
May 24, 2010



Expected Release

9:30 a.m.

James B. Burch
Deputy Inspector General for Investigations
Department of Defense Inspector General
before the
Commission on Wartime Contracting
On
"How Good Is Our System for Curbing
Contract Fraud, Waste, and Abuse?"

Chairman Thibault, Chairman Shays, and members of the Commission, good morning and thank you for the opportunity to appear before you on behalf of the Department of Defense Office of Inspector General.

Investigations and audits of activities relating to Operation Iraqi Freedom and Operation Enduring Freedom are the DoD IG's top priority. The Defense Criminal Investigative Service (DCIS), the criminal investigative arm of DoD IG, has been engaged in investigations involving DoD operations in Iraq, Kuwait, and Afghanistan in Southwest Asia (SWA) since the start of the war. Additionally, DCIS has committed resources to the International Contract Corruption Task Force (ICCTF) since 2006 in an effort to maximize interagency efforts to effectively investigate and prosecute criminal cases involving Southwest Asia. Our current in-theater workforce consists of 15 DCIS special agents and 1 administrative assistant who have deployed in support of Overseas Contingency Operations (OCO) efforts. These special agents and support staff serve as forward-deployed elements supporting DCIS' investigative commitment in SWA.

ICCTF

Cooperation and mutual support were evident during the early deployments of agents from separate law enforcement entities (military investigators, inspectors general, and the FBI); however, formalization of this cooperation through formation of the ICCTF and its main operational body, the Washington, D.C.-based Joint Operations Center (JOC), has resulted in a effective fraud and corruption fighting team. The ICCTF, an outgrowth of the National Procurement Fraud Task Force, was designed to encourage organizations to approach international corruption and procurement fraud investigations in a cooperative, collective manner. ICCTF consists of the following members: the Defense Criminal Investigative Service; the FBI; U.S. Army Criminal Investigation Command's Major Procurement Fraud Unit; the Department of State, Office of Inspector General; the United States Agency for International Development, Office of Inspector General;

the Special Inspector General for Iraq Reconstruction; the Special Inspector General for Afghanistan Reconstruction; the Naval Criminal Investigative Service; and the Air Force Office of Special Investigations.

The mission of the ICCTF is to deploy criminal investigative assets worldwide to detect and investigate corruption and contract fraud, and to successfully prosecute offenders. This task force is led by a Board of Governors consisting of senior agency representatives. The task force's Joint Operations Center (JOC) focuses on collecting and sharing criminal intelligence of potential relevance to ICCTF operations. The JOC coordinates intelligence-gathering, de-conflicts case work and deployments, disseminates intelligence, and provides analytic and logistical support for the ICCTF agencies.

The ICCTF model has been effective because agencies have remained committed to working together and supporting one another's efforts. This is especially important in a high risk environment. Resource intensive cases and mobility restrictions make it exceptionally difficult for investigative organizations to function in an autonomous manner. Collaboration is key. The ICCTF model has brought laudable results and has been efficient. Duplication of efforts is avoided, relevant information and intelligence is distributed to all ICCTF members, resources (e.g., technical assistance, forensics, and polygraph support) are shared, and agents do not hesitate to assist one another. The level of cooperation is unprecedented.

CONTINGENCY CONTRACTING

Although the ICCTF concept has been successful, DoD IG continues to identify issues specific to contracting in a war zone that have resulted in increased potential for fraud, waste, and abuse. Most examples result from the need to engage in contingency

contracting and its inherent reduced oversight. From inception of the Overseas Contingency Operations, military and civilian contract administration personnel engaged in contingency contracting, which was contracting designed to obtain much-needed goods and services as quickly as possible. Contract administrators focused primarily on timely mission accomplishment versus ensuring strict adherence to traditional contract administration procedures, many of which are designed to reduce the risk of corruption and abuse. When engaging in contingency contracting, administrators typically do not consider the risk of increased levels of fraud resulting from lower levels of oversight, as the mission is to provide goods and services as promptly as possible. When left unchecked, this mind set can become pervasive to the extent contract administrators begin to view oversight responsibilities as unwelcome burdens conflicting with their ability to effectively perform their duties. This factor has been especially prevalent when exploring allegations of corruption and abuse related to funds administered via the Commander's Emergency Response Program (CERP), which was designed to fund development of local programs and institutions.

CERP funds are appropriated through the DoD and allocated through each major command's sector of operations in Iraq and Afghanistan. The CERP is intended to bolster local economies through construction of much needed roads and facilities to support the development and expansion of the Iraqi and Afghan government and organizations. Up to \$500,000 for small-scale projects can be allocated to individual CERP projects, and CERP beneficiaries often receive payments in cash. A small number of projects exceeding \$500,000 can be approved by the appropriate contract command as designated by CENTCOM.

DoD IG has identified occasions whereby soldiers with limited contracting experience were responsible for administering CERP funds. In some instances, there appeared to be scant, if any, oversight of the manner in which funds were expended. Complicating

matters further is the fact that payment of bribes and gratuities to government officials is a common business practice in some Southwest Asia cultures. Taken in combination, these factors result in an environment conducive to bribery and corruption.

By way of example: In 2009, DCIS and ICCTF partners discovered that two contractors with dual citizenship (U.S. and Afghanistan) approached a U.S. Army captain serving as a contracting officer's representative in Kabul, and offered to pay \$1 million in exchange for awarding a CERP project to the contractors. The CERP project calls for the construction of a road in Afghanistan. The two contractors informed the government representative they could construct the road for about \$9 million; however, they intended to bid \$18 million for the project. The government representative was offered \$1 million in exchange for awarding the project to the contractors. The contractors also threatened to use political connections to blacklist successful competitors if they did not receive the contract at issue. The government representative notified ICCTF agents, and agreed to assist in the investigation. Assistance provided by the U.S. military's Joint Contract Command (Iraq/Afghanistan) was critical to the successful outcome of this investigation. At the Command's direction and approval, a spurious contract was created and awarded to the two suspects. The legitimate contract award was delayed, which allowed agents to utilize undercover techniques to engage the suspects. On May 31, 2009, the contractors were arrested, interviewed, and transported to Bagram Air Field for transportation to the United States. The two contractors pled guilty to bribery-related charges in the U.S. District Court, Eastern District of Virginia.

DCIS and our ICCTF partners will continue to aggressively pursue criminal allegations relating to the CERP. We will also continue to devote extensive man-hours to providing awareness briefings to new personnel assigned to administer this program.

DCIS CASES

As of May 1, 2010, 106 DCIS agents (approximately 33% of the DCIS workforce) are involved in investigating a total of 223 Overseas Contingency Operations (OCO) cases. The volume of criminal cases has increased by roughly 18 percent over the past year.

A significant number of investigations have focused on members of the military who engaged in criminal activity - particularly, bribery and corruption associated with the administration of their contracting duties. The majority of our OCO investigations identified crimes committed by military members and civilian contractor counterparts. Unique factors contribute towards individual military members' decisions to engage in corrupt activities. These factors can be applied to U.S. contractors as well, since in some circumstances contractors have played just as much a significant role in the contracting process as military members, and have also been subjected to the same environmental stresses related to wartime contingency operations. Some examples of these unique factors include:

- Routine exposure to offers of bribes, gratuities, and kickbacks resulting from differing cultural views regarding corruption;
- Temptation resulting from prior lack of exposure to large amounts of funds, exacerbated by the extent to which cash is utilized to conduct business;
- Perception of lax oversight;
- Personal financial hardships;
- Opportunity for personal enrichment (greed); and
- Stress and morale issues resulting from multiple deployments..

Although DCIS currently keeps pace with the investigative demands in SWA, we will require more law enforcement agents to properly investigate the anticipated increase in the volume of criminal allegations resulting from the current wartime strategy. These changes impacting the investigative tempo include the anticipated troop drawdown in Iraq and increase in Afghanistan.

TROOP DRAWDOWN IN IRAQ

The administration's current plan calls for all combat troops to leave Iraq by the end of August 2010. This aggressive plan will create numerous accountability challenges for DoD, which will result in opportunities for criminal activity. A primary concern is the potential theft and/or diversion of viable military equipment that has accumulated over a seven-year period. DCIS expects much of the equipment to flow through the Defense Reutilization and Marketing Service (DRMO) in Kuwait, where it will be retrograded, transferred, or redirected to support other U.S. military priorities. DCIS will continue close coordination with appropriate DRMO personnel to ensure sensitive properties are adequately accounted for.

A secondary concern involves the potential for cost overruns and other questionable actions on the part of contractors involved in the drawdown. For example, a contractor will be responsible for providing logistic services in support of the withdrawal of theater transportation equipment, retrograding of supplies and equipment, and packaging equipment for shipment. This is a tremendous responsibility that will require an exorbitant amount of contract personnel and funding. The fact that this drawdown is being fast-tracked could potentially tax internal DoD controls.

Lesson learned: Public Warehousing Company (PWC), a logistics company organized under the laws of the Nation of Kuwait, has been the #1 logistics company supplying food to military troops in Kuwait, Iraq, and Jordan since 2003. During November 2009, PWC was indicted by a federal grand jury in the Northern District of Georgia on multiple

charges of conspiracy to defraud the United States, committing major fraud against the United States, making false statements, submitting false claims and wire fraud. All of the charges concern multi-billion dollar contracts issued by the Department of Defense. PWC offered proposals and was awarded Prime Vendor contracts over a 7 year period. Each of these contracts was for the provision of food and other items to military customers in the Middle East, including Iraq, Kuwait and Jordan. PWC has been paid over \$8.5 billion for the contracts. The conspiracy alleges PWC provided false invoices and statements to the Defense Supply Center Philadelphia, a troop support component within the DoD.

NEW STRATEGY IN AFGHANISTAN

In December 2009, a new strategy was announced with respect to Afghanistan. Two components of this strategy that will influence DCIS' ability to effectively counter fraud, waste, and abuse in Afghanistan are:

(1) A surge of 30,000 U.S. Troops into Afghanistan. This increase will place additional stress on a contracting command that is struggling to keep pace with current demands. If history dictates, attempts to expedite the development of transportation and facility infrastructures in an effort to support the surge could result in less than optimum contracting practices and opportunities for fraud and kickback schemes;

(2) Efforts to accelerate training of the Afghan National Security Forces (ANSF) – specifically, the Afghan National Army (ANA) and Afghan National Police (ANP). Department of State currently administers existing security forces training contracts; however, DoD's Combined Security Transition Command-Afghanistan, (now known as NATO Training Mission – Afghanistan/Combined Security Transition Command-Afghanistan), will eventually administer an \$800 million contract under a new DoD task order. DoD anticipates awarding the contract in 2010. DoD oversight of this program

will be heavily scrutinized given challenges associated with ensuring accountability of security forces training funds. DoD IG will need to actively monitor efforts in an attempt to deter, detect and counter fraud, waste, and abuse.

FUTURE ACTIONS

The significance and number of challenges that face a fraud and corruption investigations program in a war zone have been extensive. These challenges include: the complexity of the fraud or corruption schemes, the multi-national and multi-cultural aspect of investigations, and the necessity to work with foreign governments and foreign security forces. Also, criminal activity often crosses multiple venues, with actions in furtherance of criminal ventures occurring in Southwest Asia, the United States, and numerous other countries. Other complications include intricate logistics, use of translators, evaluation of foreign evidence, and hefty costs associated with deploying civilian criminal investigators for extended periods of time. Added to these are the restrictions and dangers associated with operational tempo and persistent insurgent activity, the difficulties in locating witnesses who redeploy or leave military service, and precautionary transportation restrictions imposed by the U.S. Forces. Despite these challenges, DCIS and its law enforcement partners have assertively pursued the important mission to investigate DoD-related criminal activity concerning fraud and public corruption. We stand committed to devoting substantial resources to projects and investigations designed to reactively and when possible, proactively, identify fraud, waste, and abuse relating to SWA.

A case example highlighting multi-national aspects affecting the development of these complex criminal investigations involved a former civilian employee working as a contracting officer for the DoD. The subject, a former resident of Kuwait City, Kuwait, and dual U.S./Ghanaian citizen, eventually admitted he failed to report \$2.4 million in taxable income while serving in Kuwait as a contracting officer for the Department of

Defense. The individual worked on detail from 2002 until 2007 at Camp Arifjan, Kuwait. He also admitted he failed to report his ownership interest in foreign bank accounts in five different countries, including Ghana, Switzerland, the Jersey Channel Islands, the Netherlands and the United Kingdom. These accounts were used to help conceal his unreported income, and to send and receive wire transfers totaling more than \$3.5 million. He was sentenced in U.S. Court, District of Columbia to 110 months in prison and ordered to pay a \$1.6 million fine for filing false tax returns.

UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

As previously mentioned, DCIS special agents and partner agencies serving in Southwest Asia work under the auspices of the ICCTF, which is closely aligned with the U.S. Department of Justice. The majority of investigations conducted by DCIS in Southwest Asia are prosecuted by the Department of Justice. Upon receiving criminal allegations, Department of Justice representatives and military prosecutors (typically, representatives from the U.S. Army Judge Advocate General's Corps) normally engage in consultations regarding whether charges should be pursued by court-martial under the Uniform Code of Military Justice or through the Federal district court system. In many circumstances, UCMJ charges levied against members of the military result in court-martial penalties that significantly exceed sentences handed down in the Federal district courts system, arguably providing a greater deterrent effect. Prosecutors, however, are prone to pursue charges via Federal civilian courts when the investigation targets military members and civilian contractor personnel. Also, using district courts allows investigators to work in conjunction with the Department of Justice to forfeit the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate fraudulent activity. This option is not generally available when pursuing charges under the UCMJ.

MILITARY EXTRATERRITORIAL JURISDICTION ACT

The Military Extraterritorial Jurisdiction Act (MEJA) was initially intended to allow for criminal prosecution of DoD civilian employees, DoD contractors military personnel, their family members, and civilian contractors directly supporting DoD missions overseas. The act was amended to allow for prosecution of contractors employed by other Federal agencies in support of DoD missions overseas. Although MEJA affords law enforcement agencies important authorities required to ensure contractor accountability, prosecutions related to the act have been limited. The majority of MEJA prosecutions pursued by the Department of Justice have focused on “general crimes” (crimes against persons and property, e.g., assault, rape, murder, theft) committed by civilian and contractor personnel assigned to Southwest Asia versus significant corruption and fraud allegations of the nature investigated by DCIS and other members of the International Contract Corruption Task Force. However, we are hopeful that MEJA charges will become more commonplace as prosecutors become increasingly familiar with provisions of the Act. Further, prosecutors may forego pursuing contractors accused of fraud and corruption violations via MEJA when offenders are citizens of the host nation. In such instances, prosecutors attempt to work in conjunction with the host nation’s legal system barring unusual circumstances.

DFAS ROME PROJECT

DCIS, the Defense Finance and Accounting Service (DFAS), and DoD IG’s Audit component, assisted by the Defense Contract Audit Agency, the U.S. Army Audit Agency, and the FBI, continue to engage in a proactive project involving analysis of more than \$10 billion in Iraq payment vouchers stored at DFAS facilities in Rome, NY. Many of the vouchers relate to transactions carried out by the Army shortly after initiation of the global war on terror. During this period, the Army was operating in contingency contracting mode. The primary goal of this project is to identify fraudulent activity related to the war effort through utilization of data mining techniques; however,

haphazard record keeping by administrators responsible for overseeing purchases has made it nearly impossible for investigators and auditors to assess the legitimacy of certain acquisitions.

MANDATORY DISCLOSURE RULE

A final rule regarding mandatory disclosure of fraudulent activities by government contractors went into effect on December 12, 2008. Efforts regarding this rule were strongly championed by the Department of Justice, Inspectors General, and law enforcement agencies. The rule amended the Federal Acquisition Regulation (FAR) to establish mandatory disclosure requirements for violations of federal criminal laws and also for violations of the civil False Claims Act by Federal government contractors and subcontractors. The rule requires a contractor or subcontractor to make a disclosure if it has "credible evidence" of a violation. The rule also requires government contractors to establish a business ethics awareness and compliance program, and it mandates the minimum requirements of an internal control system. The rule adds to the potential causes for suspension and debarment the failure to timely disclose potential violations of criminal law and potential violations of the civil False Claims Act, as well as significant overpayments. Of course, beyond suspension and debarment, a company that knowingly fails to disclose a violation exposes itself to enhanced criminal sanctions.

Although this requirement should help to promote ethical contracting practices, its execution has caused a workload increase for investigators and prosecutors (181 disclosures since December 2008). A greater revelation of misconduct under the rule has brought more investigations and prosecutions. As such, additional law enforcement agents will be required to investigate the crimes and conduct verification investigations when contractors are allowed to conduct their own inquiries.

ADMINISTRATIVE REMEDIES

DCIS is fully committed to holding individuals and companies responsible for unscrupulous activities that impact DoD. Although criminal prosecution is a top priority, special agents do not lose sight of their ultimate responsibility: protecting the Government's interests. As previously noted, various obstacles can interfere with the Government's ability to successfully investigate and prosecute offenders. When this occurs, DCIS attempts to ensure appropriate administrative actions are taken, to include suspension or debarment of contractors, levying of administrative fines and penalties, etc. By way of example, during October 2009, the DCIS Kabul Resident Agency initiated an investigation into allegations that an Afghanistan company stole construction equipment valued at \$102,000 from a project site in Mazar-e-Sharif, Afghanistan. The company also allegedly failed to pay its subcontractors for work performed in excess of \$1.2 million, and fraudulently billed the U.S. Army Corps of Engineers (USACE) in excess of \$555,807 for spare parts never received. USACE previously awarded the company a \$12.6 million contract for the building of an Afghan National Police site. Our investigation determined that the company entered in a joint venture agreement with a South Korean company to complete this task. Although the investigation did not warrant prosecution, DCIS continued to coordinate with USACE so as to ensure administrative action was taken. During February 2010, in accordance with the Federal Acquisition Regulation, USACE notified the two companies that the U.S. Government considers them to be indebted to it in the amount of \$1,881,877.

CLOSING & PLANS FOR ADDITIONAL CONTINGENCY OPERATIONS OVERSIGHT PROJECTS

As the Department of Defense's principal oversight agency, DoD IG is committed to providing effective and meaningful oversight in Southwest Asia. Our priority is to assist DoD and the Congress by identifying and deterring waste, fraud, and abuse involving

taxpayer monies; and protecting the interests of our brave soldiers, sailors, airmen, and Marines serving overseas. We will continue to coordinate and integrate our efforts within the oversight community to minimize duplication and ensure oversight coverage is as comprehensive and effective as possible.

We thank the commission for the opportunity to discuss our work and look forward to continuing our strong working relationship with Congress and with all oversight organizations in Southwest Asia.