



# Wartime Contracting Commission releases final report to Congress

- **Pegs waste, fraud in Iraq, Afghanistan at >\$30 billion**
- **Sees threat of more waste in unsustainable projects**
- **Faults both government officials and contractors**
- **Offers 15 recommendations for contracting reform**

ARLINGTON, VA, Aug. 31, 2011—The final report of the congressionally chartered Commission on Wartime Contracting in Iraq and Afghanistan says at least \$31 billion has been lost to contract waste and fraud, and that major reforms are required.

Commission reform objectives include improving federal planning for use of contracts, strengthening contract management and oversight, expanding competition, improving interagency coordination, and modifying or cancelling U.S.-funded projects that host nations cannot sustain. The reforms are described in 15 strategic recommendations.

The eight-member, bipartisan Commission filed its 240-page final report, “Transforming Wartime Contracting: Controlling Costs, Reducing Risks,” with U.S. Senate and House officials this morning. A briefing in the Capitol followed.

The Commission report notes that a consequence of 1990s reductions in the federal acquisition workforce and in support units within the military, the United States cannot conduct large or sustained contingency operations without heavy support from contractors. “Contingency” operations, as defined in federal law for the Department of Defense, are those involving military forces in actual or imminent hostilities, or in response to declared national emergencies. Civilian agencies use a similar definition.

Commission Co-Chair Michael Thibault, former deputy director of the Defense Contract Audit Agency, said, “The government has known for 20 years that contractors would be a key part of any major response to large or sustained hostilities or major disasters. Yet the government was not prepared to go into Afghanistan in 2001 or Iraq in 2003 using large numbers of contractors, and is still unable to provide effective management and oversight of contract spending that will have exceeded \$206 billion by the end of September. That has to change.”

Co-Chair Christopher Shays, a former U.S. Representative for Connecticut, said, “The Commission finds the government is over-relying on contractors. Even if you think having more than 260,000 contractor employees at work in Iraq and Afghanistan, at times outnumbering the military they support, is reasonable, there are still problems. Some contractors have been performing tasks that only federal employees should perform, while

others are doing work that is permissible but still too risky or inappropriate for contractors. And overall, there is simply too much contracting for the federal contract-management and oversight workforce to handle. From every angle, that's over-reliance."

The co-chairs said fraud and abuse are problems in wartime contracting, but the biggest challenge is waste. Thibault said, "We have found billions of dollars of waste stemming from a variety of shortcomings—poor decision making, vague contract requirements, lack of adequately trained federal oversight people in the field, duplicative or unnecessary work, failure to revise or re-compete contracts, unsustainable projects, inadequate business processes among contractors, and delayed audits. There are many causes, and no simple solution."

Based on research and hearing testimony, the Commission estimates that waste and fraud have amounted to at least \$31 billion, and possibly as much as \$60 billion, during the operations in Iraq and Afghanistan. The final report warns that at least as much additional waste may develop if host countries cannot or will not sustain U.S.-funded projects and programs after the United States hands them over or reduces its support.

Shays said the Commission report lays blame at the doorsteps of both government and the contracting industry. "Many of the convictions and guilty pleas for bribery, kickbacks, theft, and other offenses involve federal civilians and members of the military," he said. "Likewise, poor performance shows up both in government and contractor operations. We've had soldiers injured or electrocuted because of faulty wiring in base showers, and we've had federal officials tolerating a far greater supply of contract labor than was needed for military-vehicle maintenance. There is plenty of blame to go around." Shays called attention to a key paragraph in the executive summary of the Commission's final report:

'Much of the contingency-contract waste and fraud could have been avoided. Unless changes are made, continued waste and fraud will undercut the effectiveness of money spent in future operations, whether they involve hostile threats overseas or national emergencies here at home requiring military participation and interagency response. Responsibility for this state of affairs lies with Congress, the White House, federal departments, the military services, agency leadership, contractors, and individuals who abuse the system.'

The full report, plus two interim and five special reports submitted previously, can be read or downloaded at the Commission's website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov).

The co-chairs expressed appreciation to many officials in government, military, academia, and industry who cooperated in the Commission's research, hearings, meetings, and travel. "In particular," Shays said, "we are grateful for the long-standing interest and support of U.S. Senators Jim Webb, Claire McCaskill, Susan Collins, and Joseph Lieberman, and U.S. Representatives Darrell Issa and John Tierney."

Brief summaries of the final report's chapter and resulting recommendations appear below.

## **REPORT OVERVIEW BY CHAPTER, WITH RECOMMENDATIONS**

### **Chapter 1: Agencies over-rely on contractors for contingency operations**

Forced to treat contractors as the default option because federal agencies lack the organic capacity to perform some mission-critical functions, the government also lacks the acquisition personnel and structures needed to manage and oversee an unprecedentedly large contractor force.

The consequences have been: extending contracting to activities that law, policy, or

regulation require government personnel to perform; creating unreasonable risks to mission objectives and other key U.S. interests; eroding federal agencies' ability to self-perform core capabilities; and overwhelming the government's ability to effectively manage and oversee contractors.

One indicator: The number of contract specialists—an occupation critical to the execution of contingency contracting—rose by only 3 percent government-wide between 1992 and 2009, despite an enormous increase in contracting activity during that period.

## **Chapter 2: 'Inherently governmental' rules do not guide appropriate use of contractors in contingencies**

The "inherently governmental" standard in law, policy, and regulation that reserves certain functions for government personnel provides insufficient guidance for contracting in contingencies. Nor does it enable officials to decide whether contracting for non-governmental functions is appropriate or prudent in contingency operations.

Events in Iraq and Afghanistan have shown that systematic consideration of operational, political, and fiscal risks must be a factor in judging appropriateness, as opposed to assuming that any task not deemed inherently governmental is automatically suitable for performance under a contingency contract.

In Afghanistan, for instance, carrying out stabilization-and-reconstruction projects in insurgent-contested areas with contractor employees has led to deaths, delays, and waste. If agencies had trained, experienced, and deployable cadres for stabilization-and-reconstruction functions in high-risk areas of contingency operations, the government would have an alternative to contracting for those functions.

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

Applying risk and other situational considerations to a contingency may indicate that a particular task should not be contracted. For such cases, the government needs options beyond cancelling or postponing activities, such as having qualified, expandable, and deployable federal cadres for acquisition management and contractor oversight. Current planning for contingency operations also suffers from the fact that the government cannot mandate overseas deployment for most of its civilian employees.

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

The use of private security companies can present especially sensitive risks, because their armed employees can become involved in incidents that injure or endanger innocent civilians. In addition, their use for convoy security in parts of Afghanistan invites pay-for-protection extortion that diverts taxpayers' funds to local warlords and insurgents. On the basis of financial and political risks, performance by contractors for some security tasks should be phased out.

*RECOMMENDATION 3: Phase out use of private security contractors for certain functions.*

Agencies must provide greater control and accountability for security contracting, starting with documenting an interagency understanding of lessons learned in Iraq and Afghanistan, agreeing on best practices, and providing overall guidance for security functions in future contingencies.

Defense, State, and USAID should develop and enter into a standing interagency

Memorandum of Agreement (MOA), incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors in future contingencies. At the operational level, ambassadors, USAID mission directors, and military commanders should be responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change. This responsibility would include assessing the risk of using contractors for static security at bases and camps, particularly the risk of using local nationals for that task.

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

### **Chapter 3: Inattention to contingency contracting leads to massive waste, fraud, and abuse**

Engaging in contingency operations is not cheap. But U.S. operations in Iraq and Afghanistan entailed vast amounts of spending for no benefit. That is waste. The Commission's conservative estimate of waste and fraud is about \$31 billion to \$60 billion based on contract spending from 2001 projected through the end of FY 2011. This chapter summarizes dozens of examples of waste from a variety of root causes.

Failure to curb contract-related waste, fraud, and abuse is a breach of agencies' fiduciary duty to efficiently manage budgets and resources. Worse still, it undermines U.S. defense, diplomatic, and development missions.

Without sufficient management and oversight, officials have been late to catch and correct poor contractor performance. Key deficiencies include idle contractor personnel, defective construction, and inadequate protection of property and personnel.

### **Chapter 4: Looming sustainment costs risk massive new waste**

Many billions of dollars already spent, including spending on apparently well-designed projects and programs, will turn into waste if the host governments cannot or will not commit the funds, staff, and expertise to operate and maintain them.

Money lost as a result of the inability to sustain projects could easily exceed the contract waste and fraud already incurred. Examples range from the \$35 billion that Congress has appropriated since 2002 to train, equip, and support the Afghan National Security Forces, to scores of health-care centers in Iraq that far exceed the Ministry of Health's ability to maintain them.

Officials have often not examined programs and projects for sustainability, or taken appropriate action to cancel or redesign those that have no credible prospect of being sustained. Requirements and acquisition strategies for contingency contracts on projects or services to be handed over to a host nation have often lacked a detailed assessment of long-term costs and of host nations' ability and willingness to fund those costs. There is, moreover, no current requirement that officials analyze sustainability risks and report their findings and risk-mitigation strategies.

Officials should report to Congress, by December 31, 2011, and annually thereafter, their analysis and proposed actions for mitigating sustainability risks.

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

## **Chapter 5: Agencies have not institutionalized contracting as a core function**

Acquisition officials have become more knowledgeable and vocal about the extent and nature of the problems in contingency contracting, yet agencies are slow to change.

Meaningful progress will be limited as long as agencies resist major reforms that would elevate the importance of contracting, commit additional resources to planning and managing contingency contracting, and institutionalize best practices within their organizations.

Changes in agency structures and practices affect culture and behavior, but cannot have deep and lasting impact without the full involvement of senior leadership. Contingency-contracting reform demands active and sustained attention from senior agency leaders that transcends succession in office and changes in administrations.

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

*RECOMMENDATION 7: Elevate and expand the authority of military officials responsible for contingency contracting on the Joint Staff, the combatant commanders' staffs, and in the military services.*

## **Chapter 6: Agency structures and authorities prevent effective coordination**

Misalignment of organizational structures and authorities impedes interagency coordination and cooperation for contingency contracting, leading to duplication of effort, gaps in continuity, improper phasing of operations, and waste.

Defense has well-established arrangements for ensuring joint operations, but there is no effective whole-of-government equivalent, particularly where international diplomacy and development are concerned. The Commission proposes new positions and authorities that would improve coordination and cooperation, including alignment of agency budgets, especially among Defense, State, and USAID.

*RECOMMENDATION 8: Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction.*

Improving agency planning, readiness, and performance would be greatly facilitated by creating a permanent office of special inspector general for contingency operations. The authority of existing inspectors general is either limited by department (Defense, State, and USAID) or restricted by time and function (the special inspectors general for Iraq and Afghanistan are focused on reconstruction). Having a small, but expandable, permanent inspector-general staff devoted to contingency operations would provide critical monitoring from the onset of a contingency, permit collaboration with agency inspectors general to regularly assess the adequacy of agency planning and coordination for contingencies, and provide a logical center for developing and coordinating needed training among agencies.

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

## **Chapter 7: Contract competition, management, and enforcement are ineffective**

Agencies have failed to set and meet goals for competition in Iraq and Afghanistan. In particular, they have awarded task orders for excessive durations without adequate competition. They have failed to set and meet goals for competition and have repeatedly

awarded long-term task orders that were not recompeted when competitive conditions improved; extended contracts and task orders past their specified expiration dates, increased ceilings on cost-type contracts and modified task orders and contracts to add extensive new work; favored using existing task- and delivery-order contracts like LOGCAP III over creating more competitive and more targeted contract vehicles; and used cost-reimbursable contract types even though simpler, fixed-price contracts could expand the competitive pool.

Effective competition motivates contractors to provide fair pricing, best value, and quality performance. The lessons from Iraq and Afghanistan are that agencies have not effectively employed acquisition-management strategies that balance the United States' interests with contractors' profitability objectives.

*RECOMMENDATION 10: Set and meet annual increases in competition goals for contingency contracts.*

Monitoring the performance of individual contractors is critical at all stages of the contracting process to allow proper management and oversight and to obtain necessary information for making payments. Better collection, recording, and use of contractor performance data would significantly improve government contracting officials' ability to weed out poor performers and manage the contingency-contracting process.

*RECOMMENDATION 11: Improve contractor performance-data recording and use*

Suspension and debarment can be powerful tools to protect the government's interest in doing business only with contractors capable of performing their contractual obligations and maintaining acceptable standards of behavior. The opportunity costs of a suspension or debarment are very high for government contractors. Nevertheless, agencies sometimes do not pursue suspensions or debarments in a contingency environment.

Fostering a culture of contractor accountability is especially difficult in war zones, where the contractor community is made up of U.S., local, and third-country nationals; where gathering a stable of responsible, competitive companies eligible for contract award is a challenge; where security threats hamper oversight; and where fluid operations drive changing requirements under short timeframes. More aggressive use of existing competition and enforcement techniques for contracting would reduce the risk of awarding contracts to companies with questionable capability to perform. Expansion of investigative authority and jurisdiction would facilitate imposing effective accountability on contractors—especially foreign contractors and subcontractors who are difficult or impossible to subject to U.S. law.

*RECOMMENDATION 12: Strengthen enforcement tools*

A variety of weaknesses frustrate the U.S. government's ability to protect its—and federal taxpayers'—interest in economical and effective performance of contingency contracting: Insufficient staff and resources—notably at the Defense Contract Management Agency and the Defense Contract Audit Agency—for financial management, acquisition planning, business-system reviews, source selection, incurred-cost audits, performance management, property management, contract payment, and contract close-outs;

- Limited authority to withhold contract payments even when contractor business systems for functions such as estimates, labor billing, and purchases impede the work of government management and oversight officials;
- Limited power to access contractor records that can be useful or essential for examining matters such as supervision of subcontractors; and
- Shortfalls in strategic planning and dedicated budgets to support related human

resources and information-systems requirements.

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

## **Chapter 8: The way forward demands major reforms**

The Commission's authorizing statute requires it to end operations by September 30, 2011. The work of crafting, securing, and implementing lasting reforms will require much more time.

Congress must issue mandates and provide resources for improved planning, management, and oversight capabilities if it expects significant change and real savings in contingency contracting. Given the federal budget outlook, the temptation will be powerful to postpone the investments needed to support contingency-contracting reform and thereby to avoid making hard choices.

Congress must resist that temptation and recognize preparedness for emergencies requiring contingency contracting is as much a national-security priority as procuring weapons systems.

*RECOMMENDATION 14: Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission.*

Continued attention, monitoring, and advocacy may require congressional requests for subsequent evaluations and agency reporting, and perhaps the engagement of governmental or non-governmental organizations to continue to focus on contingency-contracting issues. A forcing function is needed to ensure widespread and effective adoption of contingency-contracting reform. We propose periodic reporting.

*RECOMMENDATION 15: Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform recommendations.*

## **COMMISSION BACKGROUND**

The Commission was created in Section 841 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The act, signed in January 2008, tasked the Commission with studying, among other things, the extent of reliance on contractors for logistics, security, and reconstruction operations in Iraq and Afghanistan, and their performance; determining the amount of waste, fraud, and abuse in the Iraq and Afghanistan operations; assessing the extent to which offenders have been held accountable; examining the appropriateness of Defense and State structures, policies, and practices for managing contracts; and recommending improvements.

Following appointments of commissioners and recruitment of professional staff, the Commission began full-scale operations in late 2008. The Commission's first hearing, held in the Senate Caucus Room on Feb. 2, 2009, focused on findings of federal inspectors general and featured introductory remarks from Senators Webb, McCaskill, and Collins. Its 25th and last hearing, on June 6, 2011, examined contracting at the Department of State.

Congress originally specified a two-year life for the Commission, but extended it for another year. Over its working life, the Commission has conducted 25 formal hearings, participated in more than 1,000 meetings, made repeated fact-finding trips to theater, and maintained liaison offices in Baghdad and Kabul. It has previously published two interim reports and five special reports to Congress.

In compliance with its authorizing statute, the Commission will now begin winding down its operations and preparing to sunset on Sept. 30, 2011. Its electronic and paper records will be turned over to the National Archives and Records Administration.

The Commission's reports, hearing documents, news releases, and other material posted on its website will continue to be publicly available at [www.wartimecontracting.gov](http://www.wartimecontracting.gov). The website will be maintained by a university affiliate of NARA, but will not be updated after Sept. 30.

#### **COMMISSION MEMBERS**

- **Christopher Shays**, Co-Chair, former 11-term U.S. Representative, Connecticut;
- **Michael J. Thibault**, Co-Chair, former Deputy Director, Defense Contract Audit Agency;
- **Clark Kent Ervin**, former Inspector General, U.S. Departments of State and Homeland Security;
- **Grant S. Green**, former Under Secretary of State for Management;
- **Robert J. Henke**, former Assistant Secretary for Management, U.S. Department of Veterans Affairs;
- **Katherine V. Schinasi**, former Managing Director for Acquisition and Sourcing Management, U.S. Government Accountability Office;
- **Charles Tiefer**, professor (government contracts, contracts and legislation), University of Baltimore School of Law; and
- **Dov S. Zakheim**, former Under Secretary (Comptroller) and Chief Financial Officer, Department of Defense.

The Commission's professional and administrative staff are managed by Executive Director Robert B. Dickson and Deputy Director Jeffrey Brand.

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