

TESTIMONY OF THOMAS O. MILLER
General Counsel of L-3 Communications
Services Group, representing
L-3 Communications Holdings, Inc.

Before

THE COMMISSION ON WARTIME CONTRACTING
IN IRAQ AND AFGHANISTAN

Hearing on the
Global Linguistic Services Contract

August 12, 2009

WRITTEN TESTIMONY OF THOMAS O. MILLER

Good morning, Co-Chairmen Thibault and Congressman Shays, and Members of the Commission. My name is Tom Miiller, and I am the Senior Vice President and General Counsel of the L-3 Services Group, representing L-3 Communications Holdings, Inc. (“L-3”).

L-3 appreciates the invitation to participate in this hearing and is pleased to address your questions. Moreover, we are proud to be a part of the Global Linguistic Solutions (“GLS”) Team that is performing the U.S. Intelligence and Security Command (“INSCOM”) Translation / Interpretation Management Services – Operation Iraqi Freedom contract (“TIMS Contract”). We realize that L-3 – as a result of its experience performing the preceding INSCOM linguist contract (known as the Worldwide Linguist Support Services contract, “WLSS”) – is in the unique position of having extensive experience with the numerous challenges encountered in performing a major translation services contract in a war zone.

We understand that this Commission is primarily interested in three specific aspects of L-3’s experience regarding the TIMS Contract:

- (1) How do L-3’s responsibilities and duties under the GLS Contract add value to the program;
- (2) What was the rationale for GLS and L-3 entering into the subcontract and what was the nature of the negotiations; and
- (3) What was the basis of L-3’s protests of the contract award to GLS and how were they resolved?

These areas of interest are inextricably connected to one another. And complete answers are not possible without considering the larger context that surrounds these questions. L-3 appreciates this opportunity to answer the Commission’s questions and help provide that context.

I. BACKGROUND

L-3 was the prime contractor on the INSCOM WLSS Contract that preceded the TIMS Contract. L-3 undertook that responsibility when it acquired the Titan Corporation in July 2005. Titan had been performing the WLSS Contract since 2004, as well as the contract that preceded WLSS from 1999 to 2004.

The 1999 linguist contract was initially for just 12 linguists; a requirement that ultimately grew into an international linguist services program under which more than 17,000 linguists were provided to support the U.S. and allied forces in 21 different countries. At its conclusion, the WLSS Contract generated over \$600 million in annual revenues and provided over 8,000 linguists in Iraq, supported by 200 staff employees in the L-3 Linguist Operations and Technical Support (“LOTS”) division in Reston, Virginia and 190 staff employees in Iraq. It was the largest linguist services contract ever.

The WLSS Contract was a cost plus fixed fee contract with low margins; it was large program but not a “lucrative government contract” with huge profit margins, as such programs are often mischaracterized. And it was costly in human terms. No group of contractors in Iraq was as visible, exposed, or targeted as the linguists. During the life of the L-3 linguist program, 361 linguists were killed in the line of duty or by assassination and 623 were wounded. Another 17 linguists were missing, and their status could never be determined. 631 linguists suffered non-battle injuries or serious illness. None of these numbers include the families of the Iraqi linguists who were also targeted for assassination or intimidation.

What cannot be counted is the number of lives saved by the performance of these linguists as they accompanied MNF-I troops. These linguists shared the costs of war with the soldiers they proudly served, and they were instrumental in the success that has led to the current drawdown of our forces in Iraq.

II. THE PROTEST PROCESS

L-3 was surprised and disappointed in December 2006 when INSCOM announced that GLS had been awarded the TIMS Contract. While we expected GLS to write an excellent proposal, we could not understand how we had lost since our proposal's estimated cost was significantly lower than GLS's proposed cost. During the formal debriefing, we discovered what appeared to be significant errors in the evaluation process. Specifically, we did not think that the evaluators had (1) applied the selection criteria consistently as between L-3 and GLS and (2) that the L-3 proposal had not been evaluated in accordance with the selection criteria.

Once we reached that conclusion, we had a responsibility – to our employees and their families, and to our shareholders – to consider protesting the award. Nevertheless, it was not an easy decision. L-3 typically places more value on the long term relationship with its customer than on the potential benefits gained through a protest. But too much was at stake. Ultimately, we made the only responsible decision; we protested to the Government Accountability Office (“GAO”).

In April 2007, GAO decided the protest in L-3's favor, agreeing with our assessment that the evaluation had been flawed, and ordered INSCOM to re-evaluate proposals or solicit revised proposals, if necessary. Because the protest was conducted under a protective order, and the published decision was heavily redacted, L-3 does not know the details of the case. Following an INSCOM motion for reconsideration that GAO denied in June 2007, INSCOM solicited revised proposals in August 2007.

In December 2007, INSCOM again awarded the TIMS contract to GLS, and L-3 again found itself in the position that its proposal had not been properly evaluated. And, after careful deliberation, L-3 once again protested the award on the basis that the selection criteria had not been followed. Before the protest could proceed to final adjudication, INSCOM elected to take corrective action by amending the solicitation and requesting revised proposals, which were submitted on January 29, 2008.

Thereafter, INSCOM selected GLS for award in February 2008 and, once more, L-3 discovered what it believed were material errors in the evaluation that could not be ignored. L-3 filed its third protest at GAO. After multiple rounds of proposal preparation and protest, L-3 was as fatigued by the process as the other parties. Moreover, by this time, GLS had reduced its proposed costs so that it had offered the lowest cost. (GLS lowered its overall proposed costs by \$676 million since its first proposal was selected in December 2006.)

Throughout these protests, and without interruption, L-3 continued to support the WLSS mission, providing vital linguist support to our men and women in uniform during the surge campaign.

III. THE GLS/L-3 TIMS SUBCONTRACT

A. NEGOTIATIONS AND RATIONALE

Because of the protracted nature of the protest process, L-3 began to consider a business solution instead of continuing the legal battle. After the third protest was filed, executives at both L-3 and GLS tentatively explored the possibility of GLS awarding a subcontract to L-3. Ultimately, the management of the two companies agreed on an L-3 workshare under the TIMS Contract, and teams from both companies entered into detailed negotiations to draft a subcontract document, with INSCOM's approval. Following a March 12, 2008 agreement on the subcontract's terms and conditions, L-3 withdrew its GAO protest and the contract transition process immediately began.

The rationale for the two companies joining forces was straightforward from L-3's perspective. Through three rounds of proposals, GLS had made its proposal more cost competitive, whittling away at a substantial L-3 cost advantage. Although L-3 strongly believed it would win the third protest, the strain on the LOTS division management and employees was significant. Further, L-3 realized that INSCOM, which had already awarded a linguist contract for Afghanistan, could unilaterally elect to use the Afghanistan contract to meet its linguist requirements in Iraq. Rather

than risk a total loss of the linguist business to GLS or the Afghanistan contract, L-3 decided to enter into the subcontract provided its workshare was sufficient to maintain its LOTS division and program capability.

Although L-3 does not know GLS's reasons for entering into a subcontract with L-3, there are several obvious advantages to GLS. First, adding the incumbent contractor (L-3) to a GLS team that had to build an infrastructure from scratch greatly improved GLS's prospects of successfully launching and performing the TIMS contract. Prior to the TIMS Contract, L-3 was the only company to ever perform a linguist services contract of such large size during a war. L-3's years of unique experience and its extensive policies, procedures and lessons learned are a critical part of the material value that L-3 adds to the TIMS program today. Second, awarding a subcontract to L-3 also enabled GLS to resolve the protest for the customer and move forward with performance of a major contract that would substantially increase the financial performance of its majority member, DynCorp International. Finally, GLS may also have realized that INSCOM could use the Afghanistan contract to supply linguists in Iraq.

The Government also benefited substantially from the protest process and the business resolution that GLS and L-3 reached. First, the protest was closed and the procurement process completed. INSCOM's new linguist contract was in place. Further, the prospects for a successful transition and performance were greatly enhanced by adding L-3 to the GLS team. Clearly, the most difficult and highest risk part of TIMS performance was the handoff between contractors. INSCOM's paramount mission in this program is to support the soldiers with linguists; accordingly, a successful transition was essential. Finally, as an added and substantial benefit, INSCOM purchased the services at a greatly reduced cost; \$676 million (or 20%) lower than it was prepared to pay before the protests. It is difficult to imagine another scenario creating such a positive outcome the Government.

B. L-3's SUBCONTRACT RESPONSIBILITIES AND THE VALUE ADDED

L-3's WLSS Contract had no provisions regarding transition to a new contractor, other than the most elementary continuity of services provision. The TIMS Contract stipulated an extraordinarily ambitious 90-day transition period, during which time GLS was to establish infrastructure and operations in the United States and Iraq and transfer all linguists from L-3 to GLS. As part of the new working relationship between L-3 and GLS and, more importantly, because of L-3's commitment to support the troops, L-3 aggressively supported the transition, without reservation. In so doing L-3 went far beyond the typical "hand-off" that takes place between services contractors.

One of the attractive features of GLS's successful management proposal for the TIMS Contract was its Integrated Team Management Approach ("ITMA"). GLS was a joint venture established by DynCorp International and McNeil Technologies for the purpose of winning and performing the TIMS Contract. To that end, GLS evidently crafted a compelling management proposal that successfully overcame the most obvious challenge facing GLS upon award: building a \$600 million company from scratch that could assume full program responsibility within 90 days after award.

U.S. Government contracts are awarded based largely on the quality of the plan proposed to perform a contract. As an analogy, think of a solicitation to buy a house. The company that offers the best design for the house wins the contract, whether it has the house at hand to deliver, or must build the house from scratch. In a Government contract competition, it is often easier to offer the design of a house not yet built, but the task of building the house remains. Thus, after GLS was awarded the TIMS Contract based on its compelling design, it had 90 days to build a fully staffed international linguistic services company. To meet this challenge, GLS proposed its ITMA management concept.

Stated simply, ITMA required that each GLS subcontractor assign a percentage of its staff employees to GLS, and send those employees to the GLS program office in Falls Church, VA.

Each subcontractor was required to fund such assigned personnel as a part of its own indirect costs. In this way, GLS could plausibly build a company almost overnight.

When L-3 became the largest subcontractor on the GLS program, it also became the administrative muscle that better enabled GLS to meet its 90-day obligation to assume complete responsibility for the TIMS program. Upon signing the subcontract, L-3 immediately assigned 92 of its best and most experienced staff employees to GLS. Those employees performed the following essential roles for the GLS ITMA Team:

- Director & Deputy Director Accessions
- Accessions Manager I, II, II
- Accessions Specialist I, II, III
- Senior Accessions Advisor
- Administrative Specialist I
- Finance Specialist II, III
- HR Specialist II
- IT Specialist II
- Linguist III, Senior Linguist
- Linguistics Program Manager
- Logistics Specialist I
- Operations Analyst II, III
- Operations Program Manager II, III
- Operations Deputy Director
- Principal Operations Analyst
- Senior Security Supervisor
- Security Specialist I, II
- Training Specialist III

L-3's objectives were to ensure: (1) that support of our soldiers did not falter; (2) that the linguists did not suffer a loss of support during the transition; and (3) that GLS and the TIMS program succeeded. Fulfilling these objectives was a matter of personal pride to L-3, and L-3's support of GLS went well beyond providing the ITMA manpower that became a major part of GLS's infrastructure. The staff that remained at L-3 LOTS provided the following value-added support:

- **Contracts and Procurement Support**

- The L-3 LOTS Contracts Department worked closely with GLS procurement and contracts personnel to ensure the smooth transition of vendors and international subcontractors and suppliers.
- Rather than protect its proprietary data, L-3 responded immediately and comprehensively to all GLS requests for historical and operational information. This support included sharing copies of vendor agreements to ensure that there were no lapses in coverage between outgoing L-3 vendors and incoming GLS vendors; sharing data regarding L-3 recruiting vendors; and sharing information regarding INSCOM contract management matters.
- L-3 coordinated with its WLSS subcontractors to ensure that their employees transitioned to their new companies smoothly and did not lose pay, benefits, or clearances in the process, or due to a break in service.
- L-3 managed the contractual and other administrative processes that were required to transition linguists from WLSS to TIMS.
- L-3 provided recruiting facilities for GLS during the period that GLS was establishing their recruiting organization.
- L-3 shared numerous international agreements with GLS to help reduce the time GLS needed to negotiate similar agreements with their partners.
- L-3 immediately transitioned 74 leased vehicles to GLS for use in theater while GLS was getting established.
- L-3 participated in transparent and unrestricted discussions with GLS contracts personnel regarding INSCOM contract management issues, INSCOM expectations for cost proposals and negotiating with specific international suppliers.
- **Security Support**
 - L-3 is currently assisting GLS Security CONUS/OCONUS for all CAT 3 (top secret) clearance activity because of a vacancy of the CSSO position at GLS.
 - L-3 managed the transition of linguist and staff security clearances to GLS.
 - L-3 provided to GLS a complete listing of all CAT 2 (secret) and CAT 3 linguists held in JPAS by L-3 and its WLSS subcontractors.
 - L-3 guided GLS through the INSCOM / Defense Industrial Security Office (DISCO) security processes for the linguist program.

- L-3 oversaw establishing the interface of GLS security personnel to primary contacts at DISCO and the Cognizant Security Executive in order to ensure a smooth security transition.
- **Human Resources Support**
 - L-3 established formal interface and working relationships with GLS Human Resources and other staff members regarding employee relations and medical issues.
 - L-3 encouraged and supported the transition of incumbent staff employees in Iraq to GLS in a timely manner. To that end, L-3:
 1. Staffed the team that managed the transition;
 2. Provided orientation for transitioning employees;
 3. Managed transition hiring forms and documentation;
 4. Secured approvals for termination and start dates; and
 5. Implemented the transfer of employee records and pertinent data.
 - L-3 transferred to GLS copies of employee certificates, letters and historical training records.
 - L-3 ensured proper timekeeping for linguists throughout the transition.
- **Knowledge and Experience Transfer**
 - L-3 gave GLS a complete copy of L-3's Policies and Standard Operating Procedures Library for all Iraq management staff functional areas, i.e., finance, logistics, operations, human resources, quality assurance, and subcontract operations. Additionally, L-3 provided its Project Director "Notes to the Field"; historical and routine slide presentations; meeting protocols; and the Chief of Staff's continuity binders and files. L-3 also provided its Timekeeping Policy.
 - L-3 shared its knowledge with the GLS benefits staff on: (1) Defense Base Act processes and procedures; (2) L-3 Survivor Benefits Policy; and (3) L-3 Notification of Kin (NOK) procedures.
 - L-3 provided a complete copy of its Training Policies and Procedures as well as helping GLS draft a new policy based on L-3's Policies and Procedures.
 - L-3 gave GLS a copy of the L-3 Ethics Badge Card so as to help GLS solve the logistical problem of providing Ethics Helpline numbers for in-theater personnel.

- L-3 shared its lessons learned (successes and failures) regarding training in theater (e.g., placing training centers near transition areas, specifying the training required regarding movement checklists and leave requests).
- L-3 reviewed the GLS training processes and suggested changes to preclude audit issues. L-3 also shared its research into regulatory requirements and guidelines pertaining to training and ethics.
- L-3 provided guidance into INSCOM policies regarding:
 1. In processing requirements for linguist candidates;
 2. Counter Intelligence screening process;
 3. In-theatre processing of CAT 3 candidates; and
 4. Indoctrination procedures for CAT 3 linguists.

As the preceding examples demonstrate, L-3 has already played an instrumental and material role in the TIMS contract and, as the program proceeds, L-3 remains a vital member of GLS's team.

Under its subcontract with GLS, L-3 is currently allocated 777 linguists, for whom L-3 administers travel, timekeeping, payroll, insurance and other benefits. But L-3's added value goes far beyond L-3's administration and management of linguists recruited by GLS. To suggest otherwise would be shortsighted and wrong.

L-3's experience and capability to perform a large-scale linguist services contract in a contingency operation is almost unique. At this time, there are three companies in the world that arguably have that experience, and L-3 is one. The U.S. Government often spends significant resources ensuring that it has a "second source" for critical defense items to protect against the failure of one company to perform, or even continue to exist. The situation with regard to large-scale linguist support services is no different. Prior to the WLSS program, linguist services were mostly provided by a small, "mom and pop shop," industry. There was absolutely nothing comparable to WLSS, TIMS or the current Afghanistan linguist services contract. L-3's role on the TIMS contract, which adds negligible cost to the Government, ensures the continued availability of a competitive second source for future procurements or a reliable alternative if

something happens to GLS. And the effects of robust competition should never be underestimated or forgotten.

Further, as demonstrated repeatedly above, L-3 possesses an unprecedented storage of knowledge and experience about performing a linguist services programs in third world countries during a war. That storehouse of knowledge remains *immediately* available to GLS and the U.S. Government so long as L-3 is a part of the TIMS program. L-3's continued participation on the TIMS contract provides each of the important and valuable services mentioned above.

Finally, as discussed in detail above, GLS and the U.S. Government (which approved the GLS/L-3 subcontract) received substantial value up-front from L-3 in establishing a fully functioning TIMS program team and seamlessly transitioning the work from WLSS to TIMS.

In conclusion, I sincerely hope that these comments have added both clarity and perspective to the issues this Commission is exploring. L-3 is proud of its service to our nation and the world on the linguist programs as well as its many other programs. I am prepared to answer any questions you might have.