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14. ABSTRACT U.S. employment of battlefield contractors is in general a force multiplier. However, this paper addresses a set of problems that should be addressed by improved contracts and contract administration, risk mitigation and fall-back military capabilities to minimize or eliminate the negative aspects of contractor battlefield presence.					
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CONTRACTORS ON THE BATTLEFIELD

By

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A paper submitted to the faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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17 May 2004

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CONTRACTORS ON THE BATTLEFIELD

In all countries engaged in war, experience has sooner or later pointed out that contracts with private men of substance and understanding are necessary for the subsistence, covering, clothing, and moving of any Army.

Robert Morris, Superintendent of Finance, 1781¹

INTRODUCTION

The U.S. military has used civilian contractors on the battlefield since the Revolutionary War when they provided transportation and supplies. In the U.S. Civil War, suttlers were contracted to supply prisoners with basic necessities. By the time of World War II, there was one civilian service provider for every six military persons, a ratio that continued through the Vietnam conflict.² In the 1991 Gulf War, some 9200 contractors supported 541,000 military personnel.³ In the 1997 war in Bosnia, U. S. Soldiers were ordered to seize and control a transmission tower on Mount Zep that was being used to transmit enemy hostile messages. Within thirty minutes of soldiers' securing the area, contractors pulled up in a civilian truck with all the supplies needed to set up a defensive position, including sandbags, plywood, barbwire, portable showers, latrines, and hot food.⁴ Today contractors are employed to help reconstruct Iraq, including electrical power generating plants, hospitals, schools, water and sewer plants, in addition to providing essential services to the troops such as food service and fuel supply. Thus, contractors have proven themselves time and again to be effective force multipliers.

¹ Army Department, "Contractor Deployment Guide," Army Pamphlet 715-16 (Washington D.C., 27 February 1998), 1.

² James E. Althouse, "Contractors on the Battlefield: What Doctrine Says and Doesn't Say," *Army Logistician* 30, no. 6 (November/December 1998): 14.

³ Lourdes A. Castillo, "Waging War with Civilians Asking the Unanswered Questions," *Aerospace Power Journal* (Fall 2000): 26.

However, the use of the battlefield contractor is not without its problems. Chief among them are the risk of the contractor failing to perform, security concerns, and difficulties in monitoring the contracts. Nonetheless, the combatant commander can plan effectively for contractors on the battlefield by understanding the limitations of the contracts, mitigating the risks of using contractors, maintaining critical military capabilities as backup, and centralizing contract administration for his area of operations.

ANALYSIS

As weapon systems and technology become more complex, the Services rely increasingly on contractors as the sole support for highly specialized technical skills with few manpower requirements. For instance, contractors are the sole providers of support to the Army's Guardrail surveillance aircraft because the Army determined this was more cost effective than in-house capability to maintain the equipment.⁵

In a different venue, because of the shrinking size of the military forces, private companies are being employed to provide security in war zones. From 1994 to 2002, the Department of Defense awarded 3,061 contracts to twelve such companies.⁶ This has become big business, especially in Iraq where there are over two dozen private security companies with contracts employing 15,000 people. Many employees are former Special Operations Force personnel who provide security for everything from Iraqi currency to

⁴ Colonel Herman T. Palmer, "More Tooth, Less Tail: Contractors in Bosnia," *Army Logistician* 31, no. 5 (September/October 1999): 6.

⁵ General Accounting Office, *Military Operations Contractors Provide Vital Services to Deployed Forces but are Not Adequately Addressed in DOD Plans* (Washington D.C.: June 2003), 9.

⁶ The Center for Public Integrity, "Making a Killing: The Business of War", <http://www.publicintegrity.org/printer-friendly.asp?aid=177> (18 March 2004).

private contractor senior businessmen to diplomats.⁷ These firms imply a unique capability for the Department of Defense because they allow for the retention of the training and expertise of former military personnel.

A third factor is that contractors can be used in countries where status of force agreements may limit the number of military allowed. This happened in the Balkans where contractors replaced soldiers when force levels were reduced by multinational agreements in that region. Services such as firefighting that had been performed by military members were taken over by contractors. In October 2002, the Army estimated that contractors in Kosovo outnumbered military members by two to one.⁸

Finally, the Executive Branch has been increasing pressure since the early 1990s to privatize or outsource work traditionally performed by the military. The use of contractors is seen as a means to decrease the costs associated with logistics, thus freeing up scarce dollars for critical transformation efforts. It is also to compensate for the decline in the number of active duty troops from a total of 2,130,229 in 1989 to 1,425,144 in January 2004. For these reasons, contractors are truly a force multiplier in today's environment.

However, the use of contractors on the battlefield does not come without inherent drawbacks. In employing contractors, the combatant commander faces "lack of performance" issues, security concerns, military mission essential skill set atrophy, and concerns related to monitoring contracts, including command and control of contractors.

⁷ James Dao, "Private U.S. Guards Take Big Risks for Right Price," *New York Times*, 2 April 2004, 1.

⁸ GAO, 2003, 8.

Performance Failures

The commander has little recourse if the contractor cannot perform on a contract. While a contractor can be subjected to financial penalties and debarred from future contracts, he cannot be forced to perform except in a declared war. This can have a significant impact on the commander's mission if critical services are not available. For example, in a U. S. Air Force deployment to Bahrain in 1997, a contractor had promised fuel supplies from local vendors. However, just before the deployment, the contractor informed the Air Force that he was capable of supplying only one-third of the required fuel.⁹ In Iraq, there are stories of troops living without fresh food, regular access to showers, and telephones, as well as delayed mail services because contractors failed to show up for work.¹⁰ If a contractor happens to be the sole source provider of a service, such as maintenance on a critical weapon system, failure to perform could prove catastrophic to mission accomplishment.

In 1991 the DoD Inspector General stated that the Department of Defense had

“...no capability to ensure continued contractor support for emergency-essential services during mobilization or hostilities, no central oversight of contracts for emergency-essential services, no legal basis to compel contractors to perform, and no means to enforce contractual terms.”¹¹

In June 2003, the General Accounting Office reported that the problem still had not been addressed by the Department of Defense:

“Despite requirements established in DOD guidance (Instruction 3020.37), DOD and the services have not identified those contractors that provide mission essential services and where appropriate developed backup plans to ensure that essential contractor-provided services will continue if the contractor for any reason becomes

⁹ Matthew F. Pausch, “Air Force Deployments and Support Services Contractors,” *Air Force Journal of Logistics* XXIV, no. 1 (2000): 9.

¹⁰ David Wood, “Some of Army's Civilian Contractors are No-Shows in Iraq,” *Newhouse News Services*, 31 July 2003.

¹¹ *Ibid*, 12.

unavailable. Service officials told us that, in the past, contractors have usually been able to fulfill their contractual obligations and, if they were unable to do so, officials could replace them with other contractor staff or military personnel. However, we found that this may not always be the case.”¹²

Military Skill Set Concerns

Another concern is that over-reliance on the use of contractors may result in the military not retaining the necessary skill sets as backup in the event that the contractors are not available to perform a mission. For instance, because the Air Force now uses contractors to integrate telephone networks with local networks in all of the bases in the United States, it no longer has military personnel to perform this function when a unit is deployed.¹³

In fields where a reduced military capability is retained because the skill has been partially outsourced to a contractor, it may have the adverse impact of requiring the military personnel to be deployed constantly, thus resulting in decreased morale and retention. An example is the Air Force military fuels career specialty. The Air Force conducts fuel operations at CONUS installations and tactical nodes overseas with approximately 3500 people, mostly active duty Air Force personnel. The military personnel rotate between CONUS and overseas deployments.¹⁴ If the CONUS function is outsourced, the remaining military personnel will be required to deploy much more frequently.

¹² GAO, 2003, 1.

¹³ Ibid., 9

¹⁴ Pausch, “Air Force Deployments and Support Services Contractors,” 8-9.

Security Risks

When employing contractors on the battlefield, the combatant commander faces substantial risks relating to security. These security concerns can impact his operational plans. A variety of concerns pertain.

Traditionally combat service support personnel have served as a rear area reserve and provided security for logistics lines of communication. Unarmed contractors cannot provide this capability. This means the military must rebalance from offensive to defensive operations to protect contractors and lines of communications.

If a situation becomes too dangerous or volatile in a region, contractors may suspend performance because of security concerns. This potentially could leave the Services without critical resources such as food service and thus disrupt operations. Today *Kellogg Brown and Root* has over 700 trucks on the roads between Iraq and Kuwait at any given time.¹⁵ Even though protection is provided by the U.S. military, the company has suspended convoy traffic during times of high threat and combat. This negatively affects operations in the region; the necessity to provide convoy protection reduces the availability of Soldiers and Marines for combat operations because contract convoys do not have self defense capability.

By attacking contractors who are performing reconstruction in Iraq, the enemy can significantly hamper the U.S. strategy to rebuild that country. Thus the enemy can use attacks on contractors to damage U.S. strategy at both the operational and strategic levels.

¹⁵ Greg Jaffe and Christopher Cooper, "Military Seeks More Troops in Iraq," *Wall Street Journal*, 13 April 2004, 3.

Senator Jack Reed from Rhode Island has pointed out that Iraqi insurgents may be infiltrating some private security companies.¹⁶ Information sharing can also become a problem in using such companies.

Some contractors employ and supervise local nationals, which can generate additional security concerns. After the 1998 bombings of the US embassies in Kenya and Tanzania, contractors “were restricted to their bunkers unless escorted under arms to other locations. As a result contractors were severely restricted in their ability to supervise local nationals for 75 days. U.S. military personnel were taken off primary assignments to perform escort duties for unarmed DOD civilians and contractor personnel.”¹⁷

Related to security concerns is the possibility that a contractor may refuse to perform in an area that he considers too dangerous. Bechtel Corporation, one of the largest contractors in Iraq, has reduced or eliminated travel in those areas that it deems too dangerous to enter.¹⁸ This impacts negatively the conduct of the services being provided under the contract. The contractors have demanded more security for their employees; this results in either additional cost to the U.S. government or diversion of over-tasked U.S. military forces from primary duties in order to provide more security for the contractors. For instance, Bechtel Corporation originally set aside \$500,000 to hire six security guards in Iraq. Today, it has hired more than 169 guards because of increased security concerns.¹⁹ The

¹⁶ Mary Pat Flaherty and Dana Priest, “More Limits Sought for Private Security Teams,” *Washington Post*, April 13, 2000, 15.

¹⁷ Pausch, “Air Force Deployments and Support Services Contractors,” 10.

¹⁸ Neil King, Jr. and Greg Jaffe, “Killings in Iraq Cast New Cloud Over Rebuilding,” *Wall Street Journal*, 1 April 2004, 1.

¹⁹ Neil King, Jr., “Race to Get Lights On In Iraq Shows Perils of Reconstruction,” *Wall Street Journal*, 2 April 2004, 1.

Washington Group International at one point had 700 security guards for 350 employees who were installing power lines around Fallouja.²⁰

Difficulties in Monitoring Contracts

A recent GAO audit pointed out the operational commander's problems in even identifying all contractor support being employed in a particular area. Often the commander does not have visibility of all contractors on the battlefield. In Afghanistan, for example, the commander was unaware of a contractor's arrival, and thus not prepared to provide facilities the contractor needed to perform maintenance on biological identification equipment. In a similar vein, the commander was not notified of contractors who showed up in Kuwait.²¹

Aggravating the above, rules and regulations regarding control of contracts differ at the DOD and Service levels. Moreover, the varying contractual terms and conditions in different contracts lead to confusion when trying to provide force protection, support, and control of contractors.²²

In 1999, an Air Force Inspection Agency report stated that

“...most locations did not have any idea how many contractors were on an installation or who the contractors were. In some instances, command and control of contractors was maintained thousands of miles away.”²³

As the size of the U. S. military continues to decline, the United States increasingly relies on private companies to provide security for U.S. government agencies and

²⁰ T. Christian Miller, “Soaring Security Costs Burden Iraq Reconstruction Efforts,” *Los Angeles Times*, 9 April 2004, 1.

²¹ GAO, 2003, 33-34.

²² Ibid, 3.

²³ Ibid, 12.

contractors. Iraq presently has an estimated 20,000 private security workers.²⁴ There are no common rules and regulations regarding their activities or the weapons they are allowed to carry. Instead, each company is governed by a contract with terms and conditions that may not be similar to other contracts in the region. This can place an enormous burden on the military in dealing with these private security forces in a hostile region.

On March 24, 2004, four Americans employed by Blackwater Security Consulting of Moyock, NC, were ambushed and shot or beaten to death by Iraqi insurgents. Blackwater is one of about two dozen companies that provide security services in Iraq. The men who were killed were performing on a contract to provide security of food shipments to the Fallujah region. Their deaths have raised a variety of concerns, including the few regulations on the quality of employee training for hostile areas. Although the four murdered men were combat-savvy veterans of U.S. Special Operations Force components, their deaths raise the issue of skills, equipment, and the information (situational awareness) essential to survival in such environments.²⁵

Moreover, contractors are not obligated to abide by military orders or regulations about security risks, but can make their own decisions as contractually specified on whether to continue performance and under what circumstances. There was a report in Iraq of a contractor being killed while making a mail delivery, even though the U.S. military had offered to take over the duties because of the dangerous situation.²⁶ Situations such as this hamper the combatant commander's ability to provide adequate force protection.

²⁴ Flaherty and Priest, "More Limits Sought for Private Security Teams," 15.

²⁵ King and Jaffe, "Killings in Iraq Cast New Cloud Over Rebuilding," 1.

²⁶ T. Christian Miller, "Halliburton Suspends Some Iraq Supply Convoys," *Los Angeles Times*, 13 April 2004, 1.

RECOMMENDATIONS

How does the combatant commander mitigate the challenges associated with contractors on the battlefield? First, it is essential that the combatant commander have visibility of all the contracts on his battlefield. In addition, the combatant commander's concerns must be included in all phases of the acquisition cycle, from requirement generation to acquisition planning, to developing terms and conditions of the contract, to requiring contractors are included in operational readiness exercises. In order to use contractors effectively, a combatant commander's operational planners must have sufficient education in the contracting environment. Finally, laws regarding the combatant commander's command and control of contractors must be changed to ensure his authority over contractors in a combat zone.

Identify Contracts for the Combatant Commander

The Federal Procurement Data System can be modified to provide the combatant commander with access to information about contractors on the battlefield. Congress mandates that all government contracts obligating \$25,000 or more be reported to Congress on a yearly basis. Currently the Services each have an individual system that reports the contract number, name, amount awarded, and various other information, such as small business statistics. Each Service in turn submits the contract information to a central DoD collection system where it is reported to the General Services Administration's (GSA) Federal Procurement Data System (FPDS) and then to Congress. However, the Federal

Procurement Executive Council has acquired a new data collection system that will soon eliminate the Service and DOD collection points, and will electronically collect information directly from all contracts, regardless of dollar amount, into the FPDS-Next Generation (FPDS-NG). This new system will not only satisfy Congressional requirements, but also can be used to provide governmental leaders with current, accurate information necessary to manage contracts effectively. To make this system even more effective, the DOD could request that the FPDS-NG be modified to collect information that the combatant commander needs to maintain visibility of contractors in his area of operations.

Types of information that the combatant commander might want are identities of contractors performing mission essential services in his area, whether deployment clauses are in the contract, whether the contract is a sole source, and whether any SOFA requirements have been added to the contracts. He could also use FPDS-NG information in planning his operations to determine what contractors might be available to provide support. During actual operations, if a contractor defaults on a contract, the commander can use the FPDS-NG to identify potential sources for an urgent replacement contract. For instance, in the 1997 Bahrain incident, where the fuels supply contractor notified the Air Force he would not be able to supply fuel, the combatant commander's staff could have accessed the FPDS-NG data base to identify alternate contractors who had supplied this product in the past.

Commanders and the Acquisition Cycle

Including combatant commander concerns in major phases of the acquisition cycle is essential for employing the contractor successfully on the battlefield.

The current Federal Acquisition Regulations and Defense Supplements do not mandate that operational considerations of the combatant commander be considered in acquisition plans. Currently the only wording in the Federal Acquisition Regulations mandates that the acquisition plan must state all significant conditions affecting the acquisition such as any known cost, schedule and capability, or performance constraints. The danger of such limited requirements is illustrated by a contract for services in the Pacific Air Force, written to give contractors, including local nationals, the privilege to use commissary facilities. However, this was in violation of the local commander's policy not to allow local nationals to use the commissary because of black market and security concerns. The result of this lack of coordination was a U. S. Congressional inquiry and a potential claim against the contract for millions of dollars.

The Defense Supplement to the Federal Acquisition Regulations should be revised to mandate coordination with the combatant commander to ensure that Status of Forces Agreements, host nation laws, and security and force protection requirements are addressed in all acquisitions where there is potential for the contractor to deploy.

A contractor is governed by contract terms and conditions rather than the rules of the operational commander. Therefore, it is essential that contracts have standard clauses for when the contractor's services are integrated into a theater. These clauses must ensure that the contractor complies with combatant commander rules and theater-specific policies in matters relating to force protection and security. All contracts should include clauses mandating compliance with any applicable status of force and/or host nation agreements.

Before a solicitation is issued or a contract signed, the combatant commander's staff should review it to ensure that any specific requirements for his area of responsibility are

included. Currently the Defense Acquisition Regulations Supplement requires liaison with the cognizant contract administration officer when a contract is not under the jurisdiction of a command for the country involved. It should be amended to require coordination with the combatant commander's staff also.

In performing a source selection for a contractor who might be deployed on the battlefield, previous deployment performance also must be considered. The DoD Past Performance Automated Information System collects information on the satisfactory performance of contractors, and includes management, cost, and quality of performance. Like the FPDS-NG system, it should be modified to include information on the contractor's deployment performance. Having instant access to this information is particularly vital in short notice emergency situations to avoid awarding a contract to a company with unsatisfactory past performance.

Educating Commanders and Planners

Operational commanders and planners must be educated in contracting and outsourcing to accomplish their mission. Operational planners must be provided tools to integrate contractors effectively on the battlefield while retaining core capabilities for the military. Colonel Phillip Deavel recommends sending officers to institutions such as the Wharton School of Business, followed by internships in "Wal-Mart type" businesses. He states:

"By Wal-Mart, I mean cutting-edge businesses whose success hinges on information management, outsourcing and a complex web of suppliers. When those officers returned to the military, they would be better prepared to utilize privatization where appropriate....Developing a robust institutional expertise in privatization

would allow the military to coherently graft a new economic paradigm into its culture, while intelligently opposing conversion in areas where a thoughtful analysis establishes it would weaken the military.... The marching orders for this privatization corps should be to analyze each initiative on its merits for enhancing the quality of life and operational robustness of the military.”²⁷

Back-Up Plans for Contractors

In a declared war, the President can order a contractor to perform; however, in other situations, the contractor could conceivably refuse to perform on a contract if he felt the situation was too dangerous. In that event, the combatant commander needs to have a back-up plan to continue those mission essential services. These services need to be identified in the operational plans. One way to ensure a back-up plan is to require the contractor who is the sole source provider of equipment to train a certain number of military personnel on repairing and maintaining this equipment.

Command and Control Procedures for Contractors

The Department of Army Pamphlet 715-16 states that contractor personnel supporting military combatants are subject to the Uniform Code of Military Justice only when Congress declares war. While contractors are expected to obey instructions and general orders of the Combatant Commander, the commander has only indirect authority over contractors when war has not been declared. His options are limiting the contractor’s access to facility or requiring the contracting officer to remove the contractor from the battlefield.²⁸ One possible way to ensure compliance with the combatant commander’s rules on the battlefield is to

²⁷ R. Phillip Deavel, “The Political Economy of Privatization for the American Military,” *Air Force Journal of Logistics*, XXII, no.2, (1998), 8.

change the current statutes so that the commander's rules apply to contractors who are performing services in a combat zone, even if war has not been declared by Congress. This would cover such incidences as the contractor continuing to deliver mail services in spite of being warned away by military counterparts, or entering mosques when contra-requested by the commander.

CONCLUSION

Contractors serve as force multipliers for the operational commander by providing invaluable services on the battlefield, including everything from food and water to critical support technology for advanced weapon systems. As the size of U. S. military forces continues to decline, contractors become increasingly vital by allowing the military to focus on training and conducting combat operations. While contractors supporting the military on the battlefield have performed exceedingly well for the most part throughout history, improvements in their use must be made to allow the combatant commander to optimize their use. By providing the combatant commander full visibility of the contractors performing in his theater, he will be better prepared to address contractor performance failures and security concerns. He will also be better prepared to shape the skill sets of his military forces to complement those provided by the contractor. Standardizing contract clauses and increasing his statutory authority over contractors will allow him to have better command and control of the battlefield. Finally, by educating the combatant commander and his planners on the limitations and risks involved in the use of contractors, he will be able to maximize their use on the battlefield.

²⁸ Army Department, "Contractor Deployment Guide," Army Pamphlet 715-16 (Washington D.C., 27 February 1998), 5.

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