, while initial operations are under way. After this time, a transition would be made to something akin to an Installation Management Command (IMCOM), which would provide professional installation-support services for the duration of operations, as is done at military bases in the United States. Under an IMCOM-type arrangement, a technical staff qualified in such areas as dining facilities, fuels, and fire-marshal responsibilities provides the technical and management expertise that allows combat units to execute their combat missions. Deployed units enthusiastically endorsed this solution, but it would require a change in policy. The Commission is exploring the pros and cons.

BILLIONS OF DOLLARS IN WASTEFUL SPENDING HAS OCCURRED UNDER THE LOGCAP III CONTRACT

Paying more than necessary for services provided constitutes wasteful spending. The Commission believes that the services provided by contractor KBR under LOGCAP III—with $31.4 billion funded through March 20, 2009—could have been delivered for billions of dollars less. This belief is based on review of information from the Army Contracting Command award-fee boards, data given to GAO by the military services, analysis by the Defense Contract Audit Agency, and early experience as the Army transitions from LOGCAP III to IV—a process now well under way in Kuwait and Afghanistan, and scheduled to occur in Iraq.

We think it possible that services currently provided under LOGCAP III could cost billions of dollars less under the LOGCAP IV framework of competition for task orders. Work currently being performed under LOGCAP III is slowly being transitioned to LOGCAP IV, and all new work in Afghanistan has been competed and awarded under LOGCAP IV.

In a statement provided for the Commission's May 4, 2009, hearing record, KBR said its LOGCAP III work since 2003 has included serving more than 937 million meals, issuing more than 7 billion gallons of fuel, handling more than 335 million pounds of mail, washing more than 66 million bundles of laundry, and hosting more than 152 million visits to morale, welfare, and recreation facilities.

In-theater conversations with military personnel at all levels found overwhelming satisfaction and appreciation for contractor support services including arrangements for their care and feeding. However, the down side of the LOGCAP picture includes large costs that have been questioned by government auditors and substantial work that has never been properly evaluated.

EXAMPLES OF WASTEFUL SPENDING

Substantial evidence supports the view that LOGCAP services cost too much. The evidence comes from the work of the LOGCAP contracting office's award fee boards, current actions being taken by LOGCAP contracting officials, the initial results of re-competing LOGCAP III task orders under LOGCAP IV, an internal report commissioned by the LOGCAP Program Office, GAO findings developed from discussions with Army and Marine Corps recipients of LOGCAP services, and DCAA reviews of LOGCAP work. The wasteful spending documented in their work reflects a combination of poorly written statements of work, inadequate oversight, and contractor inefficiencies.

The LOGCAP III award-fee board process addresses wasteful spending. In several 2008 decisions on the LOGCAP III contract, officials criticized KBR for not proactively seeking cost savings. The award-fee board determining official said he believes KBR handles issues expeditiously and effectively once they are identified, but lacks a proactive posture—a board observation cited as a consistent and systemic issue with KBR in November 2007.

In a March 2008 review of task orders in Afghanistan, the award fee board cited overstaffing as a systemic issue. A DCMA March 2009 performance-evaluation board report for LOGCAP task order 151, providing support for the U.S. Embassy in Iraq, said KBR needs to take more initiative to find contract cost savings. DCMA officials in Iraq repeated that conclusion during April 2009 talks with The Commission about KBR's work there.

The Commission also learned during its April 2009 trip to Iraq of recent steps taken by LOGCAP officials to control costs. In February 2009, after the LOGCAP procuring contracting officer identified more than $50 million in labor-cost overruns, KBR was directed to freeze hiring, to begin a responsible Iraq drawdown of personnel, and to decrease the cost and footprint of its operations in the country. In March 2009, the Army's LOGCAP executive director decided that by April 15, 2009, KBR was to remove all Iraq customer-liaison officers. And in April 2009, DCMA directed KBR to reduce fire equipment and personnel at 15 forward operating bases and reduce staff theater-wide for all fire fighting equipment.

Awarding the LOGCAP III contract to a single contractor (KBR) may have made sense in the early stages of operations in Iraq and Afghanistan, where a dynamic environment required flexibility and speed. However, in the current stage of relatively stable operations, it makes more sense to emphasize cost controls by introducing task-order competition, using multiple sources of supply, creating separate contracts for unique logistics services, reducing the layers of subcontractors, and awarding more fixed-price contracts with definite requirements.

When various logistics services are bundled in a loosely defined statement of work and awarded to a single prime contractor, a high percentage of the work is generally performed by subcontractors. $21 billion of the $30 billion spent on LOGCAP III was paid to subcontractors.[46] This level of subcontracting is an advantage for rapidly building scale, but without close oversight by the prime contractor, it also presents significant challenges for cost control.

The Government Accountability Office Has Identified Savings Obtainable Through Greater LOGCAP Efficiency

GAO has shown that when government officials reviewed work under LOGCAP III, savings have been generated by eliminating or reducing services and through more efficient contractor performance.[47] The GAO's work over the past seven years with Marine Corps and Army units receiving LOGCAP services illustrate how the government can and does identify cost savings:

- When Marines replaced Army forces in Djibouti in December 2002 to provide humanitarian assistance in a contingency environment, they also took over responsibility for funding LOGCAP services. Marine commanders reviewed the statement of work and reduced the $48 million task order by an estimated $8.6 million, or 18 percent. Marine Forces Central Command deployed teams of subject-matter experts to Djibouti twice a year to identify services that could be eliminated, reduced, or changed. The Marines also identified potential additional savings totaling more than $2 million, including $75,000 a year by switching from a commercial laundry detergent to one in the U.S. Marine Corps supply system.
- Army Central Command estimated that $2.6 million could have been saved in March 2004 if it had contracted directly for food service at six locations in Kuwait rather than using LOGCAP. GAO calculated annual savings of almost $31 million. Bypassing LOGCAP and making the LOGCAP subcontractor the prime contractor reduced meal costs by 43 percent with no loss of quality.
- The coalition forces military command at the time, Combined Joint Task Force-7, reviewed the task order for life-support services in Iraq in 2004. By eliminating services and an extra dining and laundry facility, it reduced the estimated cost of the task order by over $108 million.

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[46] Commission on Wartime Contracting Hearing, Testimony of DCAA Director April Stephenson, May 4, 2009.

[47] GAO Report GAO-04-854, Military Operations: DoD's Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004.

The Defense Contract Audit Agency Has Identified Unnecessarily High Spending

The Defense Contract Audit Agency has recommended billions of dollars in reductions in proposed and billed costs under wartime contracts and identified billions of dollars in estimated costs that lack sufficient support. DCAA Director April Stephenson discussed LOGCAP III costs at the Commission's May 4, 2009, hearing. "I don't think we're aware of [another] program, contract, or contractor that has had this number of suspensions or referrals," she said. Examples of questioned spending cited in DCAA's testimony and/or DCAA reports include:

- In a 2004 review of KBR invoices for operating dining facilities in Iraq, DCAA questioned the practice of billing at the headcounts provided in the statement of work rather than for the substantially lower numbers of people actually being fed. The statement of work had not specified how the four-meal-a-day service was to be billed. The Army and KBR negotiated a $55 million payment reduction. At the May 2009 hearing DCAA further stated that although KBR's actions in 2004 improved the dining facility (DFAC) situation, DCAA continues to have issues with reasonable subcontract prices. Subsequent to the Army's settlement of earlier questioned DFAC costs, DCAA has suspended an additional $64.7 million that remain unresolved as of May 4, 2009.
- In April 2005, DCAA raised issues about the prices KBR was paying for "living containers" to be used for housing. DCAA found that KBR was paying one supplier more than twice what it was paying another for comparable living containers ($38,293 versus $18,292). The unit-price difference for the 4,100 living units KBR purchased equates to questioned costs of about $82 million. DCAA auditors found that the highest-priced supplier had bought living containers from a Middle Eastern manufacturer, then doubled the manufacturer's price when reselling the units to KBR. DCAA disapproved $51.3 million in living-container costs on March 17, 2006. In December 2006, the Defense Contracting Management Agency, the agency responsible for deciding what payments to allow, issued an interim decision allowing KBR to recover $25.6 million of the $51.3 million disapproved by DCAA. The remaining $25.7 million was set aside by the DCMA contracting officer pending a final determination. DCAA said in its testimony that it continues to work with DCMA concerning their interim decision to allow KBR to recover $25.6 million. KBR is disputing the disapproved costs through the claims process.
- In August 2007, DCAA questioned $100 million of private armed security personnel costs. The LOGCAP III contract states that the Army will provide force protection to KBR; the contracting officer has determined that the contract prohibits the use of armed private-force protection. However, DCAA reported that KBR billed the government directly or indirectly for an estimated $100 million of security costs. DCAA has suspended $19.9 million in payments, which

KBR is disputing under a claim filed with the Armed Services Board of Contract Appeals. A KBR filing with the Securities and Exchange Commission reported that suspended costs related to security could total $400 million.

In addition, DCAA is reviewing $277 million in LOGCAP III subcontracts involving KBR employees or ex-employees that have been or may have been involved in improper procurement activities. The purpose of DCAA's review is to assess the reasonableness of payments under those subcontracts.

Regular Efficiency Reviews Are Needed

No one performs regular, scheduled reviews of all task orders. GAO recommended in 2004 that teams of subject-matter experts travel to locations where contractors provide services to evaluate the support and make recommendations on the level, appropriateness, economy, and efficiency of services being provided. The Department of Defense said it would issue a policy memorandum to implement the recommendations. GAO reported that as of February 2005, no policy memorandum had been issued and no teams of subject-matter experts established or deployed.[48] DoD continues to agree with GAO's recommendation, but as of March 2009, GAO's Director for Defense Capabilities and Management told the Commission that DoD still has no systematic effort to assure that contractors are operating efficiently.

THE IRAQ TROOP DRAWDOWN RISKS FURTHER WASTEFUL SPENDING

Under the security agreement between the governments of the United States and Iraq, all U.S. combat forces are to withdraw from Iraqi cities, villages, and localities no later than June 30, 2009. All U.S. forces will withdraw from Iraqi territory altogether no later than December 31, 2011.

To implement the security agreement, the United States will close some forward operating bases as U.S. forces leave Iraq or transfer to other bases. As a result, some bases will grow in the short term, but all will ultimately close or be turned over to the government of Iraq.

During its April 2009 trip to Iraq, The Commission had a number of discussions and briefings on planning for and implications of the coming rebasing and drawdown of U.S. forces. Many of them dealt with matters of contractor support. Based on the

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[48] GAO Report, GAO-04-854 Military Operations: DoD's Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004; and GAO-05-328 Report Defense Logistics: High-Level DoD Coordination is Needed to Further Improve the Management of the Army's LOGCAP Contract, March 21, 2005.

information we received, we have categorized issues associated with the drawdown into three major areas:

- closing bases;
- work in the pipeline, such as construction projects now underway at bases; and
- disposition of government-owned property that has been acquired by contractors, known as "white property" as distinct from green, or military property.

Closing and Transitioning Bases in Iraq – Lessons to Be Learned

According to command officials, 351 U.S. bases now exist in Iraq. The plan is to reduce that number over the next two years to a handful of strategic bases and several dozen subsidiary bases. The Marine Corps is beginning this process, and plans to downsize to two bases. Army units are also beginning to close bases.

The Army closed Forward Operating Base (FOB) Rustamiyah, for example, and turned it over to the government of Iraq in late March 2009. The unit handling the closure gave The Commission an after-action briefing on the process and the challenges it had encountered. This base occupied almost seven acres and contained, among other things,

- a camp population of over 3,000, including government personnel and contractors;
- more than 400 containerized housing units and shower/bathroom trailers;
- 170 buildings;
- 17 guard towers; and
- over 175,000 gallons of JP-8 jet fuel in storage containers.

In the course of closing the base, a number of lessons were learned as the challenges were met:

- **Comprehensive transition guidance:** The brigade-support battalion identified three sets of guidance, each of which directed the transition or removal of different items of white property. The Commission learned that because of the lack of consistent guidance and clear communication, window-mounted air-conditioning units (white property) were removed from housing units and shipped to other bases for their use. It was later decided that the housing units from which the air-conditioning units were removed would be turned over to the government of Iraq intact. This information never flowed to LOGCAP and the DCMA. The air-conditioning units must now be returned to FOB Rustamiyah and reinstalled.
- **A way to synchronize requirements:** Base transition is complex and calls for close synchronization among organizations. There is currently no forum for this

synchronization. The Rustamiyah after-action briefing recommended that Multi-National Forces Iraq (MNF-I) chair a base-transition working group to synchronize plans, policies, and procedures; synchronize transition timing between the operational and logistical staffs; and ensure unity of effort for the entire process.

- **A better mechanism to terminate contracts for providing support on the base:** Different contracts used on the base were managed in different ways by different people in different organizations. The after-action briefing also recommended that the transition working groups coordinate for and ensure that the appropriate paperwork for the termination of services is completed.
- **Synchronize operations and logistical support:** The brigade-support battalion recommended that all operational units leave the base about 45 days before closure, but at Rustamiyah that decision could not be supported operationally or logistically. The Commission learned that as the military population draws down, there are few if any military personnel to provide contract oversight as contractors perform the last closure steps. Between early January and the end of March 2009, the military population at Rustamiyah declined from 1,490 to 62, while the contractor population declined only from 928 to 338, reducing the military-to-contractor-employee ratio from 1.6-to-1 to 0.18-to-1.

Work in the Pipeline May Be Unnecessary

As the United States rebases and draws down forces, new physical-infrastructure requirements continue to be identified, while work on some previously approved projects has either not begun or is still in process. The time limits on U.S. presence in Iraq make it important to decide which projects are still necessary. The Commission has identified more than $2 billion in new projects in Iraq. About one-fourth are projects under LOGCAP, while three-fourths are military construction projects of the U.S. Army Corps of Engineers.

LOGCAP PROJECTS

The new projects under LOGCAP fall into two categories: (1) those funded and for which the contractor has been given notice to proceed, but where work has either not begun or is in process; and (2) those requested by the customer and proposed to the contractor, but not yet funded, so that work has not been authorized to proceed.

The LOGCAP Contracting Office gave the Commission a list of projects in both categories totaling $531 million. Of that total, funded projects with work authorized to begin between March 2008 and January 2009 amounted to $217 million. Projects submitted between August 2008 and February 2009, but not yet funded, totaled $314 million.

The coming drawdown makes many projects unnecessary. Senior command officials have ordered local commanders to review all authorized, uncompleted work and assess

if it is still needed. Only work found necessary for the life, health, or safety of deployed personnel is to proceed. However, when we asked if there was a common definition of what work related to life, health, or safety, the answer was that there are no clear standards. In addition, LOGCAP officials told The Commission that the reviews are being conducted, work is coming off the task order, and they think units are making a good effort, but they have not been keeping track. The Commission is concerned that reviews may be taking place at too low a level and that there are no incentives to stopping work that may be unnecessary.

CONTINGENCY CONSTRUCTION PROJECTS

In addition to LOGCAP projects, a number of projects using military construction funds are being undertaken by the U.S. Army Corps of Engineers on behalf of the U.S. Army Central Command (CENTCOM). At the Commission's request, Army Central Command gave us a list of all projects from fiscal year 2007 forward. The list contained a total of 82 Army projects valued at $1.5 billion. These are projects identified by Multi-National Corps-Iraq (MNC-I) and managed by Army Central Command. It was a broad array of projects to be built at bases throughout Iraq, including base-security control points, wastewater treatment plants, landfills, replacement facilities, detainment facilities, hospitals, and dining facilities. Project values ranged from $880,000 to $137 million.

MNC-I officers continually reevaluate projects in light of changing conditions in Iraq. As a result, MNC-I has cancelled 39 projects valued at $810.6 million, including all projects scheduled past fiscal year 2008; 43 projects valued at $679.3 million are continuing. The Camp Delta dining facility discussed below is one of the continuing projects and involves a large, long-term investment in a camp that will close in less than three years. Army Central Command says it will work with MNC-I to assess the need for the approved projects and wants to ensure that funds are not spent on projects that no longer make sense.

THE DINING FACILITY AT CAMP DELTA

One ongoing project is building a dining facility at Camp Delta in Iraq. It was submitted for $36 million in funding on June 30, 2008. A $30 million construction contract was awarded on September 30, 2008. The contractor was directed to begin work on October 31, 2008, and construction is estimated to be completed on December 25, 2009.

Army Central Command's June 2008 justification said the current facility was only one-fourth the size needed to serve the current population, the ceiling sagged, lighting was

poor, air-conditioning was undersized for the load, the on-grade wooden floor was unsanitary, there was no overhead protection, and the serving kitchen was undersized. In July 2008, Army Central Command restated the urgency, saying the existing DFAC is a dilapidated facility in deplorable condition.

Unfortunately, Army Central Command inadvertently used outdated information in describing the need for the new DFAC. The Commission visiting Camp Delta in April 2009 observed the ongoing construction of the new DFAC, had all their meals at the existing one, and toured its food preparation and storage areas.

We also learned about a recent expansion of the existing DFAC. On July 17, 2007, an administrative change letter and notice to proceed were issued to the LOGCAP contractor to expand the current DFAC with work authorized at a cost of $3.36 million. The letter said expansion of dining facilities in Camp Delta was required because the current DFAC could not handle the expected 4,000-person population of Camp Delta. The work requirements to expand the existing DFAC included enabling the DFAC to serve 4,500 personnel four meals per day with a three-hour feeding period per meal; increasing power generation to support additional HVAC, cooking, and food preparation areas; expanding the area around the DFAC for storage; expanding the seating capacity; expanding the refuse facility; installing force-protection barriers around the DFAC, and increasing space for hand washing.

The expansion was completed on June 14, 2008—just over a month before Army Central Command described the Delta DFAC as a dilapidated facility in deplorable condition and in urgent need of replacement. In May 2009, Army Central Command officials told the Commission that they were aware of the expansion of the existing DFAC, but had inadvertently not updated their justification.

Camp Delta's current DFAC (Commission photo)

During its visit, The Commission toured the service kitchen of the existing DFAC without seeing or hearing of any problems or shortfalls. We were told that foam covering has been added to the facility, which may make the building usable for approximately 10 years. We were also told that the camp's preventive-medicine personnel reported no medical issues with the facility.

The May 2008 Base Camp Master Plan for Camp Delta states that planning horizons will be up to two years for immediate requirements, two to five years for short-range plans, and five to 10 years for long-range plans. The security agreement between the United States and Iraq has overtaken these planning assumptions. The security agreement states that U.S. military forces will depart Iraq by the end of 2011 and further states that at that time all real property will be turned over to the government of Iraq. Constructing the new DFAC will increase capacity by 1,500. Although the future camp population is unclear, U.S. military forces will use the facility for two years at most.

It appears that the major feature that the new DFAC would offer is an overhead cover to protect against mortar and rocket attacks. MNC-I told the Commission that hostile forces in Iraq continue to make such attacks and the need for protection remains. It is unclear why command officials would not have added an overhead cover at the height of the insurgency, or at least during the upgrade of the existing DFAC.

As noted, MNC-I project cancellations have left the Camp Delta DFAC as one of 43 projects whose construction is proceeding. The Commission discussed the need for the new DFAC with engineering officials at MNC-I. These officials said they are constantly assessing the need for construction projects in Iraq. They said conditions changed after the DFAC justification was submitted in June 2008, changed again in January 2009 when the security agreement was implemented, and remain subject to change as personnel and units shift among bases, division battle space, and the corps area. The constantly changing force posture and basing plans in the Iraq theater of operations adds uncertainty.

MNC-I officials later told the Commission that as of May 12, 2009, plans for Camp Delta were still in flux. Meanwhile, the existing DFAC is serving the camp population of about 4,000. These officials also said that construction of the new DFAC is well under way and at this point savings from cancellation will likely prove disappointing. The contractor has already ordered the bulk of his materials, and would have a legitimate claim for significant payment. MNC-I noted that past project cancellations have recovered only a fraction of what might be expected based on construction progress alone. That is, canceling a project that is 25-percent complete does not save 75 percent of the completed cost. MNC-I said that if the new DFAC were cancelled, it would consider expanding the existing DFAC, but thought the time and expense of such an effort would likely outweigh cancellation savings.

The Commission believes that if a prompt review of the need for a new DFAC had been undertaken when the security agreement was signed, the comparative merits of expanding the existing Camp Delta DFAC or completing the new one might have looked much different. The contractor was directed to proceed with the new construction on October 30, 2008, while negotiations were still under way for the security agreement that was signed on November 17, 2008. The case of the Camp Delta

DFAC project underscores the need for an immediate high-level review of all proposed and ongoing projects throughout Iraq.

Disposition of Property Will Require A Number of Decisions

Billions of dollars in "white property"—contractor-acquired but government-owned—in Iraq will have to be disposed of. In February 2009 testimony before the House Armed Services Committee, the Managing Director of GAO's Defense Capabilities and Management group said:

> Maintaining accountability for and managing the disposition of U.S. government property under the control of contractors may present challenges to redeploying U.S. forces from Iraq. According to Defense Contract Management Agency officials, there is at least $3.5 billion worth of contractor-managed government-owned property in Iraq.[49]

Command officials in Iraq estimated that there are 31 million items of property in all of Iraq, including military and white property. For LOGCAP alone, the largest contract providing services in Iraq, there are 614,000 "lines" of property, such as generators, valued at more than $3 billion in total. It may be necessary to streamline some steps in the disposition process to meet mission needs and drawdown milestones.

Property disposition can include donating it to the government of Iraq, returning it to the United States, using it elsewhere in Iraq or Afghanistan, transferring it to other U.S. government agencies, selling it, or, if the property has no commercial value, scrapping it. Under the security agreement between the governments of Iraq and the United States, Iraq owns all buildings and structures that cannot be relocated, and assemblies connected to the soil that exist on agreed-upon facilities and areas, including those that are used, constructed, altered, or improved by U.S. forces.

Law, regulation, and policy govern disposition of government property. For Iraq, the Under Secretary of Defense, Acquisition, Technology, and Logistics has issued a procedural waiver to allow donating up to $5 million (acquisition value) per forward operating base—not a large sum compared to the value of LOGCAP property at individual bases. Commission analysis of data from the LOGCAP property database showed that the smallest base has 3,906 line items of property valued at $18.4 million, while the largest has 75,954 line items of property valued at $577.6 million. For the 14 sites in central Iraq, the average was 11,555 line items of property valued at $49.1 million.

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[49] GAO Report GAO-09-380-T, Iraq and Afghanistan: Availability of Forces, Equipment, and Infrastructure Should Be Considered in Developing U.S. Strategy and Plans, Statement of Janet St. Laurent, Managing Director Defense Capabilities and Management before the Committee on Armed Services, House of Representatives, February 12, 2009.

Senior command officials are planning for the disposition of property and have reported a number of actions:

- Multi-National Corps – Iraq (MNC-I) is working on developing two orders, one to have commanders inventory property on their bases, the other to begin transition or disposition of material.
- Multi-National Force – Iraq (MNF-I) is developing a computerized "virtual warehouse" of all property on each base to avoid disposing of items at one base and buying new ones at another base.
- MNC-I is developing a policy memorandum defining real property. The closing of FOB Rustamiyah generated some confusion over what constituted real property to be turned over to the government of Iraq.

The Commission has identified a number of challenges associated with white property disposition that DoD must and is working to address. They include:

- **Decisions on property disposition.** The Commission was told that commanders in Iraq have different perspectives on what stays and what goes. The current position is that everything stays; the previous commander had directed that everything would go. A related issue is the tension between the desire to reutilize material from closing bases versus the desire to turn functioning bases over to the government of Iraq. Ensuring full functionality would entail turning over not only real property per the security agreement, but other property such as furniture and wall-mounted air conditioning units.
- **Need to better understand the white-property disposition process.** MNC-I officials told The Commission that they have not yet developed a flow chart showing the process, including identifying the key decision points and who must make the decisions.
- **Property accountability.** Senior command officials told The Commission that defining white property might not be easy, particularly for property not acquired under LOGCAP. They said that they lack accountability for non-LOGCAP white property, including equipment acquired by local contractors. MNF-I officials also told The Commission that they are trying to clarify the situation with white and green (military) property, but are hampered by poor recordkeeping in the early years of Iraq operations.
- **The role of military units in the process.** To turn LOGCAP property over to the government of Iraq, KBR prepares a property inventory. The Army then prepares the official property disposition form to transfer the property to an Army unit, which can in turn transfer it to the government of Iraq. However, in closing FOB Rustamiyah, some military units were unwilling to accept responsibility for the property.

- **Possible need for increased waiver authority.** As noted earlier, the current dollar-value waiver authority for donating white property to the government of Iraq is very low. MNC-I officials believe that they need further relief from property-disposition requirements, but have not yet defined that need. Too much red tape and delays may result in property of use to the Iraqis going to waste because the documentation could not be arranged within base-closing deadlines.
- **Need to consider the needs of Reserve and National Guard units.** Back in the United States, these units have a high need for items useful either for training or for readiness. Every effort should be made to make otherwise unused property available for that purpose.

During their Iraq visit, the Commission heard concerns about what would happen to property turned over to the government of Iraq. Some were worried that local officials might convert property for their personal use or that bases would be looted—events that would, besides adding to waste, reflect poorly on the American effort in Iraq and on the effectiveness of hand-over planning. Political and military leaders should be aware of this possibility and consider what practical steps might mitigate the risks.

CHALLENGES TO CONTRACTOR SUPPORT FOR THE AFGHANISTAN BUILDUP

As the focus of contingency operations turns from Iraq to Afghanistan, the Department of Defense is shifting forces and support resources. Applying logistics lessons learned from the Iraq buildup and the 2007 "surge" effort to Afghanistan could yield cost savings and increased efficiency. This is particularly important during the transition from LOGCAP III to LOGCAP IV.

Increasing U.S. troop strength in Afghanistan will require expanding numerous existing bases and creating new ones. LOGCAP IV task orders will support much of this expansion. During the April 2009 trip to Afghanistan, The Commission identified several lessons from the Iraq buildup and surge that can be applied in Afghanistan. Discussion of these lessons follows.

Understaffing Severely Impedes Efficient and Effective Execution of the Logistics Mission

Adequate staffing, from the LOGCAP Program Office to individual contracting officer's representatives, will promote full and effective government oversight of contractor efforts. LOGCAP Support Officers can help units develop requirements packages that avoid costly over-specifying or "gold-plating" requirements. LOGCAP program personnel can check price realism by generating an independent, government cost estimate. The Defense Contract Management Agency should be staffed with additional administrative contracting officers and quality assurance representatives. And proper

numbers of trained CORs in requesting units should be assigned to monitor and report on contractor performance at all locations where work is performed.

The Time From Requirement Identification to Notice to Proceed Is Too Long

Army guidance highlights the importance of early identification of requirements as key to maximizing the effectiveness of contractor support. In Iraq and Afghanistan it takes about 60 days from the start of requirements generation until the LOGCAP contractor is directed to proceed– if the process works perfectly. It rarely does. The Commission heard from many units that 120 days was the norm, not including time necessary (30 days or more) to provide the service called for in the requirement. However, the units responsible for supporting new units' arrival were often informed only 30 days in advance. The LOGCAP Deputy Program Manager in Afghanistan noted that earlier notification of service requirements could cut delays in getting support to requesting units.

Far-Flung Bases and Rotating Units Exacerbate the Property-Management Problem in Afghanistan

Property management is already a major issue in Afghanistan. One base operations officer at Bagram Air Base reported property all over the base whose ownership and maintenance status were unknown. A rapid troop build-up will exacerbate the problem by bringing in even more material as bases in Iraq are closed or consolidated. Matching material to needs, establishing serviceability, and transporting it to new locations will be big jobs. A scarcity of property administrators will impede management of the vast amount of material in theater.

ON THE AGENDA

The original planning for both Iraq and Afghanistan envisioned operations of short duration, so insufficient attention was given to the staffing of agencies and organizations involved in logistics support. Lack of planning has been exacerbated by the steady drawdown of contracting personnel across the government in recent years, and has led to a situation where personnel issues overwhelmed parts of the management of LOGCAP and other programs. The expanded and crucial new role of contractors, coupled with inadequate contract oversight, poorly written statements of work, and contractor inefficiencies, has resulted in billions of dollars of largely avoidable waste. The Commission continues to assess the role of contractors providing logistical support to deployed forces, including:

- Evaluate techniques for reducing service and system-support contract costs, including improved independent cost estimates, enhanced competition, and improved contractor oversight.

- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Study the management of U.S. government property in theater, with special attention to the efficient disposition of property affected by the ongoing Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Analyze the effectiveness of the logistics planning process for future contingency operations.
- Examine the various types of contingency funding appropriations and their impact on logistics support decision-making.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

Chapter 3

Security

Security support during contingency operations has traditionally been considered primarily a military responsibility. As the duration and extent of security requirements in Iraq and Afghanistan increased, so did a compelling need to increase security support for the Departments of Defense and State and the U.S. Agency for International Development. They used private security contractors to fill the government-security staffing void.

In the wake of the 1983 attack on the U.S. Embassy in Beirut, Congress passed legislation authorizing the Department of State to provide security for all U.S. federal civilian personnel abroad, which enabled private security contractors to compete for security-service contracts in support of U.S. missions overseas.[50] The Department of State first employed private security contractors in Haiti during 1994; the next significant use of security contracting came in 2000 for support services in the former Yugoslavia. The U.S. security-support mission expanded—from Haiti to the Palestinian territories, Afghanistan, and most recently to Iraq in 2003.

Security services to guard U.S. military bases in the United States were mainly provided by military service members until after the terrorism attacks on September 11, 2001. As the U.S. government tightened security at military bases and simultaneously mobilized troops to fight in Afghanistan and then in Iraq, the Department of Defense engaged contractors to provide some security services.

Two distinct authorities are responsible for the security of U.S. federal civilian employees and contractors. The U.S. military, under the authority of the Secretary of Defense and the combatant commander, are responsible for the security of all personnel under direct control of the combatant commander, including Department of State and U.S. Agency for International Development contractor employees. The Department of State, under the authority of the Secretary of State, is responsible for the security of all other U.S. federal civilian personnel on official duty abroad and contractor employees.

Outsourcing this critical function may have unintended consequences, even though the use of private security contractors allows commanders to free military forces for core warfighting missions. This chapter discusses significant events in private security contracting, defines the various types of private security activities, and focuses on the consequences and challenges of outsourcing. It also outlines the differences that geography and culture play in the execution of security contracting services and their implications for acquisition planning in Iraq and Afghanistan.

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[50] The Diplomatic Security and Anti-terrorism Act of 1986, 22 U.S.C. § 4864.

SIGNIFICANT EVENTS

Two events—the murder of four Blackwater (now Xe Services, LLC) security contractors in Fallujah, Iraq in 2004 and the killing of Iraqi civilians in Baghdad's Nisur Square in 2007—heightened the visibility and intensified the scrutiny of private security contracting.[51] The events made international news, generated heated public debate, prompted executive-branch reviews, and sparked congressional investigations. The incidents brought to light the extent to which the U.S. government relies on private security contractors (PSCs) in Iraq, and revealed a breakdown in basic contract-management procedures. The public and Congress began asking questions: who are these private security contractors, what are they doing in Iraq, how are they being controlled, and what is their accountability for criminal behavior?

The four Blackwater employees were shot and killed in an ambush by insurgents while escorting a convoy in Fallujah on March 31, 2004. After the attack, the bodies of the four dead security guards were publicly desecrated by being beaten, set on fire, dragged through the streets, and hanged from a bridge crossing the Euphrates River. News of the event and media photographs provoked outrage in the United States.

The second event, the shooting of Iraqi civilians at the Nisur Square traffic circle in Baghdad on September 16, 2007, was a watershed moment for the U.S. and Iraqi governments and triggered a series of executive-branch reviews, investigations, and new regulations for the U.S. government's use of PSCs. The facts and the circumstances surrounding this event remain in dispute and are the subject of an ongoing criminal prosecution. On December 4, 2008, a 35-count indictment returned in the U.S. District Court for the District of Columbia charged five Blackwater security guards with voluntary manslaughter, attempt to commit manslaughter, and use and discharge of a firearm during and in relation to a crime of violence.[52] The defendants were charged with killing 14 unarmed Iraqi civilians and wounding 20 others. The U.S. government alleged that the "34 unarmed Iraqi civilians, including women and children, were killed or injured without justification or provocation." A sixth Blackwater security guard pled guilty on December 5, 2008, to charges of voluntary manslaughter and attempt to commit manslaughter for his role in the Nisur Square shooting.[53]

The Nisur Square incident highlighted fundamental policy concerns. One concern relates to the widespread use of and dependence on PSCs by civilian and military

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[51] Various spellings of the Square appeared in the media. The Commission has adopted the transliteration used by the U.S. Department of Justice in the charging documents.
[52] Blackwater was working in Iraq under a contract with the Department of State. The indictment (U.S. v. Slough, et al.) states that the defendants' "employment related to supporting the mission of the United States Department of Defense in the Republic of Iraq."
[53] U. S. Department of Justice Press Release 08-1068, December 8, 2008.

organizations. Another relates to the implications of using PSCs to perform mission critical or potentially inherently governmental functions.

The following table shows the distribution of PSC personnel in Iraq and Afghanistan as reported in the U.S. Army Central Command's second-quarter FY 2009 census. These numbers include prime PSC contractors and most subcontractors performing under Department of Defense contracts.[54] Five years after their first use in Iraq, these subcontractors still pose a significant challenge. A SIGIR report in April 2009 found that "no organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes."[55]

The table also includes PSC personnel working under the Department of State Worldwide Personal Protective Services (WPPS) and Baghdad Embassy Security Force contracts.[56]

Private Security Contractor Personnel in Iraq[57]				
	Total	U.S./Coalition	Third Country National	Local/Host Country National
Total DoD PSCs	**12,942**	681	10,596	1,665
Total Department of State PSCs (WPPS/Embassy)	**3,321**	1,050 / 200	321 / 1,600	10 / 140
Private Security Contractors in Afghanistan				
	Total	U.S./Coalition	Third Country National	Local/Host Country National
Total DoD PSCs	**4,373**	17	29	4,327
Total Department of State PSCs (WPPS/Embassy)[58]	**689**	94 / 179	20 / 321	5 / 70

The census data illustrate three important points: DoD employs significantly more PSCs

[54] U.S. Army Central Command, CCJ4, Contracting Branch, May 11, 2009.
[55] SIGIR Report 09-019, Opportunities to Improve Processes for Reporting, Investigating, and Remediating Serious Incidents Involving Private Security Contractors in Iraq, April 30, 2009, Summary.
[56] In Iraq and Afghanistan, the U.S. Agency for International Development receives all of its PSC support from the Department of State WPPS contracts.
[57] Department of Defense figures as of March 31, 2009; Department of State figures as of February 28, 2009.
[58] Congressional Research Service briefing document, Private Security Contractors: Possible Legislative Approaches, March 10, 2009, 3.

than the Department of State; PSC employees in Afghanistan are primarily local/host-country nationals; and security services in Iraq are provided primarily by third-country nationals.

In Iraq, 25,000 to 30,000 PSC personnel work for U.S. agencies, the government of Iraq, coalition governments, and U.S. contractors. These numbers exceed the PSC census data in the table above because they include PSC support to the government of Iraq and coalition governments. The total U.S. spending for PSCs is estimated to be between $6 billion and $10 billion from 2003 to 2007. Of this amount, $3 billion to $4 billion is estimated to be for obligations made directly by U.S. government agencies, and $3 billion to $6 billion is estimated to have been spent by U.S. contractors to acquire PSC support.[59]

Private Security Contractor Incidents Initiated Reform

After the Nisur Square incident in September 2007, the government of Iraq revoked Blackwater's license to operate in the country, putting in jeopardy activities at the U.S. Embassy. In response to the incident, the Secretaries of Defense and State implemented significant programmatic and interagency reforms to address the risk of PSC performance.

The Secretary of Defense initiated an investigation and within 10 days issued specific policy guidance advising unit commanders of their obligations and requirements under DoD Instruction 3020.41.[60] The Secretary reinforced the unit commanders' obligation to enforce their authority over Defense Department contractor personnel under the Uniform Code of Military Justice (UCMJ), and to detain, disarm, and apprehend violators pending a review and determination of their disposition. The memorandum heightened DoD oversight and broadened accountability over its private security contractors. The department augmented the Secretary's guidance with improved contract requirements under revised Defense Federal Acquisition Regulation Supplement (DFARS) clauses that added clarity to PSC operations.[61] The new DFARS requirements placed enhanced reporting and compliance obligations on PSCs. Other new contract clauses were embedded in contracts by the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A).

The Department of Defense's policy and process improvements were steps in the right direction; the Department of State implemented its own changes as well. In October

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[59] Congressional Budget Office, Contractors Support of U.S. Operations in Iraq, August 2008, 2, 13, 14.

[60] Deputy Secretary of Defense Memorandum to Secretaries of the Military departments, Subject: Management of DoD Contractors and Contractor Personnel Accompanying U.S. Armed Forces in Contingency Operations Outside the United States, September 25, 2007.

[61] DFARS subparts 225 and 252, effective January 15, 2009.

2007, the Secretary of State established the Panel on Personal Protective Services in Iraq, which issued a report with recommendations that led to changes to virtually every aspect of the Department of State's engagement and operation of PSCs.[62] These changes included recommendations to place cameras on security vehicles, called for the mandatory use of diplomatic security officers to accompany PSC details, and for enhanced coordination among agencies involved in such details. Another recommended improvement was to increase the capability to conduct investigations.

These recommendations culminated in an interagency Memorandum of Agreement (MOA) between the Departments of Defense and State dated December 5, 2007. It articulated interagency operating procedures, established an oversight collaboration process, and implemented common methods for monitoring PSCs. The collaboration process is designed to integrate operations and exchange information about PSCs. The MOA provisions also define the rules of responsibility, authority, and standards for the accountability and operations of PSCs in Iraq. The MOA covers the use of force, authority to carry firearms, movement control, the reporting of serious incidents, and legal accountability.

Although the MOA is intended to prevent a situation in which PSCs working for different elements of the U.S. government follow differing policies and regulations, it applies only to Iraq. There is no similar agreement for Afghanistan or other countries where private security contractors of the two departments work side by side. The Commission plans to examine this issue, along with the following issues, in order to evaluate how implementation flows from policy and directives into the contracts and how the PSCs are being overseen:

- standards of conduct, including ethical standards, the Rules of Engagement, and the Rules for the Use of Force;
- training requirements and compliance, including the number of hours, and frequency and methods of training; and
- personnel hiring procedures, including the use of third-country nationals, reliance on labor brokers, performance of background checks, verification of education, and consideration of past performance.

Legislative Remedies To Improve Security Contract Management

While the improvements by both Defense and State to the process of PSC oversight were significant, they did not allay the public outcry over the Nisur Square incident or dampen congressional interest. During 2007 and 2008, congressional leaders held many hearings to address the PSC incidents and responded with a number of legislative initiatives. The most influential are sections 861 and 862 of the National Defense Authorization Act of 2008, which demonstrate the depth of concern about the incidents

[62] Report of the Secretary of State's Panel on Personal Protective Services in Iraq, October 2007.

and the expansion of congressional focus beyond Iraq to Afghanistan.

Section 861 directed the Departments of Defense and State to execute a Memorandum of Understanding to address all contracting procedures, including the movement of contractors, the establishment of common databases, and the consideration of the UCMJ to bring accountability to PSCs.

Section 862 was tailored specifically to regulate PSCs. The requirements direct the Department of Defense, in coordination with the Department of State, to enact regulations on the selection, training, equipping, and conduct of personnel performing security functions under a covered contract in the area of combat operations. The regulations are to specify:

- a process for registering, processing, accounting for, and keeping appropriate records of personnel performing PSC functions in an area of combat operations;
- a process for authorizing and accounting for weapons carried by personnel providing private security functions;
- a process for registration and identification of armored vehicles, helicopters, and other military vehicles used by PSCs;
- an incident reporting procedure;
- a process of independent review of incidents;
- requirements for qualification, training, and screening, including background checks;
- knowledge of the Rules for the Use of Force; and
- development of specific contract clauses to require compliance with these goals and objectives.

Section 862 was subsequently augmented in Section 832 of the 2009 National Defense Authorization Act. The Sense of Congress provisions set forth additional guidance for PSC management: security operations in high-threat environments should ordinarily be performed by members of the armed forces if the use of deadly force is probable; sole discretion for determining whether performance by a private security contractor is appropriate rests with the commander of the combatant command; the armed forces should have enough trained personnel to perform security operations without having to rely on private security contractors; and regulations issued by the Secretary of Defense should ensure that private security contractors are not authorized to perform inherently governmental functions in combat areas.

In the coming months, the Commission will continue to inquire into the effectiveness of these initiatives and the possible need for additional policy or legislative remedies for the use and employment of PSCs.

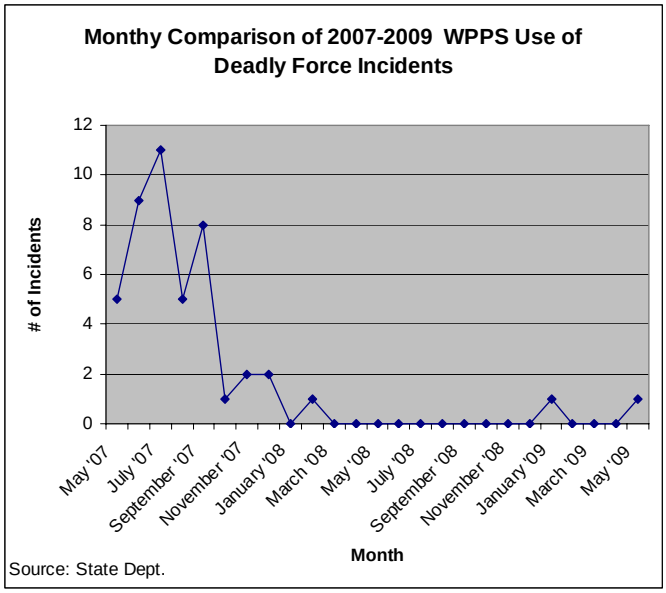
SECURITY CONTRACTING CURRENT ENVIRONMENT

Definitions Of Security Mission Areas

Private security contractors provide a number of security-related functions. The Commission will focus its study on the following security-support activities, each of which has a specific function:

- personal security: the protective security for high-ranking U.S. government officials and U.S. federal civilian personnel, and other individuals traveling in unsecure areas;
- convoy security: the protection of convoys traveling in unsecured areas;
- static security: the protection of fixed or static sites, such as military bases, and housing areas, and reconstruction work sites.[63]

Significant Decline in Incidents Involving the Use of Force by State Department PSCs Since 2007



Many congressional and agency-process improvements in the management of personal security contracts appear to have led to a decrease in incidents of the use of deadly force. In addition to the recommendations made by the Secretary of State's Panel on Personal Protective Services in Iraq, beneficial changes include the initiative to move more military forces into the Iraqi provinces, and the subsequent policy changes initiated by Congress and implemented by the Departments of Defense and State. Another key improvement was the increased capability to conduct investigations. Other factors were the improved security situation in Iraq with the reduction in sectarian fighting and the start of the surge in troop levels.

For example, the State Department figures above show a significant reduction in the use

[63] Jennifer K. Elsea, Moshe Schwartz and Kennon H. Nakamura, CRS Report RL32419, Private Security Contractors in Iraq: Background, Legal Status, and Other Issues, August 25, 2008, 3. See also GAO Report 05-737, Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers, July 2005, 9.

of deadly force incidents by State Department Worldwide Personal Protective Service (WPPS) contractor personnel after the Nisur Square incident in September 2007. The chart shows that the number of incidents began to decrease in October 2007, with a rate of reduction that held through May 2009.

The Commission will conduct further study to determine if the factors behind the significant decrease in deadly force incidents in Iraq carry over to the expanded missions in Afghanistan. Although the incidents that brought PSCs to public attention involved convoy and personal security services, during the Commission's trips to Iraq and Afghanistan we saw first hand how the use of PSCs in static security poses a potentially serious risk to the contingency mission as well. Therefore, all three security support activities will be a major focus for the Commission's further analysis.

Departments of Defense and State Multiple-Award Security Contracts

The Departments of Defense and State each established multiple-award indefinite delivery-indefinite quantity (IDIQ) contracts to acquire their private security support requirements. These are umbrella contracts where contractors compete to be awarded a contract. If they are selected, they can bid on task orders—specific missions—under the umbrella contract. Although the agencies use various other contracts to acquire security support services, these two IDIQs represent a large portion of total PSC contracting activity in Iraq and were the focus of our initial attention.

The Department of State's IDIQ, the Worldwide Personal Protective Service contract, is used to acquire a variety of service requirements such as providing private security details in Baghdad. The Department of Defense's IDIQ is called the Theater-Wide Internal Security-Services Contracts (TWISS), and it is used to acquire multiple security services such as the provision of static security for bases in Iraq.

DoD THEATER-WIDE INTERNAL SECURITY SERVICES CONTRACT

The TWISS contracts were awarded to expedite and simplify the contracting process for static security services in anticipation of increasing requirements. The contractor proposals for the TWISS IDIQ contracts were evaluated on five criteria: technical capability, past performance, past experience, Iraqi participation, and price. However, discussions with Defense Contract Management Agency (DCMA) personnel revealed that past-performance data were not being captured through a routine process, or being regularly reviewed before a contract award, resulting in undue weighting of other criteria. With the source selection of the upcoming TWISS II contractors, the TWISS contract awards will grow in size to a potential $935 million.[64]

[64] SIGIR Report 09-017, Need to Enhance Oversight of Theater-Wide Internal Security Services Contracts, April 24, 2009, 12.

The competitive task-order process incorporated into these IDIQs has worked to drive down the costs of security services. According to JCC-I/A officials, the average wage rate for a security guard decreased 26 percent between the time the contract was awarded and the award of the first task order. In the most recent task order competition, the rate decreased an additional 29 percent.[65] To the extent that TWISS PSC labor costs are being pushed down through the competitive process, competition is doing its job. However, if taken to the extreme, this process could have unintended consequences.

If the competitive task order process gives undue weight to proposed prices without proper consideration of other criteria, the selections could cause a "race to the bottom" and yield substandard contract performance. The government needs to ensure that security contractor source selection is truly based on best-value analysis. Evaluation criteria should promote selecting the contractor capable of providing the quality of service needed—especially the contractor's capability to effectively support the guards it deploys. The Commission will continue to study this issue, focusing especially on the process used to make trade-offs among cost, capability, and past performance.

DEPARTMENT OF STATE WORLDWIDE PERSONAL PROTECTIVE SERVICES CONTRACT

The Department of State issued its first personal security contract in Iraq during the days of the Coalition Provisional Authority. The CPA had used Blackwater, but once the CPA ended in 2004, the Department of State extended the original CPA Blackwater contract to secure its rapidly growing diplomatic mission. The department replaced Blackwater's CPA contract with the WPPS contract. The advent of the WPPS IDIQ contract expanded the list of PSCs eligible for protective security task orders to Blackwater (now Xe), DynCorp, and Triple Canopy.

Legal Accountability for Security Contractors Remains Unresolved in Iraq

The response to the events of Nisur Square resulted in substantial progress in defining comprehensive oversight procedures and increased oversight necessary to manage PSCs in sensitive roles. What remains unresolved, however, is comprehensive civil and criminal accountability for a narrow class of PSCs—those who provide armed security support services under civilian-agency contracts.

Historically, PSCs operating outside the United States, have been held legally accountable under civil and criminal provisions of the host country's organic law. This general rule is augmented by the Military Extraterritorial Jurisdiction Act (MEJA), which extended jurisdiction of the U.S. courts to certain offenses committed by contractors employed by or accompanying U.S. forces overseas. PSC personnel may be tried in federal court after being brought to the United States. MEJA jurisdiction applies only if

[65] Ibid., 5.

the employees have not been prosecuted under the host nation's legal system or under the Uniform Code of Military Justice.[66]

The MEJA statute has been used infrequently. From MEJA's enactment in 2000 through March 2008, DoD has referred 58 cases involving PSCs and other contractors to the Department of Justice. Federal prosecutors brought charges in 12 of those cases, and state prosecutors brought charges in one other case. Of those, eight resulted in a conviction and five await trial.[67]

American military personnel who commit criminal offenses in foreign countries are subject to the Uniform Code of Military Justice (UCMJ) and the courts-martial process. As of January 2007, civilian contractors working for the Department of Defense can be tried and punished for violations of the UCMJ. Section 552 of the 2007 National Defense Authorization Act added several key words to Article 2(a)(10) of the UCMJ, effectively expanding the jurisdiction of the UCMJ to allow military jurisdiction "in time of war or a contingency operation" over persons "serving with or accompanying an armed force in the field." Contingency operations are defined to include military operations "designated by the secretary of defense as operations 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."[68]

In Iraq a unique situation developed as a result of Coalition Provisional Authority Order 17, promulgated in June 2004 by the CPA administrator. It provided military forces with legal immunity from Iraqi law and extended this immunity to American contractors working as private security contractors.[69] The legal vacuum created by CPA Order 17 was compounded by the rapidly deteriorating security situation in Iraq, which forced private security contractors to assume a more aggressive posture in order to complete their mission successfully. It was in this environment that the tragic shootings in Nisur Square took place.

SECURITY AGREEMENT CHANGES JURISDICTION OVER CONTRACTORS IN IRAQ

Effective January 1, 2009, the security agreement between the United States and Iraq

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[66] 18 U.S.C. § 3261(a) and (b).

[67] Matthew Schwartzfeld, "Security Contractors Remain Outside the Law," *ProPublica*, August 15, 2008.

[68] 10 U.S.C. § 101(a)(13).

[69] CPA Order 17 states: "Unless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process."

removed the immunity previously provided by CPA Order 17.[70] Iraq now has primary jurisdiction over U.S. contractors, subcontractors, and their employees.

It is unclear whether MEJA would cover all employees of contractors working for entities other than DoD who commit crimes and offenses in the battle space. Coverage for contractor personnel under civilian agency contracts depends upon a finding that the individual's employment "relates to supporting the mission of the Department of Defense overseas." The test may become problematic when the contract is with another agency, such as the Department of State, that traditionally undertakes its own missions and whose objectives in a war zone may sometimes, but not always, be supporting DoD's mission. The Commission notes that in the pending criminal trials the courts will address these jurisdictional issues.

A Department of Justice press release stated that the 35-count indictment represents the first prosecution under MEJA to be filed against non-Defense Department private contractors.[71] The rulings in this case may clarify the nature of the accountability of private security contractors in the battle space.

SECURITY CONTRACT MANAGEMENT ISSUES

The Commission identified a number of specific concerns with respect to private security contracts as a result of its visits to Iraq and Afghanistan. The following sections detail several of the issues that relate to the execution and oversight of PSC contracts.

Subject-Matter Expert Support Is Insufficient To Oversee Static Security Services

There is a shortage of subject-matter experts (SMEs) to oversee security contracting in both Iraq and Afghanistan. During our recent visit to the Defense Contract Management Agency (DCMA) in Iraq, officials acknowledged that they have no resident security specialist or quality assurance representative (QAR) expertise, impeding proper oversight of the contracting officer's representatives (CORs) throughout the country.

The military occupational specialty with directly applicable skills is the security/military police. During the Commission's visits to Camps Hammer and Delta in Iraq, the security CORs said they had no comparable technical expertise in security. One COR was a combat medic and another was a crewman with a multiple-launch rocket system. Both said they did not sufficiently understand the complexities of managing base force-

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[70] Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, November 17, 2008. The agreement took effect January 1, 2009. The agreement is commonly referred to as the status of forces agreement (SOFA).
[71] U.S. Department of Justice Press Release 08-1068, December 8, 2008.

protection contractors. The senior commander of Camp Hammer concurred with their self-assessment.

The base "mayors" and other leadership that we interviewed shared the concern that there was a lack of expertise in managing security contractors. During discussions with security-contractor CORs at Bagram Air Base, Camp Shank, and Camp Eggers in Afghanistan, only one of the three CORs interviewed had expertise as a military-police officer, while the others were field artillery and quartermaster officers. The apparent lack of qualified oversight of security contractors could impose a force-protection risk. The issue will be further examined in the coming months.

Ineffective Contractor Oversight Risks Contract Non Compliance

The lack of skilled contract-oversight personnel and security SMEs has a big impact on the execution of the task orders awarded under the IDIQ contracts. The U.S. military has over 300 secured forward positions in Iraq, referred to as forward operating bases (FOBs), to support tactical operations in theater.

Third-country-national security guard at Camp Hammer in Iraq

Many large- and medium-size FOBs in Iraq use static security services provided by PSCs. Most of the PSCs for static security services in Iraq employ third-country nationals (TCNs) as the guard labor force at FOBs. They are usually hired through labor brokers in countries such as Uganda and Peru. Of all the PSCs the Commission interviewed, only one said they have in-country quality assurance employees that supervise the brokers to ensure proper vetting and evaluation of TCN performance.

Based on our interviews with the cognizant CORs, PSC representatives, and PSC site managers, and our personal observations at Camps Delta and Hammer, the Commission is concerned that some contractors in Iraq may be limiting training and not providing basic equipment. The adequacy of weapons and equipment, the number of vehicles available, and the type of night-vision equipment used are a few areas of performance that gave us cause for concern. The lack of trained and experienced government oversight personnel such as CORs and QARs greatly increases the risk of contractors failing to properly execute the terms and conditions of the contract. Poorly trained and ill-equipped contractor employees providing security for our operating bases put

American forces at increased risk of harm.

The Commission considers all areas of PSC contract compliance to require further review, and has referred these concerns to the JCC-I/A Commander. JCC-I/A followed up with a no-notice special-purpose audit of 50 sites and issued corrective-action requests to PSCs contractors at these sites.

Inconsistent Rules of Engagement and Use of Force Impact Security Posture

Strong force-protection measures are critical to ensuring the safety of encamped U.S. warfighters. Several military commanders in Iraq told the Commission they viewed the PSCs as "force enablers" that free up military service members for other mission requirements. The commanders generally support the use of PSC services as a necessary and useful tool of force augmentation. A recent SIGIR report confirmed the commanders' perception that "the requirements for the task orders were based on the need to replace troops performing static security with private security contractors to make more troops available for combat operations."[72] Examples:

- At Camp Taji, DoD issued a task order for over 900 personnel to free up 400 soldiers and to address deficiencies in existing site security.
- At Camp Bucca, DoD issued a task order for 417 personnel to free up approximately 350 soldiers for combat operations.
- At Camp Hammer, DoD issued a task order for 124 personnel to free up 102 soldiers for combat operations.[73]

To be effective, PSCs guarding sensitive installations must have a clear understanding of when and to what extent they may use their weapons. Base commanders explained to the Commission that the rules for using weapons were different for military and PSC personnel, and that the differences could compromise the safety of the installations.

Rules of engagement (ROE) define when, where, and against whom military force can be used by warfighters on the battlefield. Because PSCs are civilians, they do not follow the ROE. PSCs follow the Rules for the Use of Force (RUF), which provide clear guidance on when to escalate the PSCs' use of force to an identified threat in order to deter or, if necessary, eliminate it. It is important that these RUF requirements be provided to the PSC personnel, and just as important that the PSC personnel receive appropriate instruction and oversight to ensure they apply the RUF properly.

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[72] SIGIR Report 09-017, Need to Enhance Oversight of Theater-Wide Internal Security Service Contracts, April 24, 2009, ii.
[73] Ibid., 6.

The memorandum of agreement signed by the Departments of Defense and State in 2007 outlines the RUF in Iraq, and puts special priority on the escalation process. The escalation process proceeds from the use of non-deadly force through various methods and finally prescribes the limited conditions where the use of deadly force is authorized. Officials at Camp Hammer in Iraq told the Commission that the RUF restrictions on the use of deadly force have raised a concern that private security contractors may be unwilling to fire at potential threats for fear of losing their jobs. Representatives of the military units at bases PSCs protect reported their concern that a delayed response in the use of deadly force could have devastating consequences—that is, casualties or a significant loss of property.

Interviewees informed the Commission that military personnel operating under the conditions set out in the ROE are much more willing to quickly and decisively engage a threat and to use escalation procedures to neutralize the threat before lives or property are lost. Military personnel are authorized to hold individuals that pose a potential threat for up to 24 hours before turning them over to a competent local authority; however, PSCs are only authorized to repel intruders and report the incident to military authorities. This difference represents a procedural gap between the military and PSCs, one that could result in the escape of high-threat personnel and repeated attempts to breach perimeter security.

The interviewees at military bases in Iraq provided the Commission with information that indicates that PSCs may not be receiving sufficient training in the RUF to enable them to effectively determine, with confidence, when and how they should engage threats. This may lead to an inappropriate use and escalation of force as well as a failure to use force in a manner consistent with the circumstances of a situation. The Commission's initial exploration of this issue in Iraq shed a new light on concerns involving private security contractors' role in the battle space.

Management of the Armed Contractor Oversight Directorate in Afghanistan Poses Potential Conflict of Interest

Incidents involving PSCs in Iraq have highlighted the need for enhanced oversight. In response to these incidents, DoD has taken numerous steps to improve oversight and accountability of these contractors. One of the improvements in Iraq was establishing the Armed Contractor Oversight Division (ACOD) to serve as Multi-National Force-Iraq's principal staff element for oversight of PSCs, development of policies, and investigating and reporting incidents that involve the use of force. [74] ACOD was also tasked with broad oversight authority for DoD security contractors.

The story of ACOD in Afghanistan is very different and raises significant concerns about

[74] In Iraq, ACOD is referred to as a division; in Afghanistan, it is referred to as a directorate.

contracting for certain functions generally performed by the government. In February 2009, ACOD in Afghanistan was established to implement DoD's armed contractor policies, procedures, processes, and liaison with PSCs throughout Afghanistan. Aegis, a British-owned firm, was selected as the support contractor.

DoD interviewees informed the Commission that sufficient military manpower and/or expertise did not exist in Afghanistan, and that contracting with Aegis allowed the Combined Joint Task Force (CJTF-101) to obtain expertise quickly. Aegis does not currently provide armed contractors in Afghanistan, and as the ACOD is currently structured, an Aegis contractor serves as the Deputy Director and has day-to-day responsibility for managing the directorate. Should they be awarded a PSC contract under the current structure, there would be a conflict of interest.

In addition, Aegis's work raises heightened inherently governmental concerns because the ACOD receives limited U.S. government supervision. Since its establishment, ACOD in Afghanistan has primarily been run by contractor personnel from Aegis. Aegis's responsibilities include working with the Afghan Ministry of Interior in investigations concerning PSC escalation-of-force incidents. CJTF-101 submitted an expedited request for four field-grade officers for ACOD; however, as of mid-May the request had yet to be approved and there were still no senior U.S. military officials assigned full-time to the directorate. A review of the Aegis contracting documents showed that without these military officers in place, Aegis is in a role of significant official responsibility in reviewing activities of other private security contractors. [75]

Oversight Of Contractor Weapons Possession Requires Enhancement

The process for arming contractors is regulated by the Defense Federal Acquisition Regulation Supplement (DFARS), specifically DFARS 252.225-7040, and DoD Instruction 3020.41. This clause is to be included in every security contract. The Commission recognizes these regulations as reflecting several years of evolving program concerns and lessons learned in Iraq.

While in Iraq, The Commission was briefed about the arming-certification process and the Army's problems in establishing it. In the early days of operations in Iraq, the process to evaluate applications for carrying weapons was chaotic and often ad hoc. The situation in which private security contractors had unauthorized weapons became so dangerous that U.S. Army Central Command and the area commanders began to use the arming-certification process as a control mechanism.

After several iterations, the basic process and necessary vetting requirements were

[75] Contract W91B4N-09-C-5001, Section 1.57 of Aegis Performance Work Statement, Attachment 1, January 26, 2009.

finally determined for all individuals seeking to carry a weapon.[76] These arming-certification documents are required to be carried at all times by all contractor employees carrying a weapon.

Commanders imposed discipline on the process by simply denying access to the base (and thus food and shelter) to any individuals without the arming authorization. It was apparently only in this fashion that some order was restored to the arming process in Iraq.

In Afghanistan, the process begins when the applicant meets seven requirements, after which the application is submitted to the Combined Joint Task Force 101 J3 (Operations), routed through the Judge Advocate General, and is ultimately approved by the Deputy Commanding General. The requirements are:

- a request for arming the civilian from the military command being supported;
- a demonstration that the contractor meets weapons qualifications;
- Law of Armed Conflict Certification;
- knowledge of the Rules for the Use of Force;
- DD Form 2760 (Qualification to Possess Firearms or Ammunition);
- an acknowledgement by the contractor of the risk of host-nation prosecution and of civil liability; and
- a letter acknowledging the contractor's understanding of the Rules for the Use of Force as opposed to the Rules of Engagement.[77]

In addition to DoD arming approval, armed contracting companies are legally required to be licensed by the Afghan Ministry of Interior, and contractually required to follow all Afghan laws. There is a licensing fee of $120,000 per year for foreign companies and $60,000 for Afghan companies. As of early April 2009, there were 39 licensed private security companies.

There are some concerns about the licensing process. Afghanistan has refused to issue any additional licenses and the ministry has also capped the number of employees under each licensee at 500, although exceptions are being granted for those that exceeded the cap prior to its implementation. Although contractors are contractually bound to follow all Afghan laws, proof that companies are licensed with the Ministry of the Interior is currently not required before arming approval is granted. However, the Principal Assistant Responsible for Contracting in Afghanistan (PARC-A) has expressed the intent to inquire into the status of the licensing of all Afghanistan security guard

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[76] U.S. Army Central Command message, Modification to USCENTCOM Civilian and Contractor Arming Policy and Delegation of Authority for Iraq and Afghanistan, November 2006.
[77] The requirements are set forth in DoD Instruction 3020.41.

contractors with the Afghan ministry.

The arming process in Afghanistan does not appear to be in accordance with the direction given in DFARS 252.225-7040 and DoDI 3020.41 that require the process to be submitted through the contracting officer. These requirements were established to create appropriate levels of oversight in the arming process. Furthermore, as of early April 2009, the ACOD in Afghanistan had no direct involvement in the arming process. The result is that the entities responsible for oversight in ensuring that private security contracts are following all regulations and contractual obligations may not be able to confirm that all armed contractors are appropriately authorized to carry weapons.

Our understanding of this issue is based on our knowledge of the development of the arming authorization process in Iraq, in-country interviews with the ACODs in Iraq and Afghanistan, and in-country interviews with the J3 (Operations) and the Judge Advocate General in Afghanistan. We examined the current process of arming contractors in Afghanistan and how it compared with that in Iraq. We also inquired if the arming process: follows DoD regulations and Afghanistan law, is adequate to ensure that contractor employees meet the requirements for arming, and applies proper checks on all contractors whose contracts stipulate that they are to be armed.

Security Contractor Oversight in Afghanistan Does Not Reflect Lessons Learned In Iraq

The Commission recognizes that different operating environments in Iraq and Afghanistan affect the way security services are provided and managed. For example, contract security work in Afghanistan is performed almost entirely by Afghan security guards, while in Iraq, the work has been performed mostly by third-country nationals and U.S. citizens.

Oversight of private security contractors is also conducted differently in Iraq and Afghanistan. In Iraq, there is significant coordination on PSC operations between the Departments of Defense and State, but very little in Afghanistan. The ACOD in Iraq, which goes back to 2007, is a mature organization led and staffed primarily by Defense Department personnel. The ACOD in Afghanistan, however, is a new organization developed only in February 2009 and is primarily staffed by Aegis contractor personnel.

The Commission will undertake further review of these differences in security-contractor management in the upcoming months.

ON THE AGENDA

The Commission's initial research confirmed that despite significant efforts to deal with these basic issues, many remain unaddressed, and that some lessons learned from the experience in Iraq are not being effectively adopted in Afghanistan. Over the course of the next year the Commission will address other key issues that arise concerning the use and management of private security contractors. We will:

- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and reactivation of military reservists.
- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Determine the extent to which PSCs should be held to the same standards and operational requirements as the military.
- Evaluate the extent to which U.S. citizens, host-country nationals, and third-country nationals are treated differently by various PSC employers, and if they are treated differently, whether such treatment is appropriate.
- Evaluate requirements necessary to implement any court rulings providing for legal accountability of PSCs in theater.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Evaluate alternative contracting methods for different security functions.

Chapter 4

Reconstruction

Reconstruction programs in contingency operations are wide-ranging, difficult to execute, expensive, and essential. Stability operations follow closely on the heels of war. Often they go together. Reconstruction encompasses infrastructure repair and construction, governance and institution building, democracy building, development of civil society and the rule of law, and training police and security forces to keep the peace.

All these call for unity of effort, a network of government and private-sector personnel, and the expenditure of vast sums of money. The Commission's work on the reconstruction aspect of wartime contracting will focus on the following issues:

- Reforming the planning, organization, coordinating, and oversight of reconstruction and development projects and programs to ensure unity of effort and obtain measurable outcomes resulting from different funding streams.
- Improving planning and oversight in Washington of all aspects of reconstruction, stabilization, and development in contingency operations—including all stakeholder entities such as the National Security Council, the Departments of Defense and State, the United States Agency for International Development, and the Departments of Agriculture and Treasury, among others. This also involves coordination and liaison with Congress, nongovernmental organizations, and the private sector.
- Developing sound metrics and specific guidelines for assessing capacity building and sustainability in reconstruction projects and programs, benefiting from lessons learned (especially from Iraq), and seeking to apply those requirements and guidelines across the range of funding programs, including U.S. government appropriations and UN and other international organization contributions.
- Making capacity building and sustainability of reconstruction projects and programs an integral part of contingency operations and the private-sector contracts that support them.
- Devoting greater attention to the role of human resources in contingency operations, both in numbers and in qualifications, including the field-level operations of Provincial Reconstruction Teams who work closely with the military. The goal is to relieve military personnel who now conduct reconstruction and development activities of a burden that should be carried by civilian personnel.

MIXED RESULTS FROM OVER $80 BILLION IN RECONSTRUCTION FUND SPENDING

The U.S. Congress has appropriated over $80 billion for reconstruction in Iraq and Afghanistan since 2001. Since 2003, reconstruction appropriations for Iraq amount to about $51 billion.[78] For Afghanistan, the amounts were almost $33 billion at the time of this report; they will increase substantially with the rapid ramp-up of operations in that country.[79] The second FY09 Supplemental Spending Bill would provide $980 million for economic development programs and for strengthening governance and rule of law in Afghanistan, as well as $3.6 billion to train and equip the Afghan security forces.

How well the billions of dollars spent so far on reconstruction were contracted for and how well contracts were executed, particularly in Iraq, has been assessed in hundreds of audits and reports by the agencies involved—the Departments of State and Defense, and the U.S. Agency for International Development (USAID)—as well as by the federal oversight community, particularly the Government Accountability Office (GAO) and the Special Inspector General for Iraq Reconstruction (SIGIR). The Commission is also conducting its own in-theater trips and reviews of contract documentation. The verdict is mixed at best. A July 2008 review by the Special Inspector General for Iraq Reconstruction (SIGIR) audits directorate identified broad, systemic management issues that impeded the execution of reconstruction programs:

- failure to anticipate the need to attract, develop, and retain qualified program and contract-management personnel;
- lack of an integrated management structure with clear lines of authority, interagency coordination, and program accountability;
- need to work closely with host-country government officials and other groups to develop reconstruction programs and projects that will be accepted and maintained; and
- difficulty of implementing reconstruction programs in an insecure environment.[80]

According to SIGIR, the prevalence of these issues in Iraq "contributed significantly to reduced program effectiveness and increased the potential for fraud, waste, and abuse."

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[78] According to SIGIR, "Six years since the start of efforts to provide humanitarian assistance and to rebuild and restore Iraq's services and infrastructure, more than $139 billion has been made available through three main sources: Iraqi funding: $71.01 billion; U.S. funding: $51.00 billion; International funding: $17.79 billion." SIGIR, Quarterly Report to Congress, April 30, 2009, 26.
[79] According to SIGAR, "in addition to U.S.-appropriated funds, the international community has pledged approximately $25 billion towards Afghanistan reconstruction." SIGAR, Quarterly Report to the United States Congress, April 10, 2009, i-ii.
[80] SIGIR, Hard Lessons: The Iraq Reconstruction Experience (Washington, DC, 2009), 353-354.

Understanding them is "critical to avoid repeating them in the future."[81]

In carrying out its work in the area of reconstruction, the Commission will be mindful that there may be a life cycle in contingency operations. Some early reconstruction measures can help in bringing an end to conflict. But attempting to do too much too early invites waste and may not build sustainable capacity. Major reconstruction, stabilization, and development in a contingency environment is hard enough, let alone when fighting a war at the same time.

NEED FOR STABILIZATION WITH RECONSTRUCTION

The scope of the Commission's work in reconstruction contracting includes reconstruction and stabilization initiatives in conflict and post-conflict areas in Iraq and Afghanistan. Defense Department Directive 3000.05 of November 2005 declares that stability operations are a core U.S. military mission, and the Reconstruction and Stabilization Civilian Management Act of 2008 mandates that all federal agencies develop interagency plans and strategies for reconstruction and stabilization operations.[82] The Department of State was assigned responsibility for taking the lead in this planning effort. Reconstruction planners require sufficient funding and proper staffing support to carry out this role.

Reconstruction extends beyond building infrastructure—roads and transportation, communications, water, power generation and energy, and health care—to "soft" projects that include strengthening civil society and socio-economic development, governmental institutional building, building local-community and provincial governance, and sponsoring rule of law, gender equality, and democratization programs. Because the international community and host nations recognize that without basic security even the best of "hard" reconstruction projects and programs may founder, reconstruction in Iraq and Afghanistan entails training and developing police and security forces.

We must learn from Iraq to make proposals for Afghanistan. Our legislative mandate calls for an analysis of overall policy, procedures, organizational alignment, and interagency coordination. Our focus—all the more important when large sums of money are soon to be obligated for Afghanistan—will be on developing creative and implementable solutions that remedy the conditions that permitted mismanagement and weak leadership and coordination in the past.

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[81] SIGIR Report 08-020, Key Recurring Management Issues Identified in Audits of Iraq Reconstruction Efforts, July 27, 2008, ii.

[82] S. 3001, Duncan Hunter National Defense Authorization Act for 2009, Title XVI: Reconstruction and Stabilization Civilian Management.

UP TO $5 BILLION OF WASTE IN IRAQ RECONSTRUCTION

Reconstruction contracting in Iraq was in large part shaped in the early days of the Coalition Provisional Authority (CPA). During this period, the CPA and those agencies working on its behalf turned to large indefinite delivery, indefinite quantity (IDIQ) contracts for rehabilitating Iraq's debilitated industrial and public works infrastructure. Contractors such as Bechtel, KBR, Parsons, Fluor, and Perini collectively received billions of dollars in U.S. and Iraqi funds to support reconstruction of the oil sector, healthcare system, water and sewage system, and the electricity sector.

For some of the largest contracts, the CPA dealt with its severe shortfalls of personnel by contracting out even parts of the process of putting together these enormous contracts. Because many of the projects were "design-build," the contractors who decided the details of what to build were the same ones who built it.

As the oversight community has repeatedly noted, the projects to be delivered under these major contracts have been beset by delays, cost overruns, and disturbing instances of substandard construction. SIGIR estimated at the Commission's February 2009 hearing that $3 billion to $5 billion of Iraq construction appropriations had been wasted, not including billions more in Iraqi funds for which the United States had been trustee. As the Commission's work progresses, we will develop a more definitive assessment of the lessons learned from reconstruction contracting in Iraq, keeping in view the expanding efforts in Afghanistan.

CAPACITY BUILDING AND SUSTAINABILITY

The rush to "do something quickly" in contingency environments can give short shrift to local buy-in and maintenance, ultimately undermining sustainability. As one senior official said, there was a "real risk of huge multi-million-dollar projects sitting alone, non-operative, because we had not put the same focus on sustainability as we have on building it," a problem depicted in many SIGIR reports.[83] All too often, contractors designed and built under the supervision of the U.S. Army Corps of Engineers what the contractors and the Corps were familiar with building, not the different type and scale of building that had the best chance of taking root in Iraq's soil, as well as its social and governmental institutions.

At the Commission's February hearing, SIGIR confirmed that the failure of sustainability could turn out to be the biggest source of waste in reconstruction contracting. For many months, efforts at a systematic turnover of reconstruction projects remained frustrated because the State Department could not arrive at a transition agreement with Iraqi officials. The Commission learned that this agreement was reached only in April 2009. It

[83] SIGIR, Hard Lessons: The Iraq Reconstruction Experience (Washington, DC, 2009), 262.

remains to be seen whether transition now shifts into a smooth pattern or further barriers arise which will put at risk the continuing quality and even the viability of the projects at stake.

CAPACITY-BUILDING OVERSIGHT AND METRICS

In Afghanistan, although officials are aware of lessons learned, programs need more rigorous examination and activities to ensure sustainability. This includes sound metrics and oversight from the beginning of projects through completion. Everyone involved—including the Defense Department (through projects funded by the Commander's Emergency Response Program), the Department of State, USAID, the U.S. Army Corps of Engineers, and international donors—must be part of this process.

Reconstruction contracts aimed at developing the capacity of the Iraqi and Afghan governments have suffered from a lack of oversight and inappropriate measurements of project success. SIGIR found that some major capacity-building contracts overseen by USAID in Iraq were not managed at the outset to make sure that the relationship between contract costs and actual program outcomes could be ascertained.[84] An example is the case of two contracts, with a total value of close to $600 million, awarded by USAID to the Research Triangle Institute (RTI) between 2003 and 2005 for developing local governance. At first, costs were identified only at an aggregate level. Not until April 2007 did RTI reports begin to identify costs for discrete activities. Thus meaningful judgments could not be made about the cost effectiveness of the contract and whether local governance in Iraq had improved.

Reports by the USAID inspector general noted that the agency neglected to enforce its own requirements for receiving progress reports and other information needed to determine the outcomes of these contracts.[85] Moreover, the agency assigned only one contracting officer's representative during the life of most of the contracts.

Lacking enough contract oversight personnel and the metrics necessary to assess progress, the U.S. government cannot really know if a particular capacity-building program is an effective expenditure of reconstruction funds. Without more concrete measures of contract success, the U.S. government's reconstruction strategy will not fit the realities on the ground.

Capacity building is also an important part of the U.S. strategy to promote economic

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[84] SIGIR 09-003, Cost, Outcome, and Oversight of Local Governance Program Contracts with Research Triangle Institute, October 21, 2008, i-iv.

[85] USAID OIG Report E-267-06-003-P, Audit of USAID/Iraq's Local Governance Activities, July 10, 2006, 5; USAID OIG Report E-267-07-007-P, Audit of USAID/Iraq's Local Governance Activities, July 31, 2007, 4.

activity in Afghanistan. In February 2007, USAID awarded BearingPoint, Inc. a $218.6 million capacity-development program contract aimed at developing the capacity of institutions within Afghan society through training and technical assistance for private- and public-sector managers.[86]

Like the RTI contract in Iraq, the BearingPoint contract lacked detailed plans for assessing the success of the program until about 14 months into the life of the contract. The agency and the contractor spent much time trying to define program objectives and activities after the contract had been awarded. The USAID inspector general reported that although the agency and contractor worked to define objectives, significant funds were spent on contractor activities that did not directly contribute to the capacity-development program objectives. For example, in Afghanistan, USAID decided to have the contractor pay the salaries of employees of Afghanistan's ministry of education, which would have cost about $11.1 million over a two-year period, even though the contractor had no detailed plan for training ministry staff. Looking ahead, more attention will be needed to train and mentor Afghan professionals as U.S. government programs and their funding increase during the buildup in Afghanistan.

U.S. government civilian resources in Afghanistan are inadequate, as the President noted in a March 27, 2009, strategy announcement. He said the United States "will devote significantly more resources to the civilian efforts in both Afghanistan and Pakistan" and that he "will submit a budget that includes indispensable investments in our State Department and foreign assistance programs. These investments relieve the burden on our troops and contribute directly to our safety and security."[87]

A major Washington initiative now under way could greatly augment the civilian presence throughout Afghanistan at Provincial Reconstruction Teams (PRTs) and elsewhere. USAID and other agencies are struggling to do this quickly.

LACK OF INTERNATIONAL COORDINATION

The United States has played a dominant role in contingency operations in Iraq, Afghanistan and beyond, allocating significant resources and funding. Still, the role of other nations and the international community is important in achieving unity and synergy of efforts.

The Commission devoted much of its first hearing to an exploration of the problems in coordination throughout Iraq reconstruction, with a factual foundation established by

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[86] USAID OIG Report 5-306-08-012-P, Audit of USAID/Afghanistan's Capacity Development Program, 1.

[87] www.whitehouse.gov/the_press_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan.

SIGIR's two-year study, *Hard Lessons*. The hearing made all too clear that wartime reconstruction, stabilization, and development must be better coordinated among U.S. agencies and receive more attention during the funding and implementation of contingency operations. The U.S. government also needs an acknowledged central point where its own vast expenditures and operations in support of wartime reconstruction, stabilization, and development can be best coordinated in cooperation with other governments and international entities.

The Department of Defense, Department of State, and USAID will remain the major players, but a central node should be responsible for ensuring good coordination and synergies with non-U.S. entities involved in reconstruction efforts. Questions to witnesses at the February 2009 hearing elicited two proposals for where such a coordinating point might reside: the State Department's Coordinator for Reconstruction and Stabilization, or the National Security Council in the Executive Office of the President.

In theaters such as Iraq and Afghanistan, military commanders and U.S. Chiefs of Mission are responsible for ensuring maximum coordination and cooperation with allies and other international entities, bringing to the attention of Washington—to a designated point—issues to be addressed and resolved at the higher levels in foreign capitals.

To leverage funding and attain synergy of effort, effective international coordination and cooperation in wartime and post-conflict reconstruction, stabilization, and development is imperative. These international entities include allied and other governments, the UN and other international organizations, the multilateral development banks and international financial institutions, leading nongovernmental organizations, the international private sector, and the far-flung network of contractors and subcontractors associated with them.

In Iraq, poor international coordination made for duplication and waste. Various reports and assessments—including that of the Iraq Study Group—reveal this starkly. The current Administration has indicated that it will rely on the UN to play a greater coordinating role in overall reconstruction and development in Afghanistan, where the record so far is marked by uneven coordination and disparate priorities among the lead nations involved in reconstruction and development.

The United States is the dominant party in funding and operational support, including military and civilian resources, of post-conflict reconstruction, stabilization, and development. Meshing this more effectively with money and resources from allies and other international entities will leverage U.S. government funding and reduce wasteful overlaps in projects and programs. These initiatives should begin at the front end, for

example in donors' conferences, and keep up as projects and programs are coordinated on the ground.

COMMANDER'S EMERGENCY RESPONSE PROGRAM

The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan is seen as a prized asset for U.S. military forces as well as a powerful tool in carrying out reconstruction, stabilization, and development projects in the midst of wartime conditions. The acceleration of the program in 2006 has been credited with fostering the perception by Iraqis that the American military is serving them.[88] Indeed, the CERP standard operating procedures manual is aptly entitled *Money as a Weapons System* (MAAWS). The value of CERP is that it is nimble and quick—in contrast to other slow and cumbersome funding streams and the seemingly interminable process through which projects are approved and get off the ground. That said, however, CERP projects and programs also need proper planning, coordination, and oversight.

CERP guidelines are clearly stated by command authorities, but a measure of subjective judgment comes in to play in choosing and recommending projects that local communities want and need. According to the DoD Financial Management Regulation, the Commander of the U.S. Army Central Command (CENTCOM) approves all CERP projects in Afghanistan greater than $2 million. The Commander of the Combined Joint Task Force in Afghanistan has the authority to approve projects less than or equal to $2 million. The commander is to approve on an exception basis any essential individual CERP projects of $500,000 or more given that the intent is for small-scale projects. Projects of $50,000 or more are to be coordinated with Provincial Reconstruction Development Committees (PRDCs), and in fact projects from $200,000 to $2 million in Afghanistan must be approved by the regional command in conjunction with assessments by a CERP board. In Iraq, this process is slightly different.[89]

> "Where the road ends, the insurgency begins."

CERP funds are used extensively for road building and infrastructure in Afghanistan—projects considered vital in view of the rugged topography and in combating the Taliban and other insurgents. Officers in theater understand this point well. One told the Commission, "Asphalt is ammunition." Another said, "Where the road ends, the insurgency begins."

Since 2003 just over $3.5 billion in U.S. funding has been appropriated for CERP use in Iraq. In Afghanistan, overall funding through fiscal year 2009 is approximately $1.4

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[88] SIGIR, Hard Lessons: The Iraq Reconstruction Experience (Washington, DC, 2009), 279-291.
[89] DoD 7000.14-R, volume 12, chapter 27, Commander's Emergency Response Program (CERP), January 2009.

billion.[90] The military's CERP projects and corresponding "quick-impact" initiatives by State and USAID have made a significant contribution to reconstruction, stabilization, and development.

As is true across the board in reconstruction, there are questions of project viability and sustainability. The degree to which CERP-funded projects are properly coordinated with USAID and host-country ministries and provinces in order to maximize capacity building and avoid cross-purpose efforts is also in question. That lack of coordination is a serious problem that needs to be addressed.

Nor has the CERP program been immune from substantive allegations of fraud and corruption. The Commission will review representative CERP contracts and evaluate amounts allocated, how the money was used, oversight, and capacity-building outcomes. Recent events indicate that officials of some American allies supporting the reconstruction of Iraq have subverted CERP for their own gain.

In April 2009, three South Korean military officers were convicted of extortion and bribery in connection with a $70 million U.S.-funded reconstruction program in northern Iraq.[91] These crimes raise serious concerns about oversight of reconstruction contracts funded by the U.S. government and managed by allied nations.

Concerns apply to both Iraq and Afghanistan, as the U.S. has relied on allies operating in both nations to oversee portions of the reconstruction contracting process. The Commission will further study the impact of such abuses and develop lessons learned to address oversight problems of U.S.-funded contracts involving international allies and partner nations—whose role remains highly relevant to reconstruction and development efforts in Afghanistan.

Much of CERP activity in Afghanistan is linked to the operations of Provincial Reconstruction Teams (PRTs), which anchor projects by obtaining Afghan buy-in and bolstering prospects for sustainability. Support of CERP projects needs to be coordinated with all of the government entities involved and the military, in addition to being closely integrated with approved provincial development plans. Otherwise, CERP might be used for a project or program that does not mesh with other agencies' efforts, or has no buy-in from host-country nationals.

Senior command staff in Afghanistan meet regularly on CERP projects and track them for timely action, with most items processed for approval within two weeks. But there

[90] SIGAR, Quarterly Report to the United States Congress, April 30, 2009, 36-37.
[91] James Glanz, Eric Schmitt, and Choe Sang-hun, Three Koreans Convicted of Bribery in Iraq, New York Times, May 4, 2009.

are also problems of turnover among the stakeholders, including unit deployments of personnel serving on PRTs and gaps in overall staffing, as well as a lack of adequate project-management records. In addition, there are few subject-matter experts, such as contract specialists and experts in finance. The Commission will look more closely into PRT and CERP issues.

PROBLEMS OF PROVINCIAL RECONSTRUCTION TEAMS

The Commission believes that a serious shortage of U.S. government civilians in Afghanistan is all too likely to trigger heavy reliance on contractors in both the short term and the long run. At current U.S. civilian staffing levels, there are about three civilians at each PRT in Afghanistan. The rest of the 75-85 personnel at a typical PRT are military. The civilians come from the Department of State, USAID and, in some cases, the Department of Agriculture. Some are contractor personnel. In reality, civilian government personnel are not always available at a given PRT.

For now, the U.S. Army Corps of Engineers (USACE) and contractors fill part of this void. But it is hard to maintain continuity. Civilian personnel usually have one-year assignments, including regular leave for rest and relaxation and temporary duties away from the PRT.

PRTs operate in Iraq and Afghanistan, though in different configurations and circumstances. They are a local presence to provide assistance through projects that could not be planned in or implemented from the capitals. Their role is to improve stability by increasing host-country capacity for governance, economic development, and the delivery of public services such as health care and security by local governments and communities.

PRT operations in Iraq and Afghanistan serve an important, indeed necessary function in any significant and longer-term U.S. government involvement in contingency operations in those countries. Iraq's 18 provinces have 14 regular PRTs and four Provincial Support Teams, as well as 10 smaller PRTs embedded with Brigade Combat Teams who work with city and local governments in their areas.

The U.S. Embassy in Baghdad oversees PRT efforts through its Office of Provincial Affairs, headed by an official at the ambassadorial level. The PRT presence and operational scope in Iraq will be affected by the redeployment and withdrawal of U.S. troops, as well as decisions about their future by the Iraqi government.

As part of a major Administration initiative now under way to expand considerably the numbers and activities of U.S. government civilians in the field in Afghanistan, the State Department plans to add over 50 new positions at PRTs in 2009, growing this to a total of over 250 positions by spring 2010.

Officials at State and elsewhere have underscored the challenge of fielding so many new personnel and, in addition to the regular assignment process, will use the special hiring provisions under Title 5 of the U.S. Code and personal-service contracts. They are also looking into using military reservists in these assignments, a course that may be difficult considering the many deployment demands already made on the Reserves. If substantial personnel gaps persist, State and other agencies may look to contracting as part of the planned increase in the U.S. civilian presence in Afghanistan. The Commission is skeptical that long-term personnel needs can be met without new incentives and will provide recommendations on this issue.

In Afghanistan, all 26 PRTs are embedded under the operational command of the International Security Assistance Force. The United States serves as lead nation for 12 PRTs, and the International Security Assistance Force and NATO nations serve for the others. State and the U.S. Embassy in Kabul are planning to expand their field presence in Afghanistan, through the establishment of several more PRTs and the provision of resources at the district level. Newly created provincial governance and development offices focused on economic and development issues will also supplement the work of the PRTs.

Adding resources and improving coordination will go far to avoid "development fratricide" (duplication and working at cross-purposes) both among and between U.S. agencies, as well as among the United States and international organizations. The alternative may be overdependence on contractors and organizational disarray.

COORDINATION AND COSTS OF USAID PROGRAMS

The U.S. Agency for International Development has received approximately $9 billion for reconstruction activities in Afghanistan from 2001 through the present ($1.7 billion for FY2008). Some two-thirds of all funding has gone into USAID's Economic Support Fund for a variety of programs. In comparison, Defense has been allocated $18.5 billion in Afghanistan reconstruction funding, and State $4.6 billion. Other agencies, such as the Departments of Agriculture, Justice, and Treasury, have also received funding for program activities in Afghanistan.

USAID at present has around 130 employees in Iraq to manage and oversee the work of 4,000 implementing personnel. In Afghanistan, it has some 250 personnel, out of 350 authorized, overseeing approximately 10,000 implementers.

But USAID, like other civilian agencies, is challenged when it comes to augmenting its civilian government presence in Afghanistan, as called for by the President. Like other U.S. civilian agencies and the military, USAID also needs more subject-matter experts to

coordinate with nongovernmental organizations and oversee grantees and contractors.

The USAID effort in Afghanistan suffers from poor coordination with ongoing operations of the Defense Department and other entities, particularly at the provincial and local levels and in the PRTs located in these areas.

According to a January 2009 report by USAID's Office of the Inspector General, USAID's obligations in Afghanistan for fiscal years 2002 through the first quarter of 2009 totaled over $7.1 billion. The inspector general found that "the most frequent types of recommendations in the audits have involved inadequate contract oversight or activities management (68 percent), issues with security that prevented the mission from being accomplished (24 percent), data integrity or quality (24 percent), and contractor performance that needed improvement (20 percent)."[92] The USAID inspector general supports oversight of Afghanistan work from its office in Manila, with 14 auditors and two investigators and expects to establish a satellite office with two employees in Kabul in the summer of 2009. The Commission believes it is important that oversight and accountability be increased commensurate with the major expansion of funding and projects for Afghanistan, as outlined in the strategy set out by the President on March 27, 2009. Keeping apprised of this will be part of the Commission's continuing work.

In Iraq, USAID obligations for fiscal years 2002 through the first quarter of 2009 totaled over $7.2 billion. The agency's inspector general found that the greatest obstacle to USAID and its inspector general activities in Iraq was unquestionably the lack of security. Beyond security issues, their audits found that "the most frequent problem affecting USAID development efforts in Iraq involves inadequate contract oversight or project management (29 percent)." Other factors impeding the agency's "ability to achieve its goals are noncompliance with contract procedures (20 percent), insufficient internal controls (7 percent), and faulty or incomplete performance data (7 percent)."[93] The USAID inspector general has seven auditors and two investigators who oversee programs and operations in Baghdad.

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[92] USAID OIG Booklet on Afghanistan, January 2009, Executive Summary.
[93] USAID OIG Booklet on Iraq, January 2009, Executive Summary.

> "USAID's programmed contractor support costs appear relatively high. … USAID contract data from June 2008 shows that … of the original $130 million [funding for agency programs], approximately $89.6 million would be available for grants and subcontracts. This equates to a programmed support cost of $.45 for each $1.00 in grants awarded. The contractor also pays subcontractors an average of 8% of the dollar value of the grants to disburse grant funds to the Iraqi recipients.
>
> … USAID provided data that shows that its budgeted support costs for the entire grant are now estimated to be approximately $.61 per $1.00 in grants disbursed as of January 20, 2009."[94]

These numbers raise questions of effectiveness and waste. The Commission will look at support costs to gain a clearer sense of what percentage is appropriate for these types of reconstruction projects.

VISIBILITY OF SECURITY COSTS IN CONTRACTS

One of the greatest contributors to inflated reconstruction contract costs has been the need to provide security in the dangerous reconstruction environment. According to a data survey of major reconstruction contractors conducted by SIGIR in January 2007, contractor security costs ranged from a low of 7.6 percent to a high of 16.7 percent of total contract costs. The average for all contractors was 12.5 percent.[95]

This trend has persisted in Iraq. SIGIR has continued to report that underestimated security costs have significant consequences. They drive up the total cost of reconstruction projects and can also lead to delays in project completion.[96] Aside from the obvious effects of poor security conditions on the ground, another major factor in the growth of reconstruction contract security costs has been the lack of recognition that these costs need to be tracked.[97] Although comprehensive data on Afghanistan are not yet available, the challenging security conditions there also call for improved tracking of security cost information.

A mandatory contract line-item breakout of security costs would help identify and

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[94] SIGIR Report 09-011, Opportunities to Improve Management of the Quick Response Fund, January 29, 2009, 7.
[95] SIGIR Report 6-044, Fact Sheet on Major U.S. Contractors' Security Costs Related to Iraq Relief and Reconstruction Fund Contracting Activities, January 30, 2007, 2.
[96] SIGIR Report 08-004, Outcome, Cost, and Oversight of Reconstruction of Taji Military Base and Baghdad Recruiting Center, January 15, 2008; SIGIR Report 09-008, Cost, Outcome, and Oversight of Iraq Oil Reconstruction Contract with Kellogg Brown & Root Services, Inc., January 13, 2009.
[97] SIGIR Report 09-005, Agencies Need Improved Financial Data Reporting for Private Security Contractors, October 30, 2008, iii.

possibly control reconstruction contracting costs related to security. To the extent that security costs are acknowledged and monitored from the inception of a reconstruction contract, the ability of the responsible contracting officers to deal with rising security costs would be enhanced. When used on an aggregate basis, this information could bring realism about security costs into the bidding process and help assess the risk of poor performance by contractors.

Visibility on security related costs might also help managers determine if additional costs might outweigh the benefits of initiating projects until the risks can better be controlled, and would thus be a key element in the process making a "go" or "no go" decision on projects.

ON THE AGENDA

Reconstruction and stability operations are necessary and complementary in wartime. The Commission will look at contracts for building infrastructure and "soft" programs to strengthen societal institutions and promote democracy. We will also assess the oversight, management, and effectiveness of these programs. Items on our agenda are:

- Assess the procedures for contractor accountability in reconstruction such as use of accurate and timely contract performance evaluations, terminations, and other contract sanctions.
- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and "soft" developmental initiatives).
- Examine the appropriateness of various contract types used for reconstruction and development projects.
- Assess the effectiveness and the need for additional oversight for quick-impact CERP projects.
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.
- Assess the oversight, management, and effectiveness of governance and democratization contracts.
- Determine how reconstruction efforts can be more effectively coordinated among U.S. agencies and with the host nation, foreign governments, international organizations, and nongovernmental organizations.

Chapter 5

On the Agenda

In the preceding chapters we referred to a number of activities in progress or slated for study in the near future. They are logical next steps to verify the Commission's observations and to explore in greater depth the issues selected for attention in our legislative mandate.

This chapter describes our study plan for the nine focus areas listed in the Executive Summary and discussed throughout the report:

- leadership, culture, and accountability within the key agencies responsible for contingency operations;
- staffing and training of the federal acquisition workforce;
- pre-deployment planning for contractor support and integration;
- policies related to inherently governmental functions;
- the process for defining contract requirements;
- contract pricing and competition;
- contractor performance and cost effectiveness;
- visibility into and accountability of subcontractors—in particular, foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

Investigating such a wide swath of issues involves dividing the work into logical groupings that have evolved in our program-management approach and study methodology. For purposes of the Interim Report, they are aligned with the chapter subject areas used in this report. Specific tasks described below may, of course, be revised or augmented as our work proceeds.

MANAGEMENT AND ACCOUNTABILITY

Human Capital

- Analyze the various agencies' efforts to develop a contingency contracting corps and the status of efforts to implement the inter-governmental corps authorized in Section 870 of the 2009 National Defense Authorization Act.
- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Evaluate barriers to deploying civilian employees in theater to support wartime contingency operations through directed assignments, adjustment of tour lengths, and compensation incentives.

Knowledge And Information Systems

- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Assess the process for collecting, verifying, sharing, and disseminating contingency contracting lessons learned by the Departments of Defense and State and by USAID.

Policy And Process

- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the inherently governmental issues raised when contractors oversee other contingency contractors.
- Analyze the appropriateness of reliance on contracts for services if the failure to perform would endanger mission success.
- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Assess the desirability of creating and implementing a single government-wide Contingency Federal Acquisition Regulation.
- Address the question of when sustainment contracting begins and contingency contracting ends.
- Determine the problems that arise from contingency contract requirements having been poorly defined and not definitized in a timely and effective manner.
- Investigate issues surrounding the lack of adequate competition and determine methods to improve the extent of competition to satisfy contingency contract requirements.

Organizational Leadership And Alignment

- Identify and assess the effectiveness of contracting lines of authority and organizational alignment of the acquisition function in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify political, institutional, funding, and other barriers to implementing reforms to contingency contracting.
- Identify the issues and methods to improve cooperation, communication, and

collaboration among key stakeholders in determining contractor support requirements as part of military exercises for planning future contingency operations.
- Determine why prior recommendations from the audit community have not fixed significant contingency contracting problems.

Financial Accountability

- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.
- Identify methods for improving in-theater contractor oversight.
- Determine if the Department of State and the U.S. Agency for International Development are obtaining effective contract audit service support.

LOGISTICS

- Evaluate techniques for reducing service and system-support contract costs, including improved independent cost estimates, enhanced competition, and improved contractor oversight.
- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Study the management of U.S. government property in theater, with special attention to the efficient disposition of property affected by the ongoing Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Analyze the effectiveness of the logistics planning process for future contingency operations.
- Examine the various types of contingency funding appropriations and their impact on logistics support decision-making.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

SECURITY

- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and reactivation of military reservists.
- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Determine the extent to which PSCs should be held to the same standards and operational requirements as the military.
- Evaluate the extent to which U.S. citizens, host-country nationals, and third-country nationals are treated differently by various PSC employers, and if they are treated differently, whether such treatment is appropriate.
- Evaluate requirements necessary to implement any court rulings providing for legal accountability of PSCs in theater.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Evaluate alternative contracting methods for different security functions.

RECONSTRUCTION

- Assess the procedures for contractor accountability in reconstruction such as use of accurate and timely contract performance evaluations, terminations, and other contract sanctions.
- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and "soft" developmental initiatives);
- Examine the appropriateness of various contract types used for reconstruction and development projects.
- Assess the effectiveness and the need for additional oversight for quick-impact CERP projects.
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.
- Assess the oversight, management, and effectiveness of governance and democratization contracts.
- Determine how reconstruction efforts can be more effectively coordinated among U.S. agencies and with the host nation, foreign governments, international organizations, and nongovernmental organizations.

SUMMARY

The Commission will now address these and other areas still to be identified. We will make more trips to Iraq and Afghanistan to interview key government and industry participants in the contracting process. We will conduct several hearings—two are planned for summer 2009—in areas such as management of government property, reconstruction, security, government accountability, human capital management, and policy and process.

We will conduct a thorough review of all of our many ongoing projects—listed in the Methodology appendix—adjusted for initial research results in this report, and consider current Commission priorities in light of events and agencies' progress in addressing their challenges. Based on that evaluation, we will refine our projects to ensure we research, study, and report on the most critical issues, given time and resource constraints, to ensure our Final Report reflects the intent of the legislation.

All this work is integral to fulfilling the Commission's vision: analyzing the risks to effective wartime contracting, delineating options for top-to-bottom improvement, and making recommendations for system reforms that are real and not merely cosmetic. We will also speak to the barriers of politics, bureaucratic inertia, fiscal constraints, and institutional culture that stand in the way of implementing reforms. Above all, we will seek to generate reform that ensures oversight and accountability while respecting the needs of our warfighters, serving the interests of American taxpayers, and supporting the vital national-security goals of the United States.

Appendix A

Authorizing Statute

NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FISCAL YEAR 2008: COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN

[110th Congress, Public Law 110-181, Section 841 (January 28, 2008)]

. . .

DIVISION A-DEPARTMENT OF DEFENSE AUTHORIZATIONS TITLE VIII-ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS
Subtitle D-Accountability in Contracting

. . .

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 cochairmen, 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.

NOTES

1. Although Section 841 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181) is the operative text for the Commission on Wartime Contracting, other provisions of the NDAA of 2008 will be relevant to its work (e.g., Section 842 with regard to Inspectors General audits, sections 1221 and 1229), as well as other laws and future legislation, e.g., NDAA FY2009 (S.3001).

2. As noted, Public Law 110-181 was signed on January 28, 2008. The Commission's work, however, did not begin at that time. Official appointments of Commission members were not complete until summer. Office space and equipment were not provided until the fall. Processing of most staff hires was not complete until winter. The net result is that this Interim Report reflects less than six months of full-strength operations.

Appendix B

Commission Milestones

Section 841 of the National Defense Authorization Act for Fiscal Year 2008, which created the Commission on Wartime Contracting, requires it to assess a number of factors related to wartime contracting, including the extent of waste, fraud, abuse, and mismanagement of wartime contracts, and the impact of governmental reliance on contractors on achieving United States policy objectives. The Commission has the authority to hold hearings, obtain information, and refer to the Attorney General any violation or potential violation of law as it carries out its duties—an authority already exercised.

Many studies have examined the vast expenditures on contingency contracting to determine how effective and efficient they were; the extent of waste, fraud, and abuse; and whether taxpayer dollars were put to good use. Ideas for reforming parts of a system widely seen as dysfunctional have been proposed and, in some cases, implemented to varying degrees of success. Guided by its broad legislative mandate to study federal-agency contracting for reconstruction, logistical, and security support of coalition forces in Iraq and Afghanistan, this Commission's investigation will be the most comprehensive and bipartisan examination of these issues yet undertaken.

In addition to this Interim Report, the Commission is authorized to submit other reports to Congress on its studies from time to time, as appropriate. A Final Report to be submitted to Congress will present all Commission findings, identify lessons learned about contingency program management and contracting, and put forward specific recommendations for improving aspects of contingency contracting. These include addressing, among other issues, the processes for defining requirements and developing scopes of work; awarding contracts and task orders; rooting out and providing accountability for waste, fraud, and abuse; and determining which functions are inherently governmental and which may be performed by contractors, and especially whether the provision of security in an area of combat operations is inherently governmental.

GETTING STARTED

The Commission's authorizing language became law on January 28, 2008. Eight Commission members were named by July 2008, although one resigned in the fall and was replaced on April 1, 2009, when the House Minority Leader appointed former Connecticut Congressman Christopher H. Shays to the post. During the fall and winter of 2008, the Commission obtained office space, added staff, obtained technical support, and developed a plan of work for carrying out our mission. By the end of January 2009, the ranks of professional and administrative staff approached 40, enabling major

research projects to begin.

A website was set up: www.wartimecontracting.gov. It has expanded to become a comprehensive source of public information about Commission activities, providing transcripts of hearings, press releases, and other resources. Plans are under way for further improvements to enable more public access to an expanded store of information about the Commission and about contingency contracting. Operating procedures were established for the office, including the electronic file structure, a correspondence-control plan, a project-management plan, a study model, and interview protocols. An ethics handbook was written and the staff has completed ethics training adapted from the course developed for Senate employees.

During September and October of 2008, Commissioners received briefings from more than 25 key organizations and programs throughout the government, including the major entities housed in the Departments of State and Defense, and the U.S. Agency for International Development (USAID), as well as the Special Inspector General for Iraq (SIGIR), the Special Inspector General for Afghanistan (SIGAR), the Congressional Budget Office, and the Government Accountability Office (GAO). They also met with leading scholars and writers on contracting issues and with contractors—a group of private security contractors in September 2008, and Kellogg, Brown & Root (KBR) in March 2009. KBR is the prime contractor for the Logistics Civil Augmentation Program (LOGCAP), the Army's multi-billion-dollar contract for worldwide support of military operations.

The Commission has two Co-Chairs, one appointed by Democratic officials, the other by Republican officials. Commissioner Michael J. Thibault was jointly designated Co-Chair by the Majority Leader of the Senate and the Speaker of the House. On April 30, 2009, the Senate and House Minority Leaders designated Commissioner Christopher H. Shays as the second Co-Chair. For a number of months, when the position of second Co-Chair was vacant, Commissioner Grant S. Green shouldered heavy responsibilities as Acting Co-Chair.

STAFFING

The Commission has recruited a diverse group of professional staff members, all of whom are federal employees. Some are detailed from agencies including the Army, the Air Force, the State Department, the Department of Defense Inspector General's office, the U.S. Agency for International Development, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the U.S. Army Corps of Engineers. Others have had careers in the military, in service as congressional staff, and in agencies including GAO, the State Department, and SIGIR, as well as in the private sector. They bring to our work hundreds of years of combined experience in contracting, executive leadership, federal acquisition and procurement, financial management, data

analysis, hands-on auditing, contracting law and administration, diplomacy, and criminal investigation.

HEARINGS

Senators McCaskill, Webb, and Collins at Commission's February hearing

Hearings are a critical part of the Commission's strategy to get to truth, identify key areas for additional research, and decide how issues can be addressed. The Commission's first public hearing took place on February 2, 2009, in the Caucus Room of the U.S. Senate, a historic venue which was the site of many hearings by the Truman Committee more than a half-century ago. The topic was lessons learned about wartime contracting by the inspectors general overseeing contingency contracting in Iraq and Afghanistan The hearing featured testimony from the offices of the Inspector General for Iraq Reconstruction (SIGIR) and from the Inspectors General of the Department of Defense, the Department of State, and the U.S. Agency for International Development. Also testifying were Senators instrumental in creating the Commission and supporting its mandate: Senators Claire McCaskill (D-MO) and James Webb (D-VA), the original Senate sponsors of the legislation establishing the Commission, and Senator Susan Collins (R-ME), the ranking member of the Homeland Security Committee.

Representative Tierney at Commission's May hearing

The Commission's second hearing, held on May 4, 2009, in the Rayburn House Office Building, focused on the multi-billion-dollar logistics contracts, known as LOGCAP, that supports U.S. military operations overseas. Rep. John F. Tierney of Massachusetts, chairman of the House Subcommittee on National Security and Foreign Affairs, offered welcoming remarks prior to the testimony of witnesses including officials of the Army Contracting Command, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the Army's LOGCAP Program Office.

LOGCAP, the Logistics Civil Augmentation Program, comprises two concurrent contracts: LOGCAP III, awarded in December 2001 and the contract under which the bulk of work in theater is still being done, and LOGCAP IV, awarded in April 2008.

Work is being phased over from LOGCAP III to IV. According to the Army, total 10-year spending under the contract could reach $150 billion for services including delivering food, water, fuel, and spare parts; operating dining and laundry facilities; providing housing and sanitation; moving personnel and supplies; engineering and constructing projects; and maintaining facilities.

Hearing documents and transcripts are posted at
www.wartimecontracting.gov/hearings.htm

The Commission intends to hold hearings on the issues of security, reconstruction, and management and accountability. Hearing plans also include a session to gather contractor-community observations and responses to issues addressed in the Commission's work. As work proceeds, topics for additional hearings are expected to surface. For example, after the second trip in theater, the Commission is considering a hearing on the Iraq drawdown and transition to Afghanistan, with a focus on accountability and planning for the disposition of government property. The challenge of efficiently moving, handing over, selling, or scrapping more than 600,000 lines of U.S. government and military property is huge, plans are incomplete, and the transition is imminent. The issue needs prompt attention.

COMMISSION TRAVEL IN THEATER

There is no substitute for in-theater experience to understand the full dimensions of wartime contracting issues and how they play out in the field. Much can be done with stateside interviews and computerized research, but onsite briefings, observation, and interviews with men and women on the ground, including high-level diplomats, commanders, non-commissioned officers, and contractors make the research data come alive and generate new information. Observational data can be more valid than what one is told in conversation with or in writings by individuals who may be protecting their own interests.

Commissioners and staff have made two trips to Iraq and Afghanistan to inspect work sites, review documents, conduct interviews, and receive briefings from officials on the ground. The first trip took place in early December 2008, with an itinerary that included briefings by the Defense Contract Audit Agency, the U.S. Agency for International Development (USAID), and the U.S. Embassies in Baghdad and Kabul, as well as reviews of construction of the Baghdad Police College and task orders for construction and repair of the Bagram Air Base in Afghanistan.

A 10-day investigative trip in early April 2009 comprised a 15-person group of Commissioners and staff that broke into two teams: one team visited Iraq, the other Afghanistan. They conducted more than 125 meetings with employees of the Departments of Defense and State, USAID, the military, and employees of contractors

working on a range of projects from building schools, hospitals, and water-treatment plants to providing food and other services at military bases and protecting diplomatic personnel. Team members were able to meet and talk with a representative group of men and women working in theater at all levels, from high-ranking diplomats to onsite construction managers and camp commanders, as well as contracting officer's representatives, who serve as the front line of contract management and oversight.

In addition to meetings in Baghdad and Kabul, the teams visited projects in the provinces and military forward operating bases, including Camps Hammer, Victory, and Delta in Iraq, and Camps Phoenix, Eggers, and Shank, as well as Bagram Air Base in Afghanistan. A focus of the trip was private security contracting. Teams observed private-security operations and interviewed contractors, including DynCorp, Blackwater, Sabre International, and Triple Canopy about their compliance with standard operating procedures. Commissioners and staff also met with the major LOGCAP contractor, KBR, and the LOGCAP management-support contractor, Serco. What they found is partially captured in this report and will be reflected in future reports and used to plan future trips.

The full Commission at the May hearing

Appendix C

Methodology

The Commission's legislative mandate charges it to study a range of issues surrounding wartime contingency contracting in Iraq and Afghanistan, focusing on the logistical support of coalition forces, the performance of security functions, and reconstruction. Our mandate also calls on us to examine core issues in contracting by the U.S. government, including:

- waste, fraud, and abuse;
- conformance to federal law and legal standards by contractors;
- reliance on contractors and its implications for inherently governmental functions;
- misuse of force;
- accountability for financial and legal infractions; and
- ensuring proper performance by contractors.

Management areas to be evaluated include:

- the organizational structures of the Departments of Defense and State and the U.S. Agency for International Development and communications among them;
- policies, practices, and resources devoted to program management and contracting;
- roles and responsibilities in and among agencies to manage and oversee contracts;
- the process for defining requirements and statements of work;
- the process for awarding contracts and task orders; and
- ways in which lessons learned are documented and disseminated.

At the time the Commission began its work, a sizable body of material—over 500 audits, studies, and reports—already existed on contingency contracting in the Iraq and Afghanistan conflicts and issues. We developed a disciplined process to capture the results of these audits and reports and use them to support our mandated work.

INTERVIEWS

Our review of these audits and reports allowed us to identify key government, contractor, and oversight organizations we thought it productive to interview. We received initial briefings from more than 25 groups, including organizations and agencies involved in contingency contracting as well as federal audit agencies. In

addition to dozens of interviews stateside over a period of several months, Commission members and staff conducted more than 125 meetings and interviews in theater during a two-week visit in April 2009. The Commission also held two hearings. One was devoted to lessons learned by the Special Inspector General for Iraq Reconstruction and the inspectors general of the Department of Defense, Department of State, and USAID.

A second hearing, on the Logistics Civil Augmentation Program (LOGCAP)—the Army's standing contract for worldwide support of military operations—included representatives from the LOGCAP Program Office, Army Contracting Command, Defense Contract Management Agency, and Defense Contract Audit Agency.

A complete list of the members of academia, industry, government, and the military that have met with the Commissioners and staff is on the Commission Web site.

DEVELOPING AND PLANNING PROGRAM ACTIVITIES

Based on a literature review, early interviews, and briefings we developed a set of 22 research projects that reflect the major activities of our study. These projects are very specific in their objectives, coverage, activities to be undertaken, schedule and responsibilities. They focus on six areas:

- logistics
- security
- reconstruction
- government organizational structure, workforce, and workload management
- contractor accountability and management
- policy and process

Commission Focus Area	Specific Research Projects
Logistics	Extent to which logistics should be contracted
	Management strategies of successful logistics programs
	Effectiveness of efforts to prevent waste, fraud, and abuse
	Problems with and dependence on one large LOGCAP contractor
Security	Private security contractor (PSC) contract performance and compliance across agencies using PSCs
	What happens when different agencies with different missions and resources contract for security
	Legal issues of contracting out security functions
Reconstruction	Organizational, resource, and contracting issues in reconstruction
	Effect of favoring local-national subcontractors
	Effect of security costs on reconstruction efforts
	Capacity of agencies that oversee reconstruction in terms of contracting officers and oversight personnel
Government Organizational Structure, Workforce, and Workload Management	Effectiveness of the staffing, training, and management of contracting officer's representatives (CORs)
	Applying lessons learned and integrating federal contingency workforce programs
	Efficiency issues of the flow of contracting authority, reporting lines, and organization structure
Contractor Accountability and Management	Effectiveness of Defense Contract Audit Agency and Defense Contract Management Agency oversight
	Adequacy of key data on Southwest Asia contracts
	Compliance with key financial and payment laws and regulations
	Adequacy of the award fee process
	Adequacy of prime-contractor awards and management of subcontracts
Policy and Process	Issues of applying lessons learned in Iraq to Afghanistan
	Adequacy of international program coordination
	Policy on contracting out wartime activities

For each project, we developed the issues to be studied, activities to be undertaken, and a schedule. For each of these 22 research projects, we developed key research questions, assumptions, a study approach (methodology), literature reviewed, additional data sources, interviewees and agencies, quality-assurance protocols, schedule, and resources.

In some instances, our initial literature reviews and interviews addressed many of the issues we targeted for analysis. In others, substantial additional research will be required. These 22 projects may be modified and some perhaps superseded or supplemented as the studies proceed.

Finally, to augment our research and findings analysis, we will invite representatives from agencies with a stake in contingency contracts to meet periodically and review and discuss tentative findings. The Commission believes that this collaborative process will go a long way to gain community buy-in and identify barriers to successful implementation and their solutions.

FLASH REPORTS

Commissioners may occasionally arrive at findings so compelling that they call for immediate attention. These might be practices, procedures, and failures to observe basic contracting regulations—even blatant instances of apparent waste, fraud, or abuse—so egregious that they call out for timely investigation, referral, and remedial action. In such cases, Commissioners take their concerns privately to officials in the office of the inspector general of the agency or agencies responsible for overseeing the activities in question.

From time to time, the Commission's research and investigations into specific questions of widespread concern may elicit findings and conclusions that unequivocally support recommendations for timely reform. In that event, we may choose to address the question promptly by preparing flash reports for dissemination to the Congress, the oversight agencies, and the public. To date, we have referred several matters to the appropriate oversight agencies for their review and disposition.

Appendix D

Commission Staff Roster

Jessica Baker
Program Analyst
Captain Tina Benivegna, USAF
DCMA Detailee
Richard Beutel
General Counsel
Anthony Box
Professional Staff Member
John Brosnan
Senior Counsel
Jeffrey Brand
Director of Operations
Rosemary Byrd
Team Lead, Professional Staff Member
Tara Chapman
Research Analyst
Marquittia Coleman
Executive Assistant
Gray Coyner
Team Lead, Professional Staff Member
Robert Curtis
Professional Staff Member
Stephen Dillard
Team Lead, Professional Staff Member
Marian Harvey
Professional Staff Member
Donna Heivilin
Team Lead, Professional Staff Member
Clark Irwin
Director of Communications
David Johnson
DCAA Detailee
Parker Laite
Program Analyst
Zen McManus
Program Analyst
Curt Malthouse
DoD Inspector General Detailee
Gary Matthews
Team Lead, Professional Staff Member
Robert Melby
Professional Staff Member
Clark Mercer
Program Analyst
Myron Myers
Professional Staff Member
Gregory Picur
USAID Detailee
Brendan Orsinger
Program Analyst
Denis Orsinger
Professional Staff Member
Karen Sorber
Study Director
Steven Sternlieb
Team Lead, Professional Staff Member
Ronald Straight
Professional Staff Member
Jazather Thompson
Office Manager
Jo-Ann Thompson
Administration Assistant
Susan Yarbrough
USACE Detailee
Adam Weaver
Staff Attorney
Barbara Wolfson
Senior Editor
Colonel Kelvin Woods, USA
Army Detailee

Commissioners

MICHAEL J. THIBAULT, *Co-Chair (Democrat)*
Appointed by Senate Majority Leader Reid and Speaker of the House Pelosi. Navigant Consulting, Director, 2007-2008; Unisys Federal Systems, Chief Compliance Officer, 2005-2006; Defense Contract Audit Agency (DCAA), Deputy Director, 1973-2005. B.A., Southern Oregon; M.A., Central Michigan, 1984; CPA.

CHRISTOPHER H. SHAYS, *Co-Chair (Republican)*
Appointed by House Minority Leader Boehner. 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. B.A., Principia College; M.B.A., M.P.A., New York University.

CLARK KENT ERVIN
Appointed by Speaker of the House Pelosi. The Aspen Institute, Director, Homeland Security Program, 2005-present; Clear Path Technologies, L.L.C., Member, Board of Advisors, 2008; CNN, National Security Analyst, 2005-present; 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, L.L.P., Lawyer, 1993-1995; Associate Policy Director, White House Office of National Service, 1989-1991; Vinson & Elkins, L.L.P., Lawyer, 1985-1989. A.B., Harvard; M.A., Oxford; J.D., Harvard.

GRANT S. GREEN
Appointed by President George W. Bush. Global Marketing and Development Solutions Inc., Chairman, 2005-present, Chairman and President, 1996-2000; "America Supports You Fund," President, 2007-present; Under Secretary of State for Management, 2001-2005; major consulting and marketing company, Executive Vice President and Chief Operating Officer, 1989-1996; Assistant Secretary of Defense, 1988-1989; Special Assistant to the President, Executive Secretary for the National Security Council, 1986-1988; Sears World Trade, senior management positions, 1983-1986. B.A., Arkansas; M.S., George Washington, 1979. Retired colonel, U.S. Army. Formerly Acting Co-Chair.

LINDA J. GUSTITUS
Appointed by Senate Majority Leader Reid. Office of U.S. Senator Carl Levin, Chief of Staff, 2002; U.S. Senate Governmental Affairs Committee, Subcommittee on Oversight of Government Management; Subcommittee on Nuclear Nonproliferation and Federal Services; Permanent Subcommittee on Investigations, Democratic Staff Director, 1980-2001; Office of the Honorable Carl Levin, Legislative Assistant, 1979; U.S. Department of Justice, Civil Division, Trial Attorney, 1977-1979; Cook County Illinois Assistant State's Attorney, Prosecutor, 1976-1977. B.A., Oberlin; J.D., Wayne State.

ROBERT J. HENKE
Appointed by Senate Minority Leader McConnell. 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. B.A., Notre Dame; M.P.A., Syracuse.

CHARLES TIEFER
Appointed by Senate Majority Leader Reid. University of Baltimore School of Law, Professor 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. U.S. Senate, Assistant Senate Legal Counsel, 1979-84; U.S. Department of Justice, Civil Rights Division, Trial Attorney, 1978-1979; U.S. Court of Appeals for the D.C. Circuit, Law Clerk, 1977-1978. B.A., Columbia; J.D., Harvard.

DOV S. ZAKHEIM
Appointed by President George W. Bush. Booz Allen Hamilton, 2004-present, Vice President, 2004-2008; Under Secretary of Defense (Comptroller) and Chief Financial Officer, 2001-2004 (coordinator of DOD civilian programs in Afghanistan, 2002-2004); System Planning Corporation, Corporate Vice President, and SPC International Corp., Chief Executive Officer, 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, 1975-81. B.A., Columbia; D. Phil., Oxford.

AT WHAT COST?

Contingency Contracting in Iraq and Afghanistan

Since 2001, the United States has placed unprecedented reliance on contractors to support logistics, security, and reconstruction efforts related to its military operations in Iraq and Afghanistan.

Contractors provide vital support. They feed troops, maintain facilities and equipment, transport cargo, wash clothes, and even provide security guards for bases. Unfortunately, billions of taxpayer dollars spent on wartime contracting have been lost to waste, fraud, and abuse. Widespread problems involve federal agencies, the military, and the contractor community. The failures undermine U.S. policy objectives, waste taxpayer dollars, and threaten the well-being of American troops.

In 2008, Congress established the independent, bipartisan Commission on Wartime Contracting in Iraq and Afghanistan to research, investigate, make findings, and offer recommendations to improve contract management in contingency operations.

This interim report to Congress discusses the Commission's work to date and sets the stage for the final report to follow.

Commission on Wartime Contracting
In Iraq and Afghanistan

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