



## Commission on Wartime Contracting In Iraq and Afghanistan

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# Federal law forces bad choices for embassy security, says special report from Wartime Contracting Commission

ARLINGTON, VA, Oct. 1, 2009 – A single sentence in federal law is preventing the U.S. State Department from making the best choice of security contractors for embassies and other Foreign Service buildings in war zones and should be changed, according to a special report issued today by the federal Commission on Wartime Contracting in Iraq and Afghanistan.

Since February 1990, federal law has forced the State Department to use a “lowest price, technically acceptable” standard in awarding building-security contracts worth \$250,000 or more. Most federal contract officers, including those conducting other kinds of procurement for the State Department, can use a “best value” standard that allows evaluation of factors in addition to price and minimum capability. The difference between the standards is more than semantic, the new report says, and can lead to hiring contractors whose limitations and failings can undermine the embassy-security mission and ultimately increase costs for taxpayers.

“The Commission urges a quick response” to its recommendation, the report says, because a new contract competition is approaching for the U.S embassy in Iraq, and a decision must be made on the future of guard services at the U.S. embassy in Afghanistan.

The report, “Lowest-priced security not good enough for war-zone embassies,” is posted on the commission’s Internet site, [www.wartimecontracting.gov](http://www.wartimecontracting.gov). The special report is the second in a series intended to highlight issues that the Commission believes warrant prompt attention by Congress or the Executive Branch.

The lowest-price contracting issue surfaced in a Sept. 14 commission hearing on State Department security contracts. Witnesses testified about off-duty partying by private security guards for the U.S. embassy in Kabul, Afghanistan, that featured alcohol abuse, lurid behavior, and degradation of subordinate staff. A number of participants from contractor ArmorGroup North America have since been fired or forced to resign. ArmorGroup’s contract with the State Department has six contractor-conduct provisions, including one that reads, “The security guards must not become involved in any activities which would prompt public criticism or cause discredit or interference with U.S.-Host Government relations.”

State Department witnesses at the hearing confirmed that State’s ability to select contractors based on

quality, past performance, and other criteria was limited by a statutory provision in Title 22 of the U.S. Code that compels it to choose the lowest-priced contractor that meets a “technically acceptable” pass/fail criterion.

“The lowest-price, technically acceptable standard may work fine if you’re buying low-value, non-critical things like office supplies,” said Commission Co-Chair Michael Thibault, “but it’s a questionable standard for more complicated purchases like construction projects or embassy security. Most federal departments can operate on the sensible principle that best value for contract dollars means more than picking the lowest price. Forcing the State Department to make decisions on an artificially narrow basis does not serve the public interest.”

Co-Chair Christopher Shays said, “The record is clear that hiring the wrong people for State Department security in a war zone can get innocent people hurt, undermine the security mission, and do terrible damage to America’s image. Congress needs to take a closer look at the potential unintended consequences of this statutory requirement. Based on our review, we recommend they modify it, at least for wartime settings.”

The co-chairs noted that removing the restriction on State Department evaluations for security-contract awards would not prevent lowest-price vendors from winning contracts. But it would allow State Department officials to evaluate other factors in making an award, they said, and would offer some protection against the “race to the bottom” temptation to “buy in” to a contract by low-balling an offer. One concern with an aggressively low offer is that, once in place, the contractor may try to preserve a profit margin by cutting operating costs in ways that could weaken contract performance, as by skimping on employee training, equipment, and supervision.

Congress created the commission in 2008 (Public Law 110-181) and directed it to research federal contracting for reconstruction, logistical support, and security functions, and to recommend improvements. The eight Commissioners are: Michael Thibault and Christopher Shays, co-chairs; and Clark Kent Ervin, Grant Green, Robert Henke, Linda Gustitus, Charles Tiefer, and Dov Zakheim. They are supported by professional and administrative staff at offices in Arlington, VA.

The Commission’s Special Report 2, “Lowest-priced security not good enough for war-zone embassies,” has been posted at the Commission’s Web site, [www.wartimecontracting.gov](http://www.wartimecontracting.gov), under the Activities/Reports tab. The site also links to the commission’s June 2009 interim report to Congress, “At What Cost? Contingency Contracting in Iraq and Afghanistan.”

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