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ISOA Testimony

before the

Commission on Wartime Contracting in Iraq and Afghanistan

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Introduction

Chairman Shays, Chairman Thibault, Members of the Commission, thank you for the opportunity to testify here on behalf of the International Stability Operations Association (ISOA). Our Association represents scores of companies across an industry consisting of contractors performing reconstruction, logistics, training and security services in conflict, post-conflict and disaster relief operations around the world. My goal today is to provide the Association's views on the Commission's findings thus far and offer some thoughts on material for the final report.

The Commission has already done much to highlight problems and advocate for solutions and improvements in how the United States does contingency contracting, and ISOA fully supports these goals. We also recognize that the Commission's work is being followed closely by many other nations that participate in international stability operations that utilize contingency contractors. The work of the Commission will have a useful legacy long beyond its final report.

Ensuring the success of U.S. and international policies in conflict, post-conflict and disaster relief operations is of vital interest to policymakers and taxpayers alike. Our industry has a vested interest in success as well, both at the contractual level but also at the strategic level. It is important to the future of our industry that we are seen as reliable and effective partners beneficial to the success of these crucial international missions. The United States was implementing these kinds of policies long before the operations in Afghanistan and Iraq, and they will be engaging in contingency operations in the future. Our industry is dedicated to being a constructive partner in these operations – indeed, our member companies survive on their ability to successfully provide critical services in difficult environments.

A few topics that ISOA believes are worth reinforcing when it comes to the Commission's final report:

Contingency contracting has unique realities

Contingency contracting by its very nature requires greater flexibility and an understanding of the infinitely higher number of variables involved compared to domestic contracting. Experienced companies in this industry recognize that there are many, many potential pitfalls not in the scope of work, from customs delays, to transportation breakdowns, to rapid changes in risk levels and many others. The

Special Inspector General for Iraq Reconstruction (SIGIR) even suggested the value of a separate government agency to handle the exceptional requirements of contingency contracting. While that concept may be unlikely in an era of tight budgets, building special rules into U.S. government contracting that take into account the nature of contingency operations makes good sense.

Contract Officers

Afghanistan and Iraq have been outliers simply due to the size of U.S. involvement. The government representatives most responsible for ensuring the success of contracts in these missions are the Contract Officers, but even the best among them were overwhelmed by the scale of the missions and work requirements. Corrective action highlighted in the Gansler Report, by the GAO, the SIGIR and SIGAR, the IGs and especially by this Commission have done much to ensure that this weakness is being addressed at all necessary levels of the government. The large scope of the change will take time – you cannot train a fully qualified Contract Officer overnight – but ISOA member companies do report improvements.

Contract Officers in this field are critical to success, far more than in benign environments. They are the primary government representative that our companies work with to ensure mission success and our organizations are better able to do their jobs when Contract Officers have the resources and support to do their jobs. They are critical for coordination, to help address and allow companies flexibility to mitigate risk issues (authorization of the hardening of targets for example) and for ensuring contracts provide the maximum value to the larger mission. The testimony last week highlighting the problems with the Contracting Officer community was right on target: being overworked, sometimes overwhelmed, while being undervalued all contribute to the problem.

Waste fraud and abuse

When addressing the issues of ‘waste, fraud and abuse’ it should be noted that the largest problem by far in contingency operations continues to be the ‘waste’ issue. Waste includes poor coordination, between governments supporting the operation, between government departments, and between governments and the many nongovernmental organizations that are fiercely independent but work in the same environment. Inadequate planning is often a result of well-intentioned government offices being overwhelmed by the scale of the task they face when rebuilding or developing war-torn societies, or due to urgent time constraints that preclude proper project preparation. A misunderstanding of local cultural and political norms has led to many projects built with good intentions being abandoned by their benefactors shortly after completion. Local governmental politics can also impact on missions in unexpected ways, including through unhelpful political decisions that undermine long-term projects, or, as we have seen more recently, exorbitant and arbitrary tax policies on the firms that carry out U.S. government policies. Numerous other unforeseen complexities contribute to the waste issue as well, including a lack of local government capacity, corrupt or intransigent customs officials, and increased risk due to the conflict itself which can throw off timetables and vastly complicate even the best made plans. While waste is inevitable in contingency operations, no one can predict everything or coordinate perfectly, we believe that the Commission's emphasis on improving contracting oversight and government coordination will do much to obviate egregious waste.

This is not to minimize the problems of fraud and abuse which are always the issues that grab the headlines, but simply to point out that the recommendations that the CWC has been making in terms of improving the procurement and contract management systems will have the largest impact by far in terms of saving taxpayer dollars and improving the chances of mission success.

Planning and coordination

Although there have been numerous problems with coordination in stability operations, contractors have limited control over how such coordination is managed. By their very nature they must fulfill the requirements of their contract, even if it means duplicating the work of other government agencies or even other governments involved in the reconstruction. This again highlights the need for a close partnership between private firms and Contract Officers who are able to modify contracts that are found to be unnecessary or need to be modified to fit into a larger picture. It also highlights the value of a more interactive ‘partnership’ with the private sector that allows information from the field related to efficiency and good project management to filter up to the mission leadership.

Support for CWC’s Emphasis on Quality over Price

The CWC’s second Special report, ‘Lowest-priced security not good enough for war-zone embassies,’ published in October 2009, gave critical support to government procurement professionals who are keen to make wise decisions in the best interest of mission goals and taxpayers dollars, but are prevented from doing so by law or the threat of Congressional or departmental rebuke. These government professionals are hired and trained for a reason, and it is absurd to take such decisions out of their hands. As has been testified repeatedly in CWC hearings, quality matters and a poorly operating contractor can not only slow a mission, but even bring harm through poor performance. We believe the findings of this report should be expanded to include not just PSCs, but most of the contracts in conflict and post-conflict operations.

Some items especially material items certainly make sense from a low bidder perspective. Services, especially in highly volatile conflict, post-conflict and disaster relief operations clearly suffer when companies are forced to shave quality aspects in order to underbid their rivals. Lowest price competitions are fertile breeding grounds for the very kinds of companies that we should not want assisting with our foreign policy. Calls for hard laws on lowest price contracts are misguided and counterproductive to effective stability operations.

Working with local nationals and local firms

Due to the high level of competition in the industry, contingency contractors will always hire local nationals (LNs) first. Locals already have the necessary language skills; they understand the political complexities and are far better at finding ways to navigate the cultural and local governmental labyrinths common to these missions. From a taxpayer view point, they are a bargain, and even when paying them good wages by local standards they are significantly less expensive than importing foreign personnel.

When organizations cannot find the necessary skill sets, or when clients require non-locals for specific positions the second option is to hire ‘Third Country Nationals’ (TCNs). TCNs generally come from developing countries, and they also bring significant cost savings compared to Western personnel.

Westerners are not a preferred option due to their high costs, but in many cases contracts will specifically require Western personnel, such as when there is a requirement for a top secret clearance or specialized communication and coordination with multinational governments and militaries.

Contracting local firms makes sense from a developmental perspective, and programs such as Iraq First and Afghan First are in place to encourage the use of local contractors and subcontractors. At the same time, we have also found that such local companies often face capacity challenges in terms of financial transparency and adequate oversight, something near and dear to the hearts of inspector generals, Congress and the CWC itself. In Afghanistan, finding literate personnel can be difficult enough, but finding companies with both literate personnel and the right kinds of computer and communications equipment to ensure proper reporting can be almost impossible, especially for U.S. contracting

requirements. At the same time, there is value to allowing such management to be mentored by Western prime contractors which could allow balance between capacity building and effective reporting and transparency.

The industry role in improving ethical operations

ISOA is a standards-based trade association founded around a code of conduct originally designed by nongovernmental organizations, academics and human rights specialists specifically for private companies working in weak and failed states. ISOA's Code of Conduct is public and we have a Standards Committee tasked with investigating complaints raised against member companies. Anyone can bring a complaint against an ISOA member company based on our Code of Conduct and we have instructions for doing so on our web site. It should be emphasized that ISOA's goal is not to force member companies out of the Association, but to ensure that our Members are in compliance or are brought back into compliance with our Code.

ISOA wants to be clear that it is incumbent upon the industry to police itself as much as possible, but ISOA's Code of Conduct *supplements* governmental forms of accountability; it should not be seen as a replacement for fair and effective governmental legal accountability systems. The Association has supported improved governmental accountability in a number of ways.

Domestically, ISOA has been proactive in supporting legislation designed to improve contractor accountability in the field. We have supported or endorsed two enhancements to the Military Extraterritorial Jurisdictional Act (MEJA), the draft Civilian Extraterritorial Jurisdictional Act (CEJA) proposed by Congressman David Price of North Carolina, and efforts at creating third-party verification for PSCs which we believe would significantly enhance the quality of this vital sector.

Internationally, ISOA has been proactive in supporting a number of initiatives aimed at improving quality and accountability in contingency contracting. ISOA was an early supporter of the process that led to the 2008 Montreux Document, a groundbreaking agreement drafted by government officials, international human rights specialists and legal academics, and supported by more than 36 nations to date that clarifies international law as it applies to the personnel in our industry. More recently, we have been active in drafting and finalizing the International Code of Conduct for Private Security Providers which has already been signed by more than 70 private security companies and details how such companies should behave in the field. An ongoing process that includes representatives from governments, nongovernmental human rights organizations and our industry has been created to establish an accountability mechanism this year.

Finally, I should mention that ISOA's Code of Conduct is a working document that we update periodically; we are currently using version 12. Version 13 will be issued later this year and as always we would like to encourage interested parties to offer comments and suggestions on what should be included in this latest version.

Appropriate use of the private sector in contingency operations

Although there has been much discussion over the definition of 'inherently governmental' and the role of the private sector in contingency operations, something is to be said for building flexibility into a definition. Contingency operations are by their nature evolving, and the needs of the international community for stability operations and humanitarian rescue will continue to evolve as well. Inherently governmental definitions must allow for policy makers to make rational and pragmatic choices in unusual circumstances, something that has been done in the past with great success.

Most obviously, the private sector does not make strategic decisions such as which international intervention to initiate or the level and types of such support. Contractors are brought in as partners for their capacity, skill sets, speed and/or cost-effectiveness to help those decisions succeed. The decisions contractors make are related to specific tasks that come from their contract. It is critical that clients ensure those contracts fit into the larger mission.

Too often we look to a remarkably capable military to do tasks that it was never intended to do, and often for duties that may not be appropriate for uniformed and armed personnel. In contingency operations, the military is excellent at establishing security by going after the sources of trouble, but perhaps improperly used when doing many developmental tasks that could be better handled by civilians in the nongovernmental sector or private sector. Civilians, from the nongovernmental or private sector, are less intrusive and less intimidating than the military and can do vital tasks with a lower profile. This is especially true when the civilians are locals learning capacities and developing a stake in the future of their communities and their countries.

Much is made of the ratio between soldiers and contractors, but the statistic is meaningless unless the numbers are understood in the context of the mission. In reconstruction and development situations such as Bosnia, Afghanistan and Iraq it makes perfect policy sense and may even be desirable that contractors (significantly locals) should outnumber soldiers since contractors are the key players in developing the new state institutions and infrastructure vital for a long-term solution to the instability. That ratio leaning towards contractors may even rise as Western military personnel are gradually replaced by trained local security forces. As the security situation improves in a given location, the contractor proportion can be easily reduced or gradually ended.

It is private security that tends to be the touchstone on the issue of “inherently governmental.” Security is clearly not inherently governmental, as in most developed countries there are more private security guards than police, in some cases such as the United States, several times as many. About 10% of our industry focuses on the security side, a percentage that varies depending on the mission requirements, risks and demands. For foreign militaries to provide security is highly expensive and resource intensive: one estimate in Afghanistan being \$1 million per soldier per year. Protecting a reconstruction effort is important, but should U.S. troops be protecting sewage treatment plants? Should they be protecting UN warehouses? Should they be protecting hospitals, universities and the thousands of other sites that are considered fair targets by a ruthless enemy? And we should ask ourselves whether using U.S. troops to protect convoys carrying supplies to private factories or extractive sites is the best use of our highly trained, all volunteer military?

Even diplomatic security must be understood in the context that diplomacy is inherently civilian, and as perceptions are important, it makes sense that their security should be civilian as well. Although U.S. Marines play a vital and historic role in U.S. embassy security, private security has long been the primary security source for embassies around the world, and their overall performance and cost effectiveness have been exemplary enough to ensure that that role is unlikely to change. For moving diplomats around, PSCs provide robust additional capacity to support existing Diplomatic Security resources. The U.S. Department of State has many security specialists who are capable of designing appropriate parameters and helping to select the most effective, reliable and ethical security partners. While the Commission could be helpful in ensuring oversight and contract management systems are working, it would be unwise to take the Department of State’s ability to make appropriate decisions for the protection of diplomats out of their hands by creating an unnecessarily rigid definition of ‘inherently governmental.’

Nevertheless, while the role of private security is not likely to be settled anytime soon, much can be done in the meantime to ensure that their work is done professionally and ethically. It would be helpful if the Commission were to highlight some points.

First, clients that hire firms for security should ensure that the firms are signatories to the previously mentioned International Code of Conduct for Private Security Providers.

Second, clients need to ensure that the role of the private security is coordinated and blends with and does not undermine the larger reconstruction and developmental mission through being unnecessary robust or by limiting the potential contribution of well-trained locals.

Third, clients should ensure that training is up to minimum standards – you do not always need a James Bond to guard a gate, but you do need someone who is professional and trained appropriately for the job.

And finally, as has been highlighted earlier, quality matters. Security is far too important to be awarded simply to the lowest bidder.

Contingency operations vary enough from place to place, even from month to month, that a hard and fast inherently governmental rule makes little practical sense. Better to have common sense guidelines and some confidence in the expertise of those in the government most closely related to the work to make correct decisions. Some flexibility is essential to ensure that the security fits the mission and does not end up undermining the effort.

Conclusion

I wish to express ISOA's gratitude for the work of this Commission since its inception. We have been impressed with the overall even-handedness and genuine enthusiasm with which the Commission has set out to robustly address the key issues facing wartime contracting. While the ISOA membership may not universally agree with every recommendation of the Commission, it has been a privilege to work with you on this important issue.

As I said the first time I testified, the humanitarian value of contingency contracting is enormous, and the better we do these tasks, the better we harness the vast capabilities of the private sector, the better for militaries, taxpayers, and most importantly, the civilians caught in the areas of conflict. Although we tend to forget the historical legacy of contingency contracting, we need to do better in the future or we will suffer many of the same frustrating problems that we are solving today.