



COMMISSION ON WARTIME CONTRACTING  
IN IRAQ AND AFGHANISTAN

# At what risk?

Correcting over-reliance on  
contractors in contingency operations

FEBRUARY 24, 2011

## **Second Interim Report to Congress**

Recommendations for Legislative and Policy Changes

**COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN**

A Bipartisan Congressional Commission

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## FOREWORD

Congress established the Commission on Wartime Contracting to reduce the extensive amount of waste, fraud, and abuse in Iraq and Afghanistan and in future contingency operations.

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 mores 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 lost for other purposes.
- 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.

Although no estimate captures the full cost associated with this waste, fraud, and abuse, it clearly runs into the billions of dollars. Yet, for many years the government has abdicated its contracting responsibilities—too often using contractors as the default mechanism, driven by considerations other than whether they provide the best solution, and without consideration for the resources needed to manage them. That is how contractors have come to account for fully half the United States presence in contingency operations.

Regrettably, our government has been slow to make the changes that could limit the dollars wasted. After extensive deliberation, the Commission has determined that only sweeping reforms can bring about the changes that must be made.

We must expand responsibility and accountability for contracting outcomes. The business of contracting must be treated commensurately with its cost in taxpayer dollars and with its mission-critical role in contingency operations.

We issue this second interim report, *At what risk?*, in the hope that the Congress and the Administration will adopt our recommendations.

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### CONTACT THE COMMISSION

We welcome comments on issues in our charter. The Commission may be contacted:

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# CONTENTS

**Foreword** .....Inside front cover

**Executive Summary**..... 1

**Background**..... 6

## RECOMMENDATIONS

**SECTION I Contractors have become the default option** ..... 13

1 Grow agencies’ organic capacity..... 15

2 Develop a deployable contingency-acquisition cadre..... 18

3 Restrict reliance on contractors for security..... 18

**SECTION II Agencies do not treat contingency contracting as a core function**..... 21

4 Designate officials with responsibility for cost consciousness ..... 24

5 Measure senior military and civilian officials’ efforts to manage contractors and control costs..... 24

6 Integrate operational contract support into plans, education, and exercises..... 26

7 Include operational contract support in readiness and performance reporting..... 26

8 Establish a contingency-contracting directorate in the Office of the Joint Chiefs of Staff ..... 29

9 Establish Offices of Contingency Contracting at Defense, State, and USAID..... 29

10 Direct the Army’s Installation Management Command to manage bases and base-support contractors in contingencies..... 30

**SECTION III Interagency organizational structures do not support contingency operations**..... 33

11 Establish a new, dual-hatted position at OMB and the NSC to provide oversight and strategic direction for contingency operations ..... 36

12 Create a permanent office of inspector general for contingency operations..... 37

13 Establish interagency certification requirements and training curricula for contingency acquisition personnel ... 38

14 Create a committee to integrate the individual authorities, resources, and oversight of contingency operations.. 39



**SECTION IV Policies and practices hamper contingency competition . . . . . 41**

15 Require competition reporting and goals for contingency contracts . . . . . 44

16 Break out and compete major subcontract requirements from omnibus support contracts . . . . . 44

17 Limit contingency task-order performance periods . . . . . 44

18 Reduce one-offer competitions . . . . . 45

19 Expand competition when only one task-order offer is received . . . . . 45

20 Allow contractors to respond to, but not appeal, agency performance assessments . . . . . 47

21 Align past-performance assessments with contractor proposals . . . . . 47

22 Require agencies to certify use of the past-performance database . . . . . 47

**SECTION V Enforcement policies and controls fail to ensure contractor accountability . . . . . 49**

23 Require a written rationale for not pursuing a proposed suspension or debarment . . . . . 51

24 Increase use of suspensions and debarments . . . . . 51

25 Revise regulations to lower procedural barriers to contingency suspensions and debarments . . . . . 52

26 Make consent to U.S. civil jurisdiction a condition of contract award . . . . . 53

27 Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas . . . . . 53

28 Establish a permanent organization to investigate international-contract corruption . . . . . 56

29 Expand the power of inspectors general . . . . . 56

30 Raise the ceiling for access to the Program Fraud Civil Remedies Act . . . . . 56

31 Strengthen authority to withhold contract payments for inadequate business systems . . . . . 57

32 Amend access-to-records authority to permit broader government access to contractor records . . . . . 57

**Conclusion . . . . . 59**

**Appendices . . . . . 60**

**CHARTS AND TABLES**

**Figure 1: Cumulative Contracts and Grants . . . . . 6**

**Table 1: DoD/State/USAID contractor employees in Iraq and Afghanistan . . . . . 7**

**Figure 2: Contract and grant obligations . . . . . 10**

**Table 2: Federal agencies and departments obligating funds . . . . . 34**



## **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 its first interim report to Congress in June 2009 and has also issued three special reports. These and transcripts of Commission hearings can be found at [www.wartimecontracting.gov](http://www.wartimecontracting.gov). The Commission's final report to Congress will be filed in July 2011.



## EXECUTIVE SUMMARY

Federal reliance on contractors to support defense, diplomatic, and development missions during contingency operations stands at unprecedented levels. Over the course of the past nine years, contractors have at times exceeded the number of military personnel in Iraq and Afghanistan.

Total spending through contracts is correspondingly large. While there is no central federal source for definitive data on contracts and grants regarding contingency operations, the Commission's conservative estimate is that since October 2001, at least \$177 billion has been obligated on contracts and grants to support U.S. operations in Iraq and Afghanistan.

Given the magnitude of mission and money at risk, losses from waste, fraud, and abuse represent a significant cost. While the impact on mission cannot be readily quantified, misspent dollars run into the tens of billions.

- The Special Inspector General for Afghanistan Reconstruction (SIGAR) warned at the Commission's January 2011 hearing that the entire \$11.4 billion for contracts to build nearly 900 facilities for the Afghan National Security Forces is at risk due to inadequate planning. This estimate does not include the waste that has resulted from the host country's inability to sustain projects.
- The Association of Certified Fraud Examiners has reported a survey-based estimate that 7 percent of revenue is lost to fraud. Applying this metric to the \$177 billion in contingency contracts and grants suggests the cost of federal failure to control the acquisition process could be as high as \$12 billion for fraud, not including contract waste.

Congress instructed the Commission to make recommendations to avoid such results in future contingencies. These recommendations must meet two primary criteria: they must address the underlying causes of the poor outcomes of contracting, and they must institutionalize changes so as to have lasting effects. In *At what risk? Correcting over-reliance on contractors in contingency operations*, our second interim report to Congress, we are making recommendations that we believe do both. Finally, these recommendations require an investment that the U.S. government must make as it continues to rely on contractors as part of the total force in contingency operations.

Our recommendations rest on the following findings, supported by the Commission's information gathering in more than 900 meetings and briefings, a series of trips to theater, our full-time staff presence in Iraq and Afghanistan,

reports by other audit agencies, and testimony received in 19 Commission hearings. They can be broadly summarized as follows:

**New and expanded, often time-critical missions combined with ceilings on civilian and military personnel have led senior officials and commanders to rely on contractors as the default option.**

In the current setting of heavy reliance on contractors and clear weaknesses in federal planning and management, the Commission believes the United States has come to over-rely on contractors. This conclusion holds whether judged from the standpoint of preserving the government's core capabilities and institutional knowledge, protecting mission-critical functions, or balancing mission requirements against the ability to manage and oversee contracts. And the conclusion holds more strongly when all three factors are weighed together. Reducing this over-reliance will take serious resolve, zealous attention, resource investments, and time.

- ▶ We recommend Congress direct relevant departments and agencies to:
  1. Grow agencies' organic capacity
  2. Develop a deployable contingency-acquisition cadre
  3. Restrict reliance on contractors for security

**Existing agency cultures all too often relegate contracting to an afterthought, thereby inhibiting sound planning, resourcing, and management of contractors.**

Contracting professionals do not bear the sole responsibility for contingency contracting. Responsibility for managing, overseeing, and evaluating contractors falls not only to contract specialists, but also to those who define mission requirements, allocate resources, plan tasks and operations, promulgate policies and programs, and use the contractors' services. For many senior officials, contractors appear to be a "free" source of labor with no direct impact on their resource budgets. Contractors are so integral to operational success that failing to plan for, manage, and evaluate them is simply irresponsible.

- ▶ We recommend Congress direct relevant departments and agencies to:
  4. Designate officials with responsibility for cost consciousness
  5. Measure senior military and civilian officials' efforts to manage contractors and control costs



6. Integrate operational contract support into plans, education, and exercises
7. Include operational contract support in readiness and performance reporting
8. Establish a contingency-contracting directorate in the Office of the Joint Chiefs of Staff
9. Establish Offices of Contingency Contracting at Defense, State, and U.S. Agency for International Development
10. Direct the Army's Installation Management Command to manage bases and base-support contractors in contingencies

**Current interagency mechanisms and intra-agency resource allocations do not support the changing missions of agencies in contingency operations, the outcome of which is greater reliance on contractors and less focus on contract outcomes.**

Contingency operations, as carried out in Iraq and Afghanistan, have resulted in the military's performing more and more civil-society missions, while civilian agencies are significantly underequipped and underfunded, particularly to operate in areas of active conflict. Agencies' differing management structures in the field also impede integrated contractor oversight and management. Oversight responsibilities are likewise a shared responsibility, but are conducted with limited resources. Without structural and resource rationalization, it will be difficult to obtain the unity of effort required to achieve U.S. strategic goals of stabilization, diplomacy, and development simultaneously with combat operations.

- We recommend the President and Congress, respectively:
11. Establish a new, dual-hatted position at the Office of Management and Budget and the National Security Council to provide oversight and strategic direction for contingency operations
  12. Create a permanent office of inspector general for contingency operations
  13. Establish interagency certification requirements and training curricula for contingency acquisition personnel
  14. Create a committee to integrate the individual authorities, resources, and oversight of contingency operations

**Without effective competition and accurate assessment of contractor performance during contingency operations, money is wasted, and the likelihood of fraud and abuse increases.**

Lack of proper evaluation of contingency contractors' performance and insufficient competition have contributed to an environment where the government often does not obtain acceptable contract performance.

- ▶ We recommend Congress direct relevant departments and agencies to:
  15. Require competition reporting and goals for contingency contracts
  16. Break out and compete major subcontract requirements from omnibus support contracts
  17. Limit contingency task-order performance periods
  18. Reduce one-offer competitions
  19. Expand competition when only one task-order offer is received
  20. Allow contractors to respond to, but not appeal, agency performance assessments
  21. Align past-performance assessments with contractor proposals
  22. Require agencies to certify use of the past-performance database

**Agencies' failure to effectively use contract suspension and debarment tools, and the U.S. government's limited jurisdiction over criminal behavior and limited access to records, have contributed to an environment where contractors misbehave with limited accountability.**

The unique nature of overseas contingency operations and a heavy reliance on host-nation and third-country contractors magnifies the impact of contract-enforcement problems.

- ▶ We recommend Congress direct relevant departments and agencies to:
  23. Require a written rationale for not pursuing a proposed suspension or debarment
  24. Increase use of suspensions and debarments
  25. Revise regulations to lower procedural barriers to contingency suspensions and debarments
  26. Make consent to U.S. civil jurisdiction a condition of contract award

27. Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas
28. Establish a permanent organization to investigate international-contract corruption
29. Expand the power of inspectors general
30. Raise the ceiling for access to the Program Fraud Civil Remedies Act
31. Strengthen authority to withhold contract payments for inadequate business systems
32. Amend access-to-records authority to permit broader government access to contractor records

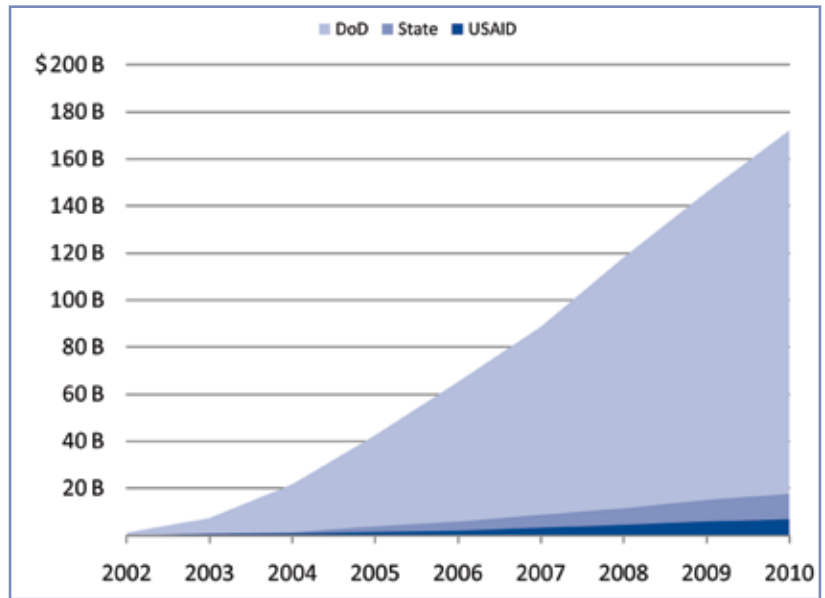
The Commission believes the recommendations offered in this report will significantly improve contingency-contracting outcomes. And implementing these recommendations should save U.S. taxpayers tens of billions of dollars in contract waste, fraud, and abuse.

Federal agencies have been asked to accomplish difficult missions in Iraq and Afghanistan—requests made too often without agencies having first been provided the necessary tools and resources. The growing reliance on contractors during contingency operations demands that sweeping reforms be implemented by the Executive and Legislative branches to make the necessary tools and resources available.

## BACKGROUND

The wars in Iraq and Afghanistan have seen unprecedented reliance on contractors to support American operations and objectives. One sign of that reliance is the value of contracts and grants for contractor support in the two countries. For federal fiscal years 2002–2010, as depicted in Figure 1, the reported value of funds obligated for contingency contracts for equipment, supplies, and support services is at least \$154 billion for the Department of Defense (DoD), \$11 billion for the Department of State, and \$7 billion for the U.S. Agency for International Development (USAID).<sup>1</sup> Adding the \$5 billion in grants and cooperative agreements awarded by State and USAID brings the total value to \$177 billion.<sup>2</sup> Actual obligations are even higher because some contracts that support contingency operations in Iraq and Afghanistan are not completely accounted for in the federal databases.

**Figure 1**  
**Cumulative obligations on contracts and grants** (in \$ billions)  
 Performed in Iraq, Afghanistan, Bahrain, Kuwait, and Qatar



There is no single, definitive accounting of the extent of contingency-contract waste, fraud, and abuse. Several organizations have developed estimates, however, and they can be used to outline the general scope of the problem:

- At the Commission's January 2011 hearing, the Special Inspector General for Afghanistan Reconstruction (SIGAR) warned that the entire \$11.4 billion for nearly 900 Afghan National Security Forces facilities is at risk due to inadequate planning for construction.
- At the Commission's first hearing in February 2009, the Special Inspector General for Iraq Reconstruction (SIGIR) agreed that an estimated \$3 billion to \$5 billion in U.S.-funded infrastructure contracting had been wasted.
- At the Commission's second hearing in May 2009, the director of the Defense Contract Audit Agency (DCAA) said contract audits revealed a high level

Sources: Federal Procurement Data System-Next Generation and [www.USAspending.gov](http://www.USAspending.gov), last updated January 25, 2011.

1. Commission calculation from Federal Procurement Data System-Next Generation data for Defense, State, and USAID contracts performed in Iraq, Afghanistan, Kuwait, Bahrain, and Qatar.

2. Commission calculation from the [www.USAspending.gov](http://www.USAspending.gov) database, which obtains data from the Federal Assistance Award Data System, for grants and cooperative agreements performed in Iraq and Afghanistan.

of unsupported or questionable contract costs—\$4.7 billion on the U.S. Army's Logistics Civilian-Augmentation Program (LOGCAP) task orders alone.

- Based on its survey of internal auditors and fraud examiners, the Association of Certified Fraud Examiners reported that an estimated 7 percent of revenue is lost to fraud.<sup>3</sup> If this metric were applied to the reported \$177 billion in contingency contracts and grants, the Association's estimate means the cost of federal failure to control the acquisition process could be as high as \$12 billion just for fraud.

Many observers believe that waste accounts for substantially greater sums than fraud and abuse. Whether the waste is caused by poor requirements definition and bad management by government or by contractor misbehavior, adding an allowance for waste to the fraud estimate indicates to the Commission that tens of billions of taxpayers' dollars have failed to achieve their intended use in Iraq and Afghanistan.

Contractors provide a wide range of services in the Middle East and Southwest Asia. They guard bases and diplomatic facilities, escort convoys and personnel, wash clothes and serve meals, maintain equipment and translate local languages, erect buildings and dig wells, and support many other important activities.

The numbers of contractor employees at work in Iraq and Afghanistan shown in Table 1 have often approached the numbers of military and federal civilian personnel deployed there. In fiscal year 2010, close to 200,000 contractor employees were supporting U.S. and allied operations in Iraq and Afghanistan:

**Table 1: Defense, State, and USAID contractor employees in Iraq and Afghanistan, fiscal year 2010<sup>4</sup>**

	Defense	State	USAID	TOTAL
<b>U.S. nationals</b>	41,855	4,322	805	46,982
<b>Iraqi/Afghan nationals</b>	44,890	10,194	32,621	87,705
<b>Third-country nationals</b>	57,960	4,734	1,193	63,887
<b>Unknown</b>	-----	60	1,149	1,209
<b>TOTAL</b>	<b>144,705</b>	<b>19,310</b>	<b>35,768</b>	<b>199,783</b>

3. Association of Certified Fraud Examiners, 2008 Report to the Nation on Occupational Fraud and Abuse, 4.

4. Defense data obtained from Deputy Assistant Secretary of Defense-Program Support, Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility, Iraq, and Afghanistan, December 15, 2010. State and USAID data obtained from Government Accountability Office Report GAO-11-1, "Iraq and Afghanistan: DOD, State, and USAID Face Continued Challenges in Tracking Contracts, Assistance Instruments, and Associated Personnel," October 2010, 44, 45.

Thousands of other contractors support the Iraq and Afghanistan wars from workplaces in Kuwait, Bahrain, Qatar, and other locations, including the U.S. mainland. By way of comparison, the Department of Defense reports 202,100 U.S. military personnel in Iraq and Afghanistan at the end of FY 2010.<sup>5</sup>

Americans constitute a minority of the DoD, State, and USAID contractor workforce in Iraq and Afghanistan, accounting for less than 24 percent of the total in the table above.

While doing their jobs, contractors risk being killed, wounded, or captured. Between September 2001 and December 2010, over 2,200 contractor employees of all nationalities have died and over 49,800 were injured in Iraq and Afghanistan.<sup>6</sup> These contractors' deaths and injuries should not be ignored, but should be a part of the public debate on the cost of war.

Using contractors in a contingency can yield several benefits. Contractors can:

- Offer skills and experience that government agencies lack or possess only to a limited extent
- Free up military personnel for combat or other critical missions
- Reduce the need to hire and train new federal civilian employees
- Provide flexibility in expanding and reducing support personnel quickly and as needed
- Be more cost-effective for performing certain support functions
- Provide jobs and training opportunities to local nationals in keeping with economic-development or counter-insurgency policies

In general, contractors have performed well in support of defense, diplomatic, and development objectives in Iraq and Afghanistan. But incidents of outright misconduct have marred the contingency-contracting effort. Some contractor personnel have pled guilty or been convicted for bribe solicitation, kickbacks, false invoicing, theft of government property, and money laundering in connection with contracting.

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5. Office of the Secretary of Defense, Defense Manpower Data Center, Statistical Information Analysis Division, September 30, 2010, 4, <http://siadapp.dmdc.osd.mil/personnel/MILITARY/history/hst1009.pdf>.

6. Department of Labor, Office of Workers' Compensation Programs, Division of Longshore and Harbor Workers' Compensation, Defense Base Act Cumulative Report by Nation (09/01/2001 - 12/31/2010), [www.dol.gov/owcp/dlhwc/dbaallnation.htm](http://www.dol.gov/owcp/dlhwc/dbaallnation.htm). Actual casualties are undoubtedly higher, because federal statistics are based on filed insurance claims, which may not apply to many foreign contractors' employees.

Federal investigators and prosecutors are working on scores of additional cases. While U.S. officials are clearly subject to laws and penalties for such conduct, that is not always the case for all private contractors. High-profile cases of misconduct demonstrate the difficulties the United States has faced while using contractors.

Urgency, uncertainty, and shifting circumstances accompany contingency operations by definition. War by its nature entails waste. But the scale of the problems in Iraq and Afghanistan also reflects the toxic interplay of huge sums of money pumped into relatively small economies and an unprecedented reliance on contractors. This interplay is aggravated by a decimated federal acquisition workforce; a military downsized in the 1990s, but now facing expanded and extended missions; limited deployability of federal civilians; and inadequate operational planning for using and monitoring contractors.

In the current setting of heavy reliance on contractors and clear weaknesses in federal planning and management, the Commission believes the United States has come to over-rely on contractors. This conclusion holds whether judged from the standpoint of preserving core capabilities and institutional memory for government, protecting mission-critical functions, or balancing mission requirements against the ability to manage and oversee contracts—and holds more strongly when all three standpoints are weighed together. Reducing this over-reliance will take resolve, zealous attention, resource investments, and time.

**In the current setting of heavy reliance on contractors and clear weaknesses in federal planning and management, the Commission believes the United States has come to over-rely on contractors.**

Meanwhile, the United States will continue to use contractors to carry out many of its contingency-related requirements. The challenge is to identify and take all reasonable steps to neutralize or mitigate risks—to ensure as far as possible that the positive effects outweigh the negatives.

Both government and contractors bear responsibility for contractor-supported program and project outcomes. Cost-effective outcomes are increasingly important because resources lost to contract waste, fraud, and abuse not only undermine mission outcomes, but are also lost for other purposes.

Figure 2 represents the cost of contract and grant obligations averaged across Congressional districts and U.S. households. Making the best use of these resources will require both the government and contractors to change their ways.



The Commission believes the costs of the reforms recommended in this report will be amply repaid in reduced waste and increased effectiveness of contingency operations.

The following five sections summarize some of the actual or potential effects of reliance on contractors, then offer legislative or policy recommendations to reduce or mitigate the risks of this reliance.

Section I begins the analysis by examining the ways in which relying on contractors has become the “default option” for many functions, including security for convoys and persons, even if it may not be a legitimate or preferable option.

Section II considers the organizational “cultures”—embedded habits, values, expectations, and behaviors—that have perpetuated agencies’ low regard for contingency contracting as a core capability.

Section III explores interagency coordination problems in planning, staffing, managing, and overseeing contingency operations.

Section IV advocates making better use of contingency competition, procurement techniques, and information on contractor performance.

Section V identifies problems with ensuring contingency-contractor accountability. Issues include inadequate policies and controls that govern the suspension and debarment of contractors, and legal jurisdiction over foreign contractors.

Each section contains specific, actionable recommendations that should be implemented in the near term to be most effective in countering the problems identified in the analysis of issues.



**Figure 2: Contract and grant obligations**

Sources: Federal Procurement Data System-Next Generation, [www.USAspending.gov](http://www.USAspending.gov), and [www.census.gov](http://www.census.gov).



*“To embrace the potential for civilian power, we will also draw on the personnel of other federal agencies, when appropriate, before turning to private contractors. Sometimes contracting makes sense and does make us more efficient and flexible. But there are core governmental functions that should always be performed by public servants, not private companies.”*

— Secretary of State Hillary Clinton, briefing on Quadrennial Diplomacy and Development Review, December 15, 2010.



## SECTION I

# Contractors have become the default option

**T**hroughout the years of contingency operations in Iraq and Afghanistan, DoD, State, and USAID have contracted for much of what were once considered core functions, mission-critical work, and organic capabilities. The resulting dependence on contractors was driven mostly by external pressures rather than by deliberate decisions about the best way to accomplish agency objectives.

In fact, the Department of Defense expanded its combat responsibilities to include stabilization and reconstruction tasks in addition to combat operations. At the same time, it decided to maintain as many combat units as possible under its end-strength limits. The State Department will take over expanded missions of intelligence, surveillance, and managing reconnaissance assets as the Defense Department draws down its forces in Iraq. And both State and USAID have been obliged to conduct diplomatic and development missions in environments of active fighting, thereby necessitating new security-related missions, which have historically been under-resourced.

This combination of reduced government staffing and increased government responsibility opened a breach into which contractors have stepped. And a missing element in decisions to contract has been the recognition that increased reliance on contractors increases the burden on government to manage and oversee them, even as the federal acquisition workforce has shrunk.

Agencies tacitly accepted the risks accompanying a loss of organic capability, at least until very recently. Though some organic capability still exists, agencies cannot successfully self-perform for the length of time and with the breadth of responsibility required in Iraq and Afghanistan.

## Reliance is acceptable; over-reliance is not

In numerous interviews with military personnel, diplomats, and contractors in Iraq and Afghanistan, the Commission found that as a result of workforce reductions, assignment of new missions, and time-critical decision making, the use of contractors has become the “default option.” Individual decisions to contract out what were once core agency functions have been made without due consideration of the overall impact on an agency, its mission, or national strategy. Over time, the immediate need that is met by contracting becomes policy. And the use of contractors for a mission-essential need becomes a permanent rather than a temporary solution.

The Department of State’s Quadrennial Diplomacy and Development Review (QDDR), released in December 2010, acknowledged the negative impact and risks of overwhelming reliance on contracting. The Secretary of Defense has similarly recognized that the military has become overly reliant on contractors.<sup>1</sup>

In a contingency, new missions are created and projects envisioned, often with tight deadlines, without assessing the larger impact on the agency, its role, and the personnel available to carry them out. If the agency cannot meet the deadline with its existing workforce, the work is contracted out. One result is that combat units

**Over time, the government’s decisions to use contractors to perform contingency-support services have become a permanent solution rather than a temporary fix.**

now have to coordinate and oversee contractors digging wells, distributing seed, building schools, and performing a number of other functions in support of counter-insurgency operations. Another result is that projects such as the Kabul power plant in Afghanistan can be started for the sake of “showing progress,” but without due regard for whether they are cost-effective or sustainable by the host government.

In some cases, contractors have supplanted government personnel as the resident subject-matter experts. When government agencies lack experienced and qualified workers to provide oversight, the potential for waste, fraud, and abuse in contract performance increases exponentially.

Further complicating this picture is the mission-essential time constraint of “gotta have it now.” Without proper assessment and evaluation of whether the need is to be met organically or contracted out, contracts or task orders may be awarded to those who can respond quickly, thereby limiting competition and increasing costs.

1. Secretary Robert M. Gates, Pentagon news briefing, August 9, 2010.

The Commission is concerned that as the result of short-term rotations of government personnel in Iraq and Afghanistan, familiarity with local practices and institutional memory lies primarily with contractors. When federal personnel rotate in and out of theater too quickly, and when long-serving contractors become the local resident experts, reliance on contractor support becomes a detriment to effective government management and oversight of contractors.

Defense, State, and USAID lack sufficient core expertise and so rely heavily on embedded contractors, sometimes in high-risk areas, to perform mission-critical support. For example, the Commission observed that because of a shortage of engineers trained in general engineering and construction occupations, agencies lack enough qualified experts to oversee base construction, road construction and maintenance, and bridge construction and repair. The government's lack of expertise has led to numerous instances of waste.

An analysis described in State's QDDR identifies work done by contractors as having been closely associated with inherently governmental or mission-critical functions. State is now committing to rebuilding its organic capacity and capability, specifically focusing on its Information Resource Management and International Narcotics and Law Enforcement Affairs bureaus.

Similarly, in his testimony at the Commission's April 2010 hearing, the Deputy Assistant Secretary of the Army (Procurement) said that following a review of contractor positions to identify inherently governmental positions, the Army plans to in-source over 18,000 positions that present unacceptable risks, including about 4,000 acquisition positions. However, citing "constrained resources" in a February 1, 2011, memo, the Secretary of the Army suspended in-sourcing for up to a year.

Accordingly, the Commission recommends that Congress direct agency heads to:

### ► **RECOMMENDATION 1** **Grow agencies' organic capacity**

Require DoD, State, and USAID to:

- Undertake a comprehensive, risk-based, contingency-manpower assessment to determine the organic resources needed to preserve a core level of capability, including consideration of the agencies' ability to manage any contractors they use.
- Submit budget justifications and obtain the hiring authority to accommodate staffing increases.

As the result of short-term rotations of government personnel in Iraq and Afghanistan, familiarity with local practices and institutional memory lies primarily with contractors.

## Contracting out acquisition management and security poses especially serious risks

Contracting out acquisition and security functions introduces especially high risks to a contingency mission. Contractors performing acquisition-management functions may commit the government to a certain course of action and usurp the government's discretion. And private security contractors operating in a contingency environment are likely to be called upon to use their weapons, raising issues of appropriate use of force and accountability.

Even when the risk of turning too much control for acquisition decisions over to contractors is recognized, safeguards have been ineffective or non-existent. On

**Private security contractors operating in a contingency environment are likely to be called upon to use their weapons, raising issues of appropriate use of force and accountability.**

one of the largest contingency-support contracts, LOGCAP IV, the DoD inspector general found that the contracting officer failed to establish appropriate firewalls for a support contractor who was assigned responsibility for developing contract requirements valued at approximately \$1 billion. This contractor had access to proprietary information which it could have potentially used as a competitor

on resulting non-LOGCAP contracts. The contracting officer failed to mitigate the potential organizational conflict of interest, and the contracting officer's representative failed to monitor the support contractor's performance.<sup>2</sup>

The government has defaulted to contractors by hiring contracting personnel to support the \$30 billion Afghan National Security Forces training program, arguably the most important U.S. government program in Afghanistan. In support of a request for 60 contract specialists, the U.S. Army Commander of the NATO Training Mission in Afghanistan stated:

*The responsiveness required to rapidly generate and sustain the Afghan Army and Police is lagging. The shortage of acquisition specialists leads to mistakes and delays, creating vulnerabilities in an already high-risk environment. Given that the magnitude of funding for the Afghan Security Forces Fund continues to increase at the same time that contracting demand from U.S. Forces is increasing, there is an urgent requirement for additional acquisition specialists.<sup>3</sup>*

2. DoD Inspector General Report D-2011-032, "Logistics Civil Augmentation Program Support Contract Needs to Comply with Acquisition Rules," January 7, 2011, 4, 22.

3. Lt. Gen. William B. Caldwell, IV, U.S. Army, Memorandum for Commander, U.S. CENTCOM, "Request for Additional Contracting Specialists," June 27, 2010.



A month later, the Chairman of the Joint Chiefs of Staff advised CENTCOM that no additional positions beyond current levels could be provided, but that DoD would solicit volunteers through the Civilian Expeditionary Workforce. When the volunteer option failed, CENTCOM defaulted to using contractors to help manage the Afghan National Army and Police training contracts. Congress's establishment of a Contingency Contracting Corps in the National Defense Authorization Act for fiscal year 2009 was a partial attempt at addressing the shortage of contract specialists, but several obstacles including insufficient funding and few volunteers have prevented the Corps from becoming a reliable resource in overseas contingencies.

In both Iraq and Afghanistan, lack of planning led to reliance on existing peacetime contracting personnel to volunteer for deployment to high-risk, remote locations. The outcome was inadequate resources to provide contract management and oversight. The Commission firmly believes that contractors need to be managed by military and government civilian personnel. Anything less is unacceptable.

The trend toward contracting out security also reflects the government's human-resource constraints. With Congressionally mandated overall force-strength ceilings, and with limits on military force-strength "in theater," DoD has had to choose between using military personnel or security contractors for force protection. The State Department has limited numbers of diplomatic security agents in its Bureau of Diplomatic Security, while USAID has no organic security capability.



Civilian security contractors at hospital in Basra, Iraq (U.S. Navy photo, March 2009).

In most cases, private security contractors are used not because they are necessarily more effective or efficient than government security personnel, but because agencies have turned to them by default. If these agencies attempted to conduct security functions with organic capability, it would require increasing manpower significantly, redirecting military personnel from other missions, or some combination of these options. Another alternative to using private security contractors would be to increase reliance on host-nation government security forces, but this is not currently a realistic option.

Armed private security contractors generally perform one of three roles: static security for facilities and bases, movement security for convoys, and movement security for personnel. Movement security for personnel carries a number of special risks. By the nature of the work, contractors who perform movement

security in Iraq and Afghanistan are likely to traverse hostile environments and enter into or generate high-risk situations.

A serious concern with relying on armed security contractors is a potential gap in legal accountability. Without certain legal accountability, incidents involving contractors may alienate the host nation and undermine attempts at establishing legitimacy. Section V includes a general discussion of the problem of legal accountability and offers the Commission's recommendations for improvement.

The use of contractors to manage other contractors and the heavy use of armed private security contractors reflect a failure of government to provide for contingency workforce needs. Congress and federal agencies are obligated to structure the U.S. peacetime workforce to deal with projected mobilization and crisis demands. Personnel shortages in a contingency are not sufficient justification for contracting out high-risk functions after a crisis develops. Securing a standing capability to deploy at the start of a contingency would reduce contract waste, fraud, and abuse such as were conspicuous in early operations in Iraq and Afghanistan.

Accordingly, the Commission recommends that Congress:

### ► **RECOMMENDATION 2**

#### **Develop a deployable contingency-acquisition cadre**

- Provide funding and direction for agencies involved in contingency operations to establish a trained, experienced, and deployable cadre for acquisition-support functions. The strategic plan for deploying this cadre should be supported by a back-up capability for making rapid, temporary hires of acquisition professionals for large-scale or long-term contingency operations.

### ► **RECOMMENDATION 3**

#### **Restrict reliance on contractors for security**

- Restrict the reliance on private security contractors by requiring agencies to more broadly provide embedded government personnel responsible for leadership, command and control, and oversight of all security contractors and operations.

This recommendation does not, however, address the Commission's abiding concern that agencies' reliance on contractors relative to government personnel is excessive, notably in the realm of movement security contractors. The Commission's final report will address that concern.



*“Although there is historic precedent for contracted support to our military forces, I am concerned about the risks introduced by our current level of dependency, our future total force mix, and the need to better plan for [operational contract support] in the future. . . . The time is now—while the lessons learned from recent operations are fresh—to institutionalize the changes necessary to influence a cultural shift.”*

— Secretary of Defense Robert M. Gates, memo to secretaries of military departments, January 24, 2011.



## SECTION II

# Agencies do not treat contingency contracting as a core function

**A**n organization's culture embodies the tacit rules, values, expectations, and behaviors that shape how things are actually done. By this standard, the federal government's culture has not adequately valued or promoted contracting as a core function. Agencies' cultures have not yet recognized that success in contingency missions depends in large part on their decisions to use contractors at the right time, in the right place, in the right numbers, and for the right purposes. Nor have agencies made sufficient investments to ensure effective contract-cost management and performance outcomes.

Federal agencies treat contracting as an administrative afterthought. Yet, contracting professionals do not bear the sole responsibility for contingency contracting. Responsibility for using, managing, and evaluating contractors also rests with those who define mission requirements; allocate resources; plan acquisition strategies, policies, and programs; and use the contractors' services. These widely dispersed responsibilities and the potentially high risk to mission success require agencies to treat contracting as a core function. Senior officials therefore should be—but are not—adequately incentivized to manage critical contract-formation processes and performance costs. Treating contracting as a core function will also require organizational culture change.

Changing agencies' cultures to enhance the value of contracting requires policies that are clearly announced, visibly consistent in practice, and sustained over time. If a critical mass of the federal workforce is to shift its attitudes and expectations, and if culture change is to be long-lasting, then top-down pressure must provide incentives to adjust day-to-day business behavior.

The lack of focus at the senior leadership level has hindered comprehensive and effective planning and oversight. DoD has a relatively well-defined and highly

**DoD has not adequately planned for using contractors for contingency support, and State and USAID have largely approached contingency contracting in business-as-usual mode.**

disciplined strategic-planning process, yet continues to struggle with translating policies and plans into execution. State and USAID have largely approached contingency contracting in business-as-usual mode, defaulting to existing acquisition organizations buried deep within the agencies to react to unique aspects of the Iraq and Afghanistan wars.

## **Senior officials do not sufficiently weigh the costs of their acquisition decisions**

The Commission has repeatedly observed that senior officials in the contingency-acquisition process—those with decision-making and acquisition-related responsibilities—do not consider costs as a significant factor in their pre-award planning or post-award performance-management decisions. Officials' failure to consider the costs of requirements results in loss of resources that could be more efficiently and effectively used. Agency heads have not held senior officials accountable for these consequences.

For many senior officials, contractors appear to be a “free” source of labor with no direct impact on their budgets. Funded out of what they perceive to be unconstrained overseas contingency-operation budgets, many senior officials pay scant attention to articulating specific support requirements, negotiating contract terms, and managing contractor performance. A general officer who briefed the Commission during its visit to Kuwait in February 2010 said that if there is no budget restriction and all contract-support requirements are met, then commanders have no incentive to consider costs.

**If there is no budget restriction and all contract-support requirements are met, then commanders have no incentive to consider costs.**

Despite the critical nature of contingency acquisition, this relatively lax approach stands in stark contrast to the way DoD manages its military personnel. Although some improvements have been made,

agency officials still have little incentive to consider costs and therefore may choose to minimize performance risk by consuming and paying more than is reasonable or necessary.



Through its hearings and research, the Commission heard many examples that show agency officials have not consistently displayed a commitment to cost consciousness and effectiveness. The four below illustrate wasteful practices:

- Labor underutilization at Joint Base Balad, Iraq, on the LOGCAP III Corps Logistics Support Services task order for vehicle maintenance resulted in as much as 92 percent of \$5 million wasted on services that were not needed.<sup>1</sup> This situation occurred despite the fact that U.S. Army regulations make unit commanders responsible for managing contract manpower and its utilization for maintenance services.<sup>2</sup>
- Reducing the requirements for contract support has not received the same attention as redeploying equipment and military personnel associated with the drawdown in Iraq. As a result, the government failed to realize significant cost savings that could have amounted to as much as \$193 million.
- Defense officials consider the military's minor-construction projects to be "low risk" because of their low volume and impact during peacetime; consequently, they receive relatively little attention. Yet in less than a year's time during contingency operations in Afghanistan, the Army and the Air Force approved *thousands* of new minor-construction projects worth approximately \$1 billion in total. No single senior official has monitored the growing expenditures, strategically managed requirements, or implemented quality-assurance processes. Despite the transformation of low-risk projects into a high-volume, high-impact program, no system has been implemented to identify, analyze, or control the minor-construction surge.
- USAID's Kabul power-plant project in Afghanistan, with cost overruns of \$40 million, is just one of many high-visibility projects where inattention to the cost of requirements at the beginning of a project had predictably wasteful results.

In light of agencies' repeated failures to consider the cost of their decisions, policies and practices need revision to ensure that senior officials at DoD, State, and USAID consider the costs of their contingency-acquisition decisions.

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1. Department of Defense Inspector General, Report D-2010-046, "Contracting for Tactical Vehicle Field Maintenance at Joint Base Balad, Iraq," March 3, 2010, 3.

2. Army Regulation 750-1, Army Materiel Maintenance Policy, September 20, 2007.



Accordingly, the Commission recommends that Congress direct agency heads to:

#### ► **RECOMMENDATION 4**

### **Designate officials with responsibility for cost consciousness**

Revise management directives, instructions, and other policies as necessary to:

- Ensure that senior officials are specifically designated as being accountable for contract-cost consciousness, and develop metrics to facilitate assessment of contract outcomes.
- Establish criteria allowing promotion boards and selection panels to evaluate and reward officials for contract cost consciousness.

#### ► **RECOMMENDATION 5**

### **Measure senior military and civilian officials' efforts to manage contractors and control costs**

Revise senior officials' personnel-evaluation reports to:

- Affirmatively state the responsibility to avoid excess cost, accurately establish contingency-contract support requirements, manage contractor performance, and revalidate requirements at appropriate stages of the acquisition process.
- Include an acquisition-management category that is separate from any existing category to measure officials' demonstrated commitment to contractor management and oversight, and to acquisition-cost control.

## **Agencies do not adequately plan for operational contract support**

Contractor employees—U.S. citizens and foreign nationals—at their peak represented nearly half of the total force deployed to Iraq and Afghanistan. Even after nine years, agencies have failed to fully embrace contractors in their strategic-planning processes. The sheer magnitude of contractors' involvement demands adequate planning. In a January 24, 2011, memorandum, the Secretary of Defense directed the department to implement changes that parallel the findings and recommendations in this section—changes that the Commission believes should apply to *all* agencies involved in contingency operations.

Defense policy for more than two decades has recognized that contractors—along with military reservists, federal civilians, and host-nation support personnel—are

part of the “total force” for contingency operations. But the declared total-force policy that includes contractors is at odds with agencies’ failure to plan for their reliance on contractors. During Commission discussions with the Defense Assistant Deputy Undersecretary (Program Support), he suggested the need for joint planners to include contractors in the military’s time-phased force-deployment requirements. DoD’s failure to meaningfully emphasize operational contract support in the 2010 Quadrennial Defense Review (QDR) was a lost opportunity to signal its importance for future strategic planning and execution.



U.S. sailors and Afghan contractors building helicopter landing pads at base in Afghanistan (U.S. Navy Photo, Nov. 2010).

Current law requires the military to better incorporate contractors and contract operations into mission-rehearsal exercises and to train personnel who are outside the acquisition workforce, but who are expected to have acquisition responsibility.<sup>3</sup> DoD has initiated educational changes to comply with the mandate, but has yet to take the steps required to institutionalize the new learning objectives. When contractors play their given roles during rehearsal exercises, government officials and contractors are better prepared to deploy and operate as a cohesive “total force” during contingency operations. Yet officials remain reluctant to bring actual support contractors into the exercises for a number of reasons. One reason is the potential for giving a competitive advantage for future contingency-contract competitions to companies that have previously participated in exercises.

Operational contract-support courses are currently being provided to non-acquisition military and civilian personnel. However, these courses have not been sufficiently recognized in agencies’ professional-education policies. Policies and instructions are the basis for accreditation and resource allocation, so once a course is officially adopted, it will be less likely to be removed as future senior leaders’ priorities shift.

Despite its importance, preparedness to manage the operational contract-support function is not measured as an element of agencies’ readiness or performance reporting. Instead, DoD currently has an extensive military readiness-reporting system

**Despite its importance to accomplishing the contingency mission, preparedness to manage the operational contract-support function is not measured as an element of agencies’ readiness or performance reporting.**

3. Section 849, National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181.

in place and submits summary quarterly readiness reports to Congress. Statutorily mandated areas for reporting military-unit readiness include training, funding, and recruit quality, and planned remedial actions are required for each identified deficiency.<sup>4</sup> Similarly, all agencies are required to report their performance to Congress quarterly in compliance with the Government Performance and Results Modernization Act.

Accordingly, the Commission recommends Congress direct DoD, State, and USAID to:

### ► **RECOMMENDATION 6**

#### **Integrate operational contract support into plans, education, and exercises**

Revise agency strategic and operational plans and policies to:

- Identify in strategic documents (including the QDR and QDDR) and specify in operational plans those missions and tasks that will be assigned to contractors, and take steps to ensure effective operational contract-support planning, deployment, and management.
- Revise policies for professional education by including operational contract support in learning objectives.
- Include contractors in mission-rehearsal exercises *in the roles they would perform during contingency operations*, after properly mitigating the competitive advantage that naturally attends an incumbent contractor's performance.

The Commission further recommends Congress revise relevant statutes to:

### ► **RECOMMENDATION 7**

#### **Include operational contract support in readiness and performance reporting**

Revise statutory readiness- and performance-reporting requirements to:

- Mandate that appropriate metrics be included in readiness and performance reports within a year. These metrics should effectively assess DoD, State, and USAID preparedness for contingency contracting to include: development of contractor-support plans, staffing the acquisition function, and management of contractor performance.

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4. 10 U.S.C. 482.

## Agencies are not organized to support contingency contracting

Contractors represent almost half the workforce the United States has employed to achieve its objectives in the Iraq and Afghanistan contingency operations. Despite the extent of this reliance, and despite the additional stress this reliance has placed on the contingency-contracting function, agencies have in too many cases continued to operate using their existing peacetime acquisition processes, organizational structures, and resources.

Supplementing the contingency-contracting function with ad hoc solutions has proven to be ineffective. The Iraq and Afghanistan contingencies have brought many problems with contractors into sharp relief. Solutions demand concerted and continuing leadership attention to ensure that money spent in the future will bring better results. Despite contractors' constituting almost half the total force deployed in Iraq and Afghanistan, DoD contingency-contracting matters have been mixed together with the J-4 logistics directorate and managed by a colonel. At State and USAID, the functions have been relegated to the office-director level.

Without high-level attention at DoD, State, and USAID, management shortfalls will persist in three areas: policy and doctrine, resource management, and workforce planning. Actions at agencies' headquarters and in Congress are required to launch the changes needed to improve overseas-contingency operations.

A central focus is required because:

- Critical questions of when and how contractors should be part of contingency operations are policy and doctrinal matters that cut across almost all agency missions. As recently as 2009, the decision to deploy additional military personnel to Afghanistan was made with little debate on the attendant contractor-support requirements. These policy questions must be answered well in advance of deployment to foreign countries to facilitate effective contingency operations.
- Contract terms and conditions are much more advantageous for the government when negotiated with full knowledge of the industrial base and of potential requirements. Nonetheless, agencies continue to struggle to meet contract-support requirements to house, feed, and transport personnel in Afghanistan following the recent surge. Advance acquisition planning and

**Supplementing the contingency-contracting function with ad hoc solutions has proven to be ineffective. Solutions demand concerted and continuing leadership attention to ensure that money spent in the future will bring better results.**

execution with an agency-wide focus must be conducted to allow efficient contingency-contracting practices.

- An agency-wide perspective is needed to answer questions of how to size, hire, train, and pay for a workforce that can effectively manage and oversee contractor operations across all agency departments and missions. DoD, State, and USAID simply do not have enough experienced acquisition personnel available to manage the funds and workload brought about by such significant contingency-contracting demands. A strategic approach to human capital and resource allocation must be employed to ensure that contingency-support services are available when needed to accomplish critical goals.

Similar contingency-contracting challenges exist in all agencies involved in contingency operations, yet tools and techniques necessary for effective knowledge management, conflict resolution, and resource reallocation are not in place after years of support to the missions in Iraq and Afghanistan.

After shifting acquisition strategies and resolving contractor disputes, DoD finally awarded a contract for training the Afghan National Army and Police in December 2010 to the incumbent contractor. Yet the government's source-selection decision still remains under protest by disappointed competitors. An organizational alignment with focused senior leaders is necessary to help derive effective acquisition solutions and institutionalize lessons for future contingencies.

Time and again, the Commission has found instances where organizational failure to plan has resulted in waste. A particularly glaring example where an operational requirement has not been aligned with the organization possessing the best institutional knowledge is the process used to manage the camps, bases, and posts in Iraq and Afghanistan. Military commanders of combat units that rotate into Iraq and Afghanistan appoint officers to become "camp mayors" responsible for managing bases and the base-support contractors.

Camp mayors often have limited experience in fulfilling their installation and contractor-management functions, yet an organization with the necessary expertise already exists. Despite having developed this expertise through years



Afghan police officer and U.S. soldiers with village elders, Afghanistan (U.S. Army photo, Dec. 2010).

of experience in managing traditional military bases around the world, the Army's Installation Management Command plays no role in overseas contingency operations.

Despite more than \$177 billion at stake, agencies have not paid proper attention to contracting or provided focused guidance throughout the planning, execution, and oversight phases of the acquisition process. Some leaders have determinedly responded to this enormous operational contract-support requirement; others have not always recognized a need to respond. Given the extent of waste, the cost savings realized by adding proper contingency-acquisition leadership and organizational alignment would be substantial.

Accordingly, the Commission recommends Congress direct agency heads and other officials to:

**► RECOMMENDATION 8**

**Establish a contingency-contracting directorate in the Office of the Joint Chiefs of Staff**

Create a new contingency-contracting directorate to:

- Elevate the critical role of contingency contracting by establishing a new J-10 directorate, managed by a general or flag officer with the contracting expertise and training necessary to promote better visibility, planning, and coordination of operational contractor-support issues.

**► RECOMMENDATION 9**

**Establish Offices of Contingency Contracting at Defense, State, and USAID**

Establish offices of contingency contracting and appoint senior-level officials to facilitate planning, preparedness, and resource allocation, and provide a focal point for interagency communication and coordination for contingency-contracting operations to:

- Elevate the organizational placement of the existing deputy assistant secretary of defense for program support and rename the office to become the office of contingency contracting. The new office should be led by an assistant secretary of defense.
- Establish positions in State and USAID comparably placed to the assistant secretary of defense to lead their new offices of contingency contracting.



► **RECOMMENDATION 10**

**Direct the Army's Installation Management Command to manage bases and base-support contractors in contingencies**

Direct the Army Installation Management Command to:

- Assume responsibility as the overseas executive agent for managing major contingency-operation facilities and the contractors that support them. Congress should provide the Installation Management Command with adequate funds and the resources necessary to assume the responsibility for improving process accountability, ownership, and control over the contingency-installation management function.



Training exercise at Army Command and General Staff College (Army photo, 2010).





*“We don’t have enough trained folks within the federal establishment to provide the oversight of the very contractors that we are bringing aboard.”*

— Maj. Gen. Arnold Fields (USMC, Ret.), Special Inspector General for Afghanistan Reconstruction, Commission hearing, “Recurring Problems in Afghan Construction,” January 24, 2011.

*“Uninterrupted oversight by inspectors general and the Congress—accompanied by adequately staffed quality-control and quality-assurance programs—is essential to ensuring the efficient and effective use of taxpayer dollars.”*

— Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, written testimony for the Commission hearing, “Lessons from the Inspectors General: Improving Wartime Contracting,” February 2, 2009.



## SECTION III

# Interagency organizational structures do not support contingency operations

Current contingency operations blur traditional agency roles and responsibilities. Tensions among defense, diplomacy, and development missions have heightened during operations in Iraq and Afghanistan. Agencies' efforts to integrate operations in the field are not always promoted or supported by headquarters' policies and decisions. And when integrated direction does emerge, it is not always implemented in the field. Different field-based structures impede integrated contractor use and management: DoD is organized by regional commands and State is organized by country, while USAID's structure is heavily decentralized.

Push and pull across agency lines has resulted in overlapping and shifting missions, conflicting objectives, and recurring debates about which agency should receive funding for what purposes. The Commission found that planning for transitioning vital functions from DoD to State in 2010 was inadequate for effective coordination of billions of dollars in new contracting, and risked both financial waste and undermining U.S. policy objectives.<sup>1</sup> In the Commission's third special report, we recommended that Congress immediately provide additional resources to State to support its increased contracting costs and personnel needs.

The Defense Department still contracts for many development-related activities that were previously the domain of USAID, but under much shorter time frames, and State has assumed responsibility for activities that were once performed under DoD contracts. Because several agencies share responsibility for reconstruction, stabilization, and security, funding for these programs falls under numerous Congressional committees and subcommittees. Noting the

1. Commission on Wartime Contracting, Special Report 3, "Iraq Transition Planning: Better planning for Defense-to-State transition in Iraq needed to avoid mistakes and waste," July 12, 2010.

problems with this cumbersome system, the Secretary of Defense and others have argued for a new model of shared responsibility and pooled resources for cross-cutting, national-security challenges.

Although better strategic and management attention is key, oversight is also essential in contingency operations when large sums of money flow into theater, especially in the early phases, when urgency dominates and attention to administrative controls suffers. Organizational changes to address these problems are necessary to ensure a unity of effort in support of contingency operations.

## Executive Branch lacks organizational alignment to conduct contingency operations

Contingency operations necessarily involve multiple federal departments and agencies. Although Defense, State, and USAID are the major participants supporting contingency operations in Iraq and Afghanistan, at least 14 others also obligate funds through contracts and grants. Table 2 shows the departments and agencies that have supported contingency operations in Iraq and Afghanistan.

**Table 2: Federal agencies and departments supporting contingency operations in Iraq and Afghanistan through contracts and grants**  
(listed in order of transaction volume)

1. Department of Defense	7. Department of the Interior	13. Peace Corps
2. Department of State	8. Department of Homeland Security	14. Social Security Administration
3. U.S. Agency for International Development	9. Department of the Treasury	15. Department of Commerce
4. Department of Justice	10. Department of Agriculture	16. Department of Veterans Affairs
5. Department of Health and Human Services	11. Department of Transportation	17. Environmental Protection Agency
6. General Services Administration	12. Broadcasting Board of Governors	

Source: [www.USAspending.gov](http://www.USAspending.gov), last updated February 15, 2011.

Despite the number of participants, there is no one senior official in the Executive Branch who can provide overall visibility, strategic direction, mission alignment, and resource allocation. Nor is there a single office specifically responsible for managing contingency-operations budgets. The consequences are illustrated by the following:

- Training of host-country security forces has shifted between DoD and State without a coherent strategy, thereby wasting time and money and losing valuable lessons. Despite the critical importance of training the Afghan National Army and Police in the United States' counter-insurgency strategy, the program lingered for months as leadership responsibility and resources shifted from State to DoD.
- DoD, State, and USAID often have different priorities for development and reconstruction projects that may result in duplication of effort and a waste of taxpayer funds.
- DoD has used the Commander's Emergency Response Program for large-scale infrastructure projects without sufficient oversight and management controls—a departure from the initial intent to provide commanders with flexible-use funds in smaller amounts for immediate local needs.

**There is no one senior official in the Executive Branch who can provide overall visibility, strategic direction, mission alignment, and resource allocation. Nor is there a single office specifically responsible for managing contingency-operations budgets.**

Marines building a bridge, Helmand province, Afghanistan (U.S. Marine Corps photo, December 2010).



- Civilian development efforts have been unsuccessfully attempted in insecure areas and combat zones, resulting in wasted effort and taxpayer dollars.
- Five inspectors general are responsible for audits, inspections, evaluations, and investigations involving operations in Iraq and Afghanistan. None has authority to look at all aspects of contingency operations, and the coordination mechanism set up by Congress has been ineffective.
- The Special Inspectors General for Iraq and Afghanistan Reconstruction, unlike the other inspectors general, have an interagency mandate. They have helped focus oversight attention and resources on contingency-reconstruction problems. But their mandates do not include other important areas such as logistics or language services. Moreover, these offices did not exist at the beginning of the wars, were slow to get started, experienced problems in recruiting trained personnel with experience in a war zone, and are programmed to close in several years.

Accordingly, the Commission recommends that the President and Congress, respectively, direct agencies to:

### ► **RECOMMENDATION 11**

#### **Establish a new, dual-hatted position at OMB and the NSC to provide oversight and strategic direction for contingency operations**

Create positions in both the Office of Management and Budget (OMB) and the National Security Council (NSC) for a single dual-hatted official to:

- Ensure that each relevant agency has the necessary financial resources and policy oversight, as appropriate, to carry out its contingency-related mission, and that agencies' budgets are complementary rather than duplicative or conflicting. In OMB, this official should be a deputy director and thus a Presidential appointee confirmed by the Senate.
- Oversee and coordinate interagency contingency operations, including contracting-related matters. At the NSC, this official should be a deputy national security adviser and deputy assistant to the President.



## ► RECOMMENDATION 12

### Create a permanent office of inspector general for contingency operations

Establish and fund a permanent inspector general for contingency operations to:

- Operate with a small, permanent staff in collaboration with agency inspectors general, regularly assess the adequacy of agency planning for contingencies, and be ready to expand and deploy at the outset of a new contingency.
- Address all functions and aspects of contingencies across all agencies.

### Agencies lack standardized training and certification requirements for the contingency acquisition workforce

The acquisition workforce that deploys in theater is a critical part of the system that helps manage and oversee the billions of dollars spent in a contingency. There are no standardized certification requirements and training for the contingency acquisition workforce. Despite a critical need for more contracting officers in theater, State's contracting officers are not certified or trained to work in a DoD contracting office.

Although the Defense Acquisition University recently developed some contingency-related contracting courses, no mandatory core of contingency courses exists for contracting officers, program managers, facility engineers, property managers, or financial managers that is consistent across all agencies.

Multiple standards for training, education, and credentialing reduce agencies' flexibility in using the contingency acquisition workforce. Members of the acquisition workforce are required to meet a variety of training and experience requirements established by the Defense Acquisition Workforce Improvement Act and its civilian-agency counterpart, the Federal Acquisition Certification-Contracting and Program/Project Management framework. However, training and experience with contingency acquisition is not a requirement for initial certification.

The inconsistencies among requirements create duplicative training efforts, and increase agencies' tendency to poach better-trained contracting officers and

**For acquisition personnel to work together across agency lines during contingencies, they need uniform certification requirements based on standardized training.**



other acquisition personnel from each other. For acquisition personnel to work together across agency lines during contingencies, they need uniform certification requirements based on standardized training.

Accordingly, the Commission recommends that Congress direct agency heads to:

► **RECOMMENDATION 13**

**Establish interagency certification requirements and training curricula for contingency acquisition personnel**

Standardize certification requirements and training curricula:

- The Office of Federal Procurement Policy and the Office of Personnel Management should develop standardized certification requirements and training curricula for contingency-acquisition personnel. These new curricula would consolidate the best elements of the training provided by the Defense Acquisition University, Federal Acquisition Institute, Federal Emergency Management Agency Academy, Naval Postgraduate School Monterey, professional organizations like the National Contract Management Association, and industry.

**Responsibility for contingency operations is divided among many Congressional players**

The gaps in Congress’s whole-of-government approach mirror those in the Executive Branch. No single Congressional organization currently exists to oversee activities and rationalize resources among the agencies involved in current or future contingency operations.

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Repeated calls from the Secretary of Defense in recent years to reallocate resources and capabilities to civilian agencies have gone unheeded. If the Executive agencies are to eliminate organizational “stovepipes,” work together toward a common collective end, and pursue the recommendations made in this report, they must have the support of Congress.

Accordingly, the Commission recommends that Congress:

► **RECOMMENDATION 14**

**Create a committee to integrate the individual authorities, resources, and oversight of contingency operations**

Take the necessary steps to:

- Create a committee to support the current contingencies, and establish a committee at the outset of future contingencies to provide oversight and clear authorities, and to allocate resources across agencies that support contingency operations.

*“Central to all of our efforts is an emphasis on accountability, including more rigorous monitoring and evaluation. . . . Through enhanced monitoring and evaluation, we seek to identify what works, what doesn’t, and why, and implement changes in our programs to optimize against that information.”*

— Dr. Rajiv Shah, USAID Administrator, Testimony before the Appropriations Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives, July 28, 2010.



## SECTION IV

# Policies and practices hamper contingency competition

**D**espite a more mature contracting environment in Iraq and Afghanistan today than in previous years, federal agencies such as DoD, State, and USAID still do not consistently emphasize competitive contracting practices. In fact, some of the agencies' procurement policies and acquisition strategies have hampered competition and favored incumbent contractors, regardless of the incumbents' past performance.

Agencies have repeatedly:

- Awarded contracts lasting five years or more
- Extended contracts and task orders past their specified expiration dates
- Favored issuing task orders on existing omnibus contracts over creating smaller, more targeted contract vehicles
- Awarded task orders against contracts with scopes of work bearing no obvious relation to current requirements
- Added extensive new work to existing contracts
- Used cost-reimbursable contract types even though simpler, fixed-price contracts would expand the competitive pool
- Failed to record incumbent contractors' performance assessments in the federal past-performance database

In today's contingency settings, senior officials too often have difficulty balancing mission requirements with financial-stewardship and competitive-procurement goals. In view of the unprecedented costs of war, reinvigorating competition as a foundation of contracting is a necessary precursor to responsible tax-dollar stewardship.

**In view of the unprecedented costs of war, reinvigorating competition as a foundation of contracting is a necessary precursor to responsible tax-dollar stewardship.**

## **Competition is not emphasized or measured in contingencies**

When contingency operations begin, federal agencies often rely on pre-existing task-order contracts and non-competitive awards to

meet urgent, mission-critical needs. When contingency operations in Iraq and Afghanistan began, the U.S. Army used the existing, cost-reimbursable LOGCAP contract for support services.

As contingency operations have stabilized, federal agencies have not adequately shifted their contingency-contracting approaches to introduce competition into many long-term support contracts.

The contracting flexibilities allowed by law, including exemptions from most competition requirements, are useful at the onset of a contingency. However, as the contingency-contracting environment matures, agencies should introduce more competitive practices. Competitive approaches would include looking for opportunities to transition to fixed-price contract types that will broaden the pool of qualified contractors and ensure more equitably balanced risks.



Provincial Reconstruction Team at erosion-control project near Qalat, Afghanistan (U.S. Air Force photo, Dec. 2010).

The Commission has seen evidence that real competition is an effective government tool to obtain the best value for taxpayers' money and to encourage contractor productivity and innovation:

- The U.S. Air Force broke out major tasks from the cost-type LOGCAP contract for support to Joint Base Balad, Iraq, and in mid-2010 competed the requirements on a fixed-price basis under the Air Force logistics support contract, AFCAP. The Air Force estimated it saved almost \$50 million with the improved contractor performance the competition inspired.

- In May 2010, the U.S. Army's lead cost analyst at the Rock Island Contracting Command told the Commission that an estimated 8.1 percent of total contract-support costs were saved by transitioning from the single-vendor LOGCAP III contract to the multi-vendor LOGCAP IV contract.

Taking note of potential savings and performance improvements, the Under Secretary of Defense for Acquisition, Technology and Logistics directed in September 2010 that acquisition professionals implement immediate reforms. The Under Secretary's memo mandated changes in DoD's competitive-procurement process to reduce the incidence and impact of ineffective, one-offer competitions. Other agencies lack a similar emphasis on competition policy.

Agencies' competition advocates have responsibility for monitoring and reporting aggregate rates of competitive procurements. Yet current reporting requirements do not carve out separate categories for contingency construction, services, or supplies. Combining these categories for measurement purposes misstates the true extent of competition and prevents officials from focusing on those areas that need improvement.

Measuring competition is especially important in the current contingencies so as to identify opportunities to support the strategic objective of awarding work to Afghan and Iraqi companies. The CENTCOM Contracting Command has closely monitored its competition level on contingency contracts and adjusted internal policies to increase participation by qualified host-nation contractors whenever possible. In contrast, stateside contracting activities are not required to separately monitor contingency-competition levels, even though these offices obligate billions of contingency dollars per year on contracts.

**Real competition is an effective government tool to obtain the best value for taxpayers' money and to encourage contractor productivity and innovation.**



Contractor serving lunch at Camp Leatherneck, Afghanistan (U.S. Marine Corps photo, April 2010).



Accordingly, the Commission recommends that Congress direct agency heads to:

### ► **RECOMMENDATION 15**

#### **Require competition reporting and goals for contingency contracts**

Require agency competition advocates to:

- Immediately establish separate contingency-contract and task-order categories for services, construction, and supplies for Iraq, Afghanistan, and other ongoing contingencies. Competition advocates should report competition levels and establish separate goals for each of these contracting categories. For all future contingency operations, such actions should be taken no later than two years from the start of such contingencies, and sooner if possible.

### ► **RECOMMENDATION 16**

#### **Break out and compete major subcontract requirements from omnibus support contracts**

Require, for LOGCAP and similar omnibus contracts, that agency competition advocates:

- Determine and document the feasibility of breaking out the major subcontract requirements. Considerations should include whether local or other qualified providers are available, whether the current contract supports operational strategy, and whether cost control on the current contract is successful. This determination should lead to new fixed-price competitions for the major subcontract requirements, negotiations with the incumbent to transition from cost-reimbursement to fixed-price payment terms, or continuation of the existing contract. All exercised options must meet this competition-advocate review requirement.



Army officer with Afghan contractors (U.S. Army photo, July 2010).

### ► **RECOMMENDATION 17**

#### **Limit contingency task-order performance periods**

Revise procurement policy and procedures to:

- Limit the performance periods of contingency-support contracts to one base year plus four one-year option periods, and limit contingency task orders to one base year plus two one-year option periods. Only contract and task-order options exercised within these contingency performance-period limits should be reported as competitive.



### ► **RECOMMENDATION 18** **Reduce one-offer competitions**

Quantify the instances of one-offer competitions, mitigate their consequences, and establish procedures designed to reduce their occurrence:

- Publicize the government's requirement for an additional 30 days if a solicitation attracts only one acceptable offer.
- Determine price reasonableness by conducting negotiations with the single offeror if the additional 30-day publication period fails to generate additional acceptable offers.
- Report as competitive only those contract awards that meet the previous two criteria.

### ► **RECOMMENDATION 19** **Expand competition when only one task-order offer is received**

Conduct a new acquisition when only one acceptable task-order offer is received:

- Require a new acquisition when task-order solicitations in contingencies result in only one offer deemed acceptable. This mandate would apply to task orders valued over \$100 million.

## **Agencies do not effectively use past-performance data in contingencies**

Agencies can improve their ability to conduct meaningful contract competitions if they consistently record contractors' performance-evaluation information in the federal past-performance database and then use the information when making source-selection decisions.

Accurate, complete, and timely assessments identify:

- Poor-performing contractors who cannot be relied upon to effectively support contingency operations.
- High-performing contractors with the expertise and experience necessary to support contingency operations.
- Specific areas other than a contractor's technical performance that might pose a high risk for future contract performance, such as a contractor's lack of cost control under a cost-reimbursable contract.

Agencies concede that recording contractor-performance assessments into official federal databases is not given priority in the procurement process. The Commission has confirmed through interviews, database reviews, and evaluations of audit reports

that the required performance assessments are not completed and that contractors' performance in a contingency is not adequately shared across agencies.

**Agencies' failure to record contractor-performance assessments is costly. It increases the risk of agencies' awarding contracts to habitual poor performers, and limits the agencies' ability to expand the competitive pool of contractors.**

A recent review by the Office of Federal Procurement Policy (OFPP) noted that sufficient past-performance assessments have been completed for only a small percentage of contracts and recommended that agencies give high-risk contracts priority. The Commission believes that all contingency contracts deserve priority treatment due to their high risk to critical services and substantial resources.

Agencies' failure to record contractor-performance assessments is costly. The lack of visibility into contractor performance increases the risk of agencies'

awarding contracts to habitual poor performers, and limits the agencies' ability to expand the competitive pool of contractors. By not emphasizing the requirement to record performance assessments, senior leaders are implicitly encouraging contracting officers to view recording contractor-performance assessments as a waste of time.

Contracting officers report three primary barriers or limitations to using the federal past-performance system:

- Internet bandwidth constraints in remote overseas environments make connecting to the Web-based database difficult and time-consuming.
- Contracting officers generally delegate the responsibility to assess and document contractor performance to contracting officer's representatives (CORs). But this delegation is problematic given the high turnover rates among CORs and the consequent lack of familiarity with contractors' past performance.
- Federal past-performance policy provides for a lengthy comment, rebuttal, and review process, in which government officials and contractors record their database input sequentially. To avoid the delays these policies and procedures can create, government officials sometimes make an unduly generous assessment—or no assessment at all—of the true quality of contractors' performance.

Making effective use of the government-wide database would allow information to be shared among agencies, a solution that would support the multi-agency nature of the mission in Iraq and Afghanistan. Recording contractor-performance assessments does not guarantee that poor-performing contractors will never be awarded more contracts. But recording assessments will enhance procurement transparency and improve government officials' ability to make well-informed decisions when selecting among contract competitors.

Accordingly, the Commission recommends that Congress direct agency heads to:

► **RECOMMENDATION 20**

**Allow contractors to respond to, but not appeal, agency performance assessments**

Revise policy and procedures for contingency-related contracts to:

- Exempt agencies from the policy that provides for contractor disagreements on performance assessments to be elevated to a level above the contracting officer for review.
- Allow government officials who enter performance assessments in the federal database to release that information for other officials' use even if the contractor has not yet provided comments or rebutting statements.

► **RECOMMENDATION 21**

**Align past-performance assessments with contractor proposals**

Revise agency policies and procedures for contingency-related contracts to:

- Limit contractors' proposed federal past-performance references to only those contracts that have been recorded in the government's past-performance database.

► **RECOMMENDATION 22**

**Require agencies to certify use of the past-performance database**

Certify the use of the past-performance database semi-annually to:

- Verify that contracting officers have recorded contractor-performance assessments in the federal past-performance database for any contingency-support contract that requires assessment under agency procedures.
- Certify that information in the database has been used, as required, to make source-selection decisions and to determine whether to exercise option periods.

***“Contracting has to be ‘Commander’s business.’”***

— Gen. David H. Petraeus, U.S. Army, Commander, NATO International Security Assistance Force , September 8, 2010.

***“We can’t afford to spend a single dollar that we don’t have to . . . because it takes away from resources to do other things. And to spend it on contractors who aren’t doing their jobs is not just waste, fraud, and abuse, it impacts our capabilities.”***

— Secretary of Defense Robert M. Gates, testimony before the Senate Appropriations Committee, April 30, 2008.



## SECTION V

# Enforcement policies and controls fail to ensure contractor accountability

**G**overnment oversight of contractors is difficult under the best of circumstances. In a contingency operation, mission risks and cost risks are particularly high. Because fewer management controls are in place at the beginning of operations, enforcement mechanisms must be available and active to deter inappropriate behavior and bolster accountability.

The challenge of fostering a culture of contractor accountability is especially difficult in war zones. Limitations on the government's ability to protect taxpayer interests during current operations in Iraq and Afghanistan include:

- Impediments to the use of suspensions and debarments
- Difficulty in holding foreign contractors accountable through U.S. courts
- Inability of civilian inspectors general under most circumstances to subpoena the attendance and testimony of witnesses
- Lack of a permanent interagency body to coordinate investigations of international-contract corruption at the outset of a contingency

In addition, taxpayer dollars are at risk when the government contracts with contractors that have questionable business practices, employ inadequate business systems, or fail to provide access to internal information that is important for efficient audit and oversight. Contractor-accountability improvements are needed to reduce contract waste, fraud, and abuse now and in future contingencies.

## Agencies do not use the suspension-and-debarment processes to full effect

Suspension and debarment can be powerful tools to protect the government's interest in doing business only with contractors that are 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. Unless otherwise permitted, contractors are prevented from doing business throughout the entire federal government, and are excluded for up to 18 months if suspended and generally for three years or less if debarred.

Agencies have made use of these tools. The U.S. Army recently suspended two contractors following allegations that the companies failed to pay their Afghan subcontractors—a failure that undermines the government's counter-insurgency strategy.

However, agencies sometimes do not pursue suspensions or debarments in a contingency environment, preferring instead to enter into administrative

**Suspension and debarment can be powerful tools to protect the government's interest in doing business only with contractors that are capable of performing their contractual obligations and maintaining acceptable standards of behavior.**

agreements with the problematic contractor. When agencies fail to take action to bar contractors from participation in the federal market despite chronic misconduct, criminal behavior, or repeated poor performance, taxpayer dollars can be wasted and mission objectives compromised—while the contractor is left with no incentive to improve.

Agency officials cite the complexity of suspension-and-debarment procedures as a reason for not using the tools as often as

they could. For example, in some circumstances regulations provide contractors proposed for suspension or debarment with the opportunity to request a hearing before the agency taking the action. The Commission found that it is extremely difficult, if not impossible, to locate and present witnesses and necessary documentary evidence in support of a fact-based suspension or debarment in a contingency environment. This difficulty places a heightened burden on the agency when contractors seek to dispute particular facts by appearing in person.

Deferred-prosecution and non-prosecution agreements linked to administrative agreements also undermine the effectiveness of the suspension-and-debarment processes. Contractors accused of fraud or other criminal acts may enter into such



agreements with the Department of Justice. As a part of these agreements, the contractors often concede to a statement of facts and admit to certain misconduct. However, these agreements often allow contractors to avoid prosecution, and contractors may make the admissions only with the caveat that they cannot be used in a future suspension or debarment proceeding. Such arrangements allow contractors with a history of misconduct to remain eligible for future government contracts.



USAID representatives at hospital construction site, Afghanistan (U.S. Air Force photo, Nov. 2010).

Accordingly, the Commission recommends that Congress direct agency heads to:

► **RECOMMENDATION 23**

**Require a written rationale for not pursuing a proposed suspension or debarment**

Require suspension-and-debarment officials to:

- Document their rationale for not taking action against a contractor officially recommended for suspension or debarment. This written justification should be approved by the agency head, placed in the contract file, and immediately included in the government-wide past-performance data-collection system.

► **RECOMMENDATION 24**

**Increase use of suspensions and debarments**

Mandate automatic suspensions of indicted contractors and prevent contractors from avoiding suspension and debarment:

- Make suspension actions based on contract-related indictments mandatory for a predetermined time, not subject to discretion of the suspension-and-debarment official.
- Prevent deferred-prosecution and non-prosecution agreements between the Department of Justice and a contractor from being linked to administrative agreements between an agency and a contractor in connection with a suspension or debarment action.



### ► RECOMMENDATION 25

## Revise regulations to lower procedural barriers to contingency suspensions and debarments

Require regulations and policies be revised to:

- Exempt agencies from the requirement to provide contractors with the opportunity for a hearing prior to a suspension or debarment action not based upon a conviction, civil judgment, or indictment, and when there is a dispute over material facts. Agencies should instead be able to make decisions based on the documentary record alone. This provision should apply only to contracts performed predominantly overseas in support of overseas contingency operations.

## The United States lacks sufficient jurisdiction over certain contractors and subcontractors

The Commission has determined that claims against foreign prime contractors and subcontractors have gone unaddressed because the U.S. courts lack personal, as distinct from subject-matter, jurisdiction over the foreign defendants. Without establishing personal jurisdiction, attempts by the United States and other parties to recoup damages for civil contract claims and for private parties to recover on tort claims arising out of conduct related to government contracts are lengthy, protracted, and expensive for all parties involved. Foreign courts may be unavailable, unreliable, inconvenient, or otherwise unable to hear these claims.

United States criminal jurisdiction over non-DoD contractors and subcontractors operating overseas also remains uncertain. The United States clearly has criminal

**Attempts by the United States and other parties to recoup damages for civil contract and tort claims are lengthy, protracted, and expensive because U.S. courts lack personal jurisdiction over foreign contractors.**

jurisdiction over DoD contractors supporting missions overseas through the Uniform Code of Military Justice (UCMJ) and the Military Extraterritorial Jurisdiction Act of 2000 (MEJA). However, constitutional concerns regarding the application of military law to civilians have generally led DoD to refrain from prosecuting contractors under UCMJ. Moreover, courts have so far declined to clarify the extent to which U.S. criminal

jurisdiction under MEJA was also intended to apply to *civilian*-agency contractors and subcontractors.

Accordingly, the Commission recommends that Congress direct agency heads to:

► **RECOMMENDATION 26**

**Make consent to U.S. civil jurisdiction a condition of contract award**

Revise regulations and policies to:

- Require that foreign prime contractors and subcontractors consent to U.S. jurisdiction as a condition of award of a contract or subcontract.
- Require foreign contractors to register an agent in the United States to be responsible for receiving notice, summons, and other legal documents in connection with any legal actions against those contractors.
- Reduce the burden on smaller foreign contractors by limiting these requirements to contracts and subcontracts of \$5 million or more. Exceptions should also be provided for foreign contractors participating in local-preference programs such as Afghan First and Iraqi First.

The Commission recommends that Congress:

► **RECOMMENDATION 27**

**Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas**

Revise statutes to:

- Clarify that civilian-agency contractors operating overseas are subject to U.S. criminal jurisdiction.

**Current enforcement tools are inadequate to protect government interests in contracting**

Government operations and programs that are funded with huge sums of money over a short period of time require additional tools and oversight to minimize contract waste, fraud, and abuse. Investigating and prosecuting procurement-related crimes and other misconduct serve as powerful deterrents. This is especially true in the early stages of a contingency, when contractors are working in a rapidly changing environment with limited government oversight.

The International Contract Corruption Task Force (ICCTF), governed by a memorandum of understanding among nine criminal-investigative organizations,

has been a useful tool for coordinating investigations and prosecutions. However, the task force did not start work until 2006 and has no formal legislative authorization or dedicated funding stream. As a consequence, it has limited resources and no assurance of continuity.

The members rely on the Federal Bureau of Investigation to support the ICCTF's Joint Operations Center. They also rely on combatant commanders in theater to provide transportation and translation services, housing, security, and access to facilities and sites. However, the task force cannot always obtain this support when it is needed.

Contributing to the difficulty of prosecuting procurement-related crimes is the challenge of gathering evidence in contingency environments. The chaotic conditions of war zones require quick investigative responses. Investigative agencies need faster access to information, physical evidence, and witnesses.

Congress recently granted the DoD inspector general the authority to subpoena the attendance and testimony of witnesses. The American Recovery and Reinvestment Act of 2009 (ARRA) also reflects the importance of witness testimony to the oversight of large amounts of funds that are spent rapidly. The Act gave the Recovery Accountability and Transparency Board the authority to subpoena the testimony of persons connected to projects funded under the ARRA. The Act also gave inspectors general the authority to interview contractor and subcontractor personnel and examine their records related to ARRA-funded contracts and grants.

**It is crucial that cases be investigated and prosecuted to deter others who might be tempted to take advantage of the loose oversight and chaos of a contingency environment.**

Many contingency-contracting cases involve relatively small amounts of money, but are costly to investigate and prosecute. The Department of Justice often declines to prosecute "small" matters in particular because of high administrative costs and the low potential for recovery. However, taken together, small matters can represent large sums

of money. For this reason, it is crucial that cases be investigated and prosecuted to deter others who might be tempted to take advantage of the loose oversight and chaos of a contingency environment.

Congress enacted the Program Fraud Civil Remedies Act to empower inspectors general to address false claims. However, the Act has not been adjusted to reflect inflation since enactment in 1986 and remains limited to claims of less than \$150,000. The ceiling does not reflect the cost to the government of the claim

and litigation process, nor does it recognize practical complications of litigating contingency-contracting claims, such as access to overseas records and witnesses. The low ceiling for bringing claims has made the Act increasingly irrelevant as an enforcement tool.

Many contractors with business-system deficiencies are still insufficiently incentivized to correct deficiencies in a timely manner. Following a Commission hearing in 2009, DoD proposed a new rule to define system requirements and stimulate contractor compliance. In the National Defense Authorization Act of fiscal year 2011, Congress authorized DoD to withhold payment to contractors with inadequate business systems as a means of protecting U.S. government interests and compelling contractor compliance. The promise of these initiatives has not been fully realized, and the new authority cannot serve as a meaningful incentive unless payments are actually withheld.



Afghan contractors working at new cellular telephone tower, Helmand province, Afghanistan (U.S. Marine Corps photo, Oct. 2010).

Authorizing civilian agencies to take similar measures would promote a government-wide approach to addressing problems related to contractor business systems. It would also provide a strong motivation for contractors that have delayed improving their systems to shift priorities and make necessary business-system investments. Improvements are necessary to provide agencies with more assurance of the accuracy and reliability of contractor billings.

Access to contractor records and review of contractor business systems can also serve the government well in overseeing contractors. However, the courts have interpreted current authorities for access to contractor records for cost and other variably priced contracts to exclude records of company internal-audit activities, even though they relate to performance of the government contract.

In addition, expanding access to contractor records will help ensure that government audits are performed more efficiently and effectively and are directed at areas of greatest risk to the government. Auditors could use such information to reduce the amount of labor-intensive audit testing required to accept proposed contractor costs. Benefits would include reducing resource requirements for both government and industry, as well as reducing the potential for contract waste and fraud.

Accordingly, the Commission recommends that Congress:

► **RECOMMENDATION 28**

**Establish a permanent organization to investigate international-contract corruption**

Authorize and fund a permanent interagency contract-corruption organization to assume the responsibilities of the ICCTF:

- Institutionalize the ad hoc and under-resourced task force and charge the permanent organization with the ICCTF's current responsibilities. Define the permanent organization's charter so that it is equipped to begin its collaborative work at the outset of a contingency, when the risk of fraud and other crimes is the greatest.

► **RECOMMENDATION 29**

**Expand the power of inspectors general**

Expand the authority of inspectors general by:

- Giving subpoena power to civilian inspectors general to include subpoenas for the attendance and testimony of witnesses, as is currently provided to the DoD inspector general.
- Providing both civilian and Defense inspectors general with authority to interview contractor and subcontractor personnel.

► **RECOMMENDATION 30**

**Raise the ceiling for access to the Program Fraud Civil Remedies Act**

Revise the statutory provisions to reflect current cost trends and to incentivize agencies to pursue claims:

- Raise the Program Fraud Civil Remedies Act dollar limit on claims, and allow monies recouped under this Act to flow back to the originating agency rather than revert to the Treasury.

**▶ RECOMMENDATION 31****Strengthen authority to withhold contract payments for inadequate business systems**

Incentivize contractors to improve business-system deficiencies:

- Strengthen civilian agencies' authority to withhold contract payments for inadequate business systems in line with the authority already given to the Department of Defense.

**▶ RECOMMENDATION 32****Amend access-to-records authority to permit broader government access to contractor records**

Mandate broader access to relevant contractor records by oversight personnel:

- Provide for greater government-agency access to contractor reports and documentation related to the contractor's internal audits and to other types of management reviews pertaining to government contracts.

*“The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk.”*

— Barack Obama, President of the United States, memo on government contracting, March 4, 2009.



## CONCLUSION

Reducing the risks from heavy reliance on contractors in contingency operations is an important objective that deserves greater attention and prompt action from Congress and the Administration.

The payoff for reform is three-fold:

1. Taking action now to reduce waste, fraud, and abuse in Iraq and Afghanistan will free billions in scarce resources for better use.
2. Taking action now will create incentives for more cost-effective behavior at the outset of future contingencies.
3. Taking action now will recognize the reality that contracting dollars are a strategic tool of national policy.

Starting reform now is also important because changing organizational culture, policy, doctrine, and regulations can take months or years—time that must not be lost when the next urgent need develops.

Although U.S. reliance on contractors came about through default, contractors have become, in doctrine and in practice, a necessary part of the national resources that are mobilized and deployed in contingencies. And contractors have, in general, done a good job of providing services. Nevertheless, because the scope of current reliance on contractors entails huge costs, even fractional losses to misbehavior, mismanagement, and poor performance mount up quickly. Widespread and repeated instances of waste, fraud, and abuse suggest that tens of billions of taxpayers' dollars have failed to reach their intended use in Iraq and Afghanistan.

Better planning for using contractors, more precise definition of requirements and statements of work, more concern for increased competition among contractors, tighter interagency coordination, improved government management and oversight, and stricter accountability for poor performance or misconduct—all these will help save money and promote better support for U.S. missions.

We recognize and support agency initiatives to address a number of topics that we raise in this report. Some are in policy. Some are in planning. But few are in practice. And time is of the essence.

If, on the other hand, the federal government cannot muster the resources and the will to strategically employ, manage, and oversee mission-critical contractors effectively, then it should reconsider using contractors, or reconsider the scope of its missions with a view to trimming them.

## APPENDIX A:

# List of Report Recommendations

### Section I: Contractors have become the default option

1. Grow agencies' organic capacity
2. Develop a deployable contingency-acquisition cadre
3. Restrict reliance on contractors for security

### Section II: Agencies do not treat contingency contracting as a core function

4. Designate officials with responsibility for cost consciousness
5. Measure senior military and civilian officials' efforts to manage contractors and control costs
6. Integrate operational contract support into plans, education, and exercises
7. Include operational contract support in readiness and performance reporting
8. Establish a contingency-contracting directorate in the Office of the Joint Chiefs of Staff
9. Establish Offices of Contingency Contracting at Defense, State, and U.S. Agency for International Development
10. Direct the Army's Installation Management Command to manage bases and base-support contractors in contingencies

### Section III: Interagency organizational structures do not support contingency operations

11. Establish a new, dual-hatted position at the Office of Management and Budget and the National Security Council to provide oversight and strategic direction for contingency operations
12. Create a permanent office of inspector general for contingency operations
13. Establish interagency certification requirements and training curricula for contingency acquisition personnel
14. Create a committee to integrate the individual authorities, resources, and oversight of contingency operations

**Section IV: Policies and practices hamper contingency competition**

15. Require competition reporting and goals for contingency contracts
16. Break out and compete major subcontract requirements from omnibus support contracts
17. Limit contingency task-order performance periods
18. Reduce one-offer competitions
19. Expand competition when only one task-order offer is received
20. Allow contractors to respond to, but not appeal, agency performance assessments
21. Align past-performance assessments with contractor proposals
22. Require agencies to certify use of the past-performance database

**Section V: Enforcement policies and controls fail to ensure contractor accountability**

23. Require a written rationale for not pursuing a proposed suspension or debarment
24. Increase use of suspensions and debarments
25. Revise regulations to lower procedural barriers to contingency suspensions and debarments
26. Make consent to U.S. civil jurisdiction a condition of contract award
27. Clarify U.S. criminal jurisdiction over civilian-agency contractors operating overseas
28. Establish a permanent organization to investigate international-contract corruption
29. Expand the power of inspectors general
30. Raise the ceiling for access to the Program Fraud Civil Remedies Act
31. Strengthen authority to withhold contract payments for inadequate business systems
32. Amend access-to-records authority to permit broader government access to contractor records

## APPENDIX B

### Summary table of recommended organizational changes

The following table summarizes the Commission’s recommendations for organizational changes at the various levels of the federal government.

Level	Organizational Change		
<b>Congress</b>	Congressional committee for contingency operations (Section III)		
<b>Office of Management and Budget and National Security Council</b>	OMB Deputy Director for Contingency Operations/Deputy National Security Advisor and Deputy Assistant to the President for Contingency Operations (Section III)		
<b>DoD, State, USAID</b>	Assistant Secretary of Defense for Contingency Contracting (Section II)	Comparably placed position to lead the Department of State Office of Contingency Contracting (Section II)	Comparably placed position to lead USAID Office of Contingency Contracting (Section II)
<b>DoD - Joint Chiefs of Staff and Military Services</b>	J-10 Directorate for Contingency Contracting in the Office of the Chairman of the Joint Chiefs of Staff and corresponding directorates in the headquarters of the military services (Section II)		
<b>DoD</b>	U.S. Army Installation Management Command management of non-traditional installations and all attendant base-support functions (Section II)		
<b>Interagency</b>	Permanent international-contract-corruption organization (Section V)		
<b>Interagency</b>	Permanent inspector general for contingency operations (Section III)		
<b>Interagency</b>	Deployable contingency-acquisition cadre (Section I)		

## APPENDIX C

### Acronyms

<b>ARRA</b>	American Recovery and Reinvestment Act
<b>CENTCOM</b>	U.S. Army Central Command
<b>COR</b>	Contracting Officer's Representative
<b>DCAA</b>	Defense Contract Audit Agency
<b>DoD</b>	Department of Defense
<b>ICCTF</b>	International Contract Corruption Task Force
<b>LOGCAP</b>	Logistics Civil Augmentation Program
<b>MEJA</b>	Military Extraterritorial Jurisdiction Act
<b>NSC</b>	National Security Council
<b>OFPP</b>	Office of Federal Procurement Policy
<b>OMB</b>	Office of Management and Budget
<b>QDDR</b>	Quadrennial Diplomacy and Development Review
<b>QDR</b>	Quadrennial Defense Review
<b>SIGAR</b>	Special Inspector General for Afghanistan Reconstruction
<b>SIGIR</b>	Special Inspector General for Iraq Reconstruction
<b>UCMJ</b>	Uniform Code of Military Justice
<b>USAID</b>	U.S. Agency for International Development

*In memory of our dear colleague,  
Diana Douglas White*





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