

PRIVATE SECURITY CONTRACTORS IN IRAQ: WHERE ARE WE GOING?

FRIDAY, JUNE 21, 2010

Commission on Wartime Contracting

Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m., in Room 106, Dirksen Senate Office Building, Hon. Michael Thibault, Co-Chairman of the Commission, presiding.

Present: Commissioners Ervin, Green, Henke, Schinasi, Tiefer, and Zakheim

THIBAULT:

Good morning. I'm Mike Thibault, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan. Thank you for attending this hearing, which will explore timely and important issues regarding America's use of private security contractors, or PSCs, in Iraq.

This opening statement is made on behalf of Co-Chairman Christopher Shays, our fellow commissioners, and myself. The other commissioners at the dais today are Clark Kent Ervin, Grant Green, Robert Henke, Katherine Schinasi, Charles Tiefer, and Dov Zakheim.

The commission met in this room Friday for a hearing on the question whether private security contractors in Iraq, and we may talk a little bit about Afghanistan, but this is principally in Iraq, might be performing inherently governmental functions.

As Co-Chair Shays noted in opening that hearing, the Office of Management and Budget is presently preparing new guidance on defining inherently governmental functions, plus closely associated or critical functions that may need either government performance or close oversight of private contractors.

We're looking into that issue as part of our overall mandate from Congress. Beside that mandate, there are some important facts on the ground that give this hearing special salience. There are about 19,000 private security contractor employees working in Iraq. About 14,000 of them are under Department of Defense contracts, and roughly—and sometimes getting the precise number's a challenge for everyone—roughly 5,000 work for the Department of State and the U.S. Agency for International Development, or USAID.

The massive drawdown, secondly, of U.S. forces in Iraq aims at cutting our military presence to less than 50,000 by the end of August this year and to zero by the end of 2011, obviously, next year.

Most of the security duties currently executed by the U.S. military in Iraq and by DoD contractors are being handed off to the Department of State. State will need more security contractors, many of them with special skills. And we're going to explore that today.

The drawdown and the security-function hand-off will put increased strain on our systems for planning, acquiring, overseeing contract and program management, and evaluating performance—and we're going to talk about that a fair amount—related to PSC work.

Let me give you some specifics to clarify the foundations and implications of these facts. Commissioner Green and I, accompanied by some commission staff experts, were in Iraq last month to prepare for this hearing. We met with Defense, State, and USAID people involved in security issues. And we got out into the country. We visited four forward operating bases, or as we all refer to, FOBs.

Our fact-finding visit confirmed what our research and our hearings have already documented, and prior trips, for that matter. There are already weaknesses in America's use of PSCs, especially with respect to effective internal controls to ensure full and proper vetting of security, private security contractors. The problems may get bigger and more costly with the challenges in the months ahead.

We saw significant problems at three of the four FOBs, F-O-Bs, forward operating bases we visited. At one FOB, we found 17 Iraqis and more than 50 third-country nationals—17 Iraqis, 50 third-country nationals—had been on guard duty protecting a U.S. base, American military, for about two weeks without proper vetting.

At another, a contractor CEO intervened personally to try to get third-country nationals posted to guard duty before they were properly authorized. Fortunately, military officers were on the job and turned him down. And I'm going to have extensive comments about that one in a moment. These lapses and others like them could, obviously, turn into very bad situations, say, if unauthorized, un-vetted PSCs turned out to be sympathetic to insurgents. Such concerns will only grow, for at least four reasons.

First, the State Department lacks the personnel, equipment, experience, and training to take care of some of the security functions that have been provided to DoD or by DoD previously. These could include quick-reaction combat teams (DoD's going to be gone); route-clearance capabilities; recovery of wounded personnel and damaged vehicles; the counter-rockets and counter-battery teams that return hostile indirect fire within seconds, a critical safety factor and deterrent to additional hostile indirect fire; and the experts and vehicles that detect and dispose of improvised explosive devices, or, again, what we all refer to as IEDs.

The Iraqi government currently lacks many of these capabilities. We, the United States government, are trying to develop those. But they currently lack many of these capabilities as well as a robust and consistent system for monitoring and regulating PSC operations in the country.

Third, while the military's planning for its part of the Iraq drawdown appears to be thorough and well-executed—I was personally impressed by the thoroughness and the execution—we've found plans for contractor management, versus military management, during and after the drawdown much less developed, and have made that concern known to the executive branch.

The dramatic expansion of State's security responsibilities in Iraq could lead to weakly managed contractors performing inherently governmental functions in a combat zone, a scenario with large downside risks on both policy and practical grounds, such as concerns for the safety of the remaining military, government, and contractor employees.

These are huge challenges driven by both the scale and the peculiarities of our engagement in Iraq. The United States has used PSCs in other areas such as the Balkans, but never on such a scale as in Iraq and Afghanistan. The exigencies of the Iraq drawdown and the Defense-to-State hand-off of responsibilities aggravate the problems already created by the scale of private security contractor use, including the loose private security contractor oversight practiced by USAID. And we'll be discussing that more today.

Today, we will explore processes, internal controls, and current issues related to PSC management and oversight. We'll also probe the many challenges ahead as the military-managed security environment in Iraq transitions to State Department control.

At this time, the bottom line appears to be that a lack of timely and effective coordination between Defense and State could undermine the progress achieved by the U.S. military—and there has been progress—embolden insurgents and jeopardize the safety of Americans left in Iraq.

This is a troubling prospect. With the troop drawdown under way and operational demands in Afghanistan rising, we simply cannot afford to return to the pre-surge "Wild, Wild West" days of 2006-2007 in Iraq.

Today's hearing has two panels of witnesses. The first panel comprises four government witnesses who can speak to roles, responsibilities, planning, and program management of PSCs in Iraq. These witnesses are Gary Motsek, assistant deputy undersecretary of Defense for Program Support; Charlene Lamb, deputy assistant secretary of State for International Programs, Bureau of Diplomatic Security; David Blackshaw, chief, Overseas Security Division, Office of Security, United States Agency for International Development; and Edward Harrington, deputy assistant secretary of the Army for Procurement.

Our second panel brings together four industry witnesses who will testify on the government's program management of PSCs in Iraq. They are Don Ryder, vice president for training, mentoring, and security, DynCorp International; Kristi Clemens Rogers, president, Aegis Defense Systems; Ignacio Balderas—and if I made a mistake on that, I apologize—director and chief executive officer, Triple Canopy; and, written on here is Jerry Torres, chief executive officer, top person on Torres Advanced Enterprise Solutions or Torres AES.

At this point, I must insert a late-breaking addendum to my opening statement, one that was actually prepared in the wee hours. In preparation for our hearing, commission staff offered to meet with all witnesses and/or their key staff. That's a routine function. Mr. Torres, CEO of Torres Advanced Enterprise Solutions, Torres AES, confirmed on June 7, two weeks ago, that he would be testifying today. Our staff meeting was scheduled and firm for last Tuesday. But late last Monday, Mr. Torres' assistant canceled that pre-hearing meeting. And last Wednesday, five days ago, Mr. Torres told commission staff that Torres AES was a small company and was probably not needed on the panel. He also stated that he has Army Reserve duty this week and might not be able to reschedule or get out of it.

That is the last the commission has heard from Mr. Torres. However, last Friday, Mr. Torres's lawyer, just the last business day, informed us that Mr. Torres had Reserve duty, had key staff out of the country. I don't know in that late moment what that resulted in. And the words by the lawyer were: “nervous about appearing in front of this commission.”

Mr. Torres ought to be nervous. This commission was going to ask him under oath why his firm agreed in January to assume private security responsibilities at Forward Operating Base Shield with several hundred guards that have not been properly vetted and approved. A diligent U.S. Army contracting officer representative, or what we refer to as a COR, or C-O-R, correctly prohibited these Torres AES guards from assuming their duties.

Rather, the incumbent contractor, who had lost the contract, but was from a performance viewpoint very well-rated, was quickly hired so there wouldn't be a loss of transition—this was year-end—for \$1.5 million to remain on the post for 16 additional days, and hundreds of Torres AES employees were placed in a stand-down status, nothing for them to do. They weren't approved, even though they wanted to post.

This commission was also going to ask Mr. Torres why he personally flew to Iraq to FOB Shield and strongly suggested to the COR and U.S. Army lieutenant colonel that Torres AES be allowed to post the unapproved guards anyway, guards that would protect American troops, and then to catch-up the approval process.

Personally, I was out there on this trip, asked the COR—because I was worried about that, if Mr. Torres, after he flew from the States to FOB shield had tried—and the word I used was tried—to intimidate the COR into allowing unauthorized persons or employees to post to guard

duty. The COR told me that "intimidated" was too strong a word, but that Mr. Torres essentially said, continuously for a period of time, that this was all about paperwork and wasn't a big deal.

I've heard that some recent response was also that, "What's the big deal? Why do we need controls and things like that?" The commission can now report that the same company—good news for Torres—Torres AES was awarded the next four lowest-priced technically-acceptable (they call them LPTAs) contracts to protect American troops at four additional bases.

This raises an interesting question. What's technically acceptable for our private security contractors? During our trip we raised that question in the issue of past performance. During a meeting with the commander of Joint Contracting Command Iraq and Afghanistan, or again what's referred to in the world of acronyms as JCC-I/A, specifically, we asked, "How did Torres AES, arriving and attempting to post several-hundred authorized guards, how did that impact the awards of four additional security contracts?"

We were told, and I was there along with another commissioner and staff, that these were competitive, lowest-priced, technically-acceptable task orders. Torres had the lowest price. And that past performance was not considered in this case by JCC-I/A during award of new competitive orders.

We were told that, well, there's only this contract, but they're all task orders. That's the way we do business in Iraq and Afghanistan. That is what is competitively bid and awarded. And since we only do past-performance on the contract and not the past quarters, we didn't consider it. Now, these are just like contracts. They're competitively awarded. You know, it's the wrong answer.

After an extended discussion, the commander of JCC-I/A acknowledged that past performance should likely have been considered and be considered on competitive task orders, and that she would look into this. In my view, sitting there and listening, this a major miss on the part of JCC-I/A.

So now, less than three business days after Mr. Torres decided he was nervous about testifying, with the testimony being under oath, we have a major issue that needs to be addressed, and our primary witness has hunkered down in the rocks. The issue today becomes, what does it take for government contracting leaders to say that a lowest-priced technically acceptable contractor, or any contractor—what does it take to demonstrate that they're not performing adequately and that their past performance dictates that a contractor is not technically acceptable?

We do know that trying to post hundreds of unapproved guards to protect American lives had no consequence in this case. So I guess we're going to have to explore what does. Today, we will further explore where contractual accountability and performance have consequences. Again,

what does it take for poor contractual performance to result in contract termination or non-award of future contracts?

We've asked our witnesses to summarize their testimony in five to seven minutes in order to ensure adequate time for questions, answers, and debate. We also ask that witnesses submit, within 15 business days, responses to any questions for the record and any additional information they may offer to provide. The full texts of their written statements will be entered into the hearing record and posted on the commission's website.

On behalf of the commission, we thank all of today's witnesses for participating in a very important hearing. And it's important to say that all four of you and the three other industry witnesses met with staff, provided data and information, and allowed us, in our view, to fully and properly prepare for your presentation. So this, in no way, is intended to undermine a very effective and proper way to work with us by the other seven.

On behalf of the commission, we thank all of today's witnesses for participating in a very important hearing. Now, if the witnesses for our first panel will rise and raise their right hands, I'll swear you in.

Do you solemnly swear or affirm that the testimony you will give in this hearing is the truth, the whole truth, and nothing, but the truth?

THIBAULT:

Please be seated. Thank you. Let the record show that all the witnesses answered in the affirmative.

Mr. Motsek, please begin. Thank you, sir.

MOTSEK:

Good morning, sir.

Co-chair Shays and Thibault and members of the commission, I want to thank you for the opportunity to again appear before you and this time to discuss the program management and oversight of PSCs in Iraq.

As the 2010 Quadrennial Defense Review [QDR] acknowledged, contractors are part of the total force, providing an adaptable mix of unique skill sets, local knowledge, and flexibility that a strictly military force cannot cultivate or resource for all possible scenarios. Current operations in the U.S. Central Command area of responsibility require PSCs to fulfill a variety of important security functions for the U.S. government and agencies supporting operations in Iraq.

The behavior of PSCs can affect the national security goals of the U.S. And for this reason, as you well know, we have published guidance on the selection, oversight, and management of private security contractors operating in contingency operations in the form of the interim rule in the Federal Register and for us corresponding DoD instructions.

While the rule establishes overarching U.S. government policies and processes, it assigns for DoD, to the geographic combatant commanders and for State, the chief of mission, for developing and implementing procedures and guidance specific to that area of responsibility. We believe this policy in the existing acquisition regulations provides sufficient uniformity in providing both of them the flexibility required for their missions.

In terms of implementation in Iraq, guidance and oversight of DoD PSCs is also contained in U.S. Forces Iraq Operations Orders commonly known as the FRAGOs [fragmentary orders]. And we rely, as you well know, on contracting officers and the CORs, as Mr. Thibault just discussed, to ensure PSCs comply with this guidance and the terms and conditions of their contracts.

A contractor operations cell, commonly known as the CONOC, provides operational awareness and coordination presently of PSC protected movements, and includes many but not all non-U.S. governments movements as well.

The DoD's use of contractors, including PSCs, is consistent with the existing U.S. government policy on inherently governmental functions. The recent Center for the New American Security report does an excellent job in discussing this area. We are presently reviewing the Office of Management and Budget proposed language with regards to the new definitions proposed for inherently governmental. And this language is presently consistent as being circulated with the FAIR Act. In particular, we welcome discussion of critical and core functions introduced in this draft OMB letter, which, in my opinion, is a more important issue, and could shape the future missions and force structures of DoD.

Contractors employed to perform security functions for DoD are only a fraction of the total private security sector, both public, private, and international, in the CENTCOM AOR [Central Command Area of Operation]. This is one of the reasons that the Office of the Secretary of Defense is supporting the initiative, pushed by the Swiss government on our behalf, to move beyond the present Montreux Document and implement an industry-led, government-supported, international accountability regime that will apply to all PSCs in all operational environments.

A draft of this standard is being developed and is being refined by the working group, which includes members of government and industry and even human rights organizations. If adopted, it could provide uniformity standards of PSCs employed by all inside the contingency operations area.

From the DoD's perspective, the drawdown in Iraq, based on the current planning assumptions, remains on track. We are working hard to synchronize the drawdown of contractors and contracting requirements through working groups, boards that engage with all the key stakeholders. To this date, the reduction in contractors has proceeded somewhat ahead of the MNF-I goal, or U.S. forces, now Iraq goal, and is expected to continue.

In accordance with the joint campaign plan, the U.S. military mission will transition from Operation Iraqi Freedom to a Department of State-led stability and strategic partner-led capacity building. And when Phase III of this transition begins, we will move from what is called the Title 10 authority to those of Title 22. The classified joint-campaign plan, which recently received a positive assessment by the Government Accountability Office, details the specifics of the shift of responsibilities between DoD and the Department of State.

Fundamentally, upon Phase III, the remaining DoD forces will work for the Chief of U.S. Mission like anywhere else in the world—however, in this case, as part of an Office of Security cooperation.

I'm thankful to the members of the commission for your ongoing support, and ready in answering your questions.

THIBAULT:

Thank you, Mr. Motsek.

Mr. Edward Harrington, Retired General Harrington, deputy assistant secretary of the Army Procurement Office. Mr. Harrington?

HARRINGTON:

Thank you, Chairman Thibault.

Chairman Thibault, Chairman Shays, and distinguished members of the commission on Wartime Contracting in Iraq and Afghanistan, thank you for this opportunity to again appear before you to discuss private security contractors as well as the Department of Defense's plans for future security contracting and oversight in theater.

I am pleased to represent Army leadership, members of the Army acquisition and contracting workforce, and our soldiers who depend on us for timely and efficient materiel, supplies, and services in support of expeditionary operations.

The federal government relies heavily on PSCs to provide armed security for convoys, diplomatic and other personnel, military bases, and other facilities in Iraq and Afghanistan. Unarmed PSCs may also perform guard services, electronic monitoring, intelligence analysis,

and security training. Although the use of PSCs in Iraq and Afghanistan is unprecedented in our history of warfare, PSCs provide guard services for Army installations throughout the world.

PSCs do not perform inherently governmental functions. The Army complies with the Federal Activities Inventory Reform Act and the Federal Acquisition Regulation, which, in Part 7, defines what is inherently governmental. The Defense FAR Supplement Part 37 and subpart 237 specifically allow the use of PSCs in support of war. The U.S. Army is making steady, forward progress in its execution and oversight of contracts for private security contractors.

A significant improvement in contractor accountability is the Army and DoD transition from manual tracking of contractor personnel to a web-based tracking tool called Synchronized Pre-Deployment and Operational Tracker, SPOT. The use of SPOT became mandatory in January of 2010. Also, Multi-National Forces-Iraq established the Armed Contractor Oversight Division, which provides oversight policies for governing PSCs focusing on guidance for authorization and use of weapons.

One of the keys to successful oversight of PSCs, like any contract, is trained contracting officer representatives. With the publication of the Army's G3/5/7's execution order on COR appointment and training, more trained CORs are flowing into theater than ever before. The CENTCOM Contracting Command does not award contracts without a COR and maintains a near-100 percent fill level.

Additionally, the Defense Contract Management Agency has filled 98 percent of their COR requirements in theater in Iraq and 93 percent in Afghanistan, up from 38 percent in April 2009. The Army Contracting Command is also training CORs prior to deployment here in the United States. And U.S. Army Training and Doctrine Command is developing distance-learning COR training to augment existing programs of instruction.

Continued support provided by PSCs is vital to the nation's success in expeditionary operations. As the drawdown progresses, PSCs will maintain an important role in Iraq, including the training of host-nation security forces. However, their role will be commensurate with the drawdown of forces, especially with regard to armed security guard and guard services.

As a result of lessons learned, the DoD has made several improvements in its management of PSCs. For example, an instruction was published in the Federal Register of July 2009, which prescribes the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract in a designated area of combat operations for both DoD and state PSCs. It also prescribes incident reporting; use of equipment; rules for the use of force; and a process for the discipline and removal, as appropriate, of U.S. government PSC personnel. This generates fairness and consistency across the board.

The principal assistant responsible for contracting in Afghanistan [PARC-A], for instance, has developed a standard performance-work statement for PSCs, ensuring compliance with the Afghan government's laws and regulations as well as DoD requirements.

The PARC-A is being careful to observe the Afghan government's fair-wage laws as well to ensure PSC pay is on par with Afghan national police pay. These efforts have increased PSC compliance with Afghan requirements from 31 to 88 percent.

The U.S. Army is committed to excellence in all contracting activities. The Army carefully assesses lessons learned from current operations to make improvements and adjustments along the way to ensure mission success and protection of the interests of the United States, our warfighters, and the U.S. taxpayers.

Again, thank you. I look forward to your questions.

THIBAULT:

Thank you, Mr. Harrington.

Ms. Charlene Lamb, deputy assistant secretary, International Programs, Department of State.
Ms. Lamb, welcome.

LAMB:

Thank you. Good morning, Co-Chair Shays, Co-Chair Thibault, and commissioners. Thank you for the invitation to appear before you today with my distinguished colleagues. I would also like to thank the commission for your continued support and interest in the Department of State's Bureau of Diplomatic Security [DS] in our programs in Iraq.

Today's hearing is well timed. The Department of State is deeply engaged in planning for the implementation of the government's bilateral security agreement with the government of Iraq and the transition from a largely military presence to a civilian-led diplomatic model under the authority of the chief of mission. DS has played a key role in this planning process and will assume a much larger role for providing security in Baghdad and the new diplomatic post in Iraq established as part of the transition.

DS will face many challenges as we take on roles and responsibilities currently provided by our military colleagues, but are confident we can sustain the robust security platform required to enable our government's foreign policy. However, in order to succeed, we need to continue our use of private security contractors, PSCs. Carrying out this mission successfully will require the full utilization of all available security assets, including the services of PSCs. DOS understands

that along with the use of the PSCs, there must be a commensurate level of contract and operational oversight of the PSCs.

Over the last two and a half years, the Department of State has worked closely with the Department of Defense and USAID to form a partnership dedicated to enhancing and improving private security contractor oversight and accountability.

These efforts are outlined in a number of key documents, including the 2007 Secretary of State's Panel on Personal Protective Services in Iraq; the 2007 DoD-DOS memorandum of agreement on U.S. government private security contractors, followed by sections 861 and 862 of the National Defense Authorization Act of F.Y. 2008; and the July 2008 memorandum of understanding between Department of State, DoD, and USAID relating to contracting in Iraq and Afghanistan.

All of this coordination triggered by these documents has resulted in many positive developments. Currently, diplomatic security utilizes the services of 2,700 PSC personnel in Iraq, comprised roughly of 900 movement-security personnel under the Worldwide Personal Protective Security, WPPS II, contract, and an additional 1,800 guards providing perimeter security to embassy Baghdad and related facilities in the international zone.

In contrast, DOS currently employs only 1,800 DS security agents, direct-hire government employees, to meet its global, worldwide responsibilities. While we continue to rely on PSCs, we do so with the full acknowledgment of the need for comprehensive oversight and accountability regimes. Through our WPPS II contract, DS has always maintained high standards for selecting, vetting, and training contract-security personnel.

We are equally proactive at implementing recommendations from the audits and panels that have examined our programs as well as the best practices that we ourselves have identified. We have also made the analysis and incorporation of lessons learned into our contracts an ongoing process.

As we look to the future, DS anticipates that we will need between 6,000 and 7,000 security contractors to meet the requirements in Baghdad at the new consulates and embassy branch offices. Current estimates reflect that nearly 2,200 PSC movement-security personnel and as many as 4,600 PSC static-guard personnel could be needed to secure these new facilities and support department programs. As planning evolves, so, too, will this estimate and these numbers.

The majority of these PSC personnel will be employed under a successor to our current WPPS II contract, which we are now calling the Worldwide Protective Services Contract, WPS. With the commission's support, Congress provided DOS the authority, in the Consolidated Appropriations Act of 2010, to award contracts for static-guard services in Iraq, Afghanistan, and Pakistan on the basis of best value, provided these awards are made prior to the end of this fiscal year.

This authority provided the department with the opportunity to create the WPS contract, an Indefinite-Delivery Indefinite-Quantity, IDIQ, contract, to satisfy static-guard personnel protective and emergency-response service requirements, which are currently met separately under three contracts by the WPPS II, the BESF [Baghdad Embassy Security Force], and the KESF [Kabul Embassy Security Force] contracts.

Awarding one umbrella IDIQ contract, as opposed to multiple contractual vehicles, will allow the department to consolidate terms, conditions, standards, and contracting procedures for these highly visible requirements and provide many benefits, including enhanced contract oversight through the application of uniform standards and requirements for all PSC services in contingency environments; allow for more-efficient program management, as compared to the multiple stand-alone contracts; lessen the duplication of PSC administrative and support functions by consolidating personnel protective and static-guard requirements into a single task order at certain locations.

This will reduce acquisition timelines and it will provide the department with timely options in the event that a company fails to perform.

The new WPS contract will also contain a revised standards-of-conduct clause that incorporates recent lessons learned, a comprehensive set of requirements for incidents of misconduct, and a section regarding trafficking in persons. All PSC personnel will be required to sign an acknowledgement form confirming that they have read and understand these requirements.

While DS has a history of using PSCs for personal protective and static-guard services, our greatest challenges during the transition will be replacing the specialty capabilities currently provided by the military. Some of these functions, such as explosive-ordinance disposal and downed-vehicle recovery, will be included in the new WPS contract.

DS is also pursuing separate contracts for highly technical capabilities, such as replacements for the military's counter-rocket and mortar, CRAM, notification system. These systems will be new for DS, but DS will be ready to assume these responsibilities in support of our government's expanded diplomatic presence in Iraq by October 1st, 2011.

In closing, the military withdrawal from Iraq will prompt a larger operational role for DS. We will also remain deeply engaged with our colleagues in DoD and AID to coordinate policy and other issues related to the private security industry. Mr. Motsek has mentioned one such issue designed to raise industry standards worldwide is the development of an international code of conduct that PSCs can voluntarily endorse and adopt. This initiative is being facilitated by the Swiss, and has broad participation for the private security industry, non-governmental, and human rights organizations.

In client states, such as the United States and the United Kingdom, DS has participated with DoD in several conferences and workshops and remains strongly supportive of this international initiative's success.

Thank you for providing me with this opportunity to appear before you today. And again, I personally want to thank you for your ongoing support for the Department of State and especially for the Bureau of Diplomatic Security. Thank you.

THIBAULT:

Thank you, Ms. Lamb.

And lastly, Mr. David Blackshaw, Office of Security Overseas, security division chief, USAID. Mr. Blackshaw, please?

BLACKSHAW:

Mr. Chairman and distinguished members of this commission, thank you for extending me the invitation to appear before you today. I believe it's appropriate for me to state upfront that my role as a division chief within the USAID's Office of Security limits my policy-issuance authority to matters involving staff and operations of the division, not the agency.

I hope that my testimony today clarifies my middle-management role within USAID's Office of Security and the informal advisory role my division has with USAID's missions working with implementing partners—that is the agency's prime contractors or grantees operating in Iraq and Afghanistan who have contracted for the services of private security contractors.

Many of the agency's implementing partners operating in Iraq and Afghanistan have independently decided to subcontract with PSCs to protect their employees and assets in those countries while working on USAID's mission.

Mr. Chairman, unlike the State Department's Bureau of Diplomatic Security and the Department of Defense, who have legislative authority to direct individuals and entities operating within their jurisdiction, USAID's Office of Security has no such authority.

Accordingly, the role of USAID's SEC's [Office of Security] International Security Programs Division, as it relates to PSCs hired independently by the agency's prime contractors or grantees as subcontractors, is limited to advice and counsel. And we have been very proactive with our implementing partners on advising guidance both in the field and corporately in the headquarters. So later on, if you have questions on that, I can explain that more in detail.

With this said, Mr. Chairman, I am prepared to answer questions related to the limited advisory role my division has on behalf of the agency with its missions in Iraq and Afghanistan

regarding PSCs hired by USAID's implementing partners to protect their employees and assets abroad while working on USAID's missions. My level of expertise in these matters is a result of meetings I have attended and discussions I have participated in concerning the agency's assistance role in Iraq during combat operations.

Additionally, Mr. Chairman, I am aware that the USAID inspector general conducted audits on March 4th, 2009 and on May 21st, 2010, respectively. The audits were entitled "Oversight of USAID/Iraq and USAID/Afghanistan Private Security Contractors in Iraq and Afghanistan."

I would note that the audit findings and recommendations were endorsed by management within these missions. Corrective actions to alleviate shortcomings are now being taken.

In recognition of the limited information I may have to offer this distinguished commission, I would be more than willing to assist the Commission on Wartime Contracting in Iraq and Afghanistan as it relates to follow-on questions concerning private security contractors in Iraq by taking unanswered questions from this commission to the appropriate policy authorities within USAID for review and comment.

In closing, I thank you again for inviting me to appear before you today. I am happy to take any questions you may have regarding my non-prescriptive role as adviser to the agency's missions in Iraq and Afghanistan when USAID's implementing partners render corporate-level risk-based decisions to subcontract with PSCs.

Thank you.

THIBAULT:

Thank you, gentlemen, and Ms. Lamb.

I'm going to start off with an observation before my time starts, whoever's keeping the time, because I think it represents us all.

Mr. Blackshaw, I'm sure you're a really valued government employee. I have never seen, in my role, so many qualifiers about what you can or cannot talk about. Now, I realize that senior officials that can talk about it, having worked for the government side all my life and participated in testimonies for a couple of decades, that each word is crafted to be consistent with the agency's intent.

But when you say you hope your "testimony clarifies middle-management role and answers questions with my limited role," and things like that, I realize that, when we coordinated—staff coordinated with USAID—we said we wanted Ms. Lamb's counterpart. She is a senior policy official who can speak for the State Department. We did not get that with USAID.

Now, it's going to impact the kinds of questions we'll ask because ultimately you've said in here you'll take back, you know. Very early on in my career, I got to testify to a couple of hearings and to say it just like it was. They said, "Don't mess up." And I will set a low level.

And so, I'm not looking for a comment. What I'm looking for is for you to take back our disappointment that State Department put you in this position. And I don't want you to take the hit. Well, they contacted me and I thought it would work OK because we have an expectation that senior leadership at USAID is more involved, more engaged, and would have the right person or persons in attendance.

So if we have questions, we'll give them to you. Now, you're going to get an opportunity, as does everyone, to wrap up some comments at the end. And if you'd like to put some comments out on that at the end, please do. But we're going to continue on with the questioning.

Mr. Zakheim?

ZAKHEIM:

Yes. I share the co-chairman's views. But I want to point something out for the record. When I was undersecretary for defense and I was asked to testify, I normally showed up, unless I was overseas. I'm not shooting you. You're just the messenger. But that's the problem. You're the messenger. And hang on, and if I couldn't testify or didn't want to testify, which was rare because I believe that if the Congress wants you, you come, I would kick it down to my deputy.

And if my deputy didn't want to testify, he would kick it farther down the chain. Everybody knew what was going on. And so this isn't you. You're just down the food chain. But it is reasonably outrageous that an agency that's so involved in the work that we're trying to look at did not see fit to send a deputy assistant administrator, say, the equivalent of these other people who are just as busy as your bosses are. That's all I wanted to say.

Thank you.

THIBAULT:

Well, go ahead. But I hope you won't try to match our dissertation, but we would like—go ahead.

BLACKSHAW:

No, I would just like to clarify, you asked for a security representative. And I am the appropriate person. But you have to understand, we fall under the Chief Administration Authority, Public Law 99-399, which makes diplomatic security responsible for overseas

security. USAID's proper PSCs to protect the security details are all provided by diplomatic security. And I work closely with them. I help engage the CPA 17. I've worked on the 861 and 862.

The role that USAID has here is our implementing partners, who do not fall under chief of mission authority. They're basically private citizens. They could be institutional contractors, NGOs, PBOs [public benefit organizations] sub-contracted, but were there.

THIBAULT:

OK. Now, I appreciate that. And if other commissioners want to explore this more with him, I want to give them free time at the time of their questions just so that we can be on record.

The way we're going to do this process is I'm going to lead off, and then the staff always comes up with this mystifying order of commission. And I'm going to follow a staff's recommendations because that's what I do.

But I want to start off with Mr. Harrington and Mr. Motsek. To the addendum that we added with our disappointment related to Torres AES, what does it take to terminate a security contractor contract?

Or what does it take from a policy viewpoint, Mr. Motsek?

But I'll start with you, Mr. Harrington, from an execution viewpoint. You know, you were formerly the commander of DCMA, Defense Contract Management Agency. So you're in a real good position, present and past. What does it take to terminate a contractor for—obviously, as I said, it didn't take trying to post a bunch of unapproved, unauthorized foreign guards. So can you talk to me a little bit about what is the policy and the execution guidance that you give to your field representatives?

HARRINGTON:

Sure, yes, Chairman Thibault. Your point's well taken, sir. What does it take?

It takes a clear specific evaluation of a contractor that presents a capability that's not adequate, it takes the judgment of the contracting officer rep on the ground, observing that. It takes the contracting officer there, interacting with the contracting officer representative, to confirm that that contractor's actions or lack thereof are appropriate to not select that contractor over that function.

I will tell you that I'll research that further also, sir, to ensure that the guidance we have right now, I think, very much specifically focuses on documenting contractor performance is good or not good, adequate.

THIBAUT:

Well, let me ask you to build on that Mr. Harrington. Do you agree that, if you have a contract, like the TWISS [Theatre Wide Internal Security Services] contract, that's a multi-award, and each task order is competitively awarded, that past performance might be a consideration?

HARRINGTON:

Yes, sir, I do.

THIBAUT:

OK, because it wasn't. You know, I was there. And the commander turned to this contract after quite a—I would call it almost a testy discussion. She turned and said, "Well, OK. Fine, that's something we'll consider in the future or maybe we ought to consider it in the future." And that's not good enough.

Mr. Motsek, can you talk a little bit about the policy?

You know, sometimes it gets difficult to understand it. But I know you are the key player on much of the policy direction and regulatory action associated with past performance, especially private security contracts. Can you elaborate a little bit?

MOTSEK:

I think Mr. Harrington hit the nail on the head. It should be considered. There's no doubt about it. You brought three issues in this discussion. Number one, the good news is there was a trained COR out there.

HARRINGTON:

Absolutely.

MOTSEK:

Who actually did his job properly. And I would hazard a guess that a year and a half ago or two years ago, we would not have had the same outcome as we had this time.

There are two challenges that we have with regards to this. One is an issue we've already addressed earlier in hearings with the commission, and that is the ungodly churn that we have of contracting officers in the theater.

We are stocked today, as you know, for fundamentally in Iraq, the bulk of your contracting officers are Air Force personnel because they were the only deployable personnel we had. And we're now just beginning to see the fruits of the Army's push, about two years ago, to rapidly increase their contracting-officers' capability, and in particular, some deployable capability.

So part of this—and it's not an excuse, it's a reality. When you have a contracting officer churning every four to six months, instead of spending a year, 18 months, two years on that job, we have this challenge. That is one of the fundamental lessons learned that we got from this operation. You can't have that churn and expect to have consistency.

THIBAULT:

OK. Well, thank you, both.

I will say we had a contractor who was performing well, who was asked to stay on for half a month, 16 days, in order to assure there was adequate security.

It's really easy for people to say, "Well, if it was me," but I'm going to say, if it was me, I may not make a decision that you can never work for the United States again. I may say that's a past-performance consideration, realizing that all of these approvals and authorization are contractually required. If there was ever a case worth termination or default, which is, "You all go home. And we're going to debate with you about who pays for your way home," this was it. And if this kind of behavior doesn't affect terminations, then I guess, not much.

So, Ms. Lamb, thank you for your testimony. I want to ask a question in general. And then I want to ask you a very specific question about the State Department capability. Because I appreciate the current policy decisions of some of the batons that you are being handed, very important batons related to security.

Of the four of you, and I'll put my hand up now. How many of you saw or heard about—I guess you heard about it—Academy Award-winning movie "Hurt Locker"?

Hey, we're five for five. All right. My point is, for anyone that didn't, it's the removal of explosive devices. And it's, kind of, personal in this case. And I'll tell you why, as well as visual. And that's why I asked a question.

When I was describing it to someone, it looks like the vehicles that are involved, which the Army manages (and this is a very dangerous job), looked like oversized motor homes with antennas springing all over them. And when we were coming back from, or arriving, and there

were some environmental—too much dust activity and we couldn't get the easy ride, the helicopter—the commission staff all got in a few MRAPs and got the privilege of bouncing around on that on the way back.

But we stopped for an hour on a major road because apparently there were some IED threats that we never fully heard about. But there were three of these very large vehicles, one blocking, one kind of in a backup, and one with soldiers doing what they do to assure the safety of soldiers and of people like us, and of civilians, and of Iraqis. And we waited an hour, and they completed it.

When we were in Iraq recently, we met with this staff and they gave us a list of 14 items. One of the items was IED removal. That was going to be inherited by the State Department. And so we asked the inevitable question, "The Army goes home, have you got anybody that can run on IED like they do? No, what are your options?" And what came out is, "Well, if the Iraqis run it, and they don't. If they had those kinds of skills, then it'd be great. Perfect world, they don't. Then we're going to have to get a contractor."

But we had a list of 14 items. And the contractors stand ready because they fill vacuums. And they're willing to fill this vacuum. And yet, it doesn't make a bit of sense. And it was just initial planning. And we're concerned about the planning of the transition. And now we're told that there's a lot of coordination. What are you doing, realizing that under the current plan, on all of these, but I use IED—you know, putting anti-counter-battery—you know if someone blows the horn and we all duck because there's an IED, and it happens all the time, and the protection systems are there and the Army runs the system, that's another example. Who's going to run it? Not the Iraqis, so contractor. But what are you all doing?

But does that make a bit of sense to bring contractors into an environment where the United States Army has been exceptional in their performance and now we're going to have them leave?

Can you talk a little bit about that, beyond the fact that, well, we've been told they've got to leave?

LAMB:

Sure. Thank you very much for that question. We actually have done a lot in that area already. Two of the biggest voids, probably, on your list of 14, when the military withdraws, will be the vehicles and all the equipment that come with them, as well as tactical command centers, the hub for communication that ties everybody together without their moving in a security movement, It's been ongoing for almost a year now.

We have two contracts with private contractors that are looking to consolidate all the equipment that we need in our vehicles to match the capabilities as best as possible to the

military. We are also designing a footprint for our command centers to go into all of the new locations where we will have responsibility. We are coordinating these efforts with the military in many cases. There are military ties to these companies that are currently designing these for us.

I think our end goal, as Mr. Motsek said, you know, we're not just going to turn the light switch out. This is a phased withdrawal. And we're going to be passing batons, off slowly at first, but I'm sure it's going to be very hectic toward the end. And we are making a lot of plans as we move forward, and consulting with each other to do this.

But at the end of the day, our foreign policy in Iraq, in the way forward in the future for helping to build the capacity of Iraq, we would prefer not to look like the military. We would prefer to have a much lower-key appearance to us. And that is what we're striving for without reducing or creating security vulnerability.

THIBAULT:

OK. Let me stop there. My time is up.

The only observation, as best as possible within your statement, and I'll just make the observation. I think the United States Army—and I'm not really being critical; I'm grabbing the words—works to a standard as best as possible when it comes to securing to remove the wounded from the battlefield and things that work. I guess, you know, combat medics flying in instead of taking the wounded out. It's going to be, "name a company." It's going to be, I guess, on the side of their helicopter saying, "We now are the combat medics." It just doesn't make sense.

My time's up. And I may explore it a little later with you. And I appreciate the position you're in and your candor.

Mr. Green, Commissioner Green?

GREEN:

Thank you. Thank you all for being here. I know you're as excited about it as are we.

Ms. Lamb, I was on the trip with Commissioner Thibault recently to Iraq. And I spent all of my time at the embassy with embassy and USAID personnel. I don't have to tell you, you've got a huge mission, one that I don't know whether State has ever in its history been asked to take on something like this. And certainly, none of us want to see the department fail.

But the clock is ticking. You're taking over from an organization, DoD, and much of it the Army, which has a significant planning capability and significant resources. And I know from

my experience in both organizations that State can't or hasn't been able to compete with those kinds of resources. So you've got a real uphill climb.

I was very happy when I was in country and we were briefed a number of times by Ambassador Jackson, the management counselor and her staff, and the things that are being done there.

But I'd like you to focus on one thing, and it's the PSD [personal security detail] part of the personal security contractors. This is, number one, an emotional and very sensitive issue with many. As you know, we had a hearing on Friday that dealt with inherently governmental. And there are many people out there, despite the position of those at the table, that believe that the PSD part of the PSC mission is inherently governmental.

I'm not going to take a position one way or another. But I'd like to know, based on your projections, and I think they're probably pretty optimistic, about the number of people that it's going to require in Iraq alone, how you're going to oversee that mission. My understanding is that INL [Bureau of International Narcotics and Law Enforcement Affairs] will require something like 50-plus PSD teams just to do police training.

We don't know, I think at this point, what the office of military cooperation may require. We don't know what AID is going to require. And I don't think, until we put in those five enduring-presence posts, we know what the requirement is going to be there. So how are you going to not take over this mission with DS personnel?

How are you going to monitor it with DS personnel, considering today you've only got 1,800 total officers, 800 or so of which are overseas worldwide?

LAMB:

Again, very good question. Thank you for asking. We have created an additional skill right now—and I've just lost my train of thought here. We have . . .

GREEN:

Your security special.

LAMB:

My special protective security personnel [SPS].

GREEN:

Fine.

LAMB:

These are limited-appointment positions right now. And they will be serving to augment diplomatic security officers within the PSD movements. So we are currently recruiting and hiring and . . .

GREEN:

How many have you hired?

LAMB:

We have 25 on the ground in Pakistan and Afghanistan. And when we started hiring and training, we had enough agents to fill Iraq. So we will now start transitioning SPSs into Iraq.

GREEN:

Do you consider that program successful?

LAMB:

All of the feedback that I have gotten from our security personnel in the field, it has been highly successful, and that they have meshed incredibly well with our DS agents. In fact, to the point that we are looking to perhaps create a permanent skill code and move away from the limited appointment with them.

GREEN:

And what would you do with these folks when we get out of Iraq and Afghanistan?

LAMB:

Because they will be in smaller numbers, we will be able to use them at the training center. They will have an incredible amount of skill- and high-threat capabilities. We will be able to use them for training and local-guard-force management at some of our larger high-threat posts around the world as well.

GREEN:

Well, I wish you luck.

One thing that I am somewhat concerned about, while I think coordination in country appears to be going very well, I'm not sure the level of coordination here between both within the department, NEA [Near East Regional Bureau], INL, DS, and with DoD. I think, and I'll just make a comment, I think that an issue came up, and this isn't probably the most important one, but it's one that can't be solved in the field. It's got to be solved here. Who's going to run the State Department's Air Force?

So, I don't want you to answer that because I know what your answer would be. But those kinds of issues have got to be dealt with here. And so, I would encourage you to become, not just DS, but the department to become as active as possible in that coordination process. So, you don't have to respond because I know that you want DS to run the Air Force.

Mr. Motsek, I would normally not ask this question at this hearing because we're talking security. But since you raised it in your opening statement, I couldn't resist. You made a statement that the Quadrennial Defense Review has acknowledged contractors as a part of the total force, et cetera, et cetera, et cetera.

My read of the QDR is that contractors are mentioned on very few occasions and there is virtually no planning process in the works within the Department of Defense to integrate contractors in the planning other than sort of a cursory mention of them, not even as much mentioned as was in the '06 QDR.

I'd like your comment.

MOTSEK:

Sir, from my standpoint, I was very happy with what I got into the QDR. So from my perspective, we got the acknowledgement of the total force, which was our main goal. We had other recommended language that didn't make it.

Fundamentally, inside the department, for good or for bad, we have elevated the idea of operational contracting support to the level that there is a belief and there is a process going on where especially the policy folks feel that we are addressing those needs in due course as we go through what we're doing.

A year ago, we never would have been able to sit here and acknowledge that the chairman has a three-phase assessment on use of contractors and the analysis of them, and do we have the

appropriate mix in the battle space. And he is leading that effort right now and he completed phase II. That didn't exist.

GREEN:

Well, why do we have so much difficulty in getting Annex Ws completed?

MOTSEK:

It's not just the Annex W, sir. The Annex W is important in selected COMPLANs and OPLANs, but even that is only a handful of all the COMPLANs and OPLANs that even require that degree of specifics. The real issue in my mind is what are the supporting-service plans? For example, all of your LOGCAP support, once you make that decision in the COMPLAN, falls to the Army in their supporting contract and our supporting annexes to build that in their supporting plans.

A year ago, if you recall, we hired contractors to initially go to each of the combatant commands. I have an MOA [memorandum of agreement] with each combatant commander. We had 14, 15 of them out in the field. And we're trying to inculcate these into the planning process. Today, eight of those are now government officials.

So we're weaning ourselves off of this and we're inculcating the fact that we have joint planners now who are focused solely on contractor operations inside the COCOMs [Combatant Commands]. And within the next six or eight months, they'll all be U.S. government officials as opposed to contractors. That's a point in the right direction.

We have finally published the concept of operations for OCS [Officer Candidate School] now. And that's out there. That was a painful process to get all services to buy into it. But that's something that . . .

GREEN:

Why is planning for contractors—why should it be painful? I mean, these folks are providing the lion's share of the support. A commander, a CINC [commander in chief], ought to care as much about this as he or she does about movement plans, signal plans.

My time is up.

MOTSEK:

Nothing's perfect. I don't want to overstate the case. But when the chairman got his Phase II approach, his Phase II package of his assessment, which I would urge the commission to look at and have the joint staff come in and brief it to you. When he saw that, his initial response was, "Get this out to the combatant commanders." And so as part of the normal rotation of folks going out from the joint staff to the combatant commanders, the J-4 folks, who have taken the lead in this effort, are part of that process and we put it in there. You know, when we first . . .

GREEN:

They're not very happy with what was included.

MOTSEK:

No, I understand.

GREEN:

OK, that's enough. Thanks.

THIBAUT:

Thank you, Commissioner Green.

Commissioner Tiefer, please. You're up.

TIEFER:

Thank you, Mr. Chairman.

I guess when I mentioned that as far as who has been leading the commission on this back in the winter of 2008, when I was still trying to find my way around here, Co-Chair Thibault took a trip out to places I haven't even heard of and came back with our first evidence and our first "taskers" for staff on today's subject. So I just want to mention my respect for the ground that you laid for us.

Much of your analysis of what might go wrong with PSCs depends on a system of serious-incident reports filled out and provided by the PSCs. This is self-reporting by PSCs on things like, or supposedly, anyway, on things like civilian casualties and weapons discharges.

I'm going to lay a foundation, and then I have a question for you, Mr. Blackshaw, and may carry over to you, Ms. Lamb. But I want to get AID's perspective on this. And the question is going to be, I'm going to ask you if we can rely fully on contractors to self-report the incidents.

Three different studies have been conducted on this, one by Human Rights First, which found that it reviewed 610 serious incident reports. And of these 610, quote, "Among all of these SIRs, just one even suggests unwarranted weapons discharge." Remarkable.

And then there's a study with which I'm sure you're familiar, by the AID inspector general, two studies actually, which are on the subject. They found that subcontractors can censor or omit incident reports that might reflect on them poorly from a group from 2006 to 2009. And I know your response can always be, "Well, we've made reforms since then." But we're trying to find a large evidentiary base for the attitude towards self-reporting of these firms, not just, "Well, we've made reforms since then."

From 2006 to 2009, of 207 incident reports, the numbers about civilians, the numbers about, quote, "other persons killed, or injured, or property destroyed," zero, zero in that category. So, we're seeing a certain pattern among these self-reporting incidents.

Finally, the Special Inspector General for Iraq Reconstruction did a study, a recent one, in which of 109 incidents SIGIR found documented in the CONOC's database, no Iraqi civilians were injured, let alone killed.

Mr. Blackshaw, can we count on PSCs to self-report their civilian casualties and weapons discharges?

BLACKSHAW:

It's a difficult question to answer. I would like . . .

TIEFER:

Could I start with a "yes" or "no" before we get into an explanation? Can we count on them?

BLACKSHAW:

I think in many of USAID's security scenarios, we almost have no choice, but to . . .

TIEFER:

I didn't ask whether there was a choice. Can we count on them to reliably self-report civilian casualties and weapons discharges? This is my second try is to get a yes or no. Yes, we can rely on them. No, we can't rely on them, reliably.

BLACKSHAW:

I'm not sure because there's . . .

TIEFER:

You think it's quite possible we can reliably, when they have reported zero, zero, zero in hundreds and hundreds and hundreds of their reports?

BLACKSHAW:

It's a question I cannot answer.

TIEFER:

All right.

BLACKSHAW:

So I'm not going to give you, but I would like to . . .

TIEFER:

Don't waste my time, Mr. Blackshaw. Let me ask you, you're a professional in this field. Now, I know you have definitely made reforms. I mean, I don't want to get into that. I know your diplomatic service after the 10-day report made remarkable reforms. And I know now that some of your areas you have DS agents aboard vehicles. And in some of these contracts, you have video screen. You've made credible reports. That's not one.

I want to ask whether absent that kind of scrutiny, and a lot of the PSCs in theater do not have that kind of scrutiny, can we count on private security contractors to reliably report all their civilian casualties and all their weapons discharges?

LAMB:

If you characterize them as all, I would say no. However, I would like to clarify that since we have created a position for a contract coordinator and we have drastically increased our relationship with Iraq authorities, both in the Ministry of Interior, national . . .

TIEFER:

Let me reclaim. I have very few minutes, and I appreciate that they can't be counted on. I wish AID had sent someone who could answer questions with your clarity, even though they haven't done what you've done as far as reform.

OK. AID IG did a study, which suggests that for reporting, subcontractors are not even as reliable as primes. And to quote the AID report, it found that, "Zero casualties have been reported during the period in which 140 PSCs themselves were killed or injured." I honor them. I respect them. That's not what I'm doing here. I'm just saying their reporting can be very full in one category and is zero in the other category.

And as for subs, it was found that of 29 subcontractors, that's AID subcontractors, 17 lacked documentation of the most basic point, which is that the government, AID, had consented to their hiring by their primes.

Can we count on subs as much as primes, Mr. Blackshaw?

BLACKSHAW:

I would like to begin that USAID's in a much different position than most of the other government agencies. We are implementing partners, are working way outside the wire. We're working in areas where we don't see DoD or other types of force protection. Our implementing partners are all very unique and different; some of them work in a much different thought process than what a traditional . . .

TIEFER:

If I may remind you of my question. And I know you'd rather answer your questions than mine. But the habit here is that you answer the commissioner's questions, not yours.

Can subcontractors be counted as much for self-reporting as primes? Yes or no, can they be counted or not?

BLACKSHAW:

Sir, I was trying to answer your question by laying the groundwork for you to understand . . .

TIEFER:

I only have 40 seconds left. You've laid a lot of groundwork.

BLACKSHAW:

Let me try.

TIEFER:

Can you give me a yes or no? Let me go on and ask one of my other questions.

BLACKSHAW:

I will say no with the caveat that . . .

TIEFER:

They can't be counted. Thank you.

BLACKSHAW:

Can I clarify, sir?

TIEFER:

I don't have time, sir.

THIBAULT:

Commissioner Tiefer, sir, I'll give you additional time, but, you know, you could wrap it up at the end, but it's probably a good time now. But can you succinctly take a run at it, sir?

TIEFER:

OK. Sure.

BLACKSHAW:

OK. USAID works in areas that there's not a lot of force protection. Our implementing partners work in very different types of working environment. A lot of them balance force protection between acceptance of humanitarian neutrality. We have a different force protection. Most of our PSCs are indigenous local contractors or guards using it so we can blend and work within the environment. So the difficulties of reporting is going to be higher based on the type of guards and protective security details that we use.

THIBAUT:

All right. Great, thank you. And I appreciate the clarification.

And do you have another question, Commissioner Tiefer?

TIEFER:

Yes, just one.

THIBAUT:

Please go.

TIEFER:

Ms. Lamb, on Friday, the State Department awarded a new security contract worth \$120 million to a Blackwater Company. I want to ask you, does State count the Nisour Square incident, where 17 civilians were killed by Blackwater—an extreme of past performance that is bad when it considers bids by Blackwater?

LAMB:

A very complex question. It is based on past performance of the contract.

TIEFER:

OK. I don't have any more time. I'll take that it is based on past performance. Would Nisour Square count as past performance?

LAMB:

It's still an ongoing court case, so I don't want to comment on that at this time, please.

THIBAULT:

All right. Thank you.

Commissioner Henke, please, sir.

HENKE:

I'm sure all of our witnesses are familiar with section 862 of the FY '08 Defense authorization bill. The section deals with, very comprehensively, the selection, training, equipping, and conduct of personnel performing private security functions in an area of combat operations. Would each of the witnesses tell me if you believe that section 862 is perhaps the single most authoritative complete piece of law on private security contractors?

Mr. Motsek, just a quick yes or no.

MOTSEK:

Yes, when backed up with the IR, interim rule.

HENKE:

OK. Mr. Harrington?

HARRINGTON:

Sir, likewise.

HENKE:

Ms. Lamb?

LAMB:

Likewise.

HENKE:

Mr. Blackshaw?

BLACKSHAW:

Yes. But I also think that because we use a lot of different protective-security details that follow host-government rules, we do need a broader code of conduct.

HENKE:

OK. Thank you.

Mr. Motsek, section E of the law requires the secretary of defense—it says, "The secretary of defense shall designate the areas constituting an area of combat operation for the purposes of this section." And then the next paragraph says, "Iraq and Afghanistan shall be included in the areas designated as area of combat operations."

Has the secretary of defense designated, consistent with section 862, an area of combat operations?

MOTSEK:

Did he specifically address it? The answer, to my knowledge, is no.

HENKE:

OK.

MOTSEK:

The reason is because the executive authority given the secretary resides in the executive branch and the president of the United States has declared both Afghanistan and Iraq as combat operations. I'm not a lawyer, but to me, that is absolutely redundant in a requirement.

HENKE:

So the secretary has not designated an area of combat operations Is that simply correct?

MOTSEK:

I've never seen a document in response to section 862.

HENKE:

OK. The rule on section 862 that was published in the Federal Register says, among other things, that the secretary of defense may designate such areas as areas of combat operations for limited purposes of this part. OK. It says shall in the law and may in the rule. OK, maybe that was just an oversight or a typo. What I'm trying to get at here is, do State and AID—are they bound to follow the requirements of section 862?

There's a part of the rule that says, "In an area, in a designated area of combat operations, the chief of mission will be responsible for developing, issuing, and implementing instructions from non-DoD PSCs." I think what the law is trying to get at, "Hey. State and DoD, come up with one playbook, one set of rules, operate under the same guidelines for the selection, training, equipping, oversight of PSCs."

A question for Ms. Lamb and Mr. Blackshaw: Is State bound by the parameters of section 862?

LAMB:

We have been operating in State as yes, we do. The dilemma we came with this and as Mr. Motsek stated, they implement 862 through a set of FRAGOs. And we, our civilian contracts and our civilian personnel that we deal with do not understand the military language that the FRAGOs are written in. We have worked very closely together where appropriate, in compliance with the specific mission for our personnel, they parallel each other. And we have gone to great pains to make sure that that has happened in these areas.

HENKE:

My understanding in my reading of the regulation that I believe it's final, right, Mr. Motsek? It's a final regulation?

MOTSEK:

No, it's an interim regulation.

HENKE:

Interim final?

MOTSEK:

If I may clarify that . . .

HENKE:

Is it an interim final?

MOTSEK:

It's an interim final. The final should be out this year.

HENKE:

OK. If I understand it right, section 862 applies in Iraq and Afghanistan when the relevant chief of mission there says it will apply. Is that a fair understanding of section 862, Ms. Lamb?

LAMB:

We have applied it if the military has applied it, for consistency.

HENKE:

But that's not my question. My question is, in the regulation, it allows the chief of mission some discretionary authority, which I think was the terms of the deal in negotiating with DoD on the rule. Has the chief of mission in Iraq or Afghanistan, have they determined that section 862 applies in Iraq or Afghanistan? Have they . . .

LAMB:

I would have to consult with our legal personnel. I'm not sure that there's anything in writing that says that. The RSO's [regional security officer's] office is responsible for publishing the directives which are signed by the ambassador. So inherently, yes they have endorsed this.

HENKE:

But not formally. State has not brought themselves under the rubric of section 862 formally. Is that correct?

LAMB:

OK. Again, I can take that question for the record. I believe that's starting to cross into a legal ground that I don't have familiarity with.

HENKE:

Would you please do that? If you could get it before the end of the hearing, that would be helpful, too.

LAMB:

OK.

HENKE:

I know you have staff here who are able to talk back to your lawyers and your counsel. But I understand that the negotiation between DoD and State to get the rule out the door was leave it open, leave the chief of mission with the flexibility to apply 862 or not. You're saying that the chief of mission, even though he has not made that designation, that they're operating as if he did, so they're following all the intents. Is that your position?

LAMB:

That is my position, yes.

HENKE:

OK. So if we looked at State contracts, we would find the required FAR clause in each one of those contracts, the FAR clause that's in part 862? You have a contracting expert behind you so you could ask, if you like.

LAMB:

OK. The only personnel that I have here with me today are the experts on DS contracts, diplomatic security. And yes, it is in all of our contracts.

HENKE:

It is in all.

Mr. Blackshaw, is AID bound by the parameters of section 862?

BLACKSHAW:

The answer would be, yes. And for our protective security details, which are all subcontractors for our contractors, our relation role is with the language in the contracts and grants. And that should be applied through those contracts and grants. That's what the OIG audit found and I believe we made all the corrections.

HENKE:

OK.

Mr. Motsek, would you like to comment on the issue of State and DoD? Are we running the same set of rules in Iraq and Afghanistan?

MOTSEK:

I think what we've forgotten with State is that first of all, the reason why the language in the rule is slightly different is because 862 was primarily applied, as you read it correctly, to Iraq and Afghanistan. We are trying to create a broader rule that could apply anyplace, anytime, future-oriented as well.

HENKE:

As long as it was designated to . . .

MOTSEK:

Exactly right. We are where we are with Iraq and Afghanistan because we've already had declarations and the like. The other piece with this between State, AID, and us is that we have already, I mean, State and the U.S. DoD have already signed an MOA, which is still in place, which goes back after the . . .

HENKE:

Yes, the MOA was from December '07, doesn't relate to section 862.

MOTSEK:

No, but that's what brought State and the department under a common set of standards, which would be published in the future, effectively, and you are now talking about those standards that were published in the future. So the MOA is still in existence and is still a valuable document between us and the Department of State.

HENKE:

But it's not related directly to section 862, it predates 862.

MOTSEK:

It predates 862, but it reinforces what 862 calls for.

HENKE:

OK. Thank you. I've got nothing further.

THIBAULT:

Thank you, Commissioner.

Commissioner Schinasi, please.

SCHINASI:

Thank you, Chairman Thibault.

I just would like to follow up with an addendum on Commissioner Henke's request, Ms. Lamb. And I think I heard you say that the State Department has adopted, for consistency's sake. My question then would be, once DoD leaves Iraq is the State Department bound by 862? So if it is the informal arrangement that you're talking about, what happens, you know, when the consistency issue is not necessary anymore to drive that? So just as an addendum to that.

I'm sorry. Mr. Motsek?

MOTSEK:

Ma'am, that's the key question because when we go from Title 10 to Title 22, we're no longer in a combat operation. And so you're absolutely right. You hit the nail right on the head by asking that particular question.

SCHINASI:

OK. Thank you all for appearing here today.

I'd like to say that I think, Mr. Harrington, I'm going to give you a pass. As you note in your statement, you've been here a couple of times before and you are a substitute witness for us. So a little bit of my frustration here is the fact that this whole issue of private security contractors is seen as one that resides within the acquisition community and it's all about management.

Of course, management is very important, particularly with respect to this type of contract arrangement, but there are also a number of questions that fall outside of the acquisition area.

And I believe, Mr. Motsek, something you said reinforces my frustration, which is, you know, you were happy to get anything into the QDR. I mean that's not the way we would like the department to be thinking about these issues with respect to contractors, and particularly private security contractors.

With that said, let me turn to you, Mr. Blackshaw. How many USAID-funded employees in Iraq carry weapons?

BLACKSHAW:

None.

SCHINASI:

So none of the USAID-funded employees, none of your implementing partners, and none of their field contractors.

BLACKSHAW:

I'm sorry. None of our U.S. direct-hires carry weapons.

SCHINASI:

Right. I asked the question how many USAID-funded employees, which means U.S. government money going through any mechanism that it does, carry weapons?

BLACKSHAW:

From what I understand, our implementing partners do not carry weapons. When there is a need for that type of force protection, they subcontract out that responsibility to a firm that is licensed through the host government.

SCHINASI:

And how many of those are there, that carry weapons?

BLACKSHAW:

It varies. I would want to say that I have a list . . .

SCHINASI:

In Iraq, I'm focused on Iraq now.

BLACKSHAW:

One, two, three, four. We have about 12 implementing partners that have protective security details from companies such as ArmorGroup, GardaWorld, Sallyport Global Services.

SCHINASI:

And do you know how many of those carry weapons?

BLACKSHAW:

For the most part, most of them have static and PSD, so they all pretty much carry weapons.

SHAYS:

Would the gentle lady just yield for one quick question?

SCHINASI:

Yes. OK.

SHAYS:

You act so detached, like these are folks way far removed from USAID. These are funded by U.S. dollars, correct?

BLACKSHAW:

Yes, sir.

SHAYS:

Thank you.

SCHINASI:

And for those weapons, who owns them?

BLACKSHAW:

It would be the company that owns them.

SCHINASI:

And who has responsibility for inventories and monitoring their use?

BLACKSHAW:

To the best of my knowledge, it would be the protective-security-detail companies.

SCHINASI:

And I think you mentioned mostly U.S. companies when you were reading off your list. To the extent that they are U.S. companies then, do they fall under the section 862? I believe you answered Commissioner Henke that they do.

BLACKSHAW:

Yes, ma'am.

SCHINASI:

Yes, they do. One of the reports that my colleague, Commissioner Tiefer, referred to was the OIG report looking at private security contractors in Afghanistan. And even though we're talking mostly about Iraq today, one of the recommendations that they made seems to me to be relevant across a number of different areas of operation: regulate private subcontractors, private security-service subcontractors.

Do you have a position on whether you think that would be a good idea given that you've explained that AID is so different in the way it operates?

BLACKSHAW:

I think there needs to be regulations. There needs to be a code of conduct, rules of use of weapons, things of that nature. I don't think we can regulate it completely because each of the implementing partners are working in very unique operating environments and they really have to blend in with the cultural . . .

SCHINASI:

I understand that, yes, I understand the different there.

What we have learned in our trips to the field is that locally based AID direct employees don't spend much time getting out to the field.

Would regulating the subcontractors for the private security services require—I mean, it seems to me you'd have to change your operating processes and get out and actually see what's going on in the field.

BLACKSHAW:

Yes, that's absolutely true. It's a very difficult situation. A lot of times USAID could go out and do program monitoring, but with the type of force protection that we bring along with us, with our protective security details, we could actually put the implementing partners and the recipients of the aid in jeopardy by raising the profile.

USAID does have a high-threat-environment working group looking at how to do program monitoring more effectively in combat environments.

SCHINASI:

I would just note, I think USAID works in a high-threat environment in a lot of places besides Iraq and Afghanistan, so I would hope you have figured out a lot of this already and can be bringing those lessons into the Iraqi theater.

Let me turn to you, Ms. Lamb. I would like to give the State Department some credit for creating this new limited-appointment position. I think, you know, too often this debate revolves around, "We can't do it because we can't do it," which the tautology of that is kind of disturbing.

But in your budget request, and particularly with respect to the missions that you're going to be taking on that Commissioner Green referred to, have you requested, has your budget request for both FY '11 and FY '12 been approved within the department?

LAMB:

Yes, these numbers are included in the budget requests that are out for the FY '10 supplemental, FY '11 and into FY '12.

SCHINASI:

So, you've gotten everything you've asked for, then?

LAMB:

Well, it's in the budget. We have not gotten anything yet, so we're still pending funding to start hiring, but we have advertised and we have folks lined up as soon as we get a green light.

SCHINASI:

How about more generally for the transition in Iraq? Have you received, through the executive branch, anyway, what you've asked for in order to take on the missions that the Department of Defense is going to be leaving you with?

LAMB:

Until the FY '10 supplemental comes through, I can't answer that.

SCHINASI:

But the request has gone up to the Congress...

LAMB:

The request has gone . . .

SCHINASI:

. . . fully funded.

LAMB:

I apologize. I was off last week, so I've got a little window here.

Prior to leaving last week, yes, everything was in there.

SCHINASI:

OK. Good. So maybe you'll be able to take another week at some point in the future, right?

As you know, the Senate Armed Services Committee has reported out of conference a bill that deals with a lot of these issues, and it seems to me they're focused on things that deserve some focus, but my time has just expired, so I'm going to leave that for my next round.

THIBAULT:

Thank you, Commissioner.

Commissioner Zakheim, please, sir.

ZAKHEIM:

Thank you very much, Mr. Co-Chairman.

Ms. Lamb, you know, State Department really has made a lot of progress and you guys deserve the credit for it.

You made a statement—it's on page four of your testimony—that DS has always maintained high standards for selecting, vetting, and training contract security personnel. Now, you'd agree with me, I think, that you get what you pay for, correct?

LAMB:

That's correct.

ZAKHEIM:

Well, why, then, do you continue with contracts that—unless you don't do this anymore—that are lowest-price technically acceptable?

LAMB:

We are making every effort we can to change that. Thanks to this sitting commission here today, we do have a window of opportunity this year as WPPS II [Worldwide Personal Protective Services] is ending and we will be awarding a new contract, WPS [Worldwide Protective Services]. It will combine our existing static-guard contracts, which were not best-price.

ZAKHEIM:

OK. Yes, let me just ask you point blank, can you guarantee this commission that the next contract will not be lowest-price technically acceptable but will be best value? I want a guarantee. You've got kids getting killed out there. You don't want protection on the cheap. Can I get that guarantee?

LAMB:

I can guarantee you that the process is on track in . . .

ZAKHEIM:

No, I want a guarantee. I want a guarantee that the next contract will not be –lowest-price technically acceptable. I mean, why do you want to protect people on the cheap? I mean, if it was your kids, if it was my kids, you wouldn't want that, would you?

LAMB:

No, absolutely not.

ZAKHEIM:

OK. So, can I get that guarantee right now, in public?

LAMB:

Yes.

ZAKHEIM:

Thank you.

Mr. Blackshaw, I don't envy you, I got to tell you. It's not your fault. Who's your boss?

BLACKSHAW:

Randy Streufert, director of security.

ZAKHEIM:

OK. Is he here?

You're his boss. Why aren't you at the table?

BLACKSHAW:

Actually, I'm much more involved in what we're doing.

ZAKHEIM:

No, no, no, no, no, no, no. Why isn't your boss at the table?

Could you come to the table, sir, and tell us all why you're not at the table? Presumably, you have a broader mandate.

THIBAUT:

We're going to have to pause here for a moment because I have a responsibility . . .

ZAKHEIM:

You have to swear him in, don't you?

THIBAUT:

. . . to swear him in, of course. You're doing good.

ZAKHEIM:

OK. Can you put a time-add on my time, please?

THIBAUT:

Oh, I'll put a time-add on your time.

Can you please stand up and raise your right hand? Do you solemnly swear or affirm that the testimony you'll give in this hearing is the truth, the whole truth and nothing but the truth?

STREUFERT:

I do.

THIBAUT:

Thank you, sir. Please sit down.

Let the record show that all witnesses answered in the affirmative.

Commissioner Zakheim?

ZAKHEIM:

Thank you.

Can you give me your full name and can you tell what is your responsibility? And can you also tell me the breadth of your responsibility relative to that of Mr. Blackshaw, on your left?

STREUFERT:

Randy Streufert, director of security at USAID, in the Office of Security. Mr. Blackshaw is one of three division chiefs that is under my control.

ZAKHEIM:

So, presumably, you have a broader mandate, then, correct? And so the kinds of hemming and hawing that poor Mr. Blackshaw had to do, you wouldn't have to do, correct?

STREUFERT:

I would hope not, but . . .

ZAKHEIM:

OK. Then don't hem and haw.

Question for you, just because it's so confusing and Mr. Blackshaw was forced to, you know, hedge here and there, do you folks at AID directly contract for security personnel, yes or no?

STREUFERT:

No.

ZAKHEIM:

You do not contract at all? So . . .

STREUFERT:

Overseas? No, we do not.

ZAKHEIM:

No. OK. So, then, it is the people who receive your grants, or your contracts, who can contract for those personnel, correct?

STREUFERT:

That's correct.

ZAKHEIM:

OK. And when USAID people go in the field, who protects them?

STREUFERT:

Either diplomatic security or contractors funded by diplomatic security.

ZAKHEIM:

So your people are essentially protected by DS contractors and nobody else, correct?

STREUFERT:

There may be occasions when AID people travel within country and the partners, for instance, that are PRTs [Provincial Reconstruction Teams], our partners may have the responsibility or have the contract for the security force.

ZAKHEIM:

Could you define, partners, for me, please?

STREUFERT:

Our implementing partners, the contractors, the grantees.

ZAKHEIM:

OK. So, essentially, the contractors will provide security for your personnel on occasion, correct?

STREUFERT:

On occasion that may occur.

ZAKHEIM:

OK. Well, you would hope that on occasion your personnel don't get killed.

Now how do you oversee the performance of those people who are providing protection for you people on occasion?

STREUFERT:

The requirements for their performance would be guided by what's in the contract, with the prime . . .

ZAKHEIM:

OK. And how do you oversee the prime's review of those contracts given that it's your people's lives at stake?

STREUFERT:

The contracting officer at the AID mission would be responsible for oversight of what's required in the contract.

ZAKHEIM:

So it's an AID person who's responsible for the oversight?

STREUFERT:

It's an AID contracting officer who looks at the requirement . . .

ZAKHEIM:

It's somebody on the AID staff?

STREUFERT:

Yes.

ZAKHEIM:

OK. And what kind of visibility do you have into the performance of these private security contractors that are working for the contractors that you hire? I mean, you say it's up to the person out there but what kind of evidence comes back into headquarters? How do you check these things? How do you check for incidents? How do you check for mishaps? How does it work? Just, I'm curious, tell me.

STREUFERT:

Well, one of the methods of course is the reporting done by the OIG. There's also the . . .

ZAKHEIM:

No, no, no, no, no, no. The inspector general? You know, inspector generals aren't reporting for you, they're reporting for the Hill, they're reporting for the people.

How do you manage it? I mean, you know, when I was in DoD the last people I relied on were the IG's because they were independent—they were looking at us. And if I relied on them that would be a big problem. Who else do you rely on?

BLACKSHAW:

What we have done is . . .

STREUFERT:

Hold on, David.

One of the issues that we recognized about a year and a half ago was that we needed better coordination and oversight of the implementing partners and the contractors that they employ for their security when they choose to employ contractors for security.

So in a couple of our missions we have established, I'm sorry, we've assisted the AID mission in establishing a position, right now it's called the safety and security officer position, that is a key interface between the implementing partners and the AID mission and the regional security officer.

ZAKHEIM:

OK.

Now, when the people you contract with hire out or contract with personnel-security types, are those lowest-price technically acceptable contracts, do you have any idea?

STREUFERT:

I'm sorry can you repeat the question?

ZAKHEIM:

Well, you say that your implementing partners will contract out for security, correct? That's what you just said.

STREUFERT:

That's correct.

ZAKHEIM:

OK. And oftentimes those security folks will protect your folks, correct?

STREUFERT:

On occasion they will.

ZAKHEIM:

OK. One occasion is enough for a mother or father who would be grieving.

Those contracts that your implementing partners let to these security people, are those lowest-price technically acceptable contracts?

STREUFERT:

I do not know the type of contract. I can certainly take that question, we can get back you.

ZAKHEIM:

Absolutely. And I'd like to hear about it in 24 hours because people's lives are at stake.

Thank you.

Mr. Motsek, first of all welcome back. I share my colleague Mr. Green's concern about the QDR. And I know it's not because you didn't try. You know, you're really good at what you do and I'm happy to say that for the record, but, Gary, why do people push back? I mean you say you had so much trouble and Commissioner Schinasi talked about this. I don't understand why people push back? I used to run the equivalent of the QDR many, many years ago, and if it was something important and people pushed back on it then OSD [Office of the Secretary of Defense] would just say, "Too bad." What happened here?

MOTSEK:

I mean, you know, a lot of it was internal deliberations, as I'm sure you're aware. The QDR's processed somewhat differently than when you were in the building, I'm sure as you're aware.

Really after the fact, as we did the after-action review, as to what made and what didn't make, it the response I got, quite candidly, was we had in place and we're making progress, this was not a red flag to the extent that it needed to be raised as a specific issue.

The broader issue was raised—and again, I'm thankful that they acknowledged the fact that there are three components for the total force because when you and I grew up it was active guard and reserve.

ZAKHEIM:

Right.

MOTSEK:

It's now the three pieces.

And the other piece that I think we have made progress on—and this may be the other reason—is that heretofore, to be blunt about it, as you recall, our commanders, frankly, did not plan beyond Phase III, did not plan beyond that.

The secretary has put out some pretty explicit guidance via the other classified documents that you're aware of that make it extremely important, and they must plan for all phases of the operation.

When you go late-Phase III, Phase IV, that's when this huge contractor package comes into play.

So I really don't want to look at the QDR in isolation. You got to look at that, the GEF [Guidance for Employment of the Force], and a couple of the other documents, and I think if you look at them in their totality, I think we've made reasonable progress.

But you bring up a good point. Am I personally satisfied?

Certainly not, OK? But from a broad perspective I think we've made some decent progress.

ZAKHEIM:

I was going to ask you if you're personally satisfied, but you're so forthcoming you already said it.

Another question to you. This whole process of this follow-on to the Montreux Document, the Swiss process: now IPOA is the organization that monitors supposedly or tries to monitor these kinds of contractors. Are you aware of a single case where a contractor has been essentially censured by IPOA or anybody else?

MOTSEK:

That's hitting the nail right on the head. We have associations out there. IPOA is one of them.

ZAKHEIM:

Are you familiar with any?

MOTSEK:

No. None.

ZAKHEIM:

None whatsoever?

MOTSEK:

None whatsoever. But it goes back to the discussions that were happening before.

ZAKHEIM:

No, that's fine, because in that case, why do you think this Swiss follow-on document which essentially is going to be run by the same people who haven't, whatever organization, who have not censured a single one of their colleagues, why do you think it's going to make a difference?

MOTSEK:

That's the key issue. There's two components to what we're doing today; one is to build the standards of conduct, and we're waiting for the legal version, if you will, because we've had the aspirational version floating around for a couple months.

The second piece is to have a certifying authority independent of what you and I consider to be the trade associations, independent of the government proper because we can always enforce our own rules, but an independent agency.

Quite frankly, without going into the specifics, because I can't talk about specific organizations, but some of the international institutes that are associated with some of the major universities in both this country and the U.K. have stood up and said, "We are ready and prepared to perform this mission as the independent assessor of what goes on."

What is so key to this is that the Iraqi government has signed up for this. And it goes back to everyone's question, "What the heck do you do for compliance?" The simple answer is if a company in the future screws up, his ticket is pulled and he can no longer operate. The host nation will actually be forced, if they comply with this, to pull the ticket for us. And so we have to respond and react as opposed to being always in charge.

ZAKHEIM:

Thank you. My time is up, sir.

THIBAULT:

Thank you. I'm going to work on this a little bit, Mr. Motsek, and take privilege. You said "company in the future." I couldn't agree with you more.

I'll also state that when this first concept of an independent party came up I wasn't in favor, and the reason I wasn't in favor is I said, well let's give industry and DoD and State an opportunity.

And I'm not convinced because it just has not worked but we are still concerned that in the present there are mechanisms to pull their ticket. It's called contract termination. And yet it doesn't seem to ever occur. So I just share that with you.

Now Commissioner Ervin is up and he has a couple follow-ons.

Did I get it right, Mr. Streufert, that's your name?

STREUFERT:

Streufert.

THIBAULT:

Go ahead and spell it for me so I don't . . .

STREUFERT:

Streufert. S-T-R-E-U-F-E-R-T.

THIBAULT:

Thank you.

And whoever is keeping the time, don't start it until these follow-up questions are asked.

Commissioner?

ERVIN:

Thank you, Mr. Chairman.

Mr. Streufert, I'd just ask for the opportunity to ask you a couple of follow-up questions to Dr. Zakheim. He was a little nicer to you than I expected him to be and that I would be and for those questions not to count against my time.

Our staff asked for the representative from AID who was most knowledgeable about security contracts in the war theater. And you've said that you have a broader authority—you're Mr. Blackshaw's boss—you've answered Dr. Zakheim's questions I think very well. We may agree or disagree with your responses, but you've given responses to the question. You're obviously available to be here today because you are here today. Why weren't you here today? Who made the decision for you not to testify and for Mr. Blackshaw to do so in your stead?

STREUFERT:

Mr. Blackshaw's name was on the invitation and mine was not.

ERVIN:

As I understand it, we'll consult with our staff, but as I understand it the reason Mr. Blackshaw's name was on the invitation is because after consulting with your office we were told that he rather than anyone else was the appropriate person to speak to about these matters. Is that your understanding?

STREUFERT:

I will take your word for that. I don't know.

ERVIN:

The request that we made, that Dr. Zakheim made of you for whether the contracts AID has in the field are low-price technically acceptably, he asked for that in 24 hours, I'd like for somebody—Mr. Blackshaw, or if there is anybody else from AID here—to provide that answer for us during the course of this hearing. Somebody call back or e-mail back to get us that. I don't understand why we have to wait 24 hours to get an answer that seems to me AID ought to know the answer to that question.

ZAKHEIM:

Looks like I'm just a softy.

STREUFERT:

That's answer really the contracts that any prime might issue would be their contracts.

ERVIN:

But the question is, you are presumably able, AID, your office is presumably able to provide the answer to that question within 24 hours because you said that you would. What I don't understand is why it takes 24 hours to supply the answer to that question.

Will you get us that answer during the course of this hearing? We're going to be here at least until 3:30, is my understanding. Can you do that and will you do that?

STREUFERT:

We'll contact someone in AID to see if we can get that answer for you.

ERVIN:

Can you do that right now?

STREUFERT:

Yes, we'll do that.

ERVIN:

All right. Thank you.

I actually wanted to talk about something else during the course of my eight minutes. I wanted to link the subject of Friday's hearing with the subject of today's hearing. Really we're talking about, it seems to me, essentially the same thing, this whole issue of inherently governmental—what is inherently governmental and what isn't?

And as I reflected on Friday's hearing and thought about today's hearing it occurred to me that—this is just a comment and it's a predicate for questions that I want to ask you, Mr. Motsek and General Harrington—we're really wrestling with the wrong issue because it seems to me it really isn't, if you think about it, a definitional problem. We have a perfectly adequate definition of what's inherently governmental: an activity that is so intimately related to the public interest as to mandate performance by federal employees.

Private security contractors are authorized to use deadly force to protect American lives in a war zone. And to me, if anything is inherently governmental it's that. To me we don't have a definitional problem; we have an acknowledgement-of-reality problem.

I would argue that given the risk that the misuse of force by private security contractors, the risk that they pose to undermining United States government efforts to win hearts and minds in the war zone, particularly at a time when this administration, in my view quite rightly, acknowledges that it's as important to win friends as it is to kill our enemies, given the fact that we have so little visibility as to contractors and subcontractors, given the fact that we have considerable legal ambiguity as to whether contractors and subcontractors can be accountable for their misdeeds, and given the potential for particularly local-national subcontractors to work against the interests of the United States by shooting at our own personnel, it seems to me that this is an activity that ought to be ideally performed by federal employees.

We don't acknowledge that reality though. And we explicitly make the use of private security contractors legal because we have no alternative. We don't have in the short term, and in the medium term actually, the organic in-house capability that we need to provide the security for ourselves.

So with that as a predicate—and I'm not really asking for a response; I wouldn't expect government witnesses to agree with that under the circumstances—but given that as a predicate, I was confused by a couple of statements in your prepared remarks, Mr. Motsek. You say that the role of PSCs are analogous to civilian security guard forces, not combat forces.

And then a couple of pages later you, seems to me quite rightly, contradict that and acknowledge the reality I'm talking about by saying the behavior of PSC personnel can affect the national security goals of the United States.

That's not true, I would argue, of civilian security guard forces whether they're guarding a mall down the street or whether they're even guarding an American military base here in the United States.

And then secondly, and I'll give you an opportunity to comment after this, you begin your statement, both your prepared remarks that you submitted for the record and your oral summation of it, by quite rightly saying contractors are part of the total force. And then a few pages later you go on to say that PSCs do not operate as part of a larger, totally integrated and cohesive military force where their actions could adversely affect the success of the U.S. military mission or could bind the U.S. to a course of action where alternative courses of action do not exist.

I would argue, and then I'll give you an opportunity to respond, that the discharge of force, the misuse of force, binds the United States to a course of action. When Nisour Square happened the United States was bound to a course of action as a result of a misuse of force in that incident.

So with that, let me give you an opportunity to respond to that.

MOTSEK:

Well, first of all thank you for not making me respond to the larger question, because clearly we have a disagreement there.

ERVIN:

Well, let me stop you there. I'm not sure where the disagreement is. You seem to suggest that we ought to be moving toward developing an organic in-house capability to provide security for ourselves at least to some degree. You say that on page eight.

MOTSEK:

Correct.

ERVIN:

So what's the disagreement?

MOTSEK:

It's the broad context of your statement. Just because we're in a contingency operation or a combat zone the application of deadly force is an inherently governmental function. A doctor can just as easily use deadly force on me and take my life as a contract doctor. Are we suggesting that a contract doctor can't be used there? Because he can take my life every bit as easy. So I can't parse it that way.

ERVIN:

Let me stop you there. I mean, let me stop you. That's a ridiculous example. That's just unserious. That's disrespectful to say that.

MOTSEK:

No, sir.

ERVIN:

You know perfectly well the distinction I'm making here. You go on to say that DoD recognizes that there are specific security functions that are inherently governmental and cannot be contracted. What are those? You say that on your statement.

MOTSEK:

There are . . .

ERVIN:

What are they?

MOTSEK:

There is obviously some inherently governmental security operations that can't . . .

ERVIN:

Give me an example of one?

MOTSEK:

The protection of the president of the United States cannot be done by someone other than the . . .

ERVIN:

Why is that?

MOTSEK:

. . . Secret Service. Because we have a federal law that says that Secret Service will be the primary . . .

ERVIN:

So are you saying as a result of that that the only reason why we don't have private guards for the president of the United States is because the law permits it but otherwise we would?

MOTSEK:

Well, in the past we did. In the past we did. The president of the United States during the Civil War was protected by private security contractors. He wasn't protected, unfortunately, in 1865, but he was early on.

ERVIN:

Are there any specific security functions in the war theater—let's forget the president for a minute. Are there any? Because the context of the statement where you make this claim, we're talking about wartime contingency contracting, we're not talking about the president of the United States.

MOTSEK:

Correct.

ERVIN:

And I think you know very well that. So you say in your statement DoD recognizes that there are specific security functions that are inherently governmental and cannot be contracted. So give me an example in this context.

MOTSEK:

A security function that would result in an offensive operation is one that would be inherently governmental.

ERVIN:

You don't make that qualification when you say that. So that's what you mean . . .

MOTSEK:

Well, that would be one example. You asked me for an example. That would be one example. The idea that private security contractors specifically do not operate in a context of a cohesive

force that can be massed and cause mass-casualty effects on a battle space, but while primarily they're for example in a static-guard capability, the presumption is on your part that we are always defending against an armed enemy in the terms of some sort of Geneva Convention. The vast majority of the incidents that occur around installations are primary criminal in nature. Many of them . . .

ERVIN:

Let me stop you there. On page eight you talk about the fact that DoD is developing a small cadre of government civilian PSCs. And you say that there's great potential in this area. And I agree.

MOTSEK:

Yes.

ERVIN:

That is the development of organic in-house capacity for DoD.

MOTSEK:

Yes, we have, you know...

ERVIN:

Right. Why are you moving toward that? Why is that a great idea?

MOTSEK:

It goes right back to what was brought about as part of the QDR. Heretofore we've had two options. We've had a military option, we have had a contractor option for whatever function we wanted to do. Essentially we default in the PSC side of the house by and large to a contractor option because we have no real force structure.

ERVIN:

It's exactly what I said at the beginning.

MOTSEK:

Exactly right.

ERVIN:

If you had the organic capability to provide security in the war zone, either American military personnel or civilian personnel, like DS or [inaudible] would that be the preferred method given the potential for private—not just the potential, the fact that PSCs have undermined United States government interests?

MOTSEK:

From a reality, because I have to deal in reality, I would not make the all-inclusive statement that you said.

ERVIN:

Wait a minute. Wait a minute. Let me stop you there. You know, I was going to begin this, Mr. Motsek, by commending you for your candor in response to earlier questions. You're not being candid with me. You say you deal with reality. I began my rather long statement by saying today we don't have the organic in-house capability to provide security.

MOTSEK:

Correct.

ERVIN:

So I'm not talking about right now. My question to you is, down the road is your preference to provide security internally? Is that better for United States government interest?

MOTSEK:

Across the board my answer to you, my candid answer, is no. My candid answer is no. The weakness that we have in the system in my mind today is that you're giving me the other option which I don't want, which is an all-or-nothing option.

ERVIN:

Thank you, Mr. Motsek.

Could I just, Mr. Chairman, just take just a half second to just give Mr. Harrington an opportunity just to give us his view on this issue?

THIBAUT:

Well, you can take more than a half second, Commissioner.

ERVIN:

What about you, General?

HARRINGTON:

Well, sir, my job is to take requirements and contract for them as effectively as we can. I'm unable to comment on how those requirements are structured at a much higher strategic level.

ERVIN:

Right. All right. Well, I'm not really asking about requirements but let me ask you a specific question.

HARRINGTON:

Sure.

ERVIN:

As I understand it the FY '08 NDAA requires the government to in-source security guard functions here in the United States. So isn't it anomalous that that's required here in the United States but it isn't required in the war zone?

HARRINGTON:

Sir, I just say that . . .

ERVIN:

Is it anomalous?

HARRINGTON:

I don't think so, sir.

ERVIN:

What's the difference? Why do we insist on in-sourcing the security guard function, here in the United States? What's the reason for that? Do you have any thoughts about that?

HARRINGTON:

Well, sir, I can't comment on the numbers being in-sourced, but . . .

ERVIN:

I wasn't asking about the numbers. I asked about the rationale . . .

HARRINGTON:

Right, sir.

ERVIN:

. . . for in-sourcing here.

HARRINGTON:

Well, my comment on the numbers is, I'm not sure all of those are being in-sourced. That was my only comment. I don't know, specifically.

ERVIN:

But I'm not asking about the numbers. I'm asking, "What is the rationale?" It's a rationale question. You don't need numbers.

HARRINGTON:

Right.

ERVIN:

What is the rationale for having the security guard function provided here in the United States in-house, by the United States government?

HARRINGTON:

Sir, I don't know the answer to that.

ERVIN:

Thank you very much.

ZAKHEIM:

Chairman, could I follow on.

THIBAULT:

Commissioner Zakheim, please.

ZAKHEIM:

Mr. Harrington, especially since you were earlier, General Harrington, I'd like to simply ask you this: As somebody who had to look after your troops and their welfare, would you really be comfortable with the fact that in the United States where, you know, we have incidents on occasion, but they're very few and far between, we've got Americans protecting our government facilities, but in Iraq and Afghanistan, where it's a very different situation, would you be comfortable knowing that in the United States, where things are OK, we have Americans, but overseas, where things are not OK, we rely on third-country nationals or locals who might turn on us at any time?

I'd like your personal and professional opinion on that, please.

HARRINGTON:

Sir, I'd be comfortable as long as the rules of engagement, the mannerism, and rules with regard to oversight of those contracted functions was appropriate for the level of performance the contractors had to execute within the rules of engagement and within the threat, as well as within the magnitude of the contracted function they serve.

So if it's a life-saving or a life-protection function, sir, I would be comfortable as long as the rules were in place to be able to oversight those contractors appropriately to make sure they perform properly.

THIBAULT:

Well, let me just add one thing before we get to my co-chair. The State Department is going to take care of personnel recovery. You know, you got a wounded American. If the DoD isn't there, you've got a wounded American-government employee, are you comfortable as a former military to have a contractor be in charge of the government's military hot-medivac?

HARRINGTON:

Well, sir, I would answer it the same way. As long as the terms and conditions of that contract were prescriptive enough to ensure that contractor was going to perform such a life-critical function, yes. If in fact we're unable to define those types of terms and conditions, no.

THIBAULT:

OK. Thank you.

HARRINGTON:

Yes, sir.

THIBAULT:

Commissioner Shays, please, co-chair.

SHAYS:

Thank you. I really appreciate the questions of my colleagues and the effort on the part of the panel to answer questions. And I also appreciate having the director of security from USAID here.

So thank you for being here.

This commission was established in large measure because of the extraordinary waste and theft of U.S. dollars and abuses in security. So there is a real expectation on the part of Senators McCaskill and Webb, who saw this as a form of the Truman Commission, and supporters like Lieberman and Collins, Mr. Tierney, and those of us in the House at the time who supported it when I was there, as well.

And I just would preface my question by saying, I had three incredible constituents, all in one family, that became very successful in the business world, running two Fortune 500 companies and very successful, and a third in finance.

And I said, "Why were you all so successful—one family?" And they said they think the biggest reason was they dealt with reality, not with what they wanted.

And part of what, I think Mr. Ervin is dealing with is what is the law, what would make sense, and, you know, in terms of ideally, and then, you know, what is our capacity?

And I think we're failing to acknowledge that the law really requires us to do one thing and we've pushed it aside a little bit because the reality is we can't deal with it.

And I think in the short run, you can do it. In the long run, it can be disastrous.

The law says, in terms of what is inherently governmental, the Federal Activities Inventory Reform Act, that's what Congress did, defines inherently governmental, "so intimately related to the public interests as to require performance by a federal government employee."

OMB has the same definition except two different words, "So intimately related to the public interest as to mandate performance by federal government personnel."

Now the panel we had on Friday said, well, this definition isn't all that helpful. In other words, it shouldn't guide us. But it's the law. And so either DoD needs to ask the law be changed or we have to acknowledge that we're really, I think, kind of, on the edge.

We have security guards in static positions, in convoy, and in personnel. I'd like each of you tell me, when is it more likely that inherently governmental would arise as a real question to be dealt with—not whether you're with or against, but where do we get to that real fine line.

Is it guarding facilities? Is it guarding convoys? Is it guarding personnel?

And, Mr. Motsek, I'm going to start with you, and we'll go down to you, General Harrington, and so on.

MOTSEK:

In my mind, the order is key personnel. I'd have to caveat just not personnel . . .

SHAYS:

That's when the issue becomes more . . .

MOTSEK:

That's when, I think, it becomes the interest of the U.S. government to have the U.S. government operators perform the function.

The other two examples, to be blunt, are situational-based and risk-based. A "movement" could be relatively safe, compared to a "static" today, and it could be reversed the day after. And that's why I'm . . .

SHAYS:

OK.

General?

HARRINGTON:

Sir, in my sense, it would be personnel also. But from my perspective, where any type of a threat that would overcome that private security contractor, that would turn into a combat operation, I think would be the key focal point in terms of assessing inherently governmental.

SHAYS:

Ms. Lamb?

LAMB:

I'm going to go with, this is a trick question.

Respectfully, I think no matter whether it's a static guard on a facility or protecting a VIP, we've given these folks weapons and armed them. And their sole purpose is to protect us from attack. So I don't think that you can measure or delineate between which attack is more critical than the other and which becomes inherently governmental.

SHAYS:

No, it's not a trick question. But your view is all three could or couldn't be.

LAMB:

They're equal. Exactly.

SHAYS:

OK. You think they're equal?

LAMB:

For inherently, yes.

SHAYS:

OK.

Who's going to answer this question?

BLACKSHAW:

I think inherently government is a very tough situation here. I would say any time you could use deadly force there should be an inherently government function.

But I think the difference that we see here is when we play offense or defense. Most of everything that we're doing is just . . .

SHAYS:

Director, would you add anything to that contention?

STREUFERT:

As my colleague from the Department of State could attest, we have embassies and AID missions overseas that are protected by host-government personnel, because that's their responsibility. So . . .

SHAYS:

Well, what I didn't like, though, and why I appreciate you coming forth, I felt that, Mr. Blackshaw was, kind of, like, washing his hands. You know, we don't hire contractors, we give out grants, we hire folks to do work and they do it.

And, I think you're well aware of this report: the audit of USAID Afghanistan oversight of private security contractors in Afghanistan. USAID's implementing partners use subcontractors, and we also use the word sub-recipients in grants, and they hire the PSCs.

So, my question to you is, does USAID oversee anything these PSCs do? And I'm going to ask you, Director.

STREUFERT:

I don't know that they do it directly.

SHAYS:

So you do it indirectly?

STREUFERT:

Only through the contracting officer or grant officer and their . . .

SHAYS:

OK. That raises the next question. Don't you think you have a responsibility to oversee them?

STREUFERT:

I think I'd have to be either an attorney or the contracting officer to give you that answer.

SHAYS:

I'm afraid I'd just like your intuition as someone who deals with security. You just think it's fine that the U.S. government literally has no responsibility for what these folks do?

STREUFERT:

They are hired by an implementing partner, a contractor grantee for.

SHAYS:

Paid by the United States of America.

STREUFERT:

Yes, sir.

SHAYS:

OK.

STREUFERT:

And to perform a specific security function for that implementing partner.

SHAYS:

Right.

Now one of the basic themes—it's the answer I got from you, but I find it extraordinary.

Because this report makes it very clear there are consequences by the position. And one of them is you aren't getting accurate information of the number of incidents with these security folks, because you don't have oversight over them. And that was a major criticism.

And the implications, I think, to our success or failure in Afghanistan, Iraq, or wherever is impacted by that.

What I'll just end because my time is up, but I want to go on record as saying the theme that's coming through here is DoD is leaving Iraq, State takes over. Isn't this going to be handled?

And the answer, then, is that the Army is out. The government is—the security folks that inherently is governmental is going out and State is coming in.

And what I fear, Mr. Motsek and Mr. Harrington, is that the personnel folks and our static facilities and our convoys, whatever they may be, are going to be, by default, contractors, even if it really is inherently governmental.

And it's an alarming thing that I think this commission is going to have to deal with, but you, all are going to have to wrestle with.

You're leaving. I mean, the DoD is leaving. You, the State, is going to have to take it over. You don't have the expertise, you don't have the experience, and you don't, in my judgment, have the ability to easily make sure that the government does it when it is inherently governmental.

So we're going to try to help you, but it would be nice if we were at least honest about this reality.

Do you have a comment before I . . .

LAMB:

Yes. I believe that the contracting process that we have in place, the required vetting, screening, and training is critical to all these contracts that will have to be let, whether it be specialty or for our protective security personnel.

And the process within State Department is, we write the scope of work and then it goes for legal review. And it is thoroughly scrubbed and reviewed to identify and to make sure that we do fall within the current . . .

SHAYS:

OK. Let me just end by saying, I respect what you're saying, but the bottom line is there is the concept of inherently governmental, but then there's the next level, which says it may not technically be inherently governmental, but you would be foolish not to use government security in those instances—not required by the definition, but required by good logic and sense.

LAMB:

OK.

THIBAULT:

Thank you, Commissioner.

Now we're going to head into a second, shorter round of questions.

I guess I can start, Secretary Lamb, with, our staff provided us a number that you have approaching now 3,000—I've got a number, 900 and 1,800 in my prep book, of DS-supported contractors and static contractors. Is that about right?

LAMB:

Yes, it is.

THIBAUT:

OK. And in your testimony, you said that and, you know, and you qualified it, saying—I read between the lines—it may not be enough, but it's our best current estimate that you're going to have a need for 2,200 DS supported-type PSC-detail contractors, as you have now, and about 4,600 static.

Or you're going to grow from about 3,000 to 7,000 or incrementally for PSC or for DS-type work, 240 percent, 260 percent for the other one.

And then you just said, you know, you've got this contractually required and rigorous—and, frankly, you do vetting and screening, but it raises the question in my mind.

And I'll make one other observation. Whenever I've been there, I've felt secure with the United States Army, traveling with them. I've felt secure, that's just me, at the locations where DS—and I know you have decades and years of private security contractors in a non-contingent environment, but sometimes they become contingent, so you have a lot of experience, whereas, a lot of the new DoD private security contractors are, in fact, new, you know, they haven't been in the business as long as a couple of the others.

Are you really going to be able to acquire, to train, vet 7,000 by the end of December next year? And is that really a realistic number, given the fact that the United States Army has about 14,000-15,000 private security contractors now?

And I realize they're going to shut some bases, therefore, there goes some static security. But even that number, can you do it?

LAMB:

We are prepared to do it. And it will be up to the contractors that are awarded the contracts to come forth.

THIBAULT:

So, you're confident that this unprecedented workload to meet the austere, important, demanding requirements of your contract, that you're going to make it?

LAMB:

I believe that we will, yes.

THIBAULT:

OK. Let me compound it a bit, then. Does USAID fully participate in the Army's CONOC [Contractor Operations Cell] operations in terms of movement within theater, you know, as far as registering all private security movement activities in Iraq?

Yes or no? That one doesn't need a qualifier. You're either in the system or you're not.

BLACKSHAW:

We are.

THIBAULT:

OK. So 100 percent of the people, when they head out, they're vetted and they're moving.

We're not going to find any, for the record, that just didn't happen to get in there, we'll deal with later.

It's an important statement: You're under oath.

BLACKSHAW:

To the best of my knowledge.

THIBAULT:

OK. To the best of your knowledge, you are.

OK. Are you familiar with—is anyone here, because I just found out about it—familiar with the tremendous workload-growth by commercial oil companies in the south of Iraq and the security operations there?

Go ahead. I'll start with USAID.

Are you?

BLACKSHAW:

No.

SHAYS:

Are you, Ms. Lamb?

LAMB:

They are connected to the RSO's [Regional Security Office] office through the OSAC, Overseas Security Advisory Council.

THIBAUT:

So you've got some meetings, and, therefore, you have some awareness.

LAMB:

Correct.

THIBAUT:

Are you aware of the principles and standards that they're operating under on their security—private security contractors for commercial travel and deployment of force and incident reporting and the like?

LAMB:

Personally, no, sir, I am not.

THIBAULT:

Well, you know, you're going to run the country in a year and a half. That's the question.

And when I saw you nodding your head, Mr. Motsek, and in the spirit of time, where I'm at on that is we receive briefings by your assigned individuals. They're aware of it, but it's voluntary, 100 percent, and most of them aren't.

And whoever chose the words, I thought it was appropriate in the statement, "Wild, Wild West potential." Running around now are very important private security, because they got to protect themselves, it's still a hostile environment. And they're either drilling or getting ready. And there's sort of an oil rush that's going on

And it's voluntary, you know, so the potential is a total out-of-control situation when, and even the Army right now, can't sit there and tell you about all their movements down south.

And it's critical because when there's a problem, and there are problems, then you need to know where everyone's at. And right now, we don't.

So I just share with you that if you're not aware of it, that's another major responsibility that's critical.

And my time's up, but I'm going ask one more short question about ArmorGroup [AGNA], since you brought it up, Mr. Blackshaw.

How did you vet and consider past performance for ArmorGroup when you've awarded them contracts, or your prime contractors, your partners, when they awarded ArmorGroup contracts? What's the past-performance vetting process that they go through? And how do you assure that USAID has presently responsible contractors?

BLACKSHAW:

The way the Office of Acquisition and Assistance provides security . . .

THIBAULT:

So, you're reading something off your BlackBerry, so someone sent you a note about AGNA.

BLACKSHAW:

Correct.

THIBAULT:

OK. Tell me about it.

BLACKSHAW:

It just locked out, anyhow, so . . .

THIBAULT:

Well, OK, then why don't you tell me how you do it?

BLACKSHAW:

It's a standard procedure for USAID contracting. They look for the best value.

THIBAULT:

All right. Are you aware of their performance issues that they had with State Department?

BLACKSHAW:

Are you talking about the one in Afghanistan?

THIBAULT:

Yes.

BLACKSHAW:

Yes, sir.

THIBAULT:

How did you consider that?

BLACKSHAW:

That I do not know because . . .

THIBAUT:

Can you find out for the record how that was considered? Because if there ever was an egregious, ethical, and performance issue, that was it.

And part of the issue that is out there that's a bigger, broader issue is when you have individuals that participate in those kind of activities, again, when we were out in the world of defense saying, "Where's your list?"

Where's your list of PSC employees that have either been fired, terminated, or allowed to go gracefully? Do you create some kind of a list or reference or ability so that companies know that they're not hiring someone that's participated in something like that?

So I would appreciate if each of you would for the record share with us how you expect your companies to vet their employees for past-performance issues, because we don't have time to go into that now.

And I would ask, for the record, that I'm very interested in ArmorGroup's in the actual past-performance by those companies that you oversee, as far as considering that. You know, it doesn't mean they're out of business, but it does mean they had a major breakdown, and it ought to be considered.

Thanks. I've spent my time.

ZAKHEIM:

Mike, 10 seconds?

THIBAUT:

Please, Mr. Zakheim?

ZAKHEIM:

Well, since you're here, Mr. Streufert, and you're Mr. Blackshaw's boss, can you answer Co-Chairman Thibault's question right now, without having to go to the record?

Presumably you're more senior and you have more visibility.

STREUFERT:

Could you sum up that question, again, sir?

ZAKHEIM:

My question . . .

THIBAUT:

Yes, I'll sum up that question. All your—what do we call them, partners?

STREUFERT:

Yes.

THIBAUT:

All your partners, the companies that you award money to, that, I guess, you have a partnering relationship, which is different than some of the other organizations, all your partners, did they, in the Armor case, vet both employees and the company for the issues that have occurred in their past, and was it considered by the contractors that awarded it?

And what did you think about their consideration of the past performance?

STREUFERT:

I think we'll have to get that answer from the AID mission.

THIBAUT:

OK.

ZAKHEIM:

Does that mean, sir, that as director of security, you don't have any insight at all into something like this? Is that what you're saying?

STREUFERT:

The decisions for contracting are done at each AID mission.

ZAKHEIM:

That's not what you were asked.

THIBAUT:

In other words, your leadership—you know, you got contractors that are awarding it, but oversight of the contract is a USAID quality of security.

While this company was doing whatever it was doing—and the best they could say is, "Well, these party people were, most of them, we think, weren't on duty." And "it was only one major unit that was involved with, you know, dozens of people."

Are you familiar, sir, with what they did?

STREUFERT:

The details are a little fuzzy for me, but . . .

THIBAUT:

Well, a little fuzzy. You really ought to be familiar if you're doing business with them. I know that Mr. Blackshaw apparently is, and that's a good thing.

But I would counsel you, for the record, when you go back and get this information, and Commissioner Zakheim, you want to follow up at all with the last word?

ZAKHEIM:

Yes, I mean, this was a major scandal. It was in all the newspapers. It was on TV. It was everywhere. And what I'm hearing is that the director of security of USAID has, at best, a fuzzy understanding of what happened and no insight as to the follow-up.

And, frankly, that is scary.

STREUFERT:

Are you referring to the harassment that was done of the local nationals, that was filmed?

THIBAUT:

No, about them all being naked and toga parties and licking alcohol off of places that no one should take a picture of, but the picture was taken. That's what I'm referring to.

STREUFERT:

OK. Yes, I recall that.

THIBAUT:

Yes, I recall it too. Have you seen the pictures?

STREUFERT:

I've seen them, yes.

THIBAUT:

Well, there you go. Then you did recall it. OK. You know, that's a little vague considering you've seen the pictures. You should be able to say, it's the wrong word to chose but, "I'm intimately familiar with the situation."

ZAKHEIM:

But don't let him off the hook, Mike.

Because, frankly, if you were familiar with what was going on there, and it was outrageous, then was it simply something you'd leave to the field to deal with? You're headquarters. You're director of security. If you don't beat somebody on the head, who does? Could you please respond to that?

STREUFERT:

I would love to say I had responsibility for looking into that contract, but I do not.

THIBAULT:

It seems to me, from a management viewpoint, the top person in AID ought to say, "What is every situation where our contractors have performed so poorly," should have briefed on it, "that we're contracting with and how did you deal with it?"

Whether you call that a list of poor performers, I'd call it past performance. And I would say your acquisition folks, when they're getting ready to exclude a contractor for past performance—doesn't seem anybody does it.

But I guarantee the contractors would be making some noise, and therefore it should flow up.

And I think that's Commissioner Zakheim's frustration. I have the same one.

Let us go back and be sure that our questions for the record articulate what we'd like from you. And we'll get it to you.

STREUFERT:

OK. All right.

THIBAULT:

I don't even know where I'm at.

Commissioner Green?

GREEN:

Thank you.

I'll let you off the hook for a moment, Mr. Blackshaw, so you can catch your breath, and then I'll come back to you.

Ms. Lamb, I was interested in—and this is not for an answer—but I was interested in your characterization of, essentially, the three categories of security as being equal, if and when anybody decided they were inherently governmental.

My only comment to that is you've got a heck of a force structure, then, ahead of you, if all of those activities, to include embassy security guards, become inherently governmental.

And I'm curious as to what you do with all these people when the conflict is over.

I know you can squirrel away a few of these security specialists, but to build a force structure like that I think is totally unrealistic. You don't have to answer that. I think you'd probably agree.

I don't know, General Harrington or Mr. Motsek, which of you would be the most appropriate to answer this.

As you know, Department of State has put within each of their movement teams a DS agent to oversee the contractor. Those "movement" personal security details that you are using in Iraq and/or Afghanistan, which are not being run by the military, do you do something similar?

Do you put a government person with that movement detail if it is being run by a contractor?

HARRINGTON:

Sir, we know that we do that often. I don't know that we do that all the time. It depends on the particular movement function, the mission of the function, the convoy, for instance, the route.

GREEN:

So as far as you know, there's no standard for green-suit monitoring, overview of those movements on a regular basis?

MOTSEK:

There is not.

HARRINGTON:

No, sir, there isn't. It depends on the actual mission itself.

GREEN:

Would this be something good to do based on the discussion Friday and today about inherently governmental, and as we move, maybe, in that direction, that at least oversight is comparable with what State is doing?

HARRINGTON:

Sir, well, worth considering. I know that, again, the evaluation of exactly what the contractor is going to do in term of movement, personnel, supplies to transport, those are factors used to be able to evaluate whether or not military presence is required. But well worth considering, yes, sir.

GREEN:

Mr. Blackshaw, I was going to ask this question—it's been asked in different ways several times—how is USAID involved in the oversight of their implementing partners' PSCs?

And I think the answer is "it ain't our job," because they're our implementing partners, our prime contractors, and the security folks are subs to them.

Is that a fair assessment of your feeling?

BLACKSHAW:

That is a correct statement. We have many nongovernment organization entities that work for us that actually value their independence and . . .

GREEN:

I've heard that, I've heard all that.

BLACKSHAW:

But that is correct.

GREEN:

How many times, in your knowledge, have contracting officers or CORs or anybody else that conducts oversight for AID been out in the field to evaluate what PSCs are doing?

BLACKSHAW:

I don't have an answer for that, but I would say it would be seldom, if never.

GREEN:

I would say probably never.

Now let me ask you the last question. Well, let me read something to you first. And I'm not a lawyer, and people who are and people who understand legislation better than I, can evaluate this, but, most recently, the 2010 NDAA expanded the requirements of section 862 of the 2008 NDAA to include private security contractors under USAID, State, and DoD grants and cooperative agreements.

Section 862 calls for regulations for PSC record keeping, weapons authorization, vehicle registration, incident reporting, training, among other things, and was a major step toward guaranteeing better PSC oversight.

Are you familiar with that?

BLACKSHAW:

Yes.

GREEN:

And?

BLACKSHAW:

What . . .

GREEN:

It doesn't include you guys.

BLACKSHAW:

As I stated initially, we do not have legislation authority. We were providing informal guidance. What we have done, we have worked with the USAID missions to establish safety-security officers to help the COTR [Contracting Officer's Technical Representative], or the COR.

GREEN:

I found that they hadn't gone out in the field, when we were most recently in Iraq.

So, how did they do this, if they never travel to the field, they never go to a site? How do they do it? You don't know.

BLACKSHAW:

That is an answer that our Office of Acquisition . . .

GREEN:

OK. You know, you ought to have somebody look at this legislation to see what applies or doesn't apply, because my last comment is this. If, God forbid, a Nisour Square-like incident happened at USAID with one of your personal security contractors, who are they going to go after? Who's going to point the finger? It's not going to be one of your implementing partners that was at fault. It's going to go to USAID.

And I would suggest you think hard about how you better monitor these personal security contractors.

SHAYS:

Could the gentleman grant me a moment here?

I'd just like to really emphasize the point that Commissioner Green is making.

Smart power requires the use of hard and soft power. The soft power is the mission of State, primarily, and USAID. USAID and State have been, in my judgment, underfunded, not given the attention, need more personnel.

And I don't question for a minute the competence of the three of you here. And thank you for your service. And I'm happy you were sitting in, and I'm happy you stepped forward, because I think, Director, you have added some insights.

What concerns me is that we don't use as an excuse, that because we don't have direct oversight of subs, or even the ability, frankly, to question their activities, that it not be used as an excuse for not being aware of what security people are doing who happen to be subs.

One of the important elements I'm getting from this hearing is, we've got to pay a lot of attention to this issue, because you can't do that. You can't wash your hands of what your security folks are doing. And we can't use as an excuse that they are the subs. Something has to be written in the contract that makes sure that you have some responsibility. At least that's where I'm coming from.

Thank you.

HENKE:

Mr. Blackshaw, just clarify for me what you said to Mr. Green. You said your office has no authority for what?

And I read that in your statement. You say, unlike State and DoD, "who have legislative authority to direct individuals and entities operating within their jurisdiction, USAID's Office of Security"—that's you, sir, right—"have no such authority."

No such authority to do what?

BLACKSHAW:

USAID's Office of Security provides protective services, security services, for our U.S. direct hires. This whole discussion about our implementing partners does not fall under our authority. It does not actually fall under the agency's authority.

The only direct relationship we have with our implementing partners is what's placed in the contract.

HENKE:

OK. Hold that thought. I'll come back to it on my time. Thank you.

THIBAULT:

Thank you.

Commissioner Tiefer, please, sir.

TIEFER:

Thank you, Mr. Chairman.

Mr. Motsek and Mr. Harrington, my first question should be an easy one. It's going to take some time. We got a briefing from the Department of Defense about a year ago.

And page three—see, I'm giving you things you've already briefed us—on page three stated, PSC concerns arose from earlier incidents. Most controversial incidents involved Blackwater.

And you tick off the four Blackwater PSCs in Fallujah, which basically kicked off the extreme war in 2004, the second battle of Fallujah; shooting of Iraqi security guard and Nisour Square, Blackwater killing of 17 civilians and wounding of over 20.

And then you described, which I would take as an understatement, spillover impact on DoD has been significant.

One word before I go on to my real question. You stand by that, right?

MOTSEK:

Yes.

TIEFER:

Good.

Let's say you had, you were awarding a contract and among the bidders was Blackwater, or its newly renamed ones. Would you have at least looked at these incidents as possible bad past performance? Yes?

MOTSEK:

It would have been in consideration. Yes, sir.

TIEFER:

OK. Now, there's a new section that will amend 862 that's passed the House and that's being considered in the Senate. And it says that you want to consider for such matters, both to subs and primes, consider such incidents as past performance, consider them as part of award fees, consider them as part of suspension and debarment.

Do you support that?

MOTSEK:

I believe the department supports the language as written.

TIEFER:

Now, another provision. I commend you. We couldn't get a straight answer like that out of the State Department, let alone AID. But the provision also calls for certification of PSC contractors. And I think the Department of Defense has weighed in on one of the most important questions.

Is this going to be a non-independent certifier, one in which the industry trade associations, particularly the IPOA, will have influence, or whether it should be an independent one?

Do you know the DOD position on this?

MOTSEK:

Well, Ms. Lamb's office and ours are the two working it on the international environment. And it is our position, the U.S. position, that it is an independent office. Specifically, it is not a trade organization. I gave you a possible example as who it might be. But I can't go beyond that, because there's stuff going on . . .

TIEFER:

As long as the . . .

MOTSEK:

Yes.

TIEFER:

As long as the trade association, which is otherwise quite influential, would be part of it.

MOTSEK:

Right.

TIEFER:

I'm . . .

MOTSEK:

But the idea of international accepted standards is the key. Agreed.

TIEFER:

OK.

We may this afternoon on the second panel get into some past incidents of some notoriety. And I'm going to mention in particular the one in 2006 in which a Triple Canopy employee, who said, "I want to kill some Iraqis today," and was involved in two shootings. There was no formal incident report, and the DoD people didn't have in their files any such incident report.

I'm not asking you to reinvestigate the matter. Taking that as a hypothetical, and purely as a hypothetical, would that be investigated? And might that involve past-performance considerations?

MOTSEK:

Sir, just from the hypothetical, the actions taken by the contractor would be part of the past performance.

One of the advantages of having a contractors is, as you know, is that we have the same due diligence in removing someone that we do as a government official.

And so, depending upon the contract, and not just PSCs but contractors in general, it's much easier to remove someone from the theater, as necessary. We just pull their access badge. You know, whatever it takes, and they're gone within a matter of hours.

So, as a performance of the contract in responding to that, or those types of incidents, that should certainly be considered.

TIEFER:

Very quickly, Ms. Lamb. When there's a transition, so that you're under functions like the CONOC, the Contractor Operations Cell, fall under your jurisdiction, would you favor it being conducted by a State Department government personnel, or would you favor it being conducted by a contractor personnel like Aegis?

LAMB:

It would have oversight by direct-hire personnel.

TIEFERT:

Thank you. My time's expired.

THIBAULT:

Mr. Henke?

HENKE:

You know, Mr. Blackshaw, when I asked you if 862 applied to AID, you told me that it did. Correct? But you didn't tell me the whole truth, did you. You didn't tell me everything you knew about the issue, did you?

BLACKSHAW:

I'm not following you, sir.

HENKE:

OK. You know, the whole theme that I'm picking up here from AID is, we're not responsible, we don't want to be here, we're different. OK? From the minute go in your statement, you set that tone.

We didn't set the tone, sir. You set the tone in your statement by saying: I'm not responsible, I'll be happy to take your questions back to the headquarters and get answers for you.

I want to read from this inspector general's report. It's kind of hot off the press. It's from May of last month. It's about private security contractors in Afghanistan. It's pretty narrow, pretty focused, pretty right up our ally.

Quoting from the report, AID Afghanistan has provided only limited oversight and almost no direction, almost no direction, relative to standards and requirements for security.

Further quoting—you usually don't find such damning language in an IG report, but this is pretty damning—rather than providing oversight, rather than providing oversight, AID Afghanistan typically delegated security-requirements responsibilities to its implementing partners.

Here's some language from a contract. Quote, security for the contractor's personnel and offices is the responsibility of the contractor. The contractor shall assess the security situation in Afghanistan, and particularly in the provinces targeted by the program, and institute appropriate measures, unquote.

"Such language," I'm quoting from the IG report, such contract language distances AID Afghanistan from bearing responsibility for the security it funds. By designing its awards so that security is the responsibility of implementing partners, AID Afghanistan places oversight and accountability of PSCs in the hands of others, not the U.S. government.

"Such contract language shifts responsibility for preventing the recurrence of serious incidents from the U.S. government to its implementing partners. This language is inconsistent with the detailed regulatory and contract clause requirements required by section 862."

You didn't tell me about this. You said 862 applies to AID. And then, everywhere I look, AID is waffling away from it saying, "We don't do security; we do implementing partners. Whatever they do is up to them. And we're not responsible for it."

Isn't that the case, Mr. Blackshaw? AID's position is, would rather be not responsible for it? Wouldn't you really rather wash your hands of it?

Sir, you're the director of security. What do you think?

STREUFERT:

I believe you know it in the IG's report that you said mission agreed with the findings of the IG.

HENKE:

So, they agreed they're washing their hands of responsibility for security. Right?

STREUFERT:

They agreed with the findings of the I.G. and . . .

HENKE:

Which was that . . .

STREUFERT:

. . . and they are taking corrective action.

HENKE:

So, they agreed that AID is trying to wash its hands of responsibility for security contractors. Right?

STREUFERT:

I believe that what they agreed . . .

HENKE:

In a word, right?

STREUFERT:

I believe they agreed to take the corrective action.

HENKE:

And they agreed with the findings. They didn't disagree, did they?

STREUFERT:

No.

HENKE:

In fact, they agreed that they have no oversight—limited oversight, excuse me, not no—limited oversight, and almost no direction relative to standards and requirements for security.

So, you, sir, told me that, yes 862 applies. But you didn't tell me you're not doing anything about it, did you?

STREUFERT:

I believe the IG . . .

HENKE:

I'm asking Mr. Blackshaw. You told me that 862 applies to AID. Right?

BLACKSHAW:

It does, yes.

HENKE:

You didn't tell me that AID isn't doing anything about it, did you?

BLACKSHAW:

I was under the impression that we are applying contract clauses that meet 862.

HENKE:

You're under that impression?

BLACKSHAW:

Yes, sir.

HENKE:

Well, in your statement, you said you're familiar with this report. Are you familiar with this section of the report? AID Afghanistan has no standard grant award provisions when it's not a contract, but a grant—a different vehicle, but the same intent. So, about a third of AID Afghanistan's awards with subcontracted security have no standard security requirements.

None.

So, you led me, you led this commission to believe that section 862 applied. But you didn't tell me that you'd rather wash your hands of it, and you'd rather abdicate this responsibility on your contracted partners, and stand behind all the standard excuses of, well, we don't have purview of contract with a subcontractor, that's not us, we don't have a relationship there.

I think my colleague, Mr. Green, made an excellent point. God forbid something would happen with a violent incident that would affect our national policy in Afghanistan, and you, or the administrator or the administration, would try that excuse.

It won't work. It won't work.

It works in small ways, when you can put things in your testimony that say, I'm not responsible, I'll be happy to take your questions back to AID. But if something were to happen that would affect our national policy in Afghanistan, and you tried that ridiculous line of argument, it won't work.

Any quick response? I'm over time.

BLACKSHAW:

I think you've said what you had to say. Once again, we are an agency that's very decentralized. We did not have the authority . . .

HENKE:

We who?

BLACKSHAW:

The Office of Security. And that's who . . .

HENKE:

So, why are you here today?

Did you tell us that you were the right guy to be here?

BLACKSHAW:

You asked for a security representative. To be quite frank, for the type of answers that you need, you actually need the management here, Jim Bever. You actually need the Office of Acquisition and Assistance, the . . .

HENKE:

Did you tell our staff that during the prep for this hearing? Did you or didn't you?

Did you or didn't you? Just yes or no.

BLACKSHAW:

I am the one to speak on security issues, yes.

HENKE:

OK, so you are the one, so you can't have it both ways.

BLACKSHAW:

OK.

ZAKHEIM:

A quick one?

THIBAUT:

Please, Dov.

ZAKHEIM:

You may be the one to speak on security issues, but you just made a very convincing case as to why you're not. Did you at least suggest, because this is what my colleague, Mr. Henke, just asked you. And it's a yes or no answer, nothing else.

Did you suggest to our staff that they should invite anybody else? Yes or no.

BLACKSHAW:

No, but . . .

ZAKHEIM:

Stop.

BLACKSHAW:

. . . When I'd seen your questions . . .

ZAKHEIM:

That's it.

BLACKSHAW:

I said most of them would not be answered by the . . .

ZAKHEIM:

Excuse me?

BLACKSHAW:

Office of Security.

ZAKHEIM:

Excuse me. The answer was "no." That's all I wanted to hear.

THIBAULT:

Go ahead. I think I know what you're going to say, but put it on the record.

BLACKSHAW:

I was TDY [temporary duty] when the specific questions came out. Most of those questions dealt with contracting issues, which I would not be the right, appropriate person to answer those questions.

THIBAULT:

OK. But nonetheless, I'll just say it like it is. Staff was left with the clear impression that you had said that you were, because you're the security person, and it's a security hearing. I think the point that was made is, you're really not, for what the questions were, and you kind of knew that.

Commissioner Schinasi, please, ma'am?

SCHINASI:

Thank you.

To get back to the issue of what is it that the government should be contracting for and what is it that the government should be doing in its own interest and on its behalf, it seems to me that there is an intersection between that designation and the ability of the government to manage contracts that it does decide to let.

So, I'm just going to ask each of you a couple of questions on that front.

In the pre-award process, I heard a couple of you say that, whether or not we should use the government to provide security had to do with whether or not we could appropriately write a statement of work and appropriately set out terms and conditions for that function to be satisfied.

How good, Mr. Motsek, are we on writing statements of work and getting requirements in place before?

MOTSEK:

On paper, I think we're relatively good—on paper. It's the enforcement of the contractual language, consistently, that I think we have the weakness in.

And the other piece up front, which is alleged, you know, in your statement—again, I would argue, it's not just a question of what, cut and dry, is it inherently governmental or not.

SCHINASI:

I didn't use that term.

MOTSEK:

Yes, but the implication is . . .

SCHINASI:

I didn't use that term.

MOTSEK:

I'm sorry.

SCHINASI:

And I'd prefer you'd not use that term.

MOTSEK:

OK. What I'm interested in, what I was saying, there are critical issues and core issues that it's in our interest, not from a definitional standpoint, but in a national interest, to have as a government entity as opposed to a contract entity.

SCHINASI:

Mr. Harrington, I'm going to give your answer a little bit, because I know that we've talked about the difficulty in writing good statements of work, and terms and conditions generally. But given that predicate . . .

HARRINGTON:

Yes, ma'am.

SCHINASI:

.How do we do?

HARRINGTON:

We have a standard performance work statement we've developed that we'll be using, using in Afghanistan, based upon the experiences we've had in Iraq. That as well, we have clauses, instructions in the contract, to be able to put the contractor on notice about how to conduct themselves.

We've got the training of the contracting officers representatives that emphasizes the terms and conditions of the contract in designating and assigning those contracting officer representatives more closely to the place of performance, so that they're with the contractor as they perform.

SCHINASI:

Right. And I'll just go back. Mr. Motsek said, I think quite rightly, that it depends. You don't know how good they are till you get to the enforcement piece of it. And so the planned actions are good, but we really won't understand how they are till we get to enforcement.

Ms. Lamb, are you satisfied with the government's ability to write good terms and conditions and statements of work for private security contractors?

LAMB:

Yes, I am. And in diplomatic security, we're very fortunate that we're on the third iteration of basically the same plan. And we have continued to improve it. And we consider it, even once published and awarded, to be a living document that as we have lessons learned we will update it through contract modifications quickly.

SCHINASI:

And so, if we're in good shape there, one of the provisions in the National Defense Authorization Act for 2011 has to do with applying, using, doing a better job with award fees. It seems to me that, the fact that we are granting so many more award fees than are justified maybe works against your positions that we're writing good statements of work, because if they were that good, then we would have a better idea of giving the contractors what they deserve.

And I'm going to let USAID go on this, because you all don't have any responsibility for writing statements of work or overseeing whether or not they're any good or can be enforced.

Second area then is the actual award. And I'm going to reference what Chairman Thibault said on past performance, and also the fact that we've asked our staff to go in and do some research looking at past-performance reporting on half a dozen private security contractors. And they've come back and said, there are no past-performance reports in the file—one or two occasionally, maybe.

So, I'm just going to assert that we don't do a very good job in contract award, because we don't have any idea of past performance of the contractors that we are awarding contracts to.

Do you want to just disagree with that, Mr. Motsek?

Mr. Harrington, do you want to disagree with that?

HARRINGTON:

No, ma'am.

SCHINASI:

Ms. Lamb, do you want to disagree with that?

LAMB:

No.

SCHINASI:

USAID, would you like to disagree with that? All right.

And then the last one, of course, is the administration, and whether or not we're able to administer contracts. Again, I will point to the NDAA for 2011, when the Congress has felt it important, even though the executive branch can take on the responsibility of how primes are managing the subcontracts, that they've added an awful lot of language about subcontractors, because the government really doesn't have the visibility it needs to understand how the primes are managing those subcontractors.

So, again, what I know from everything else we've looked at is that there is administration both with CORs and other personnel has been woefully lacking, and we need to do a better job of administering contracts.

So, again, you want to disagree with that, Mr. Motsek?

Mr. Harrington?

HARRINGTON:

Ma'am, I'd say we're making steady improvement on identifying, assigning, and training contracting officers' representatives.

SCHINASI:

And I recognize that improvement, but we haven't gotten there yet.

HARRINGTON:

No, ma'am. But we are making very steady, deliberate improvement. We manage it on a weekly basis at our level to . . .

SCHINASI:

Thank you.

HARRINGTON:

. . . see who's going where.

SCHINASI:

Thank you.

Ms. Lamb, are you satisfied with our contract administration capability?

LAMB:

Within DS, yes.

SCHINASI:

OK.

BLACKSHAW:

I would like to . . .

SCHINASI:

Short answer, please?

BLACKSHAW:

This is a whole new learning curve. Prior to Iraq and Afghanistan, we did a data call, and we had one or two guards in Panama and in Bogota that actually carried a weapon for an implementing partner.

So, to date, it's brand new for us.

SCHINASI:

OK. I would say that, you know, we need to consider our inability to manage as one of the reasons whether or not we do hire a contractor to do something, or whether we keep that in-house.

So, my time is up.

THIBAULT:

Thank you, commissioner.

Prior to bringing you in, Dov, Commissioner Green?

GREEN:

One question for USAID related to Commissioner Schinasi's last question of contract administration. My understanding is that USAID still is not in SPOT [Synchronized Pre-deployment and Operational Tracker], despite the fact that the Defense Department has spent \$8.5 million to create a classified version.

Any comment?

STREUFERT:

One of the concerns is whether or not the information put into SPOT can be protected properly.

GREEN:

We've heard that excuse before. They've created a classified version.

STREUFERT:

I don't believe it's implemented yet.

GREEN:

Mr. Motsek, has it been implemented?

BLACKSHAW:

Sir, I was under the impression that most of our implementing partners, or all of them in Iraq, have been putting the data that is required into SPOT. I was under the impression that we are delinquent in that for Afghanistan.

GREEN:

Mr. Motsek, is it up and running?

MOTSEK:

The classified version's been up for about eight months now, sir.

GREEN:

Eight months, gentlemen. Get with it.

THIBAUT:

Commissioner Zakheim, please?

ZAKHEIM:

Ms. Lamb, you folks use third-country nationals, don't you, places like Uganda, Peru, and so on. Isn't that correct?

LAMB:

Yes, we do.

ZAKHEIM:

OK. GAO had a costing study recently. And you folks said that, if you in-sourced security, you'd use cleared, American DS agents, because you didn't want to be perceived as using mercenaries.

What is the difference? Why are you using these third-country nationals? Don't they look like mercenaries? I don't get it.

LAMB:

I'm not familiar with what you're reading from. As long as we have well-written contracts, vetted selection and training, and oversight compliance, we have done very well with third-country nationals.

ZAKHEIM:

So, you're not worried about mercenaries and the impression given that we're hiring mercenaries. Is that correct?

LAMB:

I think the term "mercenaries" is . . .

ZAKHEIM:

It's the term that DS used to the GAO, so it's not something I made up.

LAMB:

I'm not sure who the source of that use was. That is not a term that we used.

ZAKHEIM:

OK. So, you would reject what GAO reported that the DS said. Is that accurate?

LAMB:

No, sir. I would need to refresh my memory.

ZAKHEIM:

OK.

LAMB:

. . . and re-read that to find the source.

ZAKHEIM:

Can I have a response for the record pretty quickly?

LAMB:

Sure, absolutely.

ZAKHEIM:

Like, I don't know, maybe not today, but, you know, 48 hours. How's that?

LAMB:

I'll be happy to look at it.

ZAKHEIM:

OK. I have another question for you. I understand that your contractors at the embassies do use lowest-price, technically acceptable, and that affects the hiring of third-country nationals.

I think we've all agreed that the lowest-price approach, when you're talking about security, doesn't really do the job if you're worrying about protecting people's lives, whether it's locals or our own people.

Are you prepared to write into your contracts a ban, or rather, just simply tell your contracting folks not to go that route? Are you prepared to go now with best value and not lowest price?

LAMB:

This is mandated legislatively. Until we have that change, I don't believe we can have the authority to do that.

ZAKHEIM:

Why not? You can just tell them, this is what you want.

LAMB:

I'll be happy to follow up with the contracting personnel.

ZAKHEIM:

OK. I'd like an answer to that one, too, please.

I've got a little bit more time, which is good. Let me ask Mr. Motsek, this whole certification process you talked about, Gary, who's going to have to sign up for it? Different governments, presumably?

MOTSEK:

Governments will endorse it, but the companies are the ones that have to be the signatories to it, not us.

ZAKHEIM:

OK.

MOTSEK:

Consider it a super ISO [International Organization for Standardization].

ZAKHEIM:

OK.

MOTSEK:

I don't hire a CPA without certification. Why should I hire a guard without certification?

ZAKHEIM:

How long? Give me a time line. Is this going to happen in a month, a week, a year?

MOTSEK:

Hopefully by the end of this year. We had hoped to have, last week, the legal document, the one that was in legalese language, and our secretary is late on that. We're pushing them hard. It's still my intent to have the standards of conduct in place by the end of this calendar year, which will be endorsed by the major companies.

The implementing authority will have to, obviously, follow on. It will probably take some seed money from a couple of nations to get it started. But even that should be, in the long term, should be mandated and should be funded by the companies themselves, not us.

ZAKHEIM:

OK. Seed money means budgets. I know a little bit about budgets.

Has anybody made a formal commitment to the seed money yet?

MOTSEK:

If I can get it obligated by the end of this fiscal year, I actually have some seed money available. I don't want to talk the amounts.

ZAKHEIM:

That's fine for the United States. What about for other countries?

MOTSEK:

The only ones I'm familiar with are the Brits, and we're still discussing that pretty hard with them.

ZAKHEIM:

OK.

MOTSEK:

It's going to be the two of us that are really going to push this forward.

ZAKHEIM:

All right. So, you figure next year. You're talking two years, roughly, right?

MOTSEK:

Two years for full implementation. But again, the standards—everyone recognize they're in place before the end of this year.

ZAKHEIM:

OK. I would like to ask our AID folks, this whole business of overseeing these PSCs via the implementing partners. So, basically, you've been saying that the implementing partners are the ones who actually do the oversight. Correct? At least up to now.

STREUFERT:

That's correct.

ZAKHEIM:

Do you think that's an inherently governmental function? And if not, I want to know why not.

STREUFERT:

The implementing partner is the one in the best position to determine for themselves what type of security that they need. They may need a static guard. They may need . . .

ZAKHEIM:

I understand that. But again, you've said to me that there will be occasions—I don't know whether it's one or 50, it doesn't really matter—where the guards that have been hired by the implementing partner will guard our personnel. Correct?

STREUFERT:

Our personnel may accompany implementing partner personnel where . . .

ZAKHEIM:

They will be guarded . . .

(UNKNOWN)

. . . the security guard is present.

ZAKHEIM:

. . . by these guys. Right? I mean . . .

STREUFERT:

It is possible.

ZAKHEIM:

I mean, it's not going to be that they hold up a sign, "I'm not being guarded." Right? I mean, presumably, they're being guarded. And if the guards aren't doing their job, they're just as vulnerable. Right?

STREUFERT:

That would be case with no matter who the guard is.

ZAKHEIM:

OK. So, they're being guarded. So you're basically saying that you rely on a contractor to supervise another contractor for the protection, on occasion, of Americans who might be vulnerable to attack. Tell me where I'm wrong here.

BLACKSHAW:

When we have USAID employees travel out to do program monitoring and they are put under the security umbrella of the implementing partner. The chief of mission, the RSO [regional security officer], does evaluate that prior to allowing the travel. So, there is some oversight, some risk-management that's looked at first before those decisions.

ZAKHEIM:

OK. Do they look at the backgrounds of the guards? Do they look at whether these people have criminal records? Do they look at who they are? You know, what do they look at?

BLACKSHAW:

I think they look at their overall capability and their ability to operate in that environment.

ZAKHEIM:

And that's it.

BLACKSHAW:

To the best of my knowledge, yes.

ZAKHEIM:

And that's satisfactory.

Now, I have one last question, and I have four seconds. You folks said that you're responding to the IG report by taking corrective action. But at the same time, you've been telling us the last two-and-a-half hours that you haven't done anything wrong. So, what exactly are you correcting?

STREUFERT:

The IG report itself would contain the corrective actions taken by the AID mission.

ZAKHEIM:

I understand that. But you said you're taking more corrective action. Are you taking no more corrective actions? Is that it?

So, you're still off the hook, and it's just the AID missions overseas? Is that what you're telling me? I just want to know.

STREUFERT:

What additional corrective actions are you referring to?

ZAKHEIM:

Well, for instance, oversight at headquarters.

STEUFERT:

I believe an additional review of that is being done.

ZAKHEIM:

So, you are going to be taking corrective actions. But you just told me you're doing nothing wrong. Which is it?

Or maybe you're not the guys to answer. And if you're not the guys to answer, who should we call? Could you give me a name, please? I'd like a name. There must be somebody in the Agency for International Development that can answer these kinds of questions. Can I have a name?

STEUFERT:

Let me get back to you on that.

ZAKHEIM:

You don't know who would be responsible? You're director of security, and you don't know anybody in your agency? You can't rattle it off?

Who's your boss?

STEUFERT:

The administrator.

ZAKHEIM:

You report directly to the administrator.

STREUFERT:

Yes, I do.

ZAKHEIM:

And you're at that high a level and you don't know anybody who can answer our questions.

STREUFERT:

It may be a combination of the head of our Office of Acquisition and Assistance . . .

ZAKHEIM:

OK, fair enough. Could you please send us a list of the people we should call? Thank you.

THIBAUT:

Thank you, commissioner.

Commissioner Ervin, do you mind if I follow up on one item briefly?

ERVIN:

Please.

THIBAUT:

And it's for anyone here—maybe it's an observation. But we've been in this business for 18 or 20 months, and this is the first primary hearing on security, and I suspect we're going to have another one or two.

But when we first started into theater, which was in November of '08, that's when we first got exposed—and, Dov, you brought it up, well, it's been up, but you sort of focused me on it—to this world of LPTA [lowest-price technically acceptable].

And at the time, we were briefed on Peruvian and Colombian guards. And the natural question you ask is, so what do you pay for these folks? And at the time—and I'm playing off memory cells, but I'm pretty good at that—it was about \$1,000 to \$1,200.

And then, oh, I don't know, six months, a year ago, it became Ugandan guards at about \$800 a month. And we'd ask the question of security companies, because of this lowest-price, technically acceptable rush to the bottom, is what some call it. Why Ugandans now versus

Peruvians and Colombians? Say we don't have a chance to get the award unless we use Ugandans, because they're \$200 to \$400 less.

And then, of course, we'd ask, are they any good? Of course, you know. And we've had hearings where we try to figure out, were they trained by the British military or not, and that was an interesting hearing.

And now on this most recent trip, the company, and I guess we've put it in the testimony, but the company that is winning all the awards, that had this problem about unqualified people, the first I'd heard of, well, we've got a good strategy; we're using Sierra Leoneans.

And so, you ask the question, so, what are we paying for them? And it's about \$250 a month.

Well, you know, I guess rhetorically—I don't expect you to answer it—can we go a little lower? Could we find someone that will do it for board and room, you know, that has such a terrible country, that maybe they'll just go out of the country and be a free security guard? I mean, that's pretty inexpensive.

I can picture a draft office, because, oh, by the way, AFRICOM [U.S. Africa Command] is—get their own version of ANA [Afghan National Army], for those of you who follow such things—they're training Sierra Leonean individuals, citizens, to be better military. But they're OK to be guards, you know, and I guess I'll have to defer to others to look at technically acceptable. But they're OK guards.

And so, I can visualize draft office register, and then have a big "or." You can be a private security guard for five times the money, or whatever the difference between a private in one and \$250 a month.

I say that. It sounds facetious, but it's real. You get what you pay for. If you all have a contractor, and you're paying him 25 percent of what you're paying another one, you'd better understand whether they can pound nails or not.

So, on the LTPA world, Dov, thank you, sir, for pushing that.

I apologize, Commissioner Ervin. Please tee it up.

ERVIN:

That's perfectly fine, Mr. Chairman.

I want to start also with AID. Have you all gotten that information I requested earlier, information as to whether AID contracts are lowest-price, technically acceptable?

STREUFERT:

The information we received back from mission is that, no, that they use the best-value practice.

ERVIN:

Thank you.

Ms. Lamb, I want to direct most of my questions this round to you. If I understood it correctly in the first round that you had with Dr. Zakheim, after a lot of prodding of you, you guaranteed, reluctantly, that State wouldn't be using lowest-price, technically acceptable going forward. Right?

LAMB:

Within the context of the process, we are lined up, and we have a time line that is adequate and reasonable to ensure that this contract is awarded under best value.

ERVIN:

I'm not sure I understand that answer. I mean, you said that you guaranteed that you won't use lowest-price, technically acceptable going forward. Right? I mean, you did say that. That's what you told me.

ZAKHEIM:

That's what you told me.

LAMB:

I said that and I will do everything in power personally to make sure that happens. I still work for the United States government, and we still have legal hurdles to go over. And I cannot foresee the future in the final-award stages of this contract.

ERVIN:

OK. Fair enough. But you're basically saying, to the extent that you have the power to make this guarantee—provided there is not some executive direction by your superiors at the State Department, some law, some regulation to the contrary—henceforth, there will be no lowest-price, technically acceptable use of contracts by State DS Right?

LAMB:

Exactly. I mean, what you all did for us was huge. We needed this badly. And the timing could not have been better.

ERVIN:

OK.

LAMB:

We have worked around the clock to get this teed up.

ERVIN:

OK, fair enough. I'm glad to hear that. I'm glad for this clarification.

The reason I ask the question is you seem so reluctant to give this answer. Why the reluctance? Why would you want to have this as an option, if the law no longer requires this of you?

LAMB:

I don't want it as an option. But when you're sitting on my side of the table, and you have two seconds to answer a question, and you're being pushed, and you've worked for the government for 30 years, and you know that there are things that will frequently go beyond your control, but at the end of the day, before I said yes, I thought, but I'm still eligible to retire, so . . .

(LAUGHTER)

. . . I'm going to drive my people to the very end to make this happen.

ERVIN:

That is remarkable candor. And I find it very refreshing, indeed.

And let me ask you about the Xe contract that we talked about a little earlier, the U.S. training-center contract.

LAMB:

Sure.

ERVIN:

And it gets into this whole issue of past performance. And you were reluctant to answer a previous question, or line of questions, about it, because you didn't want to get into the legalities of it.

And I appreciate that. And I'm a lawyer, and I know what you can say and what you can't. We're not asking you, and at least I'm not asking you, to get into the legalities of it.

My primary interest here is to the extent to which State is taking past performance into account. Was Xe's past performance in Iraq considered in the decision to award this contract to this Xe subsidiary?

LAMB:

Yes.

ERVIN:

And how was that past performance factored in? It mustn't have been weighted very highly.

LAMB:

I would prefer to send this question to the contracting personnel. I'm an operations person by trade. I mean, this is a very sensitive question, and I would like to make sure you get the most efficient answer.

ERVIN:

Well, I appreciate that. And you could feel free to supplement that. But I want your answer right now, on the record, in front of us all. What is the best answer you can give us right now as to the relative weight that past performance was given in making this award?

And the reason I ask the question is obvious, but I'm going to state it for the record. And that is, we are where we are. It's where I began with Mr. Motsek and General Harrington. We don't have, really, any alternative now to reliance on private security contractors.

But the least we can ask of our government, it seems to me, is to oversee the process. And key to oversight is accountability on those admittedly, and thankfully, rare occasions when there are contractor misdeeds.

So, to what degree was past performance ranked and weighted?

LAMB:

The evaluation criteria is based off of their technical plan to move forward, their past performance and price. And they're weighted equally.

ERVIN:

OK. They're weighted equally. And so, were they the lowest price among the three contractors? As I understand it, their competitors were DynCorp and Triple Canopy.

And, of course, you're giving me additional time, Mr. Chairman, right, during this consultation?

THIBAUT:

Oh, absolutely. I'd like to hear the answer. And if Charlene needs to take some time to get the right answer, please.

LAMB:

OK. And I apologize. And this is exactly why we need to—you can't write down quick enough the details you need to know for this answer.

They are not weighted equally. And there is a definition system—outstanding, good, satisfactory, unsatisfactory, and factors that go into the whole process of evaluating.

ERVIN:

OK, well, I'm not asking you for, you know, precise, minute calculations. But what was the relative weight of these three factors? Price and past performance, and what was the third one you said?

LAMB:

Technical ability.

ERVIN:

OK. What was the relative weight? And was it 20-percent price and 60-percent past performance? So, give us a relative, and if your colleague behind you can help you there, let's swear her in, and let's ask her to give us these specifics.

LAMB:

Let us get back to you. We were not prepared to answer that question today, and this is out of my ballpark.

ERVIN:

So, you don't have any idea what the relative weight was?

LAMB:

I don't want to guess, sir. Please.

ERVIN:

All right.

Let me turn to you, General Harrington. You, in response to an earlier question said the whole issue of DoD's potentially inserting DoD personnel into convoys, like State Department has done with DS agents and convoys, is well worth considering. Right?

HARRINGTON:

Yes, sir.

ERVIN:

Is any consideration being given to it now?

HARRINGTON:

Yes, sir.

ERVIN:

What's the likelihood, do you think, that that will be phased in at some point?

HARRINGTON:

Sir, I think it's a day-to-day consideration, depending on what the actual contractor task is. If it's a task to move from one location to another . . .

ERVIN:

Right.

HARRINGTON:

. . . in a quiet area . . .

ERVIN:

Right, you said that that it's being used to some degree right now. But, I mean, the issue is whether going forward this might become the norm. And I think that's where the question was going. And that's what I thought you were answering when you said it's well worth considering. It's being done to some degree now, depending on the nature of the mission.

HARRINGTON:

Yes, sir.

ERVIN:

But going forward, as standard operating procedure—and that's how it's done at the State Department—it's not a mission-by-mission thing. It's a standard operating procedure now after Nisour Square.

Is DoD considering the insertion of military personnel in convoys as standard operating procedure going forward? Is that well worth considering?

HARRINGTON:

I think it is well worth considering, sir. I don't speak for DoD.

ERVIN:

Right.

HARRINGTON:

I only comment on the Army . . .

ERVIN:

Is it being considered now, which was your answer previously.

HARRINGTON:

Sir, I would say it is well worth considering as we go along, depending on all of the conditions that were presented.

ERVIN:

Is it being considered right now?

HARRINGTON:

Yes, sir. Yes, sir.

THIBAUT:

Let me, can I inject?

ERVIN:

Please.

THIBAULT:

General Harrington, to your knowledge—and you're a policy guy now for the Army—but is there a policy statement to differentiate when you do, when you don't, what the Army's policy is for inclusion of either U.S. Army or government employees where you have private security contractors?

HARRINGTON:

Sir, let me take that question for the record and make sure we determine that.

THIBAULT:

All right. All right. Because that's really the way I read Clark's question.

HARRINGTON:

Yes, sir.

THIBAULT:

. . . is that you've got a policy or you don't. And are you working on a policy or not? And then I get down to, should you be working on a policy or not?

So, for the record, you'll . . .

HARRINGTON:

Yes, sir. We'll get an answer for you.

THIBAULT:

And for the record—I think Commissioner Ervin was really good to you, Ms. Lamb. For the record, I would like you to provide—a great example, and that's what this is about, lessons learned this commission is about—a scorecard. Not only the very specific scorecard of the ratios and percentages in this example, but the break-out of the ratings.

Now, you can put appropriate labeling on there, and we'll honor that. In other words, if there's some competitive, whatever, reasons for non-disclosure, just tell us. But we'd like the scorecard for the record, if your acquisition folks prepared one. And if they didn't—you know, if you ultimately look at it and say, hey, because they thought 2007 wasn't relevant, because we were in 2009 when we did this, just say that.

OK? Thank you.

ERVIN:

And let me just end by just a closing comment on that, if I may, Mr. Chairman.

Ms. Lamb, I have great respect for you, and I appreciate the position that you're in. But again, I think this is a key accountability issue here. And I think the message that this sends by your not being able to answer this question really is a troubling one.

The subject of this hearing is "Private Security Contracting in Iraq: Where Are We Going?" And it comes out on Friday that the State Department is awarding this contract to Xe, \$120 million, potentially a five-year contract, to guard two consulates in Afghanistan.

And of course, the concern is whether in Afghanistan, where the mission is most critical right now, we might have in the future the same kind of incident that we saw in Iraq. And you can't tell me to what degree past performance was considered in awarding this contract. I just find that very troubling.

LAMB:

May I clarify this?

ERVIN:

Please do.

LAMB:

OK. I can tell you that past performance played an incredible amount. As you were asking questions, I'm looking at the totality of our contracts and task orders. And even though there's not a certain percentage attached to the three criteria, they are rank-ordered with the first, most important, being the technical. Can they do the job and the work currently in this task order?

In this case, with this specific award, Xe is the only company of our three under the WPPS II contract currently operating in Afghanistan. Their infrastructure is there already. They have their licenses. And this was not awarded as a one-base year, four-option-year contract. This was awarded as a bridge contract to get us over the hump, so we can combine it with the new WPS contract.

ERVIN:

Was past performance of WPPS I considered, as opposed to WPPS II?

LAMB:

Without speaking to the personnel on the contract, the panel that did that, I cannot specifically answer that. But they would have looked at all of their past performance.

THIBAULT:

This has been very helpful. Can I take another pass at this?

ERVIN:

I'm done. Thank you very much.

THIBAULT:

All right. I interpret what you say, then, in my way of understanding it, and you calibrate me, that this 18-month, \$120 million, now you're saying was designed as a bridge. So it's intended to be a bridge into WPPS.

But in reality, since you qualified and said, well, they're the only ones around, it was a sole-source. Because you can call it a competitive bid, but you just said, hey, they're the only ones that are around to perform. You know, either it's one company and they had a 99.999 percent chance of winning it, or they didn't.

LAMB:

No, sir. They are currently the only ones there.

We had three viable bids from all three vendors on the contract for that.

THIBAULT:

But you're saying that the only reason they won it is they were the only, or the primary reason they won it is they were the only one there.

So, if you can have a viable bid, there's no way with transition costs and moving in this bridge that to my way, there's no way you can call it. This is the old DCMA, DCAA person. I'd have been out six months ahead of time getting cost and pricing data, because I'd have said, you know, I can call it competition if I want, but there isn't. You could justify your acquisition people. I realize you're security, but you can certainly justify why there's an immediate need and it's sole source. I mean, people may contest it.

But to leave it the appearance of a competitive award seems inappropriate. So, we'll be looking at that significantly.

ZAKHEIM:

A quick one, too. If they're the only folks who can do the job—you pretty much just said that right now—you issued a bridge, because they're the only ones with the infrastructure, et cetera, et cetera, et cetera.

What's going to change in the next 18 months? They'll still be the only ones with the infrastructure.

LAMB:

No. Whoever would have been awarded that contract would have gotten the same terms in that contract. The bridge is not to bridge them as the company. The bridge is to get everything consolidated under one contract.

ZAKHEIM:

No. But you just said, if I understood you correctly—and my colleagues can tell me I'm all wet on this if I didn't understand you correctly—that you awarded Xe this contract because they have the infrastructure, they're the ones who could do it.

LAMB:

No, sir. There are three evaluation criteria, and all of them were weighed. We'll get the scorecard, and we need to turn this over to acquisitions to properly address . . .

THIBAULT:

And we will contact them. I want to talk about the best way after this.

But, you know, to me the headline—and you keep saying, well, no, because they were the only ones who could do it, but we had three responsible bids, but they were the only ones who could do it—you need to understand that to me the headline is, Blackwater awarded \$120 million sole-source. And we can all then debate. Does it walk and talk and quack like a sole source, Ms. Lamb? Or is it truly competition?

And guess what. We've got a couple of companies coming up that were part of that. We'll ask them. We'll ask them. Did they think they had a chance to win it?

And if they say no, then I'm going to tell you, maybe this could have been handled differently, as cost and pricing data. And then maybe we'd have found out who was the most whatever.

But you provide it. We'll come back. We'll also get an opportunity with these two companies to say, hey, did you feel good about that?

ZAKHEIM:

And I'd like you to add to that, I want to know how you're going to do it differently to ensure that there's a real competition next time around.

THIBAULT:

Commissioner, please. My cohort, Mr. Shays, Commissioner Shays?

SHAYS:

This may sound weird, given that we are being rather critical, but I feel that you are trying to be candid with us and share information, and we may not like the answer. And you may not even like the answer.

But all of you have contributed a lot, and it's nice to have had the director, as well.

Mr. Blackshaw, I have a sense that you know a lot and are qualified to have answered most all our questions. I don't know who required you to put in your statement that you're middle management, because once you do that, you're basically saying, "I'm irrelevant." And then we're thinking we're wasting our time.

So, I don't think we're wasting our time having you here. That's my opinion. I just wish they didn't have you put that in the statement.

So, you know, I appreciate all of you and what you're doing in your job. And we're learning a lot. Some of it doesn't please us.

One thing that we all knew, the U.S. government provides security. And we know it does it pretty well. But frankly, when they're taking individuals around, I don't want to be taken around in a Humvee and have to you know, go through all the rigors that the military has its process.

So, I like the fact that we can go in a more convenient vehicle that doesn't look so imposing when we're meeting high officials in Iraq or Afghanistan—that we go in the kind of vehicles they might go in. I think that's respectful.

So, I like the way State does it, with U.S. government management with private contractors. I think it makes sense. And that evolved from some bad experiences.

So, I knew the government did it. We now have the government managing, using contractors. And then we knew that private contractors did it on their own—with no oversight.

The new element for me is that private contractors, not security, are hiring security. I mean, in a way I knew it, but I didn't know the government was doing it. I knew private businesses would hire private security contractors. And that's what I find pretty unsettling.

You know, this report that Mr. Henke and others have referred to, and I have referred to, in the report, "The Audit of USAID Afghanistan's Oversight of Private Security Contractors in Afghanistan," May 21st of this year, when it points out that, more specifically, with regard to the first question above, which was USAID Afghanistan received 149 incident reports from October 1, 2006, through June 30, 2009, 44 of which met the definition of "serious incident." And then they say, however, the audit found that USAID Afghanistan is not receiving all reports of casualties and serious incidents, because it has no standard provision in its agreements that would require such reports.

And it's not hard to understand, because, basically, USAID washes its hands. But that just can't continue. I mean, I think you both realize that can't continue.

Does USAID really expect contracting officials, officers, to provide security oversight of subcontractors? Who should provide that oversight?

BLACKSHAW:

I think in the beginning, when we said we have no legislation authority, we understand that. We have been very proactive in helping the contracting officer and their technical representatives

be able to do the appropriate program monitoring. And I hate to say it's more of a paperwork program, monitoring versus oversight, but that's what it is.

We've had the USAID missions hire U.S. personal service contractors that have a security-officer background. My staff has been working with the security directors of these different implementing partners corporately in Washington, D.C., to share best practices, different, other security countermeasures that they can use.

But it's a gap and it is . . .

SHAYS:

OK. Don't you think that security professionals are better qualified to oversee security-related matters?

BLACKSHAW:

I think this is beyond my scope, because it's really a contracting issue. And I . . .

SHAYS:

I'm asking your opinion, so you don't have to qualify it.

BLACKSHAW:

Yes.

SHAYS:

OK.

What I would like for the record, Director, is I would like to know what qualifications are required to ensure subcontractors meet security standards. You started to talk about it. But I have a sense that it's pretty weak. If you want to talk about it now, you can. But . . .

STREUFERT:

What standards should be applied? Is that what you're asking, sir?

SHAYS:

Yes. In other words, you don't? I'm asking what qualifications are required to ensure subcontractors meet security standards? It's related to this whole report.

STREUFERT:

Well, one of the criteria that ought to be in place, and I believe is in place, is that any personal services contractor that's going to be carrying weapons must be licensed by the host government.

SHAYS:

OK. See, this is what I sense. A few years ago, Congress basically took away your staff and basically said, USAID is just going to contract out everything. And I think that mentality has gotten to the extreme, where you contract folks to do services, and then they contract security folks. And you just contract out, and you don't really have much oversight. And I think that's deadly.

And I think the challenge that we have is, as Mr. Motsek and Mr. Harrington's team in DoD leave, USAID is going to be in charge. I'm very concerned about this hand-off.

And I hope our commission doesn't wait to weigh in in our final report or an interim report, but weighs in sooner on this transfer, because I don't see anyone in charge, frankly, of this transition.

STREUFERT:

Actually, on behalf of the administrator, I'd like to thank the Congress for providing the funds for the additional personnel under the development leadership program. And it will take some time for all those people that we're bringing on board to go out in the field to reduce, as an agency, our dependence on contractors for some of these functions.

SHAYS:

Mr. Chairman, I hope that we allow all of them to make a closing comment before end . . .

THIBAULT:

Are you done?

SHAYS:

Yes.

THIBAULT:

All right. Well, thank you, Co-Chair. Yes, in fact, we are. Our process is to give you all an opportunity to throw a couple back our way, whatever's there.

In closing though, I've got a couple of quick comments. Thank goodness for the inspector-general community, you know? They're really important.

They're not your partner, but they certainly give you insights and they certainly are a critical part of the internal-control process and this commission relies heavily on the work they've done without trying to duplicate that in any way, shape, or form.

I think I'd be remiss if I didn't say thank you for the United States military. You know we're here and we're in business for the purpose of the next time, could take lessons learned now, improvements now.

The next time there is a contingency that we partner, there you go with that word, attach the contractor community in the most efficient and effective way to support the United States military mission. That's the contingency and State Department and USAID play such a critical role.

I wanted to say my son graduated from college on Sunday and at Ohio State (go Buckeyes), but the point is he'll shortly be a member, he was with their ROTC community of the First Armored Division, and I know he's in great hands, absolute confidence because of the training.

I like to hear about the training of CORs and the like and the better contract terms and the like because it's all the same process, which is get the best deal for the soldier at the best price.

So with that, Mr. Motsek, we'll just go down the order. Any final comments, sir?

MOTSEK:

Thank you, sir. First thing is thanks for bringing up "Hurt Locker." I'm the "Hurt Locker" guy without the suit. We didn't have the suits in days when I played it. I want to make sure we have the proper context for what's going on.

Since 2009, Iraq has been a sovereign nation. Technically, when you transited Iraq the last several times you went there even under a security control, you were technically operating under

Iraqi authority because the [inaudible] is reporting to an Iraqi movements-control center. So we can't lose the fact that we are operating [in] a sovereign nation and we're no longer operating with the complete unilateral control we operated under in combat operations. And that's the fundamental change that occurs even more pronounced when we go from Title 10 to Title 22.

We no longer have a combat zone. We no longer, quite frankly, have even the final rule as the extant regulation. What I would urge the commission to look at is look at the FAR because as part of this whole process, we also change the FAR 52225 and that I hope will address a lot of your concerns with regards to what should be in place even after the U.S. military leaves and more appropriately what has to be applied to some contractors because it does reference the responsibilities that have to be placed in the contracts of the subcontractors, and we may have missed that as we went through the discussion today.

Lastly, my concern is there seems to be this discussion about military versus contractor. Really, as of January 1st, the real issue, because we are transiting and we have no more military installations there. So that whole process is gone. We operate under the OSC [Office of Security Cooperation-Iraq]. The real issue is, in a perfect world the host nation provides the security that we've all talked about and the real question that the commission has to address, post-January 1st: Where is the relative confidence?

Have we established, are we establishing or are we continuing to refine a set of standards and oversight that makes PSCs a viable alternative to the host-nation law-enforcement agencies which may not have matured enough to take over their responsibilities? Because at the bottom line, again, it becomes the security protection of our U.S. people and our U.S. counterparts and our other allies operating in the area.

Thank you.

THIBAULT:

Thank you, Gary.

Mr. Harrington? General?

HARRINGTON:

Thank you, sir.

Sir, first of all, thank you, Commissioners, Chairman, Co- Chairman. Our lessons-learned continue and will continue, and your bringing this to light, I will tell you from my perspective, is very important because it shines the right light on each element of this process and it makes us look forward to the future.

So we benefit from this. Operational contract support is a key function that we've developed in consonance and in support of the Department of Defense, Mr. Motsek's initiatives, and that is a key element from our perspective as a function in this world of acquisition and contracting that we need to continue to focus.

We have in the Army for the first time operational contract units, TOE Units, Tables of Organization and Equipment. Never have had them before in the Army. Our challenge is to keep the spotlight shining very brightly on those to make sure that they come to fruition so that as we progress forward we're able to employ them more and more so that we get these types of lessons baked in to what we do throughout the range of our processes.

Sir, again, thanks very much.

THIBAULT:

Thank you, Mr. Harrington.

Ms. Lamb?

LAMB:

OK. If I can start with the response for Commissioner Henke had asked the question regarding 862 and the chief of mission's responsibility to declare it a combat zone as well, state legal counsel has read the relevant position and believe that the only formal declaration envisioned by the IFR is from the secretary of defense in coordination with the secretary of state and that once that threshold has been met, whether the rules are given to a location that is addressed—I'm sorry.

Once that threshold is an issue that applies the chief of mission has the discretion to instruct the PSCs to follow COCOM guidance or to follow chief-of-mission directives and that the PSC-policy directives are the method for doing this.

HENKE:

Once that declaration has been made. The declaration has not been made, Mr. Motsek, right?

OK. I appreciate the clarification. Thanks.

LAMB:

OK. And then just one other clarification, and I know I probably shouldn't go here, but . . .

SHAYS:

Do it.

LAMB:

Regarding the ZTO-16 that was let on Friday, when we write a scope of work for these task orders, we do it based on the requirements that form policy and the department needs. We're meeting their requirements.

One of the requirements which was key in this particular task order was the ability for the contractor to be able to stand up operations within 60 days of being awarded the contract and this is based on the department's desire to have these two consulates open and operational by late summer, early fall.

Just another point of clarification . . .

THIBAULT:

Can I then seek another point of clarification, at least when you go back, and that would be the default to that is these other two companies, DynCorp and Triple Canopy, therefore did not demonstrate that they could stand it up within 60 days, is that the default?

LAMB:

I will ask that one when we get back. Absolutely.

THIBAULT:

Would you, please? Thank you.

LAMB:

Sure. And then just in closing, Gary raised the fact that as the military is pulling out and Iraq's becoming a sovereign nation, and we also mentioned the oil companies and private security in the south, the Overseas Security Advisory Council. I can't express enough how important they are as we make this transition out in Iraq. And the regional security officers have already started to engage the private sector. Irbil is having frequent meetings. They have over 80 active members in their OSAC constituency out there, the sharing of information and the way they're

doing business, and coordination with the Iraq government is just tremendous through this program.

I would also like to just kind of highlight the Department of State and the DoD partnership that has developed through all of this has just been tremendous. Gary and I have been in this together. In fact, we were joking before this started that we weren't sitting next to each other. Usually, we were. We pass notes under the table. But . . .

SHAYS:

You shouldn't.

LAMB:

I'm just kidding. But no, you know, it's almost daily that we're picking up the phone and consulting on issues and this is ongoing as we move through this transition as well.

And I also would like to piggyback off what you said about the work of the OIG, GAO, MERO [State Department Middle East Regional Office], SIGIR, SIGAR and the work of you all. We're way into double digits with audits of DS programs for security and contract oversight in Iraq and Afghanistan just since I came in in 2007.

And we learn from every report that comes in and we try to do our best to respond to recommendations that are made and I thank you all for your contributions.

THIBAULT:

Well, thank you, Ms. Lamb, and it was by design that we put General Harrington between you because we'd observed in the past that you were too close.

UNKNOWN:

Do you still carry a gun?

THIBAULT:

There you go. You better be respectful.

Either Director or Mr. Blackshaw?

BLACKSHAW:

As painful as this was, thank you for the opportunity to testify. I think the message got across whether it's the USAID's Office of Security, the USAID mission, or the Office of Acquisition Assistance, our direct relationship with our contractor's subcontractors, the protective security details, is all what is written in a contract grant language.

Personally, I would like to see the USAID have more oversight in staff and capability to provide better services in that category. With that said, I just would like to point out that for me, our implementing partners are really the heroes for USAID.

You've mentioned we're pretty much behind the embassy walls. We do a lot of contracts and grants. Our implementing partners is the institutional contractors, the NGOs, the private volunteer organizations. They're really way beyond the front line and they are actually taking a lot of risk to enhance our goals for the U.S. government.

So they are definitely heroes and they've taken their lives lost and their risks on that. Thank you.

THIBAUT:

Well, thank you each of you. We're going to take about a five-minute break or so and swap out name tags. I'm sorry. Oh, were you speaking for USAID or do we have two? Please do if you have something to say for . . .

STREUFERT:

I'll add my two cents worth. I do appreciate that if I think if I were sitting on that side of the dais I'd be as equally as unhappy, which may be an understatement, with the responses you're getting from our agency.

When I came into AID multiple years ago, the idea of operating in a combat environment was absolutely foreign and we thought if we couldn't operate safely with our people who needed armored cars to go to and from residences, then we should get out. Obviously the administrations and the foreign-policy interests of the U.S. have changed things. We're running an organization as an agency and it's apparent that we need to learn a little bit more.

The Congress' interest in support of AID is greatly appreciated as is our great relationship we have with our colleagues in the Department of State.

THIBAUT:

Great.

STREUFERT:

Thank you.

THIBAUT:

Thank you, sir. Thank you, gentlemen and lady. Ten minutes or so.

(RECESS)

THIBAUT:

All right. If we might go ahead and get started. We'll go down the statements, but before I do the statements, I have to always be sure I say this word-for-word or my co-chair gets after me.

So might I ask the three of you to stand, please? Raise your right hand. Do you solemnly swear or affirm that the testimony you will give in this hearing is the truth, the whole truth, and nothing but the truth? OK. Please be seated. Thank you. Let the record show all the witnesses answered in the affirmative. Much appreciation for your patience, you know, I can never make the promise we'll make up time because then I may be making a false statement.

But very much appreciate your coming in and representing your companies and to an extent industry in general. We can take the statements now starting with you, Mr. Ryder. Give me one moment because I owe it to you and your company. Don Ryder, Vice President, Program Manager, DynCorp International.

Please, Mr. Ryder?

RYDER:

Good afternoon. Chairman Thibault, Chairman Shays, and members of the commission, I am honored once again to appear before you to represent DynCorp International's almost 30,000 employees who are supporting U.S. foreign policy and national security objectives around the world. I ask that my longer written statement be entered into the record.

THIBAUT:

Great.

RYDER:

The specific topic of today's hearing is security. DynCorp International is not a security company, although in Iraq we do provide security-safe services to the Department of State. Security services represent approximately two percent of our current business, but we have been successfully providing those services since the '90s in the Balkans, Haiti, the Gulf, as well as Iraq and Afghanistan.

The lessons we have learned in those locations have helped us to shape and solidify our approach to security. The keys to success and security as well as in everything we do are strong corporate ethics; leadership that enforces standards of performance, compliance and conduct; carefully vetting employees; rigorous training; and close attention to the needs and directions of our customers.

I will keep my remarks brief, but I want to take the opportunity to highlight a few points.

First, at the commission's hearing last Friday, a good portion of the conversation focused on mobile protective security details. The protection of principals demands the highest levels of professionalism and competence. We feel that the model currently being incorporated throughout the State Department's Worldwide Protective Services contract is successful and should be replicated across all mobile-security operations.

The model blends experienced contractor personnel with the Department of State supervising agents who are closely coordinated with their military counterparts using vehicles that at all times are monitored, audibly, 360-degree visually, and tracking systems. Secondly, the WPPS model can be replicated for each type of security service being provided.

For example, while I do not believe it's necessary or cost-effective to place a government agent with each entry control-point team at an embassy, assigning a government agent to supervise each shift would reduce the risk related to performance, compliance, and inappropriate employee conduct. This added degree of supervision will create a greater sense of partnership and increased accountability for both the government and the contractor.

A final point, our employees who support the U.S. government war zones share the dangers our military civilian personnel face there also. Last Thursday, I spoke at a funeral in Calhoun, Georgia, and at the same time halfway around the world in Nepal, company representatives were paying their respects at services for a Nepalese guard. Both men were working under the CIVPOL [civilian police] contract to train the Afghan National Police and were killed in a suicide attack at a regional training center.

To support those seriously injured and the families of those killed while working as contractors overseas, DynCorp International has created a program called, DI Cares, to support

the entire company family. We believe that our employee-systems program represents the gold standard of support for other companies to emulate and we recommend that the government mandate and fund similar programs for all contractors supporting U.S. national security and foreign policy objectives in hostile environments.

We've made this recommendation consistently throughout our opportunities to testify. Having lost 68 of our own, we have an obligation of those individuals and their families and we will continue to make these recommendations every opportunity we get.

In conclusion, as the U.S. military prepares to leave Iraq, the security needs of those who continue to work with the government of Iraq will be important. The title of today's hearing is, "Private Security Contractors in Iraq: Where Are We Going?" The policy and decision makers on the government side will determine where we're going, and whether the contractors will be part of that direction.

If the U.S. government asked our assistance in meeting its needs, DynCorp International stands ready to support the government, holding ourselves to the highest standards of performance, compliance, and conduct. Thank you again for the opportunity to testify in this important matter and I'll be happy to answer any questions you may have of me.

THIBAULT:

Thank you, Mr. Ryder.

Next statement for Aegis Defense Services, LLC, is Ms. Kristi Clemens Rogers, the president.

Ms. Rogers?

ROGERS:

Good afternoon Chairman Thibault, Chairman Shays, and members of the commission. I'm Kristi Clemens Rogers, President of Aegis, LLC, and I want to thank you for the opportunity to present testimony before you today.

First, please let me begin by apologizing on behalf of Aegis for not being able to accept your invitation to testify at the previous hearing in April. Please understand that we do recognize that our testimony to you is an opportunity to assist you in your critical mission to identify reforms in their critical contingency-operations contracting space.

I have prepared written testimony and submitted it and I ask that it be submitted for the record. It does go into some greater details answering the questions that were in the invitation letter.

As a brief introduction, Aegis, LLC, is a U.S. company and a subsidiary of the worldwide Aegis Group. We are threat-driven and intelligence-led. We are a security risk-management company that offers comprehensive security solutions in a variety of spaces: stability operations, reconstruction-development support, humanitarian assistance, commercial risk analysis, as well as information gathering and analysis.

Our focus is to provide the appropriate support that enables our clients to focus on their missions, the missions for which they were trained. All work undertaken by Aegis is carried out to the highest standards of professional competence and integrity. Our track record is extensive and our highly trained men and women are dedicated to supporting the mission at hand with outstanding performance. We hire seasoned and professional employees with specialized skills. My colleagues here with me today at the table clearly have exceptional military experience.

My experience in Iraq comes from the civilian side. When I worked for the Department of Defense, I was often a consumer of the services provided by private security contractors. I traveled extensively throughout Iraq, often into very hostile environments, and our mission was to work with the Iraqi people. We opened health clinics. We organized soccer games. We worked to reopen a dance school and even held a cultural dance recital in a local village. Families attended and it was a local celebration.

The Iraqi people just wanted their lives back, a sense of normalcy, and we could not have done this with soldiers in full combat gear, a standard military-security perimeter and a high-profile Humvee-led military escort. It was only possible with the low-profile security provided by the private security contractors. Our security was present, but not frightening to the local Iraqis.

At Aegis, we meld security and intelligence experience with civilian perspectives and specialized expertise in hostile environments. This approach has given us a better understanding of the hostile environment where civilians, soldiers, contractors, and Iraqis are often operating side by side. The Aegis teams are discreet and low-profile. We integrate with local nationals when and where appropriate. And, of course, this comes at the imperative need to have a robust, thorough recruiting vetting and screening processes.

Our vetting standards have been commended, used, and adopted by the United States government. To illustrate our approach, within the scope of one of our contracts, we had 18 reconstruction-liaison teams operating in each of the Iraqi provinces. These teams consisted of 11 to 14 individuals, half Iraqi nationals and half either U.S. or U.K. citizens. These teams eat, sleep, drink, live in the field, providing invaluable updates on the status of reconstruction projects and more importantly often identifying potential problems.

One such example was the U.S. Army Corps of Engineers was attempting to build a critical pipeline. It kept getting blown up. The Army Corps asked one of our liaison teams to find out why. We went out and with our local Iraqi employees we spoke with the various local tribal

leaders and discovered the pipeline inadvertently crossed in between disputed territory. The tribes didn't want one or the other to get an advantage so they were blowing it up.

We told the Army Corps, they moved the pipeline and it hasn't been blown up since. Iraq is a very different battlefield- and conflict-environment as you well know. During the conflicts in Iraq and Afghanistan, working with the local population is happening at the same time military operations are happening. This wasn't the case in World War II, in Korea, or even in Vietnam. This current battle space is very different.

Soldiers need to be doing what soldiers are trained to do. You do not want to pull a soldier off a critical mission to escort civilians to a local village so we can meet with local farmers and help build wells, but this mission also needs to happen as much as the war needs to be fought against the terrorist.

In Iraq, our mission to support the United States government is where they have identified and indicated they need our support with specialized skills and the ability to rapidly mobilize. Since Aegis was founded, we've been staunch advocates for higher common set of standards for the private security industry. Our firm belief in a necessity of standards and regulations led us to be an original signing member of the British Association of Private Security Companies.

We also reach out to other organizations such as yourself, Center for New American Security, the Professional Services Council, Government Accountability Office and the Special Inspector General for Iraq Reconstruction. We are one of the first companies to endorse the Montreux doctrine and continue to work with the Swiss initiative all with the intent to develop standards the ensure integrity, transparency and accountability.

The private security industry is one of the most highly scrutinized contracting industries in the United States government. We support the United States government on the battlefield and in high risk, constantly changing environments. There should be stringent oversight. But while the contracting environment and battle space have rapidly changed, U.S. government contracting process has not.

The same contracting system and tools that oversee contracts for building fighter jets, for guarding a nuclear facility in Iowa, and for guarding an embassy in Paris are being applied to contracts in Iraq. This is not adequate. It is part of the Cold War bureaucracy and it needs to be reformed and we would like to see reformed. Why? Because it's necessary. Because if the United States is to be successful in current and future hostile environments, reform is crucial.

It seems as though the most logical, cost-effective and efficient way to spend U.S. taxpayer dollars is to support the U.S. mission with a blend of government officials with specialized contractors. During our six years of experience in Iraq, we have demonstrated that we do add value. What that value is is for the government to determine.

Again, thank you for this opportunity. I do hope that today we identify some critical reforms and a way ahead. I look forward to continuing the dialog with the commission as you work to recommend some much needed reform that provides greater clarity, transparency, oversight, and accountability. I'm happy to answer your questions. Thank you.

THIBAULT:

Thank you, Ms. Rogers.

Now, staff did not come up, Mr. Balderas, and clarify for me. So I've got to ask you, is it Ignacio?

BALDERAS:

Yes, sir, it sure is Ignacio.

THIBAULT:

All right. Then please, Mr. Balderas, Chief Executive Officer, Triple Canopy, Inc., please provide your statement.

BALDERAS:

Chairman Thibault, Chairman Shays and members of the commission, thank you for this opportunity to appear before you today. As CEO of Triple Canopy, I hope that I can assist the commission in understanding the role my company plays in supporting the mission of the United States government in Iraq and how oversight of our industry may be improved.

I believe companies such as Triple Canopy offer an effective and cost-efficient method to supplement the United States government's internal security capacity in Iraq. For the Department of Defense, the use of private security contractors allow soldiers to be taken off routine security duties and placed in the field to perform their mission or to return home.

For the Department of State, the use of private security contractors enable the United States Embassy staff to safely conduct a greater scope of activities in furtherance of their mission in Iraq. For many years we have seen unsupported arguments made against the use of private security contractors and we have seen these arguments found to be either false or exaggerated. It has been demonstrated that private security contractors are not depleting our armed forces.

They are not paid exorbitant sums that greatly outweigh their military counterparts and they do not cost more than what to utilize government personnel. In fact, they can and do save the United

States government money. For example, our work for the Department of State protecting the U.S. Embassy in Baghdad was estimated by the GAO to save over \$780 million a year, a savings of nearly \$4 billion of the life of the contract.

Private security contractors provide the flexibility and additional capacity the United States government needs to better meet its military and diplomatic goals, but what we cannot do and should not do is replace the function of an armed military.

The work performed by private security contractors is not the type that should be classified as inherently governmental. For example, the Department of State has for many decades used private firms to provide security at various embassies around the world regardless of where the embassy is located and whether the host nation is friend or foe.

Nearly all nations have established legal frameworks by which private persons or entities may be authorized to use limited force within national laws. For example, a company providing security services in the United States must be legally licensed to provide those services. The same licensing requirement exists in the vast majority of nations around the world, including Iraq and Afghanistan.

In addition, other nations may not want or will not permit armed government or military personnel to be present within their borders. The presence of military personnel within a foreign nation typically is governed by a Status of Forces agreement or similar treaty, as is the case in Iraq.

Often there are also limits placed on the number of diplomatic staff that may be present in a foreign country. Thus, the use of private security firms in some cases is a necessity in order to comply with the agreements the United States government has in place with foreign governments.

A rigid determination that security is an inherently governmental function would've run counter to each of these considerations and would likely limit the ability of the United States government to carry its diplomatic and military objectives. I believe a more effective approach is to identify the best methods for contracting for security services and the best tools for maintaining adequate oversight, control, and accountability.

I believe there have been improvements in oversights within Iraq, but in my opinion, not enough has been done to manage to the future and to establish a framework for success. I would offer a few suggestions.

The first suggestion is to emphasize the need for following the federal acquisition regulations and to provide better guidance and training on how private security procurements should be conducted and how contracts should be administered.

A second suggestion is to recognize the private security industry should play a role in improving companies and services. Private security contractors should develop and enhance their own standards and these standards can then work in conjunction with federal regulation and oversight. For that reason, I welcome the recent inclusion of the third-party certification requirement in the House version of the 2011 National Defense Authorization Act.

My third suggestion improving oversight is to consider the following fact: the U.S. government has more authority and oversight over U.S.-based and U.S.-owned firms. U.S. firms are subject to a host of laws designed to enforce U.S. legal and policy considerations and support U.S. objectives. Permitting foreign firms to perform this work allows them generally to avoid paying U.S. taxes, avoid U.S. criminal investigation at jurisdiction, and avoid having to appear before Congress.

The only immediate recourse against a foreign firm is via the contract in the government. Use of U.S.-based or U.S.-owned firms significantly increases oversight and accountability.

My final comment is the best value contracting. Low-price awards continue to be a challenge in Iraq. The race to the bottom continues. To continue to be competitive in this environment, companies must find more ways to reduce costs and the other aspects of the operation. This causes degradation of the quality of service that is being provided to the U.S. government.

The better practice is to make these awards according to the best-value method where bids are scored and an award may be made to a higher-price bid if the additional cost is justified and benefits the government. This does not mean that an award will be made to the lowest price bidder; however, it does avoid the pass-fail-who's cheapest approach.

I would like to conclude my remarks by thanking the commission for its work and for helping address hard questions that all of us, both government and contractor, must work together to resolve. This concludes my testimony to the commission and thank you again for the invitation to appear today. I welcome your questions.

THIBAULT:

Thank you, Mr. Balderas. We're going to use the same format that we used previously except that regardless if there's eight minutes on there, there's really five, but that's OK. I'll cut at three unless you want to reschedule it to five for this round. Or we can delay it in five, sir.

Oh, my goodness. I did a blank. Excuse me. Yes, we're doing eight on the first round. Look at Charles. He was looking at me. I apologize. I had my hat on from the last time. Don't start my time until I make a comment or provide some insight.

We obviously aren't trying to be cute by putting Mr. Torres's name tag up here, but he was invited and we didn't hear until very recently he wasn't intended. And so the point that we're trying to make consciously is it would've been good to have him up here.

The process that we will work with, and we'll work with it, will be unfortunate. Already his attorney, the one that said he's not going to come, has been a counterpoint which he certainly has every right to do on the testimony.

And it certainly would've been better to fact-find at the hearing and do follow-up at the hearing than to get into this, well, there really was a solid past-performance provided and things like that where then we have to go back and say, "Well, staff at Joint Contract Command looked us in the eye and said that it was not."

So we'll be into that. One of those unfortunate situations, but we can deal with it, but we wouldn't have had to deal with it. So I thank the three of you because the other observation I'll make and then I'll get on the way is all three of you did pre-meet with us.

I have personally met with all three companies at different points in the last 20 months and didn't always agree with everything you did, but found you timely and very good at follow-up and forthright. And I know that's going to occur here and that's what we look for, again, regardless whether we always see eye to eye.

But on that, let's go ahead and get started. And, you know, I think it was you, Mr. Balderas, that said you support certification of the House 2011 NDAA. I'd like to spin that out a little bit with you.

Mr. Motsek, who certainly had a hand in that, who testified earlier, expressed support for the Swiss initiative on the basis that companies nowadays, at security companies it's an international process. And there are international companies and there are American companies, and that having an international standard he expressed support for and he expressed support for the certification process.

I'd like to hear from each one of you, both your comments relative to the value you see of an independent international effort, the Swiss initiative and any actions you may or may not be taking in support of that or whether you have an issue with that and then this third party certification to provide creditability for everyone, both the government and the company.

Mr. Balderas, can you go first and we'll work our way right to left?

BALDERAS:

Actually, I'd be very glad to start this off because I feel that since I've become the CEO of Triple Canopy in April of 2004, one of the first things we did was draw up and create our own

code of conduct and we've used this and have taken that to an organization called IPOA, to use that as a baseline for other companies to, again, agree upon and look for a standard of conduct.

So we as a company have been pushing for third-party certification. It amazes me that we do not have that already. When I came to the Hill in May of 2004 asking for guidance and for support in trying to find regulation for this industry, I just wishing looking at this that we'd have done this in 2004.

Again, I cannot support third-party certification enough. As far as the international standard, again, we have also been a leader in this area that, again, look at all the different companies around the world because most of this focus is on United States companies, but there are many foreign companies that are out there working as well.

So again, looking at reaching to the Montreux Document was again a look for a third-party certification, international code of conduct, to hold everyone accountable for their actions. So again, Mr. Thibault, I couldn't support it more.

THIBAULT:

Good.

Thank you.

Ms. Rogers?

ROGERS:

Yes, thank you.

As the commission well knows, I believe, and the commission staff, Aegis has been very proactive on this issue. We've met with the Senate and House, relevant committee staff as well and we are looking at all initiatives that are pursuing a higher code of conduct accountability mechanisms and a third party certification process and we have been for quite some time.

Since I've been with the company, which is almost four years now, we're not only working with the Swiss Initiatives, which as you mentioned is the international effort, we are also working with CNAS, the Center for New American Security. We're very involved in their study on contractors and conflict.

We do view that any opportunity—and we're trying to work with all bodies that are discussing this, because we hope that reform does take place. And whichever one has the most momentum,

we hope that we're involved in third-party certification. And I'm adding accountability mechanisms. I think they're critical.

Operating, as I said in my opening statement, operating in a conflict environment we do require high, stringent oversight. So I think for additional regulation, a code of conduct, which same thing with Mr. Balderas, one of the first things AEGIS did when it was founded was statement of ethics and a code of conduct. So I just hope we continue working with the commission in that effort.

THIBAULT:

OK. Mr. Ryder?

RYDER:

Yes, sir. You've heard me say before this commission, and the CEO, Mr. Ballhaus, before this commission that we hold the highest standards and conduct within our organization. We already have a code of conduct. We feel our employees are trained to that code of conduct and we have always said and we will continue to say that we support third-party oversight in standards and we support standards for the work that we do.

You've heard me probably say in my opening comment at least three times when I talked about performance, compliance and conduct. We feel very strongly about that. We feel we've got the corporate values and ethics that we currently execute today and we look forward to standards, whether on the international level or third-party standards that we then can look to.

THIBAULT:

I'm looking for a quick answer here from anyone, but do you believe that clear standards will reduce the marketplace from companies that are either in the business and may have difficulty with the standards or new entrants that just shouldn't belong in a high-profile, high-requirement business?

Said another way, is some of the delay in the standards the cause of some not wanting standards? Mr. Ryder?

RYDER:

I can't say whether you'll lose security companies of those that do this type work in fact because you have standards that are then created that they have to look to. I can tell you from a

DynCorp perspective I think we are postured and I think that's what sets us aside and sets us apart from other companies in the current ethics and standards we currently have.

THIBAULT:

OK. Ms. Rogers?

ROGERS:

Three men with guns, a truck, and a website operating in a hostile environment is not helpful for anybody. I think a high set of standards that is adopted to which we are held I think would minimize that. I think companies that are well structured that operate with integrity, transparency, under this oversight would definitely help with the situation and minimize these incidents.

THIBAULT:

OK. Mr. Balderas?

BALDERAS:

Sir, standards in any industry are a barrier to entry. And especially in this industry, we have to set up a minimum level of standards and then raise them to a bar that we all agree upon and then all of us should be meant to reach that bar and exceed that bar. As far as a company not being able to meet that, they shouldn't be in this business. And to include my company, set the bar, we will make it.

THIBAULT:

Thank you. We spent a fair amount of time discussing the role of past performance and lowest-price technically acceptable or what was referred to as a rush to the bottom and I think I'm right in the fact that DynCorp is most heavily involved in State Department and you do the small amount for DoD; is that correct?

RYDER:

In security work right now, we do not have a contract with DoD. We are just finishing a contract that we had for staff security in Qatar, but that ends in seven days.

THIBAULT:

All right. So you're principally State?

RYDER:

Correct.

THIBAULT:

Aegis does DoD work?

ROGERS:

Primarily DoD, correct.

THIBAULT:

Primarily? And Triple Canopy, I know you're heavy in State. Do you do quite a bit of DoD work?

BALDERAS:

Commissioner, Triple Canopy is probably, I think, one of the few companies if not the only company that has both. I'd say that we are the only company with both the Iraq theater-wide contract and the Department of State worldwide contract. So yes, we work with both.

THIBAULT:

OK. I guess what I'd like to get to, and I mentioned it earlier if you were here, if you weren't, fine, is that it seems like you called it a rush to the bottom or someone called it the rush to the bottom and I don't know whether I nabbed it from you or we nabbed it from someone else collectively, but I took it from someone. It was not an original thought on my part.

But we go from 1,200 to 1,000 to 800 and now, with no disrespect to Sierra Leoneans, the fact that one of the companies that's winning a lot of the bids has—that's what was explained to us by the government, has the \$250 a month rate. But they make a case that their Sierra Leoneans are as good or better than everyone from those countries I mentioned to the United States military.

My question is that the type of work that you should be bidding on, this rush to the bottom in trying to find maybe another country or beat someone out from Sierra Leone? What do you think about this lowest-price technically acceptable, whoever wants to tee this up?

RYDER:

Yes, sir, I'll go ahead and start. As you have heard myself and, again, the CEO before me talked to this commission and we for sure in DynCorp Internationals say it has to be best value. You shouldn't be going to the lowest price because when you go to the lowest price, you kind of get what you pay for.

THIBAULT:

OK.

RYDER:

So we are best-value and that's exactly how we feel.

THIBAULT:

And that's what you primarily bid on for those reasons?

RYDER:

Well, when we do bid contracts, we bid best-value. It's not always just the lowest price, but we bid best values to the government.

THIBAULT:

All right.

Ms. Rogers?

ROGERS:

We have not won a lowest-bid technically acceptable contract. Security is not a place where you cut corners and a rush to the bottom, of course, have to be cut if it's the lowest bid and again,

that's not good for anybody. So we view best-value contracts and best-value awards as providing the government with the best services and that's the way government should operate.

THIBAULT:

And Mr. Balderas?

BALDERAS:

In the race to the bottom, one thing that we do as a company, we take a look at safety versus cost and one of the things as far as going to the lowest bottom, if it's below and we don't believe we are safe not just for the client, but for our workers, we do not bid. One of the problems with the race to the bottom is that there's not enough requirements or standards to ensure that the level of performance meets the contract.

And, like, when I say that, I can speak from the Department of Defense and Department of State, you know, experience. The Department of State actually takes a look when we have a contract with them we have to provide all the task-order management plans which looks at all subcontractors. Based off of that, we go ahead and we have a staffing requirement to present to them.

They approve the country according to the contract standards such as English-speaking and once that's done, then they give us approval and we can work the host nation, for example, and that's how we we check our workers, we train the workers and we do a moderate-risk-of-public-trust security background check on the foreign nationals.

As far as Department of Defense, they do not do that. We can source a nation as long as it meets the minimum contract requirements of such as English speaking. Then that company can go ahead and recruit from that and that is done and all verification is done in country.

So again, there's two different ways to do this. I'm not here saying one's better than the other, but, again, it seems like to be able to prequalify a country that you're going to work with and draw workers out makes sense to me and that's where I favor Department of State in the way they do that to make sure that we have the right personnel and that we have them from the country that the government approves from.

THIBAULT:

All right.

BALDERAS:

So again, that helps.

THIBAUT:

OK. Thank you. My time's up. I'll try to make up for this in the next bit of time, but I'm having difficulty with the record showing that I'm generally agreeing with three contractors that are up on a hearing based on my hundred-years history with DCA, but I'll try to make up for it.

Commissioner Green?

GREEN:

Thank you. Third-party certification, would you advocate mandatory standards or voluntary standards?

ROGERS:

I would say mandatory.

RYDER:

Mandatory.

BALDERAS:

Absolutely mandatory.

GREEN:

OK. Thank you.

Ms. Rogers, you talked a lot about standards and so forth. What happened in Kabul, the embassy?

ROGERS:

I believe that management might not have been aware of what was going on. I believe there might've been loose standards. And from our experience with our management controls and the oversight that we put in place internally, that would not have happened.

GREEN:

OK. You mentioned in your opening statement the advantage of a low profile that is often associated with private security contractors. How would you respond to the often repeated statement that in Iraq and Afghanistan a populace doesn't differentiate between private security contractors and military? They're Americans. So I don't care what kind of a suit you're wearing. They're Americans. How do you rationalize that? How do you respond to that?

ROGERS:

Well, I would say we don't operate and move about in a, you know, high-profile military escorted Humvee. When I say, "Low profile," I mean, it's we provide security. We don't sacrifice security. We have different uniforms. We blend in. Yes, when we're on duty, you know, we do have weapons, but we work very carefully to make certain that we work with the local culture and that we are careful as how we drive and how we operate in how we drive. We do have signs on our car.

So I would say we have spent several years honing our experience and expertise to make certain that we've integrated the local culture, that we're aware of the local culture, the cultural environment and our profile is just as such.

GREEN:

Maybe it's an education of the local populace then that you are, in fact, different because that isn't how it's generally been reported. Not Aegis specifically, but . . .

ROGERS:

I would agree.

GREEN:

. . . private security contractors. And then you all sort of work for different folks?

Mr. Balderas, you kind of do both? I didn't hear who does AID work? Anybody?

ROGERS:

We've done previous AID work.

GREEN:

Yes. OK. How do you get guidance from the U.S. government or the appropriate department or agency regarding PSC operations?

Mr. Ryder, what does State tell you to do or if anything?

RYDER:

When in fact we bid on a contract, there is a statement of work and then the what I'll call the tactics techniques, and procedures that are used are outlined very specifically for WPPS work. Those standards and those tactics, techniques, and procedures are very clear because they're diplomatic security standards of how you're trained, how you operate, the vehicles you use, the weapons you use, the communication system you use. So that guidance is very, very clear from Department of State in the diplomatic-security side.

From the same side, because I do have protective service requirements in my CIVPOL contract, we have, and I'm going to use the term, WPPS-like standards, and the only reason I say, "like" is because we just went to it over the past year and the only difference is we haven't taken all of those protective service individuals back to the United States to train. We train them in country with an MTT [mobile training team].

As we replace them, they'll go back through the training here in the United States, which is WPPS-certified, and then you have the certified instructors and the certified training environment that you do, but the tactics techniques and procedures of how we conduct our missions comes from the State Department.

GREEN:

Ms. Rogers?

ROGERS:

To add on, yes. The clear guideline they usually state in the statement of work as you well know, I would also add an addition it's imperative to have close cooperation with your client, which would go to another reform I would recommend and that is from our experience, it would be very helpful to see the contracting officers, contract officer representatives in the same theatre as the contract we're managing. We think that would be very helpful and would actually behoove and better prepare future conflicts.

GREEN:

OK. Mr. Balderas, let me just modify the question a little bit for you because you have a foot in both camps and that is what are the difference in standards? And you touched on it a little earlier, but what are the difference in the standards between the State Department and the Defense Department in the guidance and the oversight, the oversight particularly, that you've received?

BALDERAS:

Well, as has pretty much been documented, as far as Department of State, we covered a lot about the statement of work in the contract. Department of State has RCOs [regional contracting officers], ARCOs [assistant regional contracting officers] that ride with the vehicles, that are with the individuals on the contract. Now, a difference between that and the Department of Defense is that they do not have that same-level oversight down close on the ground. We work directly for you know, the military, but again, as far as having actual people with us, you know, consistently, the Department of Defense is different.

GREEN:

Well, I asked that question to the earlier panel. Would you support that that Department of Defense use a similar system that State is using in having a government employee whether it be a uniformed person or a civilian in the movement?

BALDERAS:

As far as similar to State, I believe in what you're saying. One of the things that go to the extent as far as the additional cameras of the issue of, again, having more personnel on oversight, I would agree with that.

GREEN:

OK. A last question. My time will be up. What do you see in any of you, what are the biggest challenges to your operations once DoD leaves the end of 2011? Mr. Ryder?

RYDER:

As I look at the transition, because I don't know all the requirements, to me that is a challenge because I don't know all the requirements. In the first panel, there was a discussion of who are

going to do certain missions. We talked about the medical evacuations. We could talk about who is going to provide combat support, hospitals will be gone . . .

GREEN:

Road clearance.

RYDER:

. . . There may not be enough of them. And until I know who's going to have that requirement and who's going to do that mission, I see those as challenges. I don't think that they're challenges that can't be overcome. I think that there are contractors that could perform some of those missions, but because I don't know all the requirements that are going to be out there, I know what's going on.

GREEN:

Are there any missions that you know today that DoD is performing that you don't believe a contractor could perform? And I'm not talking about a two-year, three-year run-up to get the capability, but following on that mission in a year, are there any of them that a contractor could not perform?

RYDER:

But not knowing the breadth or depth of all the contractors that are out there and their capabilities, one that would come to mind is, although it's not a counter-fire battery, but those that are tracking indirect fire that are coming in, can they perform that? I would think if you had the systems and you had the technology like someone that did it before, a contractor could do that. That's the one that comes to my mind.

GREEN:

OK. Ms. Rogers?

ROGERS:

Yes, I don't think contractors should be performing offensive operations. But as the drawdown, as the military leaves—we are talking about the drawdown, I presume? I would echo

Mr. Ryder. The greatest challenge is the lack of communication and I foresee it potentially being the lack of coordination.

Going back to before, quite frankly, the CONOCs, when information was passed, is being passed to the private security contractors and all contractors operating within the Iraqi theatre and that is a best practice that's been identified by the Special Inspector General for Iraq Reconstruction as well as the Government Accountability Office. And I think that lack of coordination and visibility of the contractors even when the drawdown occurs is going to be a challenge.

GREEN:

OK. Mr. Balderas, very quickly.

BALDERAS:

One of the challenges I see is, again, not knowing all the requirements, is again coordination right now so we can get it started if we need to do those requirements.

One of the challenges I see, though, based on what Department of State requires us to do to get staffing levels up is the background checks, the security-clearance requirements that we have to meet for every worker in order to get ahead of that and train and get prepared that actually is a challenge of, again, staffing unless we understand the requirement, get in front of it so we begin that process because it's a very long and challenging process to get someone to work for Department of State to their requirements today.

GREEN:

Thank you. Time's well over.

THIBAUT:

Thank you, Commissioner. Commissioner Tiefer, please?

TIEFER:

Thank you, Mr. Chairman. You've already answered these with full-length statements, so all I want to do is get one word. You've all said you're strongly in favor of third-party certification. The word I'm looking for is independent.

When the Department of Defense wrote its report about the issue of third-party certification for the congressional defense committees, maybe you recognize it, the difference is third-party certification can merely be that a third party creates the standard and the Swiss can simply slip it into the next Swiss cheese that comes over here. But the issue is the Defense Department supports independent means to verify and monitor, meaning, as it says, "external validation, an oversight body that's independent."

Let's put it more bluntly that the IPOA not be involved, that the industry trade association not be involved in the certification decision.

Do you support independent determination certification? Mr. Ryder?

RYDER:

Yes.

TIEFER:

Miss Rogers?

ROGERS:

Yes.

TIEFER:

Mr. Balderas?

BALDERAS:

Yes.

TIEFER:

Thank you. And I commend you as hands way above the previous panel in the ability to give prompt answers. OK.

Mr. Ryder of DynCorp, we just heard from the previous panel about the fact that a contract for \$120 million worth of security, not to mention extensions which will make it even larger, has

been awarded to Blackwater even though as the Defense Department said we live under the spillover of Nisour Square, which was the Blackwater incident.

Now, I want to ask you because you were one of the bidders on this. Number one, is the argument valid that only Blackwater can do the standing up within the time period that was in the requirements? And number two, doesn't it look like your good past performance was played down compared to Blackwater's Nisour Square past performance?

RYDER:

Commissioner, I can't answer why Blackwater was selected, Ze was selected as opposed to either Triple Canopy or DynCorp. I can tell you that I know the proposal that went in and in my view, the proposal that went in, the technical portion of the proposal to put it in technical terms, was a blue technical proposal.

TIEFER:

Now, I'll...

RYDER:

I can tell you also that we feel and I feel today that we could meet the timelines of getting folks on that contract in the 60 days that were required. And if I may . . .

TIEFER:

Thank you.

RYDER:

. . . just one more, I can also state...

TIEFER:

I'm running short on my time, if I could.

RYDER:

Thank you, sir.

TIEFER:

But I do want to comment that I saw when you gave excellent testimony at a December 20th hearing. We were discussing the Afghan National Police Training contract which you wanted the chance to bid on and that GAO agreed with you and it looks to me that one looked like it was being set up for Blackwater again because they had the existing facilities in country.

It looks to me like having been kicked out of Iraq by the Iraqis after Nisour Square, Blackwater is creating a new empire for itself based on the fact it has existing facilities in Afghanistan.

THIBAUT:

Commissioner, if I negotiate with you to give you another minute, can I expand the discussion with Mr. Ryder?

TIEFER:

Thank you for the minute.

THIBAUT:

Talk a little bit about it, Mr. Ryder, about the challenges you would've had to have met the 60 days and the kinds of actions you would've taken so that you could've met the 60 days?

RYDER:

I think we were prepared as we put the proposal together. We understood the timelines. We understood the requirements for both static security, protective-service security. We understood the requirements for living conditions and life and mission support. We had worked our way through that. We provided an additional solution to the government of how to do instead of maybe building camps out of leased facilities not knowing the time length that they were going to have the contract.

So I think we were well prepared. As the commission knows, there are always challenges in standing up a contract and getting the required number of people into a country. Anyone that tells you there's not those challenges I think is being less than honest, but we were prepared. We understood the requirements and we were prepared to do that.

THIBAULT:

OK.

RYDER:

So I think we were well prepared to do that. And I might add that DynCorp International, and I could be off by a few numbers, may be the largest contractor in Afghanistan today when you count the numbers we have on LOGCAP.

THIBAULT:

OK.

Mr. Balderas, you're the third piece of this group. Could Triple Canopy have met the date that fast?

BALDERAS:

It would've been a challenge for any company based on the fact there's no company there in at least two locations right now, but we looked at it and, again, the way we look at this as far as safety, we also look at our ability to execute. You know, when I quote my COO, Kelvin Kai, that, "We don't confuse enthusiasm for capability," we do not bid unless we absolutely believe we can perform.

So yes, we could've done that job. It would've had a challenge for anyone, any of the three companies to perform, but we wouldn't have bid if we didn't really believe we could've got the job done.

THIBAULT:

Well, thank you.

Commissioner?

RYDER:

Chairman, if I may, I apologize.

THIBAULT:

Please.

RYDER:

We currently have on the ground in Mazar-e-Sharif and Herat, DynCorp International employees, although they are doing the civilian police training program, but we have folks on the ground that understand those two locations.

THIBAULT:

All right. Thank you.

Commissioner?

TIEFER:

Mr. Balderas, I was rereading a book by a Pulitzer Prize winner, Steve Fainaru of the *Washington Post* called, *Big Boy Rules: America's Mercenaries Fighting in Iraq*, and it covered a technical point that we did this morning. I'm going to read from page 35.

"Triple Canopy said its only obligation about the incident that was covered to report the incident was to report the incident to its contract holder, KBR, which was supposed to report to its contract holder, Laguna Construction, which was supposed to report to its contract holder, the U.S. military." That makes you at least a third tier or a fourth tier the way you're counting.

I'm not at all challenging you. From my reading and I think if you pick it out of the difficulty to understand of the AID testimony this morning, it may well be that unless this clarification that duty of a subcontractor under its contract is to report to its prime and above that to the prime's prime and then to DoD. Is there at least some argument for that or whether you want to argue for it or not, wouldn't you think it would be a better system if some direct relationship was established between the government and the PSC?

BALDERAS:

Mr. Tiefer, thank you for the question. Actually, I believe that very much. I believe anyone in the security business, whether you're in a subcontractor or a prime role, should have a clear reporting chain of incidents. And if possible, I'd like to speak to the earlier statement you made earlier about the issue of this incident you're talking about.

Triple Canopy did find out about that incident and we self-reported that to the area command, the military, and we also reported . . .

TIEFER:

If I can give you a question because . . .

BALDERAS:

Sure.

TIEFER:

I was interested in that. From what I read, and this is about the issue of your then-employee, Washburn, you fired him later on who said as he started the day, quote, "I want to kill somebody today," unquote, and then went out and had several incidents with the Iraqis. Your project manager filed a seven-page report, but it was given to the government in a way that it did not show the government that there had been shots fired.

Now, if you're going to tell me it did not show the depth of the incident, I can read to you from *The Washington Post* article that was filed at the time that the government guy, Lieutenant Colonel Michael J. Hartig, the former director of security for the Green Zone, said Triple Canopy officials mentioned, mentioned to him in his office, but did not specify the allegations—I'm sorry—approached him in his office, but did not specify the allegations, this is a *Washington Post* article, did not specify the allegations, quote, "They mentioned they had a couple of guys do some things that were questionable on the road and that was pretty much it," unquote, he said.

Would you be willing to supply the commission with all your documentation about this particular incident apart from the piles of courtroom stuff about the terminations?

BALDERAS:

Let me check that. I believe we already forwarded the copy of the report to the commission already based on your prior comments.

TIEFER:

But that doesn't cover what you said . . .

BALDERAS:

But we will . . .

TIEFER:

. . . to the government. That just covers the report of the incident. No evidence was found by *The Washington Post* reporter that you forwarded the report. He mentioned—remarks is what is said, not he handed the report when he was making this conversation.

BALDERAS:

Right. When we found out about the incident a few days later, we self-reported as a subcontractor to the military.

TIEFER:

Well, I want the documentation . . .

BALDERAS:

We would know . . .

TIEFER:

. . . about who the report was given to, not just—there were many different places; the CONOCs, the ACOD [Armed Contractor Directorate in Afghanistan], the director, you know? There were many different places. Can you give us the documentation about who it was given to? That's a yes or no.

BALDERAS:

Sir, we can forward that to you.

TIEFER:

OK.

BALDERAS:

Again, all the things you pointed out just shows the confusion in there and we did self-report.

TIEFER:

I think it shows more than the confusion, but . . .

BALDERAS:

I'd be happy to forward that to you and show that we did report it.

TIEFER:

If I can ask Aegis a question, your personnel currently operate, I mean, Miss Rogers for Aegis, your personnel currently operate the CONOC in Iraq, am I right?

ROGERS:

We support it, yes.

TIEFER:

Yes? You also used to have a senior position which we considered tantamount to running the ACOD in Afghanistan until you left it whether it was your choice or theirs. And I'm told by the State Department official who testified before this morning, Ms. Lamb, that once it's transitioned to the State Department they will have it under direct-hire employees.

Why do you think the ACOD and the CONOCs, which are the coordinating bodies, can and should be under PSCs and not where the State Department is going under U.S. government direct hires?

ROGERS:

I think that Ms. Lamb and myself, I think our pains would be the same and once it does transition we support the Contractor Operation Center in Iraq. We report directly to the J3. We sit side by side with them. We are embedded within the Operation Command Center. The intent, as you well know, for the Contractor Operation Centers is to coordinate, to collect information to

coordinate, to collate the incident reports that are required now of all contractors, which is a very good thing, that are operating in the battle space.

For us to support it, we bring the expertise from a private security company and I think that it is critical. I think we have been there, we've got the institutional history and a quote from one of our J3 supervisors actually said, and I could actually save the quote, send it to you, "The support that Aegis has provided has given not only expertise on private security contractors, their standard operating procedures, but has also freed up their staff to focus on actually investigating the incidents."

TIEFER:

My time has expired.

THIBAUT:

Thank you.

Commissioner Henke, please?

HENKE:

Thank you, Mr. Co-Chair.

We had a hearing on Friday about the issue of inherently governmental or not and if you got a chance to watch some or all of it, it was very interesting because we find that there are really few, if any, bright lines and some considerable disagreement on the implication of what sounds like a fairly cut and dried term.

Are you all familiar with the new OMB, the draft OMB policy letter on [defining] inherently governmental or closely associated or mission critical? Are you familiar? Let the record indicate yes or no.

RYDER:

I am not.

ROGERS:

Yes.

HENKE:

You are not? OK. I want to ask each of you, Mr. Ryder, you're familiar with the concept of "inherently governmental" and the application of it? You're familiar with the current rules?

RYDER:

Yes, sir. I am familiar with the concept. Yes, sir.

HENKE:

Right. Right. And the current rules, right?

RYDER:

Yes, sir.

HENKE:

The current rules set? I want to take an example of moving security as distinct from static security. So moving security, which, I think, would include protective details and convey security, anything other than securing a fixed post or a fixed point of space.

In an active wartime situation—I'm using the term "wartime" because it's in our title—you can have endless discussions about whether it's a contingency or it's non-permissive or permissive or it's a counterinsurgency or civil war, but in an active battle space when you have moving security, is that, each of you very briefly, just a quick yes or no, is providing that function in that scenario inherently governmental?

Mr. Ryder?

RYDER:

In that scenario that you just described, I don't think that that function is inherently government.

HENKE:

So no.

Miss Rogers?

ROGERS:

No.

HENKE:

OK.

Mr. Balderas?

BALDERAS:

No.

HENKE:

OK. Same scenario. Is that function closely associated with inherently governmental? Do you use the policy letter's own three-tiered operation? Is providing that service, is that closely associated with inherently governmental?

Mr. Ryder?

RYDER:

Commissioner, I don't think so. I mean, we struggle. Everyone has struggled with the definitions of "inherently governmental" and we continue to struggle with it. My answer to your question is I don't think so.

HENKE:

OK. Fair.

Miss Rogers?

ROGERS:

No.

HENKE:

Mr. Balderas?

BALDERAS:

No.

HENKE:

OK. Third and final quick question, is that function then critical? Third-tier, is it critical, mission-critical or critical to the agency's operations or mission?

Is it critical, Mr. Ryder?

RYDER:

Yes, I think it is.

HENKE:

OK.

Miss Rogers?

ROGERS:

Yes.

HENKE:

Mr. Balderas?

BALDERAS:

Yes.

HENKE:

OK. If it's critical and critical with the category that has the most latitude for discerning judgment and it's difficult to apply a standard term to a range of scenarios, if it is critical-function and there's a lot of latitude to determining what a critical function is, and it can change over time; what we found ourselves in the situation in '03 or '04 was different late into '06 in Iraq, obviously the situation got worse. And so it degraded.

My question to you is if it's a critical function, how do you determine where the bright lines are to determine whether it should be provided by the government or eligible to be contracted out? Sir?

RYDER:

Commissioner, I think that's a policy decision and . . .

HENKE:

Right.

RYDER:

. . . I think the policymakers struggle with that decision. So if you're asking my personal opinion . . .

HENKE:

Yes, as a provider of services in a large corporation, I'm asking for how do you think that decision should be made? How does someone exercise on the government side discretion for determining what's closely, excuse me, what's mission critical?

RYDER:

You just stated it, sir. I think that decision based on the government side was that it was critical, and they needed to capability to be performed, and they came to a private security company to provide that capability. And I think we provide it very well.

HENKE:

But that doesn't really tell me much sir. What is the criteria used to make that, because if it's critical, you can either in-source or outsource it. You have flexibility. So what are the criteria?

RYDER:

And so, Commissioner, you're asking me to make a policy decision. I don't make policy decisions.

HENKE:

No, no. The policy decision would be that we have a three-tiered system of inherently governmental, closely associated or critical. I'm asking you, how does the executive branch, whoever that is, how do they make that determination?

RYDER:

I can't answer that.

HENKE:

I think the policy is that the government should get government things, and everything else is eligible to be contracted. So I'm not asking you to make a policy decision. I'm asking you to apply a policy determination to specific circumstance. How do you do that?

RYDER:

I don't do that. The government does.

HENKE:

How would the government do it?

RYDER:

I'm not a government official.

HENKE:

You were, right? You were a military officer for 30 years.

RYDER:

Oh, that's a different question. Now you're asking me to go back five years, that's four years since I retired, and then try to . . .

HENKE:

No, what I'm hearing is I'm hearing you don't want to answer the question.

RYDER:

No.

HENKE:

Frankly.

RYDER:

I'd love to be able to answer that question, except I don't make those decisions even after the policy decision's been made and then there's a decision made that says, OK, we are going to contract that service out. That decision is not mine either. I'm the recipient of the statement of work and recipient of the proposal, or the request for proposal, that we then put in to provide those services.

HENKE:

So at that point you're a functionary. Fair?

RYDER:

I think so.

HENKE:

OK.

Ms. Rogers?

ROGERS:

I do think there's a bright line, and the bright line is offensive operations, and that should be conducted by the military. Flexibility needs to be given the government in this space you identified and OMB identifies as critical. And there does need to be flexibility, which is why, quite frankly, we believe that there should be an office of contingency-operation contracting. Contractors need to be held accountable, as do the contracting officers.

If it's not an offensive operation and the government deems critical, because it's in a contingency operation or wartime, the contractors will then, with their specialized skills, respond to the statement of work

I think if the government is given the flexibility it's identified as critical, and if we have the appropriate oversight, I think that will suffice going forward.

HENKE:

So your view is that where the bright line is where there is an offensive aspect to the contracted task, it should not be contracted.

ROGERS:

Correct.

HENKE:

Is it your view that where there are in close proximity offensive operations or the battle space is a clear, that there are force-on-force or a front line or were there are insurgents who change uniforms, is that your view, too?

ROGERS:

Yes, this is why I said in my opening statement, Iraq and Afghanistan are very different.

HENKE:

Right.

ROGERS:

. . . because you've got military operations happening at the same time you've got reconstruction stabilization operations happening. You can't with our current military force have the military do both. Military . . .

HENKE:

With our current military force.

ROGERS:

Correct.

HENKE:

Because of the size.

ROGERS:

Correct.

HENKE:

Because we've made, to Mr. Ryder's point, a policy or force-sizing decision that that's what we're going to want, and maybe the foreign policy is larger than that. So where we are is really what you're saying, right? Is that fair?

ROGERS:

That's fair.

HENKE:

Mr. Balderas, how do you make the decision? If we've all determined it's a critical function, if you're sitting there with something to do, how do you decide whether you can contract it or not?

BALDERAS:

Again, I have to agree with the, you know, with the position of offensive versus defense. You know, we train our personnel to evacuate, to avoid and evacuate in the incident, not to engage.

HENKE:

So your bright line would be what?

BALDERAS:

Again, offensive action. You know, a move from point A to point B is not an offensive action. However, getting in a situation where you have to evacuate, if you can't avoid it, you know, we train people to leave, not to engage or fire weapons at people. The first thing they do is get out of there. So again, it's a defensive reaction.

HENKE:

OK. Thank you very much. My time has expired.

THIBAUT:

Thank you, Commissioner Henke.

Commissioner Zakheim?

ZAKHEIM:

I'd like to pursue this a little further. I think you've all made a reasonably convincing argument—whether I share it or not is immaterial right now—of the line between offensive and non-offensive. And I think one could say you would argue offensive is an inherently governmental activity. OK.

But what about that level in between critical, inherently governmental, closely associated? You've already told me that offensive is inherently governmental. So why isn't the kind of thing my colleague just talked about—a war zone, threatened area, moving—why isn't it that closely associated?

You haven't explained to me, at least, why you would not call these activities closely associated? You've explained very well why it's not inherently governmental. Let me just go down the row here.

Mr. Ryder, why should not closely associated?

RYDER:

Commissioner, I'm going to go back, although Commissioner Henke assured me that this is not a policy decision. My position on this, or our position, DynCorp's position on this, is the decision has been made. What we're talking about is whether it's inherently governmental or not. The decision's been made. We've been asked to provide a capability and a mission, and we provide that capability and mission.

Now, obviously, I'm missing the question.

ZAKHEIM:

-Look . . .

HENKE:

You're saying you're downstream of the decision. You get the decision, and you take it as a . . .

RYDER:

And we execute.

ZAKHEIM:

Now, that's fine. I don't question that.

RYDER:

So that's why . . .

ZAKHEIM:

But you people are professionals. You're experts. And you very flatly said that this is not inherently governmental. Now, obviously, you have an opinion, because you're experts. So I'm asking you as an expert why is this not closely associated?

You've explained why it's not inherently governmental. You didn't say, "I'm downstream. I can't answer the question." You're an expert. I can understand that. As an expert, as three experts,

as people who do the job quite well, according to the government, why is this not closely associated?

RYDER:

Are we still on me, sir?

ZAKHEIM:

Yes, sir. And I'll move down the row.

RYDER:

Either I'm not understanding your question, because I don't think it's closely associated. I mean, I think . . .

ZAKHEIM:

I just want to know why. Just tell me why.

RYDER:

Because we've been asked to provide a capability and a mission, and we do that. What's the association? Where is the next step with the association? We're asked to provide a capability, to provide a function and a mission, and we do it.

ZAKHEIM:

Bob, do you want to jump in?

Can I cede a little time there?

Go ahead, Bob.

HENKE:

I would say, just my opinion here, I think it has to do with exercise of sovereign power in a foreign nation and the circumstances under which you're there.

Now, I think there's a bright line between a peacetime environment, providing embassy security in Peru or Tokyo or wherever, and providing embassy security in a combat zone, offensive or defensive. That's where I would pull it back to. There are peacetime places and there are wartime places, and let's not worry about what provinces, what in Iraq, or whether it's '03 versus '07. Let's say there are wartime places and peacetime places.

ZAKHEIM:

Well, let me put it this way. And I have to thank my co-chairman for planting the seed. If we as a commission were to recommend that this kind of activity—where you're moving, not where you're standing stock still—in a high-threat area was a closely associated activity, how would you react to that?

Would you say, "You're wrong, commission?" Or would you say, "That's cool," salute smartly and march on? Now, let me put that question to each of you. It's a better question than mine.

RYDER:

My response would be the same as it was in my opening oral statement. In my opening oral statement, I said there would be a policy decision and if a contractor is going to move forward with that policy decision, then we stand ready to do that.

ZAKHEIM:

OK. So you'd be good with it.

Ms. Rogers?

ROGERS:

Which is why clarity is so important on this issue, because we will abide by what the government has said.

ZAKHEIM:

Good. Good.

Mr. Balderas?

BALDERAS:

Absolutely. We would.

ZAKHEIM:

Fine. Excellent. Thank you.

None of you contract directly with AID, because AID doesn't contract directly. Do any of you contract with any of what AID calls its implementers?

Mr. Ryder, do you?

RYDER:

We do not.

ZAKHEIM:

Ms. Rogers?

ROGERS:

We had one contract with AID, and it was for security-risk assessment, and it was directly.

ZAKHEIM:

OK.

Mr. Balderas?

BALDERAS:

Commissioner, a few months ago we bought a company that does work as a subcontractor for one of the, you'd say, implementers for USAID and Afghanistan.

ZAKHEIM:

OK. Let me start with you, then.

This was a security company, presumably, right?

BALDERAS:

Yes, sir, it was.

ZAKHEIM:

Yes. You work directly for the government, but you work indirectly for AID. How do you feel about that? Do you think it makes more sense to work directly for AID? What kind of oversight are you getting from your prime?

BALDERAS:

I went over to Afghanistan in March to take a look at that situation, went down to Kandahar city, and one of the things that I saw there was the implementer having the security interface that we reported to as far as that company.

What I would like to see, and I think the commission should take a look at this, is having a direct line, as I said before, to any subcontractor, anyone that has a weapon, to have a direct reporting chain to the government, whether it's the agency or another third-party governing body.

ZAKHEIM:

And right now you don't have the sense that you've got that direct line to AID at all, correct?

BALDERAS:

That's correct.

ZAKHEIM:

And it sounds to me like you're not too thrilled about that either.

BALDERAS:

I would rather work directly for the government . . .

ZAKHEIM:

Got it.

BALDERAS:

. . . and the agency.

ZAKHEIM:

Thank you very much.

Ms. Rogers, you're not in that way involved, but in your professional opinion, does it make sense and is that the best thing to have a situation like Mr. Balderas is in, like you could be in, working for the implementer and AID at arm's length?

ROGERS:

The government needs to have greater visibility of the subcontractors. And we have two instances where we're a subcontractor to a prime, to speak in contract language. Granted, it's the DoD. But in that situation it would be very helpful if we could actually have visibility and communication with the U.S. government.

ZAKHEIM:

Does DoD provide anything like that right now for you? Are you in the same situation as Mr. Balderas, that basically you don't have that line to DoD?

ROGERS:

On one of them, yes. On the other, we work in such close proximity that we are able to have an open channel.

ZAKHEIM:

So basically, you do have those channels.

ROGERS:

Yes.

ZAKHEIM:

OK.

Mr. Ryder?

RYDER:

No, sir. I'd side with my colleagues. I prefer to work straight for either DOS or DoD and not have the—I guess I'll call it the prime between me, and me being the sub. I'd prefer not there.

ZAKHEIM:

OK. Thank you.

My last question. I understand from your testimony, Mr. Ryder, that you had at least one Nepalese working for you, and I assume you have other third-country nationals, correct?

RYDER:

I do, sir.

ZAKHEIM:

OK. In a GAO report, I don't know if you were here before, the GAO was saying that the State Department worried a little bit about mercenaries. It's actually in print. The staff showed me that. Yet you feel comfortable hiring third-country nationals.

Particularly in an environment like Afghanistan, but even in Iraq, has anyone at State said, you know, this may not be a good idea? We really need to get locals doing this kind of thing. Has anybody ever raised that with you at all—cultural issues?

RYDER:

No, sir, they have not. And if I could just go one step beyond with the Nepalese because they're mostly static-security guards. They are very loyal, they're very dedicated, and they're very professional. They're an outstanding static-security guard force.

ZAKHEIM:

And you obviously are not terribly comfortable with again going with the lowest common denominator and just hiring somebody from any country.

RYDER:

No, sir.

ZAKHEIM:

And you, Ms. Rogers, the same?

ROGERS:

Correct. No, we don't.

ZAKHEIM:

And you, Mr. Balderas?

BALDERAS:

Yes, that's correct.

ZAKHEIM:

My time is up. Thank you.

THIBAUT:

Thank you, Commissioner.

Commissioner Ervin, please?

ERVIN:

Thank you, Mr. Chairman.

Thank you all for being here. I want to start with the issue of Xe that we talked about just a second ago and to ask one question that was not asked of you, Mr. Ryder and Mr. Balderas,

about that. And that is each of you gave what sounded like convincing explanations of why you bid on it and your ability to perform the work had you won the bid.

So my question to you is given that the legal option of protesting is available to you, does either company plan to do that?

RYDER:

Sir, we will not get a debrief until tomorrow. I've been notified since I've been sitting here we'll look at the debrief, and then there'll be a decision made, once we've received the debrief of why we were not selected.

ERVIN:

OK. But it's an option that you might avail yourselves of after the debrief?

RYDER:

Yes, sir.

ERVIN:

Mr. Balderas?

BALDERAS:

Same answer. We have not received the debriefing yet.

ERVIN:

OK.

Now, to turn to your testimony, Mr. Ryder, and to kind of continue on the colloquy you had with Mr. Zakheim and Mr. Henke on this inherently governmental, closely associated, mission-critical issue, you know, I was struck in reading your testimony that you touted the WPPS model, actually embedding DS agents in moving convoys.

You like the blended system of government personnel personally overseeing private security contractors. And you went so far as on page 9 to be supportive of the notion of having government personnel present at shift changes with regard to static security. Is that right?

RYDER:

I believe if it said that, it should have said not shift changes, but on shifts—not, as I said in my oral statement, not on a specific entry-control point, but if you had government supervision at a shift, whether, you know, eight-hour shift you had a government person that was there that provided oversight. I'm in favor of that.

ERVIN:

OK. The main point, though, is that DynCorp likes the notion of government direct oversight of private security contractors by actually being there with the private security contractors, right?

RYDER:

We like the blended approach, as I've stated. Yes, sir.

ERVIN:

Yes. And I think that has considerable appeal. The only thing is if you take that notion to its logical conclusion, that suggests to me that what's appealing about that is that the government can—it's this trust, but verify notion.

I mean, is the logical suggestion of that in the optimal world we wouldn't have private security contractors doing this, and it would be entirely government personnel? The value of having government personnel there is to make sure from the government's point of view that the private security contractor is doing what they should be doing and not doing what they shouldn't be doing, right?

RYDER:

Well, I'd stated many, many times that transparency in oversight is paramount. We favor that. I would not make the leap that by having oversight of a government employee with a contractor on a shift as the next leap is that the government ought to do that function.

But I do feel that it's not only important for the oversight, in my view, but it's critically important that you then develop this partnership between the contractor and the customer, which I think is important. If you have someone there that's with your individuals 24/7, I think it's a benefit.

ERVIN:

All right.

Ms. Rogers and Mr. Balderas, what's your view about this blended concept? Is that something you support? Is that optimal from your point of view?

Ms. Rogers?

ROGERS:

Yes, yes.

ERVIN:

Mr. Balderas?

BALDERAS:

Yes, we already are doing that right now with the Department of State.

ERVIN:

All right.

Let me ask you a few questions, Ms. Rogers. In your statement you go to great lengths to talk about Aegis's support for corporate transparency adherence to national law, full and open engagement with government institutions, et cetera. And you quite rightly apologize at the very beginning of your statement for not showing up at our last hearing in April, and I appreciate that.

I was struck by your not having shown up for that April hearing, because my understanding is that beforehand, Aegis as a company and you yourself had participated personally with us every time we ask for your support. Glad you're here today.

Do you pledge that in the future, subject to some irreconcilable conflicting issue—and by the way, my understanding in April was it wasn't an irreconcilable conflict issue. You were directed by your board of directors not to appear. Is that right?

ROGERS:

I'll start by saying we do pledge to continue working with the commission members and staff.

ERVIN:

It was actually more specific than that. Do you pledge in the future, barring an irreconcilable conflict issue, to be here yourself or to send a deputy to represent Aegis at hearings that we hold?

ROGERS:

Yes. And I'd just like to expound on that a bit. It was an unfortunate perfect storm. I had just come off my honeymoon. That was not the perfect storm, but we had . . .

(LAUGHTER)

. . . we had -- we had...

THIBAULT:

Oh, come on. Excuses, excuses.

ROGERS:

No, that was actually rather enjoyable. However, we had a board meeting right thereafter. So unfortunately, given constraints on the team at that point, we felt as though we were unable to adequately prepare.

ERVIN:

All right. But in the future you will be here or you'll send a representative?

ROGERS:

Yes, Commissioner.

ERVIN:

You talked a little about the importance in your view of having local nationals as part of the Aegis team there. Could you describe a little bit you're vetting procedures?

There was a very disturbing article, which I'm sure you saw, in the *New York Times*, I think it was last week, about the fact that in Afghanistan, at least, local nationals might well be playing a double game. Obviously, I'm concerned about that in Iraq as well. What procedures do you go through, briefly, I've got limited time, to make sure that that's not an issue?

ROGERS:

We share your concern. It's a thorough process. When we first were awarded our contract, DoD in May '04, we asked the Department of Defense, we implored the Department of Defense to use local nationals, because we felt it was important to be able to move around with a low profile that we had local nationals.

We pledged and we vetted our vetting process with the Department of Defense. There weren't existing records at the Ministry of Interior at that point in time, so what we did is we embarked and implemented a seven-step process that now includes biometric testing, that now we do share with the Ministry of Interior our list of local nationals every 30 days, and we run it by them. We've got a very good relationship with them.

Going back, the screening we work with either the tribal leaders, religious leaders, past employment, we do face-to-face interviews. Again, we do biometrics. Our local nationals—and we have just over 300 that have been with us almost since the beginning. We have about an 85 percent retention rate. It's very helpful.

ERVIN:

Thank you very much. And one other question for you before going to Mr. Balderas, and that is one of the things that you touted is the company's successful efforts to negotiate a truce between these tribes such that this pipeline was moved and the pipeline was no longer attacked.

You know, obviously, that's a good news story, because the pipeline is not being attacked now. But I must say that one could look at that a different way and to say that it would probably very surprising, and I would think troubling to many Americans, to learn that private security contractors are engaging in that kind of function, talking to tribes, negotiating with tribes on behalf of the United States government. What's your comment about that?

ROGERS:

The U.S. military, specifically the Army Corps of Engineers, at that point in time were not able to get in to meet with the tribes. They were too high-profile, and the tribes would not talk to them. So we were able to, at the request of the U.S. Army Corps of Engineers, go where they couldn't go, primarily because we have a very low profile.

And we did not negotiate. What we did is we gathered the information, and we found out what the problem was. We reported the information back to the U.S. Army Corps of Engineers, and they moved the pipeline.

ERVIN:

Thank you very much.

One quick question for you, Mr. Balderas.

If you'd indulge me just for a second, Mr. Chairman.

You know, there's that old expression, "It's not bragging, if it's true," and obviously, the converse of that is the case as well. I wondered in your statement you touted a number of things. You swept away a number of, in your view, urban myths about this whole issue of contractors versus the private sector.

And one of them was the cost issue, the notion that private security contractors are infinitely more expensive than the government. And you cited a GAO study for that proposition, right?

BALDERAS:

Correct.

ERVIN:

OK. And so I asked our staff over the weekend to look at that. And what they reported back after talking to GAO was that actually it's really not an apples-to-apples comparison. Apparently, this report was intended to be a comparison of DoD costs versus private security contractor costs. And yet DoD, as we understand it, refused to participate in this study.

And so in extremis GAO, as we understand it, turned to the State Department. The State Department said, "Well, this is very hypothetical, but if we had to do it, we would use DS agents as opposed to hiring local nationals or third-country nationals, even though obviously they'd be a lot cheaper. The reason we don't want to directly hire third-country nationals and/or local nationals is because they're mercenaries." This is this mercenary language that has already been mentioned here.

And yet, we're paying Triple Canopy to do the same thing. You're hiring third-country nationals, and you're hiring local nationals. And you're charging the United States government a premium to do it. So my only point is this is not apples to apples. Do you have a comment about that?

BALDERAS:

Again, it's a GAO report. They put the numbers together. And as far as hiring, we do that by the contract. Department of State asked us to hire . . .

ERVIN:

But my point is the United States government, you would surely agree, could itself directly hire the third-country nationals and the local nationals that you hire. State Department does that, after all. People who work in our embassies are direct United States government employees. So the government could have done that without paying Triple Canopy. Isn't that right?

BALDERAS:

Our government could hire anyone they want. So again, the mechanism itself is . . .

ERVIN:

Right. But if the government were to have hired them directly, as opposed to paying you to hire them, then it would have been cheaper for the government to hire them directly, right?

BALDERAS:

Again, it depends on the nation itself. Again, we're talking about host-nation laws and whether or not they would allow a foreign government to directly hire local nationals. So yes, we work in different nations. There's different rules and laws that . . .

ERVIN:

Well, the nations we're talking about here are Iraq and Afghanistan. Aren't there Iraqis and Afghans hired directly by the United States government at our embassies in those two places?

BALDERAS:

That's correct, but we're talking about third-country nationals.

ERVIN:

Aren't there third-country nationals who work directly for the United States State Department in Iraq and Afghanistan?

BALDERAS:

I could not speak to that. I'm not sure.

ERVIN:

You're not sure about that?

BALDERAS:

No.

ERVIN:

Do you know, Ms. Rogers? Isn't it the case that the United States government hires third-country nationals in Iraq and Afghanistan?

ROGERS:

That the government hires third-country nationals?

ERVIN:

The United States government.

ROGERS:

Well, in that case Brits and U.S. citizens are considered third-country nationals and actually, no, we're not. The Brits and South Africans are, so yes.

ERVIN:

Mr. Ryder?

RYDER:

I don't have direct knowledge, but I think the answer is yes, that they do hire some third-country nationals at the embassy.

ERVIN:

Thank you.

THIBAULT:

Thank you, Commissioner.

My co-chair, Commissioner Shays?

SHAYS:

This has been a very interesting Friday for us, and also a very interesting Monday for us as well. And I thank all three of you, and I wish Mr. Torres was here. And I understand he has complaints about our opinions, but he should have been here to be able to tell us directly. And you had the willingness to come and answer our questions and disagree where we disagree. And that's the way the system should work. And I thank you, all three of you, for being here.

And I'd, no, I won't go there.

In a continuum you have the U.S. government providing security. And it is not subtle. As you, Ms. Rogers, point out, contractors can have a much lower profile, and the people they bring in have a lower profile. That sometimes means they're safer. It also means the indigenous folks don't have to necessarily have retribution when people see them talking directly with the U.S. government. There's so much logic to have private contractors.

But you have the U.S. government come in, and sometimes there's so much logic, just have the U.S. government do it. You have the U.S. government in this continuum manage private security, which happens with State. They manage. They don't oversee, but they're the ones in charge when a diplomat goes out. You have a private contractor hired directly by the U.S. government, and there I see oversight, but I don't see management.

And then the fourth one is a private contractor hires, and is paid by the United States and then hires, as in the case of USAID, a security contractor. We have practically no interaction at all. We have no oversight, basically, and no interaction, and we have to work through the prime, which strikes me as quite significant in its implications.

I was unclear as to whether you all were talking about U.S. government participation with private security in terms of management versus the U.S. government hiring a contractor, but

letting the contractor do what they do and having oversight. So when you responded to the previous question, which were you talking about as being a very good model?

RYDER:

As I understood the question, my preference is to work straight for Department of Defense, Department of State, and not through another . . .

SHAYS:

OK, but so you weren't getting into this issue.

Mr. Balderas, you basically looked at me like I might have not been stating it correctly. But my sense is that when I'm with State Department and I'm being taken around, the person in the shotgun seat is a State Department employee, who is in charge of and directs the contractors who are his or her manpower pool. Is that correct?

BALDERAS:

Yes, Commissioner, that is correct.

SHAYS:

Do you think that system works well?

BALDERAS:

I really do believe that works very well.

SHAYS:

OK. Were you suggesting that that works better than just having the contractor out on their own with the indirect oversight, or you weren't expressing an opinion about that?

BALDERAS:

If possible, I would like to see more direct oversight.

SHAYS:

OK. In that way does it shield you from liabilities and criticisms? Is it just more comfort level, because then you know you're doing what the government really wants?

BALDERAS:

Well, it doesn't really shield anyone, if there's enough accountability to take that into account.

SHAYS:

Right.

BALDERAS:

But again, having government oversight will hopefully prevent any kind of incident—again, another level of oversight.

SHAYS:

Mr. Ryder, Ms. Rogers, would you weigh in on that model?

ROGERS:

I can't comment specifically on the State Department, because we have primarily DoD, Department of Defense contracts.

SHAYS:

But they don't manage and direct operations.

ROGERS:

Correct. In our instance we have transponders in all of our vehicles, and when they are on an operation mission, there is real-time visibility back to the operational center, so yes.

SHAYS:

So but no sense of an opinion on that? You have been able to . . .

ROGERS:

That's worked very well for us.

SHAYS:

OK.

Mr. Ryder?

RYDER:

We are very in favor of this blended approach that we talked about with the State Department official . . .

SHAYS:

Yes, you used the word "blended," and that's why I wanted to . . .

RYDER:

Yes. Yes, sir, we're very in favor of that.

SHAYS:

OK. What keeps you up at night in terms of a potential screw-up? Is it more likely to have an incident in a static facility, a convoy, or guarding personnel? What would be the one where you feel you have to make sure you have the best and brightest?

I mean, let's just assume everybody's good working for your organization, but some are better than others. Would they need to be in the personal side of the equation or the guarding a base side of the equation or in a convoy side of the equation?

Mr. Balderas?

Why don't we go with you, Mr. Ryder?

RYDER:

I apologize.

SHAYS:

No, no, no. Just go ahead.

RYDER:

Chairman Shays, what I'll tell you keeps me up every night is having to go to Calhoun, Georgia, and look in the face of a wife, and a 14-year-old and a 19-year-old who just lost their dad.

SHAYS:

Well, you know what?

RYDER:

I worry about that every single night.

SHAYS:

OK. No, but that's not the question, because I truly understand that. And let me just say for the record, I knew that even when Blackwater was taking care of me and of the diplomats and congressional folk, they lost 30 people. And they lost 30 of their own people, and they didn't lose any of the people they were in charge of. So, you know, that has to be part of the record, wherever they screwed up, or some of their people did. So let's take that off the chart now. Now answer the question.

RYDER:

I just drove to that, because you ask me what keeps me up at night, sir.

SHAYS:

OK.

RYDER:

When you talk about the difference, the inherent, I think your question is the inherent danger between whether there's more danger on static . . .

SHAYS:

Yes.

RYDER:

. . . or there's more danger on the road. I don't think you could make that qualifier. The instance I just gave you was at the static position, although in Afghanistan, was in the static position where a vehicle came up, blew a hole in the wall, and three suicide bombers came into the facility. And we lost somebody.

Is there inherent danger . . .

SHAYS:

I'm not talking about losing someone. Bear with me here. I'm asking where is there a possibility for your people to screw up? That's the answer. And it's not a trick question. I don't have any, you know, sense either way of how I come down on this. I'm asking you, because you deal with it.

I cannot believe that if I was in charge of a company, that I wouldn't be concerned about some more than others. That's what I'm asking.

RYDER:

Protective-service details, mobile-security details, I think are much more complex than static security.

SHAYS:

That's the question I asked. Thank you.

THIBAUT:

Commissioner?

SHAYS:

Yes?

THIBAUT:

I think that you can answer his question, you can also, in my way of thinking, what's the highest risk where something can go wrong and you're the most vulnerable for a mistake? That to me is what's the highest—what situation can happen that you say, sitting up at night worrying about either because you don't have enough staff, you don't have the right people, it's just one of those things, the high risk that can occur?

RYDER:

My answer remains the same. I think it's a higher risk when you're actually moving in a protective-service detail than sitting in a static-security site.

ROGERS:

I actually take a little bit different of a tack. And I would say that our operations people who vet, screen, and hire, I think that's where right at the beginning where we are at the biggest risk. We need to make certain that we hire and we vet the most qualified individuals possible and that we have all the information available on the individuals, and that's whether it's local, national or . . .

SHAYS:

That's another element to it. I was really asking in terms of those three operations, and Mr. Ryder was really answering the question I asked. You're telling me something else that's very valuable, so you told me that, and I thank you for it. Now tell me between the three. . .

ROGERS:

Personal-security detail.

SHAYS:

OK.

Mr. Balderas?

BALDERAS:

Well, over 30 years and a lot of bad places, one of the most dangerous things you can do is operate a moving vehicle in these type of countries. Bad roads, no lights, bad weather, and, of course, we have local nationals on the road that aren't even familiar with driving a vehicle. But mobile operations carry a whole different level of security and risk.

Traffic accidents is another huge one. I've seen, unfortunately, people lose their lives just because of that. So again, mobile operations carries a lot greater risk.

SHAYS:

And I'm going to assume the other two, like Ms. Rogers's response, that vetting is a highly important element to this.

RYDER:

I would agree with that statement. Yes, sir.

SHAYS:

Yes.

Mr. Balderas?

BALDERAS:

Sir, I just added another step in trying to screen personnel that we hire. Again, trying to do a 100-percent staffing and remove that issue, hiring the wrong person reflects on everyone. As we say, everyone in the company carries our reputation with them, so we work very hard to make sure we have the right and suitable person that we hire.

SHAYS:

OK. Thank you.

Thank you, Mr. Chairman.

THIBAULT:

OK. I'll bite. What was that step, Mr. Balderas, that you . . .

BALDERAS:

Again, looking at it, we have five different steps that we use. Of course, we also meet contract, but we got a company called Coverti [phonetic] that does, again, assessments. And we're using this for our managers, another step in order to again identify the right person that we're going to promote to oversee other people. So again, that was another issue that we took on.

Again, no system is 100 percent. You know, I look at other systems that hire people, like NASA, and still it's a continuous effort that we work at. We have fired people for performance.

So again, we know it's just as important to prevent an incident just as much as we do to protect the principal. So again, we work very hard at it, and again, unfortunately, no system is 100 percent.

THIBAULT:

That's right. Thank you.

We need your help on something that won't initially sound like asking for help, but I think it's very important in the direction we're going. And that is, we could have thought of putting up these placards that we sometimes put up.

We would have needed big ones with your companies and the status of, like DCMA reviews, which are acceptable, which aren't, like property and subcontracting our costs, contractor-procurement system review, and then the myriad of DCAA systems review and then the status, which is very important, of incurred costs of missions, and the government looking at your costs, because contract costs and growth is a big deal.

But rather than do that, what I'd ask you to do is to take back and talk to your contract staff. And there's an opportunity for us to learn, maybe for us to get into a dialogue later on, and for you to provide inputs, because there's this big debate, raging debate about the level of—and industry's teeing it up—and DPAP, defense procurement policy people, laid out a change in the regulation proposed that there be more timely and significant penalties for companies that don't have systems that are effective in the government's eyes and don't have plans that are effective in the government's eyes.

And I know that each of your companies has an oversight presence that you work with. I've talked to you enough that I know that each of you state you're trying to be responsive, fully responsive, as issues or differences occur.

And I think it would be very helpful for you to lay out where there are exceptions in those areas that I mentioned and what the current status is, what you as an organization view it. In other words the simple version of the industry's position, which I disagree with, is that that's not really needed.

And I see a difference between companies long-established that are in the United States and companies that are doing good business in the United States and companies that are doing business in international contingencies, because there are different challenges.

So I would like your comments on that, because many of the comments come from the -- the companies that we all know and are very familiar with, like the Lockheeds, the Boeings, the Northrop Grummans, the General Dynamics. And those companies are long in business and I don't want to say they have perfect internal-control systems, but they have documentation that's born out of many years of working with the government in a constant environment, and yet they carry the flag also for all of industry.

And my question is how should the flag be carried for companies like your own that operate in the environment that we're talking about here? And so if you could do that and then provide that to the commission. And that's not one of those 48-hour challenge-your-finance, but if you feel like, you know, because we have a constant dialogue going. We're going to have another hearing at a point in time with Defense Contract Management Agency and the DCAA, and we'll have industry in to that, and specific companies, and not just associations—where you're at in those processes.

What if there's a middle ground other than that no oversight is good oversight, you know, type of thing, which I don't think I've heard that at all, I would appreciate that, if you'd take an action. And we'll try to articulate that for you.

The second item I have, I'll start with you, Mr. Balderas.

But I'll also talk to you, Ms. Rogers.

Maybe Mr. Ryder, based on what we ran into, you get a free ride.

When we were at Prosperity, where you have work, FOB Prosperity, we were told by a COR—and we've done some follow-up in this case; we've been able to do follow-up—that the company, Triple Canopy, had posted 17—and I was in the meeting when a major said that he was uncomfortable with the fullness or completeness of the ACOD armed-contractor oversight documentation, and so he asked for follow-up.

And he found documentation of gaps for 17 Iraqi nationals, found some third-country nationals also, but 17 Iraqi nationals that had been posted to static-guard positions that weren't properly authorized and that this was through reconciling his records and the ACOD's records and the company's records.

And subsequently, my notes say that Triple Canopy advised—and I work with notes off of people in all cases, some with more emotion than others—your company advised that 11 guards were posted armed positions and six were posted unarmed positions and that Triple Canopy was, and it says the words I'll just read, "were confused by instructions from DCMA and believed that they had followed required procedures," regardless of whether these people weren't approved. And that was the statement that was scribed.

You could probably talk forever on it, but can you tell me a little bit about what happened and what your takeaway is on that, because, obviously, posting Iraqi nationals—you know, arming them and posting them on guard to protect American lives and troops and all that is not a desirable outcome. Can you share that?

BALDERAS:

Thank you, Commissioner.

One of the things that arming local nationals is now a new event that we are sorting through the proper process in order to vet the individual in a country. One of the things under this contract, we were tasked to provide these individuals to stand post, and then arming. In order to do that, we had to go ahead and do background checks through the provost marshal, through the Ministry of Interior, developed the packet. We provide that to the COR.

Now, in the case here, as most contractors, you're working for someone that's on the ground and may not have a lot of experience, who is usually the highest-ranking person. You're working with a forward-contracting office, and you have the agency, and then you have an oversight entity come in after the fact.

And one of the things when we provided that information to the COR on site, it is up to the COR to submit the packets and get the arming authority through his system, through the contracting office, the military, and the Ministry of Interior.

We provided the information to the COR. The COR decided to go ahead and authorize interim clearance to go ahead and arm. We went in, responded, reacted to that. We had 11 people stand post. During the process it was taking longer than it should to get these through. And again, this is a new process.

When DCMA took a look at it, they said you cannot do that unless you have a final arming authority, so the COR was told you can't do this, so that was pulled. At that point we were

notified, and we took the weapons away from those 11 individuals. The other six never were armed. But again, as you said, they were standing post without weapons.

So based on this, after action of trying to work with the COR, work with the contracting office, work with the agency, and then be compliant with the oversight ruling, you know, I've directed, and Triple Canopy sometimes gets told that we're difficult or confrontational, but when we look at the contract, I've told my personnel that we will no longer do this anymore unless we have all the paper and written permissions in place before we react.

So again, we try to respond, try to work with the government, and the oversight said that was incorrect, so we corrected it immediately.

THIBAULT:

OK.

And I'll touch the other one because I did say I'd do it.

And I know that I've given you a bit of a heads-up, Ms. Rogers. But you had this instance on your largest contract with the Corps, where I don't think it related to security, but it involved alcohol and dancing between COR employees and between your staff.

And my question's going to be so how are we going to keep it from happening again—is that when you found out, you immediately fired those employees.

We were told by the Corps of Engineers commander that he immediately sent home the three women that were involved in the partying, the government-employee types, and that my note here says that you asked the military police, the DoD military police, to pay particular notice and to do surprise searches of vehicles, your vehicles, so that there would be no question about independence. And then they even turned up some couple of cases of beer—zero tolerance.

Those employees later were fired so, you know, you may say it's a challenge, but it's an unacceptable situation. How does your company assure that these situations just don't happen?

ROGERS:

It is an unacceptable situation. And I am aware of the one to which you refer. It was last July. It was an off-duty party with, yes, U.S. Army Corps [of Engineers] employees as well as some of ours.

When we were approached by our client, we did as you say, Chairman Thibault. We did fire them immediately. We then did ask the military police to conduct spot-checks of some of our security-escort teams and personnel. We did that, because we wanted to send a message

throughout our employees throughout the theater that we do have a zero-tolerance policy for general-order-number-one violations.

And when we hire individuals, they are made aware of that. They signed a statement of ethics stating that they're aware that if they are caught drinking or if they are caught using drugs or any unethical or criminal behavior, that they will be fired immediately. So we did that.

THIBAULT:

OK. All right. My time is up.

Commissioner Green?

GREEN:

Just one question.

Ms. Rogers, have you had any discussions with State Department about the CONOC and continuation of it, the future of it?

ROGERS:

Yes.

GREEN:

And the results are?

ROGERS:

The original conversations were, they started off being just briefings: How do they work; how can they work; when the State Department takes them over, would you think they could be improved—those kind of conversations. They then went on in a little bit more detail, and then actually stopped, because we are bidding on the State Department contract right now, so we don't talk to them.

GREEN:

OK. So as far as how long the CONOC's going to extend, you don't know.

ROGERS:

I don't know. They did express a desire to continue operating them based on a third-party saying that it was a best practice.

GREEN:

OK. Just one quick general question, opinion. What are the implications if in fact the government took over the functions that you're currently performing?

RYDER:

I guess, Commissioner, what I would say it's purely a resource implications to the government. Can they recruit, train, and deploy the number of individuals that we have performing these functions in a timely manner to be able to take up the mission? I think it's purely a resource issue on the part of the government.

ROGERS:

I think the government has identified gaps that require specialized security skills and specialized skills. And we can rapidly mobilize and give that to the government in a finite timeline, so I do think it would be a resource implication.

BALDERAS:

The same issue if we can get the requirement, we can fill it then.

GREEN:

OK. Thanks.

It's all I got.

THIBAUT:

Thanks, Commissioner.

Commissioner Tiefer?

TIEFER:

Mr. Ryder for DynCorp, I appreciate and do not in any way want to undermine the useful distinction that was made between mobile and static operations. Within that, not challenging it, not undermining, but within that, are there distinctions between static operations in places like, say, Mosul or Kandahar, where they are high-lethal incidents and urban-civilian presence?

Are there some operations which are more complicated and some applications at which some static that's more and some static, which is less complicated?

RYDER:

Commissioner, I wouldn't qualify that the static-security different positions are more complicated and more challenging. I would say that the difference specifically when you mentioned Kandahar is the threat that in that location. So I don't think it's the complexity of the .
..

TIEFER:

I'm with you. I'm with you.

Mr. Balderas?

BALDERAS:

It's the same. This situation depends on the threat.

TIEFER:

OK. Thank you.

Sorry.

SHAYS:

He's not used to short answers, given the previous panel, so you caught him by surprise.

TIEFER:

A section of the statute that's under consideration, a statute that would amend 862 that's passed the House and is being looked at in the Senate, says that accounting regulations which impose a number of control features on security contracting, a typical one being that incident requires incident reporting, simply raises them to statute-requiring regulation level, doesn't intend to put new ones in.

This clause that when there's a failure of a contractor or subcontractor under a covered contract to comply, it takes in past performance, responsibility, awards fees, suspension or debarment. In other words it just makes sure that the normal contract-compliance requirements are in place.

Do you support that, Mr. Ryder?

RYDER:

Yes, sir.

TIEFER:

Ms. Rogers?

ROGERS:

Yes.

TIEFER:

Mr. Balderas?

BALDERAS:

Actually, I had a meeting with Senate staffers Friday afternoon, asking that they support this. So again, I could support it, you know.

TIEFER:

That's support. That sounds like support to me. The short answers are getting to me, Mr. Chairman.

We've faced the question—this is for both DynCorp and Triple Canopy—all through 2008, there was a Kennedy-report recommendation that the State Department consider, after Nisour Square, whether it was in the best interest of the United States to retain Blackwater. And all through 2008, the State Department did not publicly answer that question, did not create any written answer to that question.

So what I want to know is, there was some muttering, purely oral, that, oh, how would we replace them? How would we replace them? It wouldn't be possible. How could we replace them? And suddenly, the Iraqis kicked them out in January 2009, and we did replace them.

Could DynCorp and Triple Canopy have taken over for Blackwater in 2008?

RYDER:

Yes, sir. I think we could have.

BALDERAS:

We actually did replace them in 2009.

TIEFER:

Do you think that a step like that would have facilitated our relations with the Iraqis, who refused—this was one of a number of reasons—but refused to sign a status of forces agreement during 2008?

Mr. Ryder?

RYDER:

I can't answer on behalf of the Iraqis. I can speculate based on . . .

TIEFER:

That'll be yes.

RYDER:

. . . the outcry. I think it might have been able to.

TIEFER:

Mr. Balderas?

BALDERAS:

Again, I can't speak for the Iraqi government.

TIEFER:

Ms. Rogers, much as I recognize that you had many things going on in your life, there were questions that I had time to come up with, because you didn't testify the first time.

One is that an account, which recently appeared in the Huffington Post, called "Aegis' charm offensive." You're smiling because you're familiar with it, or just at the title?

ROGERS:

Just the title.

TIEFER:

OK.

ROGERS:

I am vaguely familiar with it. Yes, sir.

TIEFER:

All right. It says that a corrective action request was considered regarding Aegis. Do you have any knowledge of that?

ROGERS:

I do believe the individual whose e-mail the author was just reprinting was a U.S.-military individual who was actually disgruntled, if I may say so, was part of the ACOD. I think it was

referring to that and that cure notice that was submitted. And the quote was it was at the convenience of the government. It had nothing to do with Aegis's performance.

TIEFER:

What did the cure notice require of you?

ROGERS:

The cure notice said that we're going to terminate the ACOD support contract at the convenience of the government. This was last June.

TIEFER:

Can you provide the commission with full documentation about what led up to the cure notice and back and forth on it?

ROGERS:

Yes. I believe I have, but I can do so again.

TIEFER:

Yes. All right. And finally . . .

Oops, I've got one minute? How generous.

The head of the Aegis Group in England and the co-founder of Triple Canopy is Mr. Tim Spicer, yes?

ROGERS:

I don't think he's a co-founder of Triple Canopy, no.

BALDERAS:

No, Mr. Spicer has nothing, absolutely nothing to do with Triple Canopy.

TIEFER:

Sorry. Who is he the co-founder of?

ROGERS:

He is the co-founder of Aegis Group.

TIEFER:

I was looking the wrong way. Yes. And is he . . .

ROGERS:

Yes, he's one of the four founders.

TIEFER:

And is he still the head of the Aegis Group in London?

ROGERS:

He's still acting CEO. Correct.

TIEFER:

OK. All right. Now, a number of times he's been characterized in testimony before this commission, as well as in the press, as a mercenary—not the often hostile term that's used in Iraq and Afghanistan about personal security contractors, but the technical sense, when he was at the Sandline company before founding your company.

What I want to know is, are you familiar—I can mention some of the press instances. Vanity Press had a title, "Iraq's Mercenary King, Tim Spicer." When we had testimony Friday from one of the two professors before us, she noted—I think it was Allison Stanger—that in *One Nation under Contract*, she had noted that he was a highly controversial mercenary.

Are you familiar with the mentions in the press that Tim Spicer, the head of the Aegis Group, is a mercenary?

ROGERS:

I'm very . . .

TIEFER:

Was a mercenary.

ROGERS:

I am familiar with the accusations in the press. I think you know, as well as we know, it's very easy to sensationalize this business.

TIEFER:

If I could ask you a pointed question . . .

ROGERS:

Yes.

TIEFER:

. . . when he was at Sandline, did he fight for money, not for his country?

ROGERS:

No, he was requested. And it has nothing to do with Aegis. But he was requested on behalf of the government to . . .

TIEFER:

And he only worked on behalf of the British government?

ROGERS:

It was actually a different government at that point in time, but it was a Western-allied government.

TIEFER:

So he worked for foreign governments for money.

ROGERS:

No. No, sir.

TIEFER:

Not for his own country.

ROGERS:

No, sir.

TIEFER:

I'm missing. What is it that he worked for money. It was a foreign government. It wasn't his own country. Am I right on those three points?

ROGERS:

No.

TIEFER:

Which of the points am I wrong on?

ROGERS:

He did work for governments that were Western-allied governments and at the request of them. It's a private . . .

TIEFER:

I'm way over my time.

THIBAUT:

We're going to give you all a chance to wrap up when we're done, so you may have a thought on that.

Commissioner Henke, please?

HENKE:

I have two quick questions. First, concerning third-party certification, you're in favor of establishing standards for the industry. Obviously, you've testified to that. And you're in favor of it reviewing your companies and then certifying them to perform security functions.

If the third-party certifier makes a determination, an unfavorable determination that would require termination of a contract that you're on or prevent you from being awarded new work, would you still favor the idea? If the third-party entity can either make a call that gets you terminated or banned from future work, to still support it??

Mr. Ryder?

RYDER:

The terms and conditions and the rules, how they're going to be set up, will be set up. But as we said before, we favor third-party oversight in standards. So the answer is we favor third-party oversight.

HENKE:

To include termination and . . .

RYDER:

If in fact at the end of the day, those are the terms and conditions that are set up, then yes, that's the answer.

HENKE:

OK.

ROGERS:

Yes. And quite frankly, if some contracts were terminated now, I think that would send a clear message across the industry.

HENKE:

Exactly.

Mr. Balderas?

BALDERAS:

Yes, I agree.

HENKE:

OK.

The second question is: you're familiar with this, and a couple of you have cited it in your testimony, this Center for New American Security issued a report a couple of weeks ago on contractors in combat. You're all familiar with it?

Has your company provided any funding or any resources to CNAS?

Mr. Ryder?

RYDER:

I do not know. I don't have the answer for that. I'll take it for the record.

HENKE:

Would you take it for the record? Would you take it back to . . .

RYDER:

I will, sir.

HENKE:

Ms. Rogers?

ROGERS:

We've been supporters of CNAS just in participation. I can also go back and check for the record.

HENKE:

So are you unaware?

ROGERS:

Support . . .

HENKE:

Financial support, resources, money.

ROGERS:

We made a contribution to an event a while ago, but I can go back and double-check on anything else for the record.

HENKE:

Any kind of financial support or resources provided to the think tank?

ROGERS:

Correct.

HENKE:

OK.

Mr. Balderas?

BALDERAS:

No, we have not.

HENKE:

You have not. OK. Thank you very much.

THIBAUT:

Thank you, Bob.

Commissioner Zakheim?

ZAKHEIM:

Thank you.

Ms. Rogers, you went to great lengths to talk about the vetting you do of local nationals. I thought it was pretty impressive. What about third-country nationals? Do you hire any? And how do you vet them?

ROGERS:

The only third-country nationals that we employ currently in our contracts in Afghanistan and Iraq are Gurkhas. And it is with the relationship that the parent company Aegis Defense Services has with Gurkhas, Nepalese Gurkhas that have previously worked for the British military. So they have their own stringent vetting process. And that's . . .

ZAKHEIM:

Are you familiar with that process?

ROGERS:

Yes. We modeled our vetting for the Iraqi nationals after that process.

ZAKHEIM:

OK.

Mr. Ryder, how about you guys?

RYDER:

Our third-country nationals are vetted in our WPPS contract, are vetted through the State Department. First, they'll go through a now recruiting process. They'll go through a vetting of background checks, medical checks, credit checks. And then once we have those checks done, they go to our security-department division that then assists them in filling out the Equip, the form that's filled out that goes to State Department.

And then I think it's the moderate-risk public-trust, that's what they get when they come out of diplomatic security. So that's the vetting process that we have for third-country nationals.

ZAKHEIM:

Mr. Balderas?

BALDERAS:

Yes, we use that State Department standard, and we use it for those individuals we use on Department of Defense contracts. And part of the thing, as I said before, Department of State does a good job of looking at the countries that we use as third-country nationals to hire people in those countries.

But one of the things that we also looked at when we first had the contract in 2005 was screening these countries that wouldn't allow their workers or citizens to work in Iraq, countries such as Nepal, where Gurkhas come from, and also the Philippines. Those citizens, you know, under their country's laws were told not to work in Iraq, because the country doesn't favor the war. So we did not hire those individuals.

I couldn't tell you right now what the laws are in Nepal and the Philippines are right now, but back then we made the decision not to hire those type of personnel.

ZAKHEIM:

I have a question for you, though, sir. Our staff was told in Iraq by your staff that third-country nationals may actually sacrifice quality. Do you think so? This is what your staff was telling our staff.

BALDERAS:

I'm unfamiliar with the comment.

ZAKHEIM:

That it is a sacrifice of quality relative to either Americans or local nationals. Do you agree with that, with your own staff?

BALDERAS:

Well, again, we fill out the requirements for the contract, so if it calls for third-country nationals—now, I'm sure if we could, you know, we had the choice, we would hire more Americans to put them to work. But again, we have to fill the requirements stated in the contract.

ZAKHEIM:

So you don't really disagree with your staff. You're making the best of the situation you've got is what you're telling me.

BALDERAS:

Again, I would rather have an American, but . . .

ZAKHEIM:

OK. That's fair enough.

Mr. Ryder, you said that when you lost out to Xe in this latest contract or bridge, as the State Department calls it, you were actually rated blue.

RYDER:

No, sir. If I said that, I misspoke.

ZAKHEIM:

OK. I'm trying to . . .

RYDER:

When I reviewed the proposal that left the company . . .

ZAKHEIM:

Oh, that was your sense of . . .

RYDER:

. . . that I thought that the...

ZAKHEIM:

Oh, you thought it was blue.

RYDER:

. . .it was a blue proposal.

ZAKHEIM:

Oh, OK. All right.

RYDER:

But if I said that's how it would be, I misstated it, sir.

ZAKHEIM:

Oh, OK. That's pretty important.

When the RFP was issued, and you mentioned there was a lot of concern about transition, you know, there's always a question period where you can ask the government to clarify, and so on.

Have you gone to the government and clarified issues about transition? Because you seemed to testify that you weren't entirely comfortable with everything yet. What kind of questions do you ask? And what kind of responses have you received?

RYDER:

Sir, I shouldn't say always. More times than not, when an RFP comes out, we'll go back to the government didn't ask questions.

ZAKHEIM:

Right.

RYDER:

I don't believe it was me that talked about the transition was the problem. I think when State Department talked earlier they said transition's a problem. I will always say that when you're transitioning a large workforce, and you're trying to do it within 60 days, it's a challenge. It's not a cakewalk. It's a challenge.

But to get back to the question, we always go back if there are clarification questions on either something that's in the statement of work is not very clear to us. We'll go back and ask it. It's kind of hard to say exactly what we ask questions on, but we try to clarify them so we can put in the best proposal for the government.

ZAKHEIM:

Are you satisfied up to now with the clarity of the answers you get when you put those questions?

RYDER: I'd have to answer that by and large, yes.

ZAKHEIM:

OK. OK.

How about you, Ms. Rogers? We're dealing with the transition here. Do you think State's giving you the kinds of answers you need to do your work right?

ROGERS:

We're not working with State Department right now.

ZAKHEIM:

I know, but . . .

ROGERS:

But in terms of clarification, I think there needs to be additional further clarification on how the coordination is going to work.

ZAKHEIM:

OK.

And you are working with State, Mr. Balderas. How do you feel about it?

BALDERAS:

We work the best we can with Department of State.

ZAKHEIM:

You're a diplomat, aren't you?

BALDERAS:

I'm trying to . . .

ZAKHEIM:

You're a soldier, but you're a diplomat.

BALDERAS:

I'm trying to be very hard to be diplomatic.

ZAKHEIM:

Yes.

BALDERAS:

We do have some challenges at State, but they are very good about letting us ask additional questions when we need those answers.

ZAKHEIM:

Do they give you the answers? Not so much the questions, but do they give you the answers?

BALDERAS:

Again, some of these proposals are time sensitive, so sometimes we don't have complete clarity on some of the questions.

ZAKHEIM:

OK. I think I got your drift. Thank you very much.

THIBAUT:

Thank you, Commissioner.

TIEFER:

I just want to ask the same question that was asked, but in a more technical way. Sometimes an award is made without discussion, and sometimes an award, the usual way is that after the proposals command, there are discussions. Do you know whether on this \$120 million contract there were discussions or there weren't discussions?

RYDER:

I do not believe there were discussions. I take it for the record, but I do not believe there were discussions on this award.

ZAKHEIM:

Do you know offhand, Mr. Balderas?

BALDERAS:

No, sir. I do not.

ZAKHEIM:

Could you both supplied for the record?

RYDER:

Yes, sir. We will.

BALDERAS:

We can check on that.

THIBAUT:

OK.

Commissioner Ervin, please?

ERVIN:

Thank you very much. I'll be very brief.

Mr. Balderas, I just want to ask about another statement, commenting your statement. You said that at its core the relationship between the United States government and the contractor is a business relationship that shares a common objective. It must be a partnership with appropriate openness and communication. You go on to say the politicizing of oversight is detrimental to this relationship.

I was with you until you got to the next sentence, and that is, "We have seen our working relationships with our government customers shift to one where communications and actions are taken with an eye toward what an agency inspector general will think rather than what is in the best interests of the government and the agency's mission."

Could you tell us what you mean by that? Are you suggesting that inspectors general are politicizing oversight or that they're being unduly pesky, or what did you mean by that?

BALDERAS:

With the increased oversight, there are no downsides to increased oversight, but one of the things that does happen is it cuts down the communication, because now contracting officers and contractors have to watch everything they say. It reduces the communication and the freedom to speak, because you're held accountable for even mistakes.

So even in some of the, you know, additional oversight issues have been brought up as far as simple things like, again, looking for every penny. We've had payments held up for pennies. I'm not sure how much the government's cost upon that small error, but now we have to spend a lot of time to figure out where that error was and to rectify it.

And there's other things that I wish the commission would look at as more preventative oversight as far as after . . .

ERVIN:

Well, that answer troubles me a little bit. I mean, I think most of us, I think all of us commissioners would say pennies we shouldn't be concerned about. But if you're suggesting that you're going to be less transparent to the government because an agency inspector general might be critical of you as a result of that, that's troubling to me. That's not what you're saying, is it?

BALDERAS:

No, it is . . .

ERVIN:

I gave you as an option and inspector general being unduly pesky, and I would suggest that focusing on pennies is pesky.

BALDERAS:

It could be seen as that, if it's not systemic of a larger problem. So there is a good reason to look at those. But again, when the contracting officer is again trying to look over their shoulder for everything, sometimes the communication is restricted or is very guarded, so to speak.

ERVIN:

Are your communications guarded and restricted now as a result of your view of agency inspector general? I'll let you answer that.

BALDERAS:

Well, one of the things is that it's more of a paper drill is the way I'd describe it. We have to have a written statement. We have a written response.

ERVIN:

Right.

BALDERAS:

And sometimes it's very hard to write the exact . . .

ERVIN:

But my question is are you being less than transparent with the government now as a result of your judgment that agency inspectors general have been unduly restrictive?

BALDERAS:

No, actually, in my opinion it actually restricts some of our ability to be more transparent, because now without oversight, we can't really discuss things with a contracting officer. We have to have, you know, people in the room . . .

ERVIN:

Give me an example of things that you're not discussing with contracting officers that you previously would have discussed with them. I'm sure they'd be interested in hearing from you.

BALDERAS:

Well, a lot of the things are like, you know, how the contract is going. You know, every business would like to have a 360. I like to have a review. What can we do better? And some of the things that, you know, that when you ask a client, a government client, is what can I do more, how can I do it better, some of those discussions aren't taking place.

So even with a 360-review-type of scenario, we're not getting answers back because, again, contracting officers don't want to say that as saying, "Well, I'm commenting on your performance." So some of that is restricted.

ERVIN:

Ms. Rogers, you mentioned in your statement that you or the company regularly meets with members of Congress and staff. About how many meetings would you say that you, for example, as president of the company, have had with congressional members and staffers and key decision-makers with regard to reform efforts and initiatives and other things?

ROGERS:

I don't think I could count them all, quite frankly. About two weeks ago, three weeks ago, I spent an entire day on the Hill, meeting with Armed Services, House Armed Services, both appropriation subcommittees, as well as Foreign Affairs.

So we try to engage in dialogue regularly, because I do think there are a lot of areas on which we can agree for reform.

ERVIN:

OK. So you gave an example of your having done it a couple of weeks ago. Just give me a ballpark for your consultations, your personal ones, over the course of the last year. I'm not asking you for a precise figure. I'm trying to figure out what "regularly" means.

ROGERS:

Regularly, I would say . . .

ERVIN:

For you.

ROGERS:

For me personally, I would say we're up there once every 45 days. I'm meeting with the respective committees and engage in dialogue on the phone. We actually engage in dialogue on the phone quite often just in terms of, I mean, when the National Defense Authorization Act passed the House recently with the third-party certification, I was talking to staff about do we support it. Yes. How can we make it stronger? So I think it happens regularly. I apologize for the vagueness.

ERVIN:

OK. Thank you.

THIBAULT:

Thank you, Commissioner.

My co-chair, Mr. Shays?

SHAYS:

Thank you.

Mr. Ryder and Mr. Balderas and Ms. Rogers, if you've spent time in Iraq or Afghanistan, other than just a daily visit or so on. Have you done any service in Iraq or Afghanistan, either one of you.

RYDER:

Either as service beyond what I do now as . . .

SHAYS:

Yes. Yes.

RYDER:

Yes, sir. Before I retired, I spent probably a couple of weeks every quarter as my responsibility as the Army's commanding general's CID and the Army's provost marshal general. I'd have to go back and give you the . . .

SHAYS:

Would you agree that that experience was invaluable in helping you in your present work? This is not -- invaluable in terms of you knowing the circumstance, not of having contacts.

RYDER:

It was without a doubt invaluable, especially in the police program and doing the protective-service business that we're in right now . . .

SHAYS:

I understand.

RYDER:

. . . the culture and all that. Without a doubt, sir.

SHAYS:

Mr. Balderas?

BALDERAS:

Yes, I served in Afghanistan in '01 and 2002, and I served in Iraq in 2003. And it does give me a very good realism of where the country was back then and where we are right now.

SHAYS:

Ms. Rogers?

ROGERS:

I served in Iraq for about nine months, a little over nine months, for the Department of Defense. And I think it was invaluable.

SHAYS:

All right.

And would you agree that if you hadn't served there, there are just certain things you might be doing now that would not be as helpful to our country and to your company and to the overall mission? In other words did that experience enable you and alert you to a different course of action because of being there?

I'm asking each of you.

RYDER:

I think clearly my experience . . .

SHAYS:

Let me just say I'd like you to give me an example of how it might have helped.

RYDER:

Clearly my experience specifically in standing up the Iraqi police and the Afghan national police as the Army's provost marshal general and understanding how the Department of Defense was attempting to do that and needed assistance from law enforcement professionals from the civilian side clearly help me in that.

And my experience running the protective-service details for the secretary of defense and the deputy secretary of defense certainly helped in what we're doing with WPPS right now, sir.

SHAYS:

Ms. Rogers?

ROGERS:

Invaluable in two aspects— one, in impressing upon me the importance of understanding the local culture and working with the local culture; and number two, understanding as the recipient of the services of private security contractors, what worked and what didn't.

SHAYS:

Mr. Balderas?

BALDERAS:

I'm assuming it's the understanding the threat in each of these countries, but also the cultural differences between both of them and how to operate in both countries. They're definitely different.

SHAYS:

This is not directly related to security, but it's something that the commission is having to wrestle with. And that's the whole concept of protests. And I'll just say it like I feel it.

I find it outrageous that our men and women could be risking their lives, and even though a contractor has the right, so they can exercise it, that we would see the number of protests that we're seeing and delaying the implementation of a new, you know, getting that new contractor in in a timely way.

I just need you to tell me do you ever wrestle with the fact that you may be by protesting risking the lives of Americans and making the war effort even more difficult? Or is that just not a factor in your consideration when you issue protests?

We'll start with you, Mr. Balderas.

BALDERAS:

No, we take a very hard to at whether or not we're going to issue a protest. And in some instances, we have not, even though we had a right to do so.

But to your point, I've seen different examples of where it made sense, and one was in 2005 when we had a contract that was turned over to Blackwater. And in that instance, because it was a high-threat area in the northern part of Iraq, we have a lot of different sites that we had set up with the CPA customers at Department of State, contracting office of the Department of Defense. And that contract award was very dubious, to say the least.

SHAYS:

OK.

BALDERAS:

And under that, we did protests, because again, another fact . . .

SHAYS:

I get the point. I get the point. Do you want to . . .

BALDERAS:

Well, the big issue there was safety . . .

SHAYS:

Yes.

BALDERAS:

. . . again, to your point.

SHAYS:

So your point was you figured this was a safety issue, and that justified your protest.

BALDERAS:

Well, also the contract was completely—well, GAO went over it and found out that it was done completely . . .

SHAYS:

OK.

My question is, Ms. Rogers, do you put into the factor that your protest could delay the implementation of a needed effort?

ROGERS:

We take protests and looking at protests very seriously, so much so that we've only protested in one instance and that was when we actually thought that going ahead with that contract would jeopardize lives. It was awarded on lowest bid.

SHAYS:

OK. Thank you.

Mr. Ryder?

RYDER:

Yes, sir. There's only been one occasion since I've been with this company since I've been out of the military where there was a protest, I think. And we all know what that protest was on CNTPO [Counter-Narcoterrorism Technology Program Office]. That protest, I think, was justified.

But to answer your question, I do sit and I think what that protest means to the tactical commander on the ground and how he's going to perform his mission.

SHAYS:

Just one last point about CONOC. This is a program that, Ms. Rogers, your company is in charge of in Iraq. It tracks the security folks in country. It also keeps a record of incidents, and it also, I think, is involved in rapid response if a security detail needs assistance.

Your opinion about the fact that we don't have that program in Afghanistan?

ROGERS:

I think that program and the CONOCs have proven very helpful, have minimized the incidents, quite frankly. To secure their coordination efforts. I do believe it has been identified as the best practice, and I think it should be, at least the model should be considered in all conflict environments.

SHAYS:

Thank you.

Thank you, all three of you. I find your testimony very helpful.

THIBAULT:

When was the protest that Aegis made on the lowest price case that you talked about?

ROGERS:

It was in August of 2008, I believe. But I can confirm that.

THIBAULT:

Can you provide that?

ROGERS:

I can confirm that.

THIBAUT:

I think that would be very helpful.

Well, thank you. I think we've gotten a lot of work done. You're going to get in a second, here's some follow-up, but I think you've all been, you know, what's a good way of saying this? We had a lot of choices of companies to bring in, and I think we did a good job of selecting, and you all were very candid. And I hope you take that back, because you were. And thank you. It greatly facilitated our effort in trying to understand what's going on.

So, Mr. Ryder, any final comments, sir?

RYDER:

Sir, just a few. Again, I appreciate the opportunity to be here in this very important work. As I stated, the policymakers will make the decision about what's inherently governmental and what's not. But DynCorp International will be ready if in fact called upon to perform any of those functions.

I also mentioned when I talked about we stand by what we've always said in that the workforce, as we deploy high-performing teams and subject matter experts, they will be embedded with our performance-compliance and conduct every single day.

I heard the word used five times today at least, and I've heard it used other times, and the word is "mercenary." And I take exception to that for our employees. I take exception to that as I looked at that young lady in Georgia, when she lost her husband, because he wasn't a mercenary. He was serving this nation, and he felt that way. So I take exception to that, and I just wanted to make sure that the commission knew that.

DynCorp, as always, stands ready to appear before this commission to help the commission do whatever we can as they move forward with this very challenging and important work. Thank you, sir.

THIBAUT:

Thank you.

Ms. Rogers?

ROGERS:

Yes. Thank you, Chairman Thibault, Chairman Shays and members of the commission. I do appreciate the opportunity. As I stated in the written testimony and my opening statement, since Aegis was founded, we have been very outspoken in the need for a higher common set of standards to which we can be held for increased transparency, increased accountability.

I think we have demonstrated just through our actions and through our meetings that we're very serious about it, primarily because we are supporting the U.S. government in conflict, dangerous environments.

I think one additional recommendation; I'm not certain if I included it in my written testimony. We have found it very helpful for performance measures and indicators to be established within each contract. I think that is very helpful when the government is looking at cost analysis. It actually helps to have cost analysis done on a regular basis.

I also will echo Mr. Ryder's comments, and I thank you for saying that. We take exception to the use of that word. I do think it's an insult to the men and women who are supporting the United States government and putting their lives on the line in Iraq and Afghanistan.

Again, thank you for the opportunity.

THIBAULT:

Thank you.

Mr. Balderas?

BALDERAS:

Again, I thank the commission for allowing us to be here today and to talk about these important issues. As I said earlier, I wish we had done this sooner. Again, Triple Canopy stands by ready to go ahead and work toward more transparency, more oversight and accountability. And hopefully, we can get the standards and third-party certification sooner than later.

Again, if I can -- if I am Triple Canopy can be of any way of any help to the commission in looking at these issues, please let us know. We stand ready to help you. Thank you very much.

THIBAULT:

Thank you all again. This is the part I really like. And we're done.

SHAYS:

You didn't hit it at all.

THIBAUT:

Well, I don't want to hit it. You want to hit it big time, huh? Well, OK, well, you see, you took away my glory.

(LAUGHTER)