

Transforming Wartime Contracting

Controlling costs, reducing risks



COMMISSION ON WARTIME CONTRACTING
IN IRAQ AND AFGHANISTAN

FOREWORD

Contractors represent more than half of the U.S. presence in the contingency operations in Iraq and Afghanistan, at times employing more than a quarter-million people. They have performed vital tasks in support of U.S. defense, diplomatic, and development objectives. But the cost has been high. Poor planning, management, and oversight of contracts has led to massive waste and has damaged these objectives.

The volume and complexity of contract actions have overwhelmed the ability of government to plan for, manage, and oversee contractors in theater. Contracting decisions made during urgent contingencies have often neglected the need to determine whether host-nation governments can or will sustain the many projects and programs that U.S. contracts have established in their countries.

Americans' "Can do!" response to the challenge of contingency operations is admirable, but human and financial resources have limits, and long-term costs are seldom considered when short-term plans are being framed. Much of the waste, fraud, and abuse revealed in Iraq and Afghanistan stems from trying to do too much, treating contractors as a free resource, and failing to adapt U.S. plans and U.S. agencies' responsibilities to host-nation cultural, political, and economic settings.

This final report to Congress summarizes the Commission's work since 2008 and offers 15 strategic recommendations that it believes warrant prompt action.

Delay and denial are not good options. There *will* be a next contingency, whether the crisis takes the form of overseas hostilities or domestic response to a national emergency like a mass-casualty terror attack or natural disaster.

Reform will save lives and money, and support U.S. interests. Reform is essential. Now.

Continuing access to Commission resources

The Commission on Wartime Contracting in Iraq and Afghanistan will, by statutory mandate, cease operations at the end of September 2011.

The Commission's public website, www.wartimecontracting.gov, will not be updated after September, but will continue to provide public access to Commission reports, hearing documents, news releases, and other material.

The Commission's electronic and paper records will be turned over to the National Archives and Records Administration for preservation.



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Final report to Congress

Findings and recommendations for legislative and policy changes

COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN

A bipartisan congressional commission

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CONTENTS

FOREWORD inside front cover

EXECUTIVE SUMMARY..... 1

RECOMMENDATIONS

CHAPTER 1. Agencies over-rely on contractors for contingency operations 16

CHAPTER 2. ‘Inherently governmental’ rules do not guide appropriate use of contractors in contingencies 38

1. Use risk factors in deciding whether to contract in contingencies 49
2. Develop deployable cadres for acquisition management and contractor oversight 52
3. Phase out use of private security contractors for certain functions..... 61
4. Improve interagency coordination and guidance for using security contractors in contingency operations ... 64

CHAPTER 3. Inattention to contingency contracting leads to massive waste, fraud, and abuse. 68

CHAPTER 4. Looming sustainment costs risk massive new waste 98

5. Take actions to mitigate the threat of additional waste from unsustainability111

CHAPTER 5. Agencies have not institutionalized acquisition as a core function 114

6. Elevate the positions and expand the authority of civilian officials responsible for contingency contracting at Defense, State, and USAID128
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 services129

CHAPTER 6. Agency structures and authorities prevent effective interagency coordination 132

8. Establish a new, dual-hatted senior position at OMB and the NSC staff to provide oversight and strategic direction144
9. Create a permanent office of inspector general for contingency operations147



| | |
|---|------------|
| CHAPTER 7. Contract competition, management, and enforcement are ineffective | 150 |
| 10. Set and meet annual increases in competition goals for contingency contracts..... | 155 |
| 11. Improve contractor performance-data recording and use..... | 156 |
| 12. Strengthen enforcement tools..... | 160 |
| 13. Provide adequate staffing and resources, and establish procedures to protect the government’s interests..... | 163 |
| CHAPTER 8. The way forward demands major reforms | 166 |
| 14. Congress should provide or reallocate resources for contingency-contracting reform to cure or mitigate the numerous defects described by the Commission | 168 |
| 15. Congress should enact legislation requiring regular assessment and reporting of agencies’ progress in implementing reform recommendations | 171 |
| APPENDIXES | 174 |

FIGURES AND TABLES

| | |
|--|-----|
| Figure 1. U.S. Forces Abroad, 1962 through 2011 | 17 |
| Table 1. Defense, State, and USAID contractor personnel..... | 20 |
| Table 2. Total obligations on contracts and grants, FY 2002 through mid-FY 2011..... | 22 |
| Table 3. Top 10 services acquired through contingency contracts | 23 |
| Table 4. Top contingency contractors | 25 |
| Table 5. Contingency contractor concentration | 26 |
| Table 6. Military and contractor fatalities..... | 31 |
| Table 7. Number of open cases by type of fraud | 91 |
| Figure 2. U.S. Rule of Law structure in Afghanistan..... | 141 |
| Table 8. Federal agencies and departments supporting contingency operations | 145 |



About the Commission

Congress created the independent, bipartisan Commission on Wartime Contracting in Iraq and Afghanistan in 2008 (Public Law 110-181) to assess contingency contracting for reconstruction, logistics, and security functions; examine the extent of waste, fraud, and abuse; and provide recommendations to Congress to improve the structures, policies, and resources for managing the contracting process and contractors.

The Commission filed interim reports to Congress in June 2009 and February 2011, and has also issued five special reports. The reports, including this final report and other materials such as hearing transcripts, are posted at www.wartimecontracting.gov.

EXECUTIVE SUMMARY

At least \$31 billion, and possibly as much as \$60 billion, has been lost to contract waste and fraud in America's contingency operations in Iraq and Afghanistan. Much more will turn into waste as attention to continuing operations wanes, as U.S. support for projects and programs in Iraq and Afghanistan declines, and as those efforts are revealed as unsustainable.

This sobering, but conservative, estimate flows from nearly three years' work by the Commission on Wartime Contracting in Iraq and Afghanistan, an independent and bipartisan panel created by Congress in 2008 to examine waste, fraud, abuse, accountability, and other issues in contingency contracting, and to make recommendations for improvement.

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

Contract waste, fraud, and abuse take many forms:

- An ill-conceived project, no matter how well-managed, is wasteful if it does not fit the cultural, political, and economic norms of the society it is meant to serve, or if it cannot be supported and maintained.
- Poor planning and oversight by the U.S. government, as well as poor performance on the part of contractors, have costly outcomes: time and money misspent are not available for other purposes, missions are not achieved, and lives are lost.
- Criminal behavior and blatant corruption sap dollars from what could otherwise be successful project outcomes and, more disturbingly, contribute to a climate in which huge amounts of waste are accepted as the norm.

This final report documents the Commission's extensive research, hearings, meetings and briefings, domestic and overseas travel, and the work of professional staff stationed full-time at Commission offices in Baghdad and Kabul. The Commission's observations, findings, and key recommendations are organized under broad contingency-contracting themes. A complete list of recommendations from all of the Commission's reports to Congress appears in Appendix A.

Agencies over-rely on contractors for contingency operations

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

The consequences have been:

- extending contracting to activities that law, policy, or regulation require government personnel to perform;
- creating unreasonable risks to mission objectives and other key U.S. interests;
- eroding federal agencies' ability to perform core capabilities; and
- overwhelming the government's ability to effectively manage and oversee contractors.

Spending on contracts and grants performed in Iraq and Afghanistan in support of operations in those countries is expected to exceed \$206 billion through the end of fiscal year (FY) 2011. The money goes to two categories of activities: first, support of U.S. operations, such as logistics; and second, direct execution of programs like training host-country military and police forces. Construction projects fall into both categories. Contracts are awarded and managed in various locations—in country, in other countries in the region, and at various buying commands in the United States.

The number of Department of Defense (Defense), Department of State (State), and the U.S. Agency for International Development (USAID) contractor employees in Iraq and Afghanistan has varied, but exceeded 260,000 in 2010. The contractor-employee count has at times surpassed the number of U.S. military personnel in the two countries. Most contractor employees are third-country nationals and local nationals; U.S. nationals totaled more than 46,000, a minority of those employed.

Although contract activity has taken on increasing importance, the resources devoted to managing contracts and contractors have not kept pace. The number of contract specialists—an occupation critical to the execution of contingency contracting—rose by only 3 percent government-wide between 1992 and 2009, despite an enormous increase in contracting activity during that period.

Because the heavy reliance on contractors has overwhelmed the government's ability to conduct proper planning, management, and oversight of the contingency-contracting function, the Commission concludes that the government is *over-reliant* on contractors.

'Inherently governmental' rules do not guide appropriate use of contractors in contingencies

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

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

The Commission endorses the context-sensitive, risk-sensitive, and mission-sensitive approach taken by the Office of Federal Procurement Policy's March 2010 draft policy letter on this topic, and recommends vigorously applying this guidance to the unique contingency-contracting environment.

Applying risk and other situational considerations to a contingency may indicate that a particular task should not be contracted. For such cases, the government needs in-house options beyond canceling or postponing activities, such as having qualified, expandable, and deployable federal cadres for stabilization-and-reconstruction functions.

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

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

EXECUTIVE SUMMARY

In those cases where performance by contract is appropriate, the government must provide acquisition management and contractor oversight. Relying on contractors to perform these functions is especially risky, and can give rise to potential or actual conflicts of interest. The use of contractors to manage other contractors reveals a failure of government to provide for a sufficient contingency workforce.

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

The use of private security companies can present especially sensitive risks, because their armed employees can become involved in incidents that injure or endanger innocent civilians. In addition, their use for convoy security in parts of Afghanistan invites pay-for-protection extortion that diverts taxpayers' funds to local warlords and insurgents.

Another essential task would be to assess the risk of using contractors for static security at bases and camps, particularly the risk of using local nationals for that task. If commanders judge the risks of using contractors, or more specifically using local nationals, to be unacceptable, then military forces or third-country nationals would provide static security. On the basis of operational, financial, and political risks, performance by contractors for some security tasks should be phased out.

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

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

Defense, State, and USAID should develop and enter into a standing interagency Memorandum of Agreement (MOA), incorporating lessons and best practices learned in Iraq and Afghanistan, to provide guidance in use of private security contractors now and in future contingencies. Such an MOA would be modified as needed soon after the start of a declared combat operation or other contingency to address the particular circumstances of that operation.

At the operational level, ambassadors, USAID mission directors, and military commanders should be responsible for making, publicizing, and revising their determinations of security-contracting appropriateness as conditions change. These officials should also apply greater emphasis to security-contractor vetting, training, weapons authorization and control, and oversight.

→ **RECOMMENDATION 4**

Improve interagency coordination and guidance for using security contractors in contingency operations

Inattention to contingency contracting leads to massive waste, fraud, and abuse

Engaging in contingency operations is not cheap. But U.S. operations in Iraq and Afghanistan have entailed vast amounts of spending for little or no benefit. That is waste. The Commission's conservative estimate of waste and fraud ranges from \$31 billion to \$60 billion based on contract spending from FY 2002 projected through the end of FY 2011.

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

Waste in contract outcomes has been driven by factors at the host-country level, at the program and project level, and at the individual-contract level.

- At the host-country level, U.S. officials lack an understanding of the need to reconcile short-term military and longer-term development goals and objectives, realistically assess host-country conditions and capabilities, and work within the constraints of local economies' absorptive capacity for influxes of cash. These deficiencies have contributed to costly and failed contract outcomes.
- At the program and project level, agencies have not sufficiently integrated their programs and projects with one another and with other donors, or paid adequate attention to the cost and management implications of poor security conditions. These shortcomings have doomed numerous acquisition strategies. Inadequate competition and lack of knowledge of local contractor and sub-contractor companies are major contributors to contracting waste.

EXECUTIVE SUMMARY

- At the contract level, there is a frequent failure to define requirements within reasonable timeframes and to assign appropriate management and oversight resources. Without sufficient management and oversight, officials have been late to identify and correct poor contractor performance. Key deficiencies include idle contractor personnel, defective construction, and inadequate protection of property and personnel.

Numerous examples from Commission travel, hearings, and research have demonstrated serious incidents of waste at every phase of the contingency acquisition process, from project selection and requirements definition, through solicitation and vetting, to management and oversight. Problems are widespread and endemic.

Looming sustainment costs risk massive new waste

A particularly troubling outcome of the Commission's examination of waste is that billions of dollars already spent, including spending on apparently well-designed projects and programs, will turn into waste if the host governments cannot or will not commit the funds, staff, and expertise to operate and maintain them.

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

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

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

Agencies have not institutionalized acquisition as a core function

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

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

Defense has promulgated important policy and doctrinal changes. However, the structure needed to force important lessons learned through the system and the authority to enable resource shifts to support the acquisition process does not exist. More than half of Defense's contract spending is for services and not for hardware procurement. Yet Defense's culture and processes remain focused on weapons systems. This imbalance in focus is particularly risky in the context of operations in Iraq and Afghanistan, where 66 percent of contract spending is for services.

In contrast to Defense's omission of contingency contracting in its Quadrennial Defense Review, State offered some encouraging comments about the importance of contracting in its 2010 Quadrennial Diplomacy and Development Review. But State has not fully recognized or implemented many of the needed changes. Therefore, significant additional waste—and mission degradation to the point of failure—can be expected as State continues with the daunting task of transition in Iraq.

USAID has made procurement reform part of its agency-wide improvement initiatives. However, it is still far from achieving the cultural change needed to make reforms a reality. Both State and USAID will face additional contract-management challenges in Afghanistan as U.S. military forces begin to withdraw.

Changes in agency structures and practices affect culture and behavior, but cannot have deep and lasting impact without the full involvement of senior leadership. Effective leaders provide attention, focus, visibility, motivation, and energy to the process of improvement and to the daily work of delivering results. They reward success, correct failure, and punish misconduct.

EXECUTIVE SUMMARY

Contingency-contracting reform demands active and sustained attention from senior agency leaders that transcends succession in office and changes in administration.

Raising the profile and authority of civilian and military leaders responsible for contingency contracting would boost the impact of the reform effort and provide some measure of accountability.

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

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

Agency structures and authorities prevent effective interagency coordination

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

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

Currently no one person has the authority to ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission, and to ensure that agencies' budgets are complementary rather than duplicative or conflicting.

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

Improving agency planning, readiness, and performance would be greatly facilitated by creating a permanent office of special inspector general for contingency operations. The authority of existing inspectors general is either limited by department (Defense, State, and USAID) or restricted by time and function (the temporary special inspectors general for Iraq and Afghanistan are focused on reconstruction).

Having a small, but expandable, permanent inspector-general staff devoted to contingency operations would provide critical monitoring from the onset of a contingency, permit collaboration with agency inspectors general to regularly assess the adequacy of agency planning and coordination for contingencies, and provide a logical center for developing and coordinating needed training among agencies.

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

Contract competition, management, and enforcement are ineffective

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

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

Dynamic contingency operations generate rapidly changing support requirements that must be met within short timeframes. Effective competition motivates contractors to provide fair pricing, best value, and quality performance. On the other hand, the tension between a contractor's motivation to make a

EXECUTIVE SUMMARY

profit and the government's demand for good performance still exists. The lessons from contingency contracting in Iraq and Afghanistan are that agencies have not effectively employed acquisition-management strategies that balance the United States' interests with contractors' profitability objectives.

Several policies and practices hamper competition in a contingency environment. Despite a more mature contracting environment in Iraq and Afghanistan today, Defense, State, and USAID still do not consistently emphasize competitive contracting practices. Some of the agencies' acquisition strategies have restricted competition and favored incumbent contractors, even those with performance deficiencies.

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

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

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

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

The challenge of fostering a culture of contractor accountability is especially difficult in war zones, where the contractor community is made up of U.S., local, and third-country nationals; where gathering a stable of responsible, competitive companies eligible for contract award is a challenge; where security threats hamper oversight; and where fluid operations drive changing requirements under short timeframes. Enforcement of laws, regulations, and contract terms serves two purposes: it addresses wasteful and fraudulent behavior, and it sets a standard for future performance.

More aggressive use of enforcement techniques for contracting would reduce the risk of awarding contracts to companies with questionable capability to perform. Expansion of investigative authority and jurisdiction would facilitate imposing effective accountability on contractors, especially foreign contractors and subcontractors who are difficult or impossible to subject to U.S. law. Increasing contractor accountability would also enhance protections against exploitation of persons.

→ **RECOMMENDATION 12**
Strengthen enforcement tools

A variety of weaknesses frustrate the U.S. government's ability to protect its—and federal taxpayers'—interest in economical and effective performance of contingency contracting:

- Agencies continue to lack sufficient staff and resources to enable adequate management of all aspects of contingency contracting. These include: financial management, acquisition planning, business-system reviews, source selection, incurred-cost audits, performance management, property management, contract payment, and contract close-outs. These shortfalls have been especially pronounced at key entities like the Defense Contract Management Agency and the Defense Contract Audit Agency. Indeed, at current staffing levels, DCAA's backlog of unaudited incurred costs will exceed \$1 trillion in 2016.
- Inadequate contractor business systems for functions such as estimates, labor billing, and purchases impede the work of government management and oversight officials. Yet the government's authority to withhold contract payments on grounds of business-system inadequacy is limited.
- The government faces significant limitations in its authority to access contractor records that can be useful or essential for examining matters such as supervision of subcontractors.
- Agencies continue to struggle with an absence of strategic planning and lack a dedicated budget to support related human resources and information-systems requirements.

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

The way forward demands major reforms

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

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

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

→ **RECOMMENDATION 14**

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

Continued attention, monitoring, and advocacy may require congressional requests for subsequent evaluations and agency reporting, and the engagement of governmental or non-governmental organizations to continue to focus on contingency-contracting issues.

A forcing function is needed to ensure widespread and effective adoption of contingency-contracting reform. Otherwise, agency inertia, resistance to change, sporadic attention, personnel turnover, and a lack of sustained and focused leadership may combine into a powerful barrier that blocks progress. Effective implementation of reform requires establishing a method for periodic reporting on the status of the Commission's recommendations to keep the reform agenda in decision makers' field of vision.

→ **RECOMMENDATION 15**

Congress should enact legislation requiring regular assessment and reporting of agencies' progress in implementing reform recommendations

Conclusion

The need for reform is urgent. Over the past decade, America's military and federal-civilian employees, as well as contractors, have performed vital and dangerous tasks in Iraq and Afghanistan. Contractors' support however, has been unnecessarily costly, and has been plagued by high levels of waste and fraud.

The United States will not be able to conduct large or sustained contingency operations without heavy contractor support. Avoiding a repetition of the waste, fraud, and abuse seen in Iraq and Afghanistan requires either a great increase in agencies' ability to perform core tasks and to manage contracts effectively, or a disciplined reconsideration of plans and commitments that would require intense use of contractors.

Failure by Congress and the Executive Branch to heed a decade's lessons on contingency contracting from Iraq and Afghanistan will not avert new contingencies. It will only ensure that additional billions of dollars of waste will occur and that U.S. objectives and standing in the world will suffer. Worse still, lives will be lost because of waste and mismanagement.

The nation's security demands nothing less than sweeping reform.