

USAWC STRATEGY RESEARCH PROJECT

JOINT IMPLICATIONS FOR CONTRACTED LOGISTICS

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This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

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Report Documentation Page			Form Approved OMB No. 0704-0188		
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 30 MAR 2007	2. REPORT TYPE Strategy Research Project	3. DATES COVERED 00-00-2006 to 00-00-2007			
4. TITLE AND SUBTITLE Joint Implications for Contracted Logistics		5a. CONTRACT NUMBER			
		5b. GRANT NUMBER			
		5c. PROGRAM ELEMENT NUMBER			
6. AUTHOR(S) George Akin		5d. PROJECT NUMBER			
		5e. TASK NUMBER			
		5f. WORK UNIT NUMBER			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College, Carlisle Barracks, Carlisle, PA, 17013-5050		8. PERFORMING ORGANIZATION REPORT NUMBER			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)			
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)			
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT See attached.					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 22	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

ABSTRACT

AUTHOR: Colonel George G. Akin

TITLE: Joint Implications for Contracted Logistics

FORMAT: Strategy Research Project

DATE: 30 March 2007 WORD COUNT: 5999 PAGES: 22

KEY TERMS: Military Change, Force Management Structure, Leadership Planning, Landpower Generation and Sustainment, Joint Interagency, Intergovernmental, Multinational (JIIM)

CLASSIFICATION: Unclassified

This paper examines current policy, doctrine and leader concerns on changing contractor operations since 2001. Analyzed are the implications for theater commanders on contract processes resulting from battlefield evolution. As contractor operations provide force capabilities and services to U.S. forces in Iraq and Afghanistan changing procedures support the requirement for new joint doctrine on contractor operations. Contractor support as part of Department of Defense (DOD) transformation must incorporate joint processes and structures to support adaptation to future battlefields. Focusing on combatant commander's contracting requirements for their respective area of responsibility, this paper recommends better joint training, leader development and joint enablers for contracting operations.

JOINT IMPLICATIONS FOR CONTRACTED LOGISTICS

The DOD components shall rely on the most effective mix of the total force, cost and other factors considered, including Active, Reserve, civilian, host nation, and contract resources necessary to fulfill assigned peacetime and wartime missions.

—DODI 3020.37¹

Contractor operations are evolving to support battlefield and geostrategic realities. Understood in any future force mix involving U.S. military forces is the continuing criticality of contractor support to augment Joint and coalition forces. As the primary service providing support to landpower, the Army is challenged to balance evolving battlefield dynamics with military force efficiency and effectiveness. As such, the Army and U.S. Joint Forces Command (JFCOM) are analyzing Congressional and DOD policy to develop procedures and force structure to support contractor operations. JFCOM, as the proponent for joint doctrine, is initiating a new Joint Publication (JP) 4-10, titled *Contracting and Contracting Management in Joint Operations* to expand the doctrine contained in the joint capstone document, JP 4-0, *Doctrine for Logistic Support of Joint Operations*.² Joint Publication 4-10 will expand the current contracting doctrine and support the JP 4-0 as “it provides military guidance for the exercise of authority by combatant commanders and other joint force commanders and prescribes doctrine for joint operations and training.”³

JP 4-10 is in the rudimentary stages of conceptual development. Prior to its final publication, it should incorporate changes in U.S. policy, Service doctrine, military force structure, ongoing contractor operations and provide theater commanders, joint staffs and personnel definitive joint guidance. By analyzing existing policy, doctrine and force structure with current battlefield conditions in Iraq and Afghanistan we can develop appropriate leader training and identify possible shortfalls that the doctrine in JP 4-10 should address. Paraphrasing DOD Instruction 3020.37, the correct force mix of any future U.S. forces will be based on the combination of Soldiers, Sailors, Airmen and Marines, US government civilians, and contractors who will augment and serve alongside our forces around the globe. Contractor personnel today are essential to the joint and Army team at home and abroad, but they must adapt to the emerging battlefield. Successful management and control of contractors and the services they provide are changing in many functional areas that historically were accomplished by traditional military forces or DOD civilians.⁴ As the force structure in the Army evolves to fight our nations wars the emphasis on contracting personnel for mission support will necessitate a change in thinking and correspondingly education of DOD and Army leaders. Optimizing this contractor support for combatant commanders requires examination of recent functional, legal

and battlefield changes as part of joint education to support theater operations. The capabilities and limitations of contractor support must be understood and supported by U.S. policy, Joint and Service regulations and institutionalized by training for military forces. Changing roles, missions and management oversight of DOD contractors evolves daily on the battlefields of Iraq and Afghanistan. Soldiers and DOD civilians must evolve effective policy and training to understand contractor implications as the US prosecutes not only the war on terrorism but any future contingency conflict.

Since the beginning of Operation ENDURING FREEDOM in October 2001 and Operation IRAQI FREEDOM in March 2003, one DOD policy, DOD Instruction 3020.41, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, published October 3, 2005 defined contractor personnel requirements expected from a theater commander.⁵ This DOD Instruction developed due to the requirement for clear DOD guidance for private corporations to support their contractors deploying as part of military forces in to Iraq and Afghanistan. Additionally, this DOD Instruction delineated theater commander requirements to support contractors in their respective area of operations (AOR). DOD Instruction 3020.41 and newly released JP 3-33, *Joint Task Force Headquarters*, published 16 February 2007 provides continuing policy and doctrine guidance to underpin the rewrite of the capstone publication, JP 4-0, *Joint Logistics Support*. Significant in JP 3-33 is the first enabler for a joint contracting system that allows rapid transition from peacetime contracting processes to wartime requirements. JP 3-33 provides clarity by stating that the directive authority for logistics (DAFL) which previously “only applied to assigned forces, under crisis or wartime conditions,” now allows the Combatant Commander (CCDR) the “use of facilities and supplies of all forces, assigned or attached, necessary to accomplish the missions.”⁶ This subtle change acknowledges that logistics plans developed in peacetime by the CCDR can be executed in wartime regardless of how the units under their command got there. Technically, there is no change to DAFL, but this would support the concept that a contracted logistics capability can be readily expanded to support contingency operations in a CCDR's AOR. This sentence provides joint doctrinal guidance that when planning, the Joint Force Commander (JFC) can consider aspects of joint logistics capabilities within the apportioned force. Clarifying this support relationship for contingency contracting in joint publications will provide better granularity for the JFC contingency contracting support relationship.

Expected within two years is a new Joint Publication 4-10, *Contracting and Contractor Management in Joint Operations*.⁷ Prior to the release of Joint Publication 4-10 it is important that current contemporary battlefield lessons learned, new staff structures and materiel enablers

are incorporated into this joint document. As the main provider of support for land forces, the Army continues to lead doctrine development by providing the current imperatives on integrating support for contractor use on the battlefield.⁸ Published in 2001, Army Regulation 715-9, *Army Contractors Accompanying the Force* already incorporated DODI 3020.41 policy guidance and combined two separate documents, DA Pamphlet 715-16, *Contractor Deployment Guide* and AR 700-137, *Logistics Civil Augmentation Program* into one Army regulation. Army Service contingency contracting requirements forced DOD policy to address the external deployment of contractors into an area of operations. Still required in JP 4-10 will be guidance that explains and synchronizes contractor integration with the theater commander's requirements and responsibilities. Defining roles and responsibilities, contractor accountability, force protection, joint training, and joint staffing for contingency contracting operations will institutionalize a joint contracting capability for the CCDR or JFC.

As JFCOM and the U.S. Army Training and Doctrine Command (TRADOC) develop respective joint and Service doctrine, the current experiences from the battlefield and U.S. Domestic political issues are providing additional political complexities to contingency contracting support. Expected oversight by Congress due to the cost of contracted operations and the underlying makeup of contingency contracting personnel who consist of U.S. civilians, third country nationals, local nationals or any mix thereof will increase requirements on theater commanders to manage contracted operations. New statutes and bills introduced by Congress are requiring a reevaluation of legal implications of contractors on the battlefield and oversight management of contractors by military forces. As CCDRs interpret current policy guidance and doctrine changes, they must synchronize management and oversight in their respective AOR and adapt to lessons learned from the battlefields of Iraq and Afghanistan. It is the formulative policies of Congress and the current contractor experiences in the U.S. Central Command (CENTCOM) AOR that are providing an insightful look on changes in military-contractor operations and portend implications for future contractor operations.

Congress is directing some changes in U.S. law concerning contractor oversight due to ongoing operations. The impact of these legal changes is yet to be implemented but they identify a fundamental shift in the relationship between military commanders and contractors. Changing is the command authority a commander can exercise over contracting personnel. Previously, the commander insured discipline of contractors in his AOR by using the contractual instrument as the primary mechanism to enforce discipline of contractor employees. The addition of the words "declared war or a contingency operation"⁹ changed the parameters of commanders Uniform Code of Military Justice (UCMJ) Authority. In effect U.S. contractors

accompanying the force can now be subject to a military commander and the UCMJ.

Previously, only in a "declared war" were contractors subject to UCMJ.¹⁰

...slipped into the Pentagon's fiscal year 2007 budget legislation. The one sentence section (number 552 of a total 3510 sections) states that "Paragraph (10) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended by striking 'war' and inserting 'declared war or a contingency operation'." ...that bill became a law (P.L.109-364).... This means that if contractors violate the rules of engagement in a warzone or commit crimes during a contingency operation like Iraq, they can now be court-martialed.¹¹

The clause was put in by Senator Lindsay Graham of South Carolina. Senator Graham is a reserve Judge Advocate General officer, and has stated in the press that he felt it would "give military commanders a more fair and efficient means of discipline on the battlefield" by placing "civilian contractors accompanying the Armed Forces in the field under court-martial jurisdiction during contingency operations as well as in times of declared war."¹² This small legal change could have a profound effect on policy and subsequent contractor doctrine. It does however attempt to provide an answer to the question of command and control. Does the Joint Force Commander have the appropriate legal authority statues and is the command and control relationship understood to enforce contractor discipline in his AOR? JP 4-0 contains a small paragraph titled "Discipline" and states, "that under federal criminal law (Title 18, Section 2441) a national of the United States, including contractor employees, may be tried for a war crime as defined under this statute."¹³ This statute provides the basis to establish the Commander's authority to enforce justice on U.S nationals who commit war crimes. Not well defined is the military commander's authority to discipline contractors in his AOR who are supporting operations but working for another governmental agency. The role and responsibility of a commander's authority to discipline contractors must be understood among supporting governmental agencies. Reported by the Associated Press on 14 February 2007, "a former contractor for the Central Intelligence Agency was sentenced to eight years and four months in prison for beating an Afghan detainee who later died . . . [this] was the first American civilian charged with mistreating a detainee in the wars in Iraq and Afghanistan."¹⁴ The implications of U.S contractor criminal misconduct and the appropriate control and discipline mechanisms between commanders and other governmental agencies will require defined legal roles and responsibilities. Clear Interagency and military authority for contractor personnel must prevent the legal rights of a U.S. contractor from being usurped or jeopardizing mission success of the military commander. Any criminal misconduct by U.S. Soldiers or contracted civilians participating in military operations must be resolved to sustain U.S. legitimacy and avoid

negative public and international reactions from the host nation or our allies. Complicating the legal status of contractors is the steady increase of armed private military corporations (PMC) who augment military forces providing personnel and convoy security.¹⁵ This use of armed contractors coupled with the legal implications of the use of force by armed contractors highlights another consideration concerning rules of engagement for theater commanders. Exemplified by the following incident in Iraq is the dilemma when a contracted individual from a PMC company kills an Iraqi policeman. This example underscores the complicated issue of a Commander's legal authority for contractors.

A PMC operator reportedly got very drunk at his company's Christmas party in Baghdad's Green Zone...he reportedly encountered an Iraqi policeman and unloaded ten rounds into him, killing him. The PMC, a company that recently has prided itself on its compassion for all people, seems to be behaving somewhat responsibly and has reportedly banned alcohol consumption among its troops and sent the guy home immediately--before Iraqi police could get their hands on him. This alleged incident raises some important questions about legal accountability of contractors in Iraq and Afghanistan, particularly given recent changes. Federal Times reported last week that an obscure clause in the 2007 Defense Bill now places contractors in Iraq and Afghanistan under the Uniform Code of Military Justice...According to the Library of Congress, the measure went into effect on October 17, 2006. If the rumor is true, the case could be the first charged under the rule changes.¹⁶

In November 2003, The Air Force Office of the General Counsel published an Air Force General Counsel Guidance Document: *Deploying with Contractors Contracting Considerations*. This document provides an Air Force legal perspective on contracting implications when contracted employees support Air Force operations overseas.¹⁷ It typifies in fourteen pages the legal guidance that must be considered when deploying contractors. It mentions a "potential jurisdiction under UCMJ for the war on terrorism"¹⁸ but it does not elaborate further on the larger legal authority of UCMJ and contractor personnel in a commander's AOR. Joint Doctrine will need to meld the Services' understanding of UCMJ authority governing contracted support with expectations of UCMJ authority expected by a CCDR. Granted, aside from interpretation of this latest new statute the preponderance of legal issues are covered by U.S. laws and regulations under the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation and Department of Defense Instructions but the CCDR's theater policy will need to standardize policy governing contractors charged under UCMJ.

Policy for contractor management and contract oversight accountability are increasingly being scrutinized by Congress due to perceived fiscal improprieties. Ensuring good stewardship of government resources including contracted receipt of services by military forces is the responsibility of the contracting officer or the contracting officer's representative. In the theater

the commander's link to the contractor is through the contracting officer or the contracting officer's representatives who establish contracts with provisions of performance and ensure management, oversight and contractor payment. However, oversight of contractor operations in a theater requires more than simple management of contractors based on the terms of the contract and liaison by a contracting officer. During war the military management structure required to support service contracts requires in depth understanding of the scope of contractor operations and how the respective contractor will ensure appropriate contractual standards and compliance on the battlefield. The 110th Congress is continuing to look at this issue of funding Private Security functions with the introduction of House Resolution 369, *Transparency and Accountability in Security Contracting Act of 2007*. This resolution will require accountability for personnel performing private security functions under Federal contracts, and for other purposes. This House of Representatives Bill has currently been referred to the Committee on Armed Services, and to the Committee on the Judiciary, for a period to be subsequently determined by the House Speaker.¹⁹

New legal changes and possibly more congressional oversight indicates that joint doctrine will need to expand its scope and revisit the resulting implications from the perspective of the theater commander's legal authority and management of battlefield contractors. Compounding this change of contractor management and discipline in the AOR is the complexity of how PMCs perceive their role of providing armed security. Policy and doctrine for PMC contractors and adherence to theater rules of engagement will require joint synchronization to prevent each theater commander or service component from interpreting different PMC functions and missions. Currently policy guidance on the use of force by PMC personnel is strictly limited. Permission to allow PMC personnel to carry firearms in order to perform security functions is considered on a case-by-case basis by the theater commander. Under no circumstances may contracted security forces conduct any type of offensive military operations. The theater commander must consider the operational location, threat level, mission objectives, methods for identifying armed personnel and communication procedures for use between contractor security personnel and military personnel when using PMC personnel. In addition, weapons training and qualification documentation are required and all PMC personnel must have a completed background check and be appropriately vetted for operational security reasons.²⁰ Standardizing the use of PMC personnel and delineating the increased responsibilities of the combatant commander will enhance this contractor function as a U.S. force multiplier. Joint doctrine should harmonize theater policy using PMC contractors and their respective force protection measures provided by military forces.

Blackwater asserts that its mercenaries, and other private contractors, are part of the US "Total Force" constituting "its warfighting capability and capacity...in thousands of locations around the world, performing a vast array of duties to accomplish critical missions." Therefore, the company says, the only remedy available to the families of security or military contractors killed or injured in Iraq is the federal government's taxpayer-funded insurance program, known as the Defense Base Act. The actual number of private contractors killed in Iraq is impossible to verify because there is no official tally. According to the Labor Department, at least 647 private contractors died in Iraq between March 1, 2003, and September 30, 2006. Under the government insurance program, the maximum death benefits available to the families of the contractors is limited to \$4,123.12 a month. The lawsuit against Blackwater could result in much greater payments to the families of the four men killed in Fallujah--but from Blackwater, not US taxpayers. Attorney Miles says that Blackwater has attempted to use the federal Defense Base Act as "essentially insurance to kill."²¹

Congress has looked at the cost accounting measures and oversight of contracts with increasing skepticism and has submitted House Resolution 97 – *Providing for Operation Iraqi Freedom Cost Accountability*. This Bill if approved will mandate that the Department of Defense Inspector General and the Special Inspector General for Iraq Reconstruction to prepare and transmit to Congress a report that would contain among other requirements a detailed "accounting of how military and reconstruction funds in Iraq have been spent thus far...and sanctions shall be imposed against contractors who have engaged in fraud or abuse or war profiteering."²² Adapting to new contractor dynamics to include use of armed contractors for force protection and ever stringent congressional oversight mandates further theater policy considerations for the CCDR. Examining casualties from the current conflicts underscores the essentiality of providing force protection to contractors and shows a disregard for contractor noncombatant status.

As of December 2006 review of contractor battlefield casualties reveals approximately 770 contractors have died in Iraq and 52 have died in Afghanistan of which the largest percentage, over 30%, were providing security services as PMC contractors. The second largest group of contractor deaths due to hostile action was comprised of vehicle drivers or transportation supervisors which had 25% of the total contractor fatalities. The high risk now being assumed by contracted personnel on the battlefield signifies another operational consideration-force protection- that requires a theater mitigating strategy. Sobering in the deaths of these contractors is the absence of any differentiation in regard to the laws of land warfare and inherent protections that contractors historically assumed as part of battlefield risk. Reasons listed for contractor fatalities include beheadings, sniper attacks, small arms fire, mortar and rocket attacks and improvised explosive devices.²³ The Law of Land Warfare is not being

observed by our enemies in the contemporary battlefields of Iraq and Afghanistan. These cases demonstrate that unarmed contractors are at more risk and are preferred targets due to lack of inherent force protection and it cripples U.S. capabilities' by dissuading support by third country and host nation contracted allies. Current commanders in the Iraq area of operations are following theater policies that dictate appropriate force protection measures to prevent contractor loss of life from hostile actions. Adapting these procedures theater wide and ensuring similar procedures apply to arriving contractor replacements indicates an additional consideration for joint doctrine. The commander requires policy and doctrine stipulating appropriate force protection mitigating contractor risk and integrating contractor passive force protection measures with military support. This integration between contractor expectations for force protection and required military support would support seamless movement of contractors between joint forces.

As policy, doctrine and battlefield dynamics have occurred since 2001 so has the military force structure to manage contingency contracting operations. Differing throughout the Services is the force structure of trained contracting officers and noncommissioned officers to support expeditionary operations. The Air Force total force to manage contingency contracting operations includes over 800 deployable airmen to the Army's projected 240 contingency contracting Soldiers. This disparity is actually diminishing since the Army Contracting Agency (ACA) recommended changes to the Army contingency contracting forces supporting tactical and operational employment. As the largest user of contingency contracting, the Army's force structure changed as part of the Army's modularity redesign to support Army contingency contracting on the battlefield. The Assistant Secretary of the Army for Acquisition, Logistics and Technology ASA (ALT) and the U.S. Army Materiel Command (AMC) established a task force recognizing modular units would require more contracting support and that contracting teams required command oversight when deployed. Additionally, effectiveness of contractors and support requirements required the integration of contingency contracting requirements with the Army's Logistics Civil Augmentation Program (LOGCAP). The Army is standing up contingency contracting battalions and teams to prevent its units from competing against each other in purchasing goods and services from companies in the field. "The service recently created the first of the contingency contracting battalions in 2006; which provides commanders support on the ground by purchasing items -- everything from stone to portable toilets -- from local vendors.²⁴ Another will be established in the next month, according to Jeffrey Parsons, director of contracting for AMC. The contingency contracting mission also encompasses the LOGCAP managed by AMC and executed by the corporation Kellogg, Brown and Root. The contingency

contracting mission has been “fractured” across the Army. ACA controlled some operations, but U.S. Forces Command and AMC also played a role. However ACA did not have its own resources to execute the mission. That led to difficulties according to Parsons.

By the end of FY 2008, the Army will have increased capability to manage part of the contracting oversight issue with more contingency contracting headquarters and teams for contractor oversight and unit support. The Army force structure will consist of four Contracting Support Brigades that will function as the Army Service Component Command’s contracting advisor and the planner and coordination activity to execute theater contracting support plans. These Contracting Support Brigades, commanded by the Principals Assistant Responsible for Contracting (PARC) provide acquisition authority to contingency contracting teams and when deployed exercise command and control (C2) of deployed Contingency Contracting Battalions, Senior Contingency Contracting Teams and Contingency Contracting Teams. Additionally, it integrates with the Army Field Support Brigade (AFSB) and Integrates contracting support with joint and strategic partners. Three Contingency Contracting Battalions provide C2 for a mix of modular contingency contracting teams. These battalions advise Corps and Division Commanders on contracting support and in coordination with the Theater Sustainment Command (TSC) staff, develop Corps and Division contracting support plans. If the Contracting Support Brigade is not deployed these contingency contracting Battalions are operationally controlled by the AFSBs. Thirty seven Senior Contracting Teams or Contingency Contracting Teams will provide area or direct support to Brigade Combat Teams. This change of contingency contracting military managers generated an active component force of 122 officers and 118 NCOs that increased support to the field by 86 additional military contracting personnel. In totality, these 240 personnel are expected to manage contingency contracts for deployed forces and interface with Army Materiel Command’s LOGCAP.

As the Total Army Analysis (TAA) process is iterative and adaptive to force structure changes additional contingency contracting teams could be added. As a force structure entity, military contingency contracting personnel and teams are chartered to eliminate duplication of contracting efforts and competition among contracting units for local vendors, expand reach back capability, ensure consistent training of Contingency Contracting Officers, and provide common practices and procedures.²⁵ As evidenced there are significant force structure changes that are ongoing to support deployed Army forces which should enable better contingency contractor oversight on the battlefield. Although CENTCOM has established a Joint Contracting Command for Iraq and Afghanistan this organization is the exception. Most combatant commanders’ AORs do not have standing organizations to rapidly develop

procedures for joint contracting operations theater wide. Codified procedures and standard Joint contracting organizations that support a JFC's theater use of external contractors are undeveloped in many Combatant Commands.

In contrast to this lack of codified joint contracting management structure is the structure implemented by the United Kingdom to manage its Contingency Logistics (CONLOG) contract. Under the United Kingdom's approach the contract resides with the Joint operational commander who ensures an overarching contractor support policy. This is fundamentally different than the three U.S. service umbrella contracts: The Army's LOGCAP, the Navy's Construction Capabilities Contract (CONCAP) and the Air Force's Air Force Contractor Augmentation Program (AFCAP) contract are not jointly integrated or necessarily mutually supporting. This U.K single approach of Joint oversight for all external contracts would make external contractor oversight and standardization more efficient and effective but it would have to be codified by policy and joint doctrine.²⁶

If Service policy is already stipulated by adequate Legal, DOD, and Federal regulations this would support a Joint Contracting Command working for the Geographic Combatant Commander integrating all external contractors. Still required for all theaters is a basic building block –the capability to track contracting personnel throughout the theater. The CENTCOM Joint Contracting Command is trying to answer a basic question that underpins all force structure support- How many Contractors are operating in their theater? The argument that contracting operations are efficient and effective can not truly be answered until the scope of contractor operations and personnel workforce is known and validated. CENTCOM and the Multi-National Force- Iraq (MNF-I) wanted to ascertain a full accounting of contractors who reside or otherwise are “permanently” stationed in Iraq. Contractor employees are defined as U.S. nationals, third country nationals working on DOD contracts in Iraq and local Iraqi nationals who receive logistics support from U.S. forces. As a result The Executive Office of the President Office of Management and Budget sent a memorandum out in May 2006 to the Chief Acquisition Officers and Senior Procurement Executives requesting the number of contractors operating in Iraq.²⁷ Before we achieve effective processes to support contracting operations for a combatant commander U.S. military forces require a tracking system and joint processes enabling contractor accountability in theater.

Information of contractors operating in an area of operations relies on integrating different Service contracting agencies encompassing three distinct types of contractors in operational theaters for joint situational awareness. Systems contractors, external theater support contractors and internal theater support contractors comprise the three categories recognized

by doctrine for contracting support. The accountability system to manage the entire scope of contracting operations tailored to a Geographic CCDR does not currently exist but it is being developed. A materiel solution to address part of this problem of contractor accountability is being undertaken by AMC and several strategic partners focusing on the accountability and functional management process for contractors accompanying the force. Acknowledged in this new accountability process is the requirement that a joint approach to deal with all categories of contractors is required and it should fulfill the requirement for contractor tracking as outlined in DOD Instruction 3020.41. This system is envisioned to provide contract visibility as well as individual contractor asset location as a systems output for joint use. The functional management capability would present a single standard user interface for contractor companies to manage their contingency contracts and maintain by-name tracking of all personnel and contract capability information in a joint database. The advantages of this type of capability are tailored to CCDR requirements in that they provide a central source of personnel information and a summary of services or capabilities provided by all external support and systems support contracts for the provisions of force protection, medical support, personnel recovery, and logistics support. This capability would provide planners an awareness of the nature, extent, and potential risks and capabilities associated with contracted support in the area of responsibility. Ongoing is the integration of this end to end business and personnel system. On 25 January 2007, the Synchronized Pre-Deployment Operational Tracker (SPOT) was designated as the Joint database for contractors accompanying the force. SPOT will use initial data inputted by contracting companies and certified by contracting officials to establish a joint database. The next step in this materiel systems solution is to field the Joint Asset Management and Movement System (JAMMS) that will use this data to track contractor assets and movement.²⁸ Supporting Combatant Commanders requirements for a joint contractor personnel tracking system will require how this system will be implemented among service components.

To support future operations U.S. military and other governmental agencies must evolve joint contractor support incorporating lessons and policies developed in Afghanistan and Iraq. Analyzing the scope of contractor changes in context to changes of U.S. policy, joint and Service doctrine, military organizations, materiel requirements and leader training are required to identify contractor support shortfalls for operational military employment. The contemporary battlefield has identified current weaknesses in contractor force protection, required command authority for contractors and better military training for contractor employment. To fight as a joint team the combatant commander must force synchronization and standardization of

contractor operations across Service components and rely on joint exercises and joint training on contract processes to optimize contractor support. In a time of war change is difficult but it allows opportunity to drive needed contracting system and process reform supporting the theater commander. To be successful, a CCDR must continuously evaluate and assess the force multiplier of contracted logistics in his AOR. To effectively leverage these capabilities commanders must insist on joint doctrine and enablers that support operations underpinned by legal authority. External contractors that accompany the force or host nation contractors must be included in any future Joint planning, operations and training exercises. The Army Chief of Staff understands this problem and stated, "The strategic context should guide . . . an Army structure that supports an expeditionary, joint force structure and leverages training, education and inherent interdependencies as recognized principals . . . [for] development of future contracted logistics."²⁹

The first needed change among Service and joint planning is a change in planning procedures. An external contracted logistics requirement should be the first capability planned to be used in the AOR to support military operations. Current planning processes indoctrinate young military leaders in the mindset that external contracted logistics due to cost is the last capability that should be considered. The first rule on contract planning is contractors only augment the force and do not replace it. Planning then frames the question of logistic support for military forces as follows: Are support forces available? If so use existing military capability, if not then contract for regional support from Host Nation. If that still does not meet combatant commander requirements then plan to contract for external logistics support. This planning decision process is the opposite of how a Service or joint planner should consider contracting operations in an expeditionary environment. The first consideration should entail the requirement for external contracted logistics. This simple change in thinking ensures that the worse case scenario of involving U.S. contractors in the theater AOR forces planners to consider the multiple effects this will cause for their respective theater commander. Additionally, worse casing this complicated force structure requires the most detailed planning and policy considerations from joint staffs and the combatant commander. For example the critical analysis from the Government Accounting Office on CENTCOM's planning indicated that the Army Central Command did not follow guidance when planning for Operation IRAQI FREEDOM. The plan to support its military forces in Iraq was developed in May 2003, two months after the invasion, even though Army guidance recommends that a comprehensive statement of work be developed during the early phases of contingency planning. Additionally, even as it became clear that U.S. forces would remain in Iraq longer than originally anticipated,

LOGCAP planning was still often ineffective, partly because the Army often did not include contractor considerations in its planning, notwithstanding guidance to the contrary. Frequent revisions to the LOGCAP plans generated a significant amount of rework for both DOD and the contractor.³⁰

All joint planning should include external contractor requirements regardless of military force structure or how host nation support will be used. This type of planning effort would focus on defining the scope of any external or Joint LOGCAP task orders that could be provided in an AOR. Even if Host Nation support would not require some aspects of external support, the contract cost estimate could still assist in analyzing contractor costs provided from the host nation. Successful early planning is essential for shaping the contractor operations supporting the theater commander's forces and can greatly facilitate military operations. In contrast to the planning done by CENTCOM, the planning by U.S. European Command (EUCOM) was credited as being very effective at integrating contract support by implementing external contract planning requirements in October 2002 five months prior to initiation of hostilities. "In planning for Operation IRAQI FREEDOM, EUCOM was tasked with supporting the anticipated movement of troops through Turkey into Iraq, and our review of that planning showed that the command followed Army guidance to good effect." ³¹

Secondly, military training on joint contracting requires synchronizing and integrating contracted capabilities with theater support requirements as a required training objective for joint staffs, theater commanders, and senior leader development. An integrated scenario approach to joint training exercises focusing on second and third order effects of contracted operations can be developed using lessons learned from today's battlefields to refine theater procedures and theater guidance. United States Joint Force Command (USJFCOM) should lead this effort since it hosts two of the three enabling capabilities of DOD's Training Transformation initiative: the Joint National Training Capability (JNTC) and the Joint Knowledge Development and Distribution Capability (JKDDC).³² JNTC uses a mix of live, virtual and constructive models and simulations in an integrated network. Supporting this effort is JKDDC which focuses on online, individual, joint training for warfighters for relevant, timely, and globally accessible joint knowledge to support integrated operations.³³ Defense Acquisition University should continue their distributed interactive training modules that provide an effective tool to train leaders at all levels on the complexity and contract considerations for operational deployment. Currently, an individual self paced learning module exists online that informs military leaders on the planning and operational concerns that are encountered when contractors accompany the force.³⁴ These readily accessible continuous learning modules should be expanded and tailored to examine

contractor considerations for each geographic combatant commander's JOA. The intent of these new modules would provide overarching theater policy guidance and host nation contractor restrictions for the use of external contracted support. Expecting military leaders and staffs to be trained on contracting considerations may require a focused approach of alerting by MOS or grade the training target audience that these modules will support. This method would be similar to the on line portal techniques already used to alert military leaders and Soldiers of their medical status and their deployability readiness, this however focuses on continuing professional military education. Ensuring effective training for military leaders must balance cost and time availability of the trainee thus online targeting of selected personnel is essential to ensure the broadest reach of training education on contracting operations doctrine and techniques.

Finally, joint enablers that support contractors throughout the theater must leverage existing ongoing lessons learned in operations. Specifically, joint doctrine development for the new JP 4-10 must encompass a broad range of effects that contractors bring to the AOR to include policy for legal authority with the host nation country and policy on using UCMJ for contracted personnel. As tailored theater policies are developed and contracting capability is planned and anticipated, so must a systems approach be established for fielded and integrated contractor accountability system. This type of joint theater enabler will allow joint commanders situational awareness of contractor personnel and operations. In addition, joint staff responsibility for contractors should be established by Joint Doctrine in the J4. The implications of these changes to joint doctrine must be provided as part of the new JP 4-10 to support joint contracted logistics. As stated in the Army document, *Serving a Nation at War*, "The best way to anticipate the future is to create it."³⁵ The current wars in Iraq and Afghanistan provide a venue and vehicle to change and create joint contracted logistics doctrine and processes for the future.

Endnotes

¹ U.S. Department of Defense, *Continuation of Essential DoD Contractor Services During Crisis*, Department of Defense Instruction 3020.37 with Admin Change 1(Washington, D.C.: U.S. Department of Defense, 26 January 1996), 2. Summary: DOD Instruction 3020.37, *Continuation of Essential DOD Contractor Services During Crises*, 11/6/1990 with administrative reissuance Incorporating change 1, January 26, 1996. This Instruction implements DoD policy, assigns responsibilities, and prescribes procedures, in accordance with DoD Directive 1100.18, January 31, 1986 and Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," November 18, 1988, to provide reasonable assurance of the continuation of essential services provided by DoD contractors, including services provided to Foreign Military Sales customers, during crisis situations.

² Joint Chiefs of Staff, *Doctrine for Logistic Support of Joint Operations*, Joint Publication 4-0 (Washington, D.C.: U.S. Joint Chiefs of Staff, 6 April 2000). Note Joint Publication 4-0 is being rewritten with a release date 2007 or 1st Qtr 2008 new title will be *Joint Logistic Support*.

³ COL Mark W. Akin, Director, Joint Logistics Group, J9, U.S. Joint Forces Command, telephone interview by author, 26 February 2007.

⁴ Frank A. DiStasio, Jr., *Fiscal Year 2007 Army Budget Analysis* (Arlington: Institute of Land Warfare, Association of the United States Army, 2006), 51.

⁵ U.S. Department of Defense Instruction, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, Department of Defense Instruction 3020.41 (Washington, D.C.: U.S. Department of Defense, 3 October 2005). DoD Instruction 3020.41 *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, October 3, 2005; Under the authority of Section 133 of title 10, United States Code and Deputy Secretary of Defense Memorandum, "DoD Directive Review – Phase II," Washington, D.C. July 13, 2005, this Instruction establishes and implements policy and guidance, assigns responsibilities, and serves as a comprehensive source of DoD policy and procedures concerning DoD contractor personnel authorized to accompany the U.S. Armed Forces. This includes defense contractors and employees of defense contractors and their subcontractors at all tiers under DOD contracts, including third country national (TCN) and host nation (HN) personnel, who are authorized to accompany the U.S. Armed Forces under such contracts. Collectively, these persons are hereafter referred to as contingency contractor personnel. One significant sub-category of contingency contractor personnel, called contractors deploying with the force (CDF), is subject to special deployment, redeployment, and accountability requirements and responsibilities.

⁶ Joint Chiefs of Staff, *Joint Task Force Headquarters*, Joint Publication 3-33 (Washington, D.C.: U.S. Joint Chiefs of Staff, 16 February 2007) VIII-2b.

⁷ Joint Forces Command (JFCOM) *Joint Publication Revision Status Tracker: Posted 2 February 07*. Available from <http://www.dtic.mil/doctrine/pubstat/pubstatus.pdf>; Internet; accessed 1 March 2007.

⁸ Mr. Randy King, "Contractors Accompanying the Force Paradigm Shift! - A New Vision," briefing slides with scripted commentary, Carlisle Barracks, U.S. Army War College, 15 January 2007. Mr. Randy King, e-mail message to author, 29 January 2007.

⁹ Representative Duncan Hunter, sponsor of Public Law 109-364, the "John Warner Defense Authorization Act of 2007" (H.R.5122) Pentagon's Fiscal Year 2007 Budget Legislation Available from <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.05122>; Internet accessed on 1 Jan 2007: Summary: The one sentence section (number 552 of a total 3510 sections) states that "Paragraph (10) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended by striking 'war' and inserting 'declared war or a contingency operation'." That bill became a law (P.L.109-364)

¹⁰ *Persons subject to this chapter, Uniform Code of Military Justice*, sec. 802 art. 2a(10), (2005). The UCMJ provides that, "In time of war, persons serving with or accompanying an armed force in the field" are subject to UCMJ.

¹¹ Peter W. Singer, *Frequently Asked Questions on the UCMJ Change and its Applicability to Private Military Contractors* (Washington D.C.: The Brookings Institution, 1 December 2007)

¹² *Ibid.*, 2.

¹³ Joint Chiefs of Staff, *Doctrine for Logistic Support of Joint Operations*, Joint Publication 4-0 (Washington, D.C.: U.S. Joint Chiefs of Staff, 6 April 2000). Joint Publication 4-0 is being rewritten with a release date 2007 or first quarter 2008, the new title will be *Joint Logistic Support*.

¹⁴ Associated Press, "C.I.A. Contractor Is Sentenced," *New York Times*, 14 February 2007. A former contractor for the Central Intelligence Agency was sentenced to eight years and four months in prison for beating an Afghan detainee who later died. The contractor, David A. Passaro, left, was accused of hitting the detainee, Abdul Wali, with a flashlight and kicking him in the groin during a two-day interrogation in July 2003. Mr. Wali died within 48 hours. Mr. Passaro, 40, was the first American civilian charged with mistreating a detainee in the wars in Iraq and Afghanistan.

¹⁵ Colonel Cliff D. Crofford, Jr., *Private Security Contractors on the Battlefield*, Strategy Research Project (Carlisle Barracks: U.S. Army War College, 31 May 2006).

¹⁶ DR R.J Hillhouse, "The Spy Who Billed Me, Outsourcing the War on Terror," available on http://www.thespywhobilledme.com/the_spy_who_billed_me/military/index.html; Internet; accessed 9 January 2007.

¹⁷ Department of the Air Force Office of the General Counsel, Air Force General Counsel Guidance Document Deploying with Contractors: Contracting Considerations November 2003.

¹⁸ *Ibid.*, 6.

¹⁹ House of Representatives, "Transparency and Accountability in Security Contracting Act of 2007," [Introduced in House Resolution.369.IH] available from <http://thomas.loc.gov/cgi-bin/query/D?c110:4:/temp/~c110yIH3Kf>; Internet; accessed 16 Nov 2006.

²⁰ Department of Defense, Defense Acquisition University Homepage, Continuous Learning Modules Contractors Accompanying the Force CLC 112; available from <http://clc.dau.mil>; Internet; accessed 1 January 2007.

²¹ Jeremy Scahill and Garrett Ordower, "From Whitewater to Blackwater, posted 26 October 2006," *The Nation*, available on http://www.thenation.com/doc/20061113/whitewater_to_blackwater; Internet; accessed 3 Jan 2007.

²² House of Representatives, "Providing for Operation Iraqi Freedom Cost Accountability," [Introduced in House Resolution 97.IH] available from <http://thomas.loc.gov/cgi-bin/query/D?c110:6:/temp/~c110xgRTYx>; Internet; accessed 15 Nov 2006.

²³ *Iraq Coalition Casualty Count*, available from <http://icasualties.org/oif/default.aspx>; Internet; accessed 14 November 2006. There is not a single database to track total contractor casualties that shows exact cause of death available to the public; Actual contractor casualties can be found from the U.S. Department of Labor under the Defense Base Act. The goal of this

website is to document coalition casualties for Operation Iraqi Freedom and Operation Enduring Freedom by a private organization that attempts to be up to date, precise, accurate and reliable.

²⁴ Jen DiMascio, "Service Begins Creating Contingency Contracting Units Under AMC," August 28, 2006 linked from *Inside Defense* at "Inside the Army," available from http://www.insidedefense.com.library.carlisle.army.mil/secure/defense_docnum.asp?f=defense_2002.ask&docnum=ARMY-18-34-8; Internet; accessed 13 Nov 2006. The Army's plans for transformation demands a new approach. When the service began creating modular brigade combat teams, the initial design included two non-commissioned contracting officers and one contracting officer to support them. Lt. Gen. Joseph Yakovac, the military deputy to the Assistant Secretary of the Army for Acquisition, Logistics and Technology, said the service didn't have enough contracting officers to support the structure...In the fall of 2004, Yakovac asked a team to look at how to better organize contracting options for the modular force. That structure was approved by Army Vice Chief of Staff Gen. Richard Cody in June 2006. The Army's new system of contingency contracting units allows the services to buy for a number of deployed divisions at the same time. Lt. Gen. William Mortensen, AMC's deputy commanding general, said in an Aug. 24 statement, "From now until fiscal year 2008, the service will continue standing up units, which eventually will include more than 200 officers and noncommissioned officers." The Army's new system is modeled on the way contingency contracting is handled by the joint community through the Joint Contracting Command. In Iraq and Afghanistan an Air Force two-star general provides support for deployed forces. The Army's new contracting teams will fit into that organization be synchronized with the JCC structure.

²⁵ Ms Tiffany Thompson, "U.S. Army Materiel Command Contingency Contracting Brief," briefing slides available from Army Materiel Command Contracting February 2003.

²⁶ Matthew Uttley, *Contractors on Deployed Military Operations: United Kingdom Policy and Doctrine* (Carlisle: U.S. Army War College, Strategic Studies Institute, 2005), 52.

²⁷ Robert A. Burton, Associate Administrator, Office of Federal Procurement Policy, "Memorandum for Chief Acquisition Officers, Senior Procurement Executives, Subject: Request Contracting Information on Contractors Operating in Iraq," Dated 16 May 2006.

²⁸ LTC Richard Faulkner, "Contractor Management Project Update Brief," briefing slides available from Army Materiel Command February 2007.

²⁹ General Peter J. Schoomaker and Acting Secretary of the Army Mr. Les Brownlee, *United States Army Serving A Nation At War: A Campaign Quality Army with Joint and Expeditionary Capabilities* (Washington, D.C.: Pentagon, Army Strategic Communications), Foreword; available from <http://www.army.mil/jec/index.html>; Internet; accessed 1 Feb 2007.

³⁰ U.S. General Accounting Office, *Military Operations DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854 (Washington, D.C.: U.S. General Accounting Office, July 2004), 3, available from <http://www.gao.gov/new.items/d04854.pdf>; Internet; accessed 18 December 2006.

³¹ U.S. General Accounting Office, *Military Operations DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854 (Washington, D.C.: U.S.

General Accounting Office, July 2004), 18, available from <http://www.gao.gov/new.items/d04854.pdf>; Internet; accessed 18 December 2006.

³² Joint Forces Command, Joint Training Directorate and Joint Warfighting Center (J7/JWFC) available from http://www.jfcom.mil/about/fact_jkddc.htm; Internet; accessed 4 January 2007. Joint Knowledge Development and Distribution Capabilities' (JKDDC) Web site offers more than 600 hours of interactive, individual training. DOD's goal for JKDDC is to help transform the force by creating a capability that will provide immediate access to individual joint knowledge resources. Objectives include: Preparing individual warfighters for duty before and during deployment, exercise participation and collective training; Supporting a joint knowledge management capability with real-time reach-back between individual warfighters, operations staffs, subject matter experts and key information sources; incorporating all aspects of advanced distributed learning; Supporting the Joint Learning Continuum and facilitating joint leader development.

³³ *Joint Forces Command, Joint Training Directorate and Joint Warfighting Center (J7/JWFC)* available from http://www.jfcom.mil/about/abt_j7.htm; Internet; accessed 3 January 2007.

³⁴ *Defense Acquisition University Homepage, Continuous Learning Modules*, available from <http://clc.dau.mil>; Internet; accessed 1 January 2007.

³⁵ General Peter J. Schoomaker and Acting Secretary of the Army Mr. Les Brownlee, *United States Army Serving A Nation At War: A Campaign Quality Army with Joint and Expeditionary Capabilities* (Washington, D.C.: Pentagon, Army Strategic Communications), Foreword, available from <http://www.army.mil/jec/index.html>; Internet; accessed 1 Feb 2007.