

PROGRAM OVERSIGHT OF CONTRACTORS ON THE BATTLEFIELD

BY

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USAWC STRATEGY RESEARCH PROJECT

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The use of contractors in the battlefield is not new. They have been employed throughout history to fulfill combat and combat support functions. However, the magnitude of reliance on contractors has grown leading to a rapid rise of an uncontrolled industry. Reduction in force and defense budgets, out-sourcing, complex technology, and operational tempo has forced the United States Government to rely heavily on non-uniformed support to carry out mission objectives in a theater of operations. Contracting has had several problems to include insufficient oversight, transparency and accountability, and ambiguous legal status potentially leading to contract waste, fraud and abuse. To reduce waste, fraud and abuse there are several tools that the federal government can use. This paper will focus on those tools that are not being effectively utilized and provide recommendations for improving contractor performance and accountability, contracting and management systems and practices, as well as, the skills of the acquisition workforce.

PROGRAM OVERSIGHT OF CONTRACTORS ON THE BATTLEFIELD

Civilian contractors have accompanied and supported troops in the field throughout much of history and are no longer restricted to acquisition and logistics functions. They are found nearly everywhere, and their presence on the battlefield is a reality.¹ Contractors provide a wide range of services, which include supply and field operations, engineering and construction, communication networks, transportation and cargo, facilities maintenance, logistics support for some new weapon systems, operating information and intelligence systems, equipment repair and maintenance, linguistics, and personal security. They provide support to weapons systems such as the Apache helicopter and chemical and biological detection equipment.² They serve as the most trusted advisers to the three and four-star generals leading the nation's wars. They spy on foreign governments, eavesdrop on terrorist networks, craft war plans, and gather information on local factions in war zones, according to the Washington Post.³ The U.S. Army has never fought an extended conflict that required this many functions to be outsourced. What makes this significant is the level of support, location, and criticality of the support contractors now provide. Several factors contribute to the increased use of contractors. They are as follows: the downsizing of the military after the Cold War, a growing reliance on contractors to support high-tech weaponry and provide initial or lifetime support for complex weapon systems. Efforts to improve efficiency and accrue funds for sustainment and modernization programs, public opinion was a significant concern of political and military leaders in the war in Iraq and leaders believed that the use of contractors would diminish American troop casualties,⁴ and personnel reductions and budget cuts have also been driving factors in the move to

outsource or privatize many functions or activities.⁵ Never before has the distinction between civilian and Soldier been as blurred or tactical operations relied as heavily on nonmilitary personnel. Privatization allows soldiers to focus on combat mission roles rather than combat service support roles, and provides a surge capacity to field additional support forces rapidly as a force-multiplier without the residual cost of employing a large military force.⁶

Since the terror attacks of September 11, 2001, this enterprise has grown so unwieldy and expensive that, according to Dana Priest and William Arkin of the Washington Post, no one knows what it costs, how many people are employed or in what functions. It seems that when national security, is used as justification no expense is spared and few questions are asked. The result is an enterprise so massive that nobody in the government has a full understanding of it.⁷

The extensive use of contractors on the battlefields of Iraq and Afghanistan has engendered strong emotion and calls for change.⁸ Policymakers continue to express concern over the management and oversight of contracts in these regions for several reasons, including; the expense and difficulty of managing logistical support contracts; transparency and accountability;⁹ alleged favoritism in issuing them;¹⁰ allegations and reported instances of contract waste, fraud, abuse, and financial mismanagement; and questions regarding Department of Defense (DoD's) ability and capacity to manage such contracts.¹¹ With hundreds of billions of U.S. taxpayer dollars invested in the two theaters since 9/11, and probably more to come, it is critical that we continue to strengthen our oversight of the contracting in these areas.¹²

DoD's primary challenges have been to provide effective management and oversight, including failure to follow planning guidance, an inadequate number of contract oversight personnel, and a lack of comprehensive training for military commanders and contract oversight personnel. These challenges have led to lack of oversight, discipline and accountability in contract management, and negative operational and monetary impacts potentially leading to contract waste, fraud and abuse.¹³ To reduce waste, fraud and abuse there are several tools that the federal government can use. This paper will focus on those tools that are not being effectively utilized and provide recommendations for improving contractor performance and accountability, contracting and management systems and practices, as well as, the skills of the acquisition workforce.

DoD has taken steps to improve how it manages and oversees contractors in Iraq and Afghanistan. These steps include tracking contracting data, coordinating the movements of contractors throughout the battle space, issuing new policy on managing contractors, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce to manage contractors in Iraq and Afghanistan and updating DoD doctrine to incorporate the role of contractors. However, some of these efforts are still in progress and could take many years to effectively implement.¹⁴

Absence of a Comprehensive Database

In the federal government there is no lead agency responsible for establishing and maintaining contractor visibility and there are no standardized procedures or automated systems designed to capture visibility of the contractors in theater. Due to the lack of a centralized tracking and functional management process for contractors deployed into theater, maintaining accurate contractor personnel accountability has

been, and continues to be, a significant challenge to commanders at all levels.¹⁵ DoD cannot develop a complete picture of the extent to which it relies on contractors to support its operations, because information on the number of contractor employees, and the services they provide, is not aggregated within DoD or its components. The fact that agencies do their own hiring and no central database exists introduces a great deal of uncertainty. An example of the significant challenges that affect DoD's ability to oversee contract support is the Joint Improvised Explosive Device (IED) Defeat Organization (JIEDDO). According to the General Accountability Office (GAO), DoD has invested over \$16 billion in JIEDDO with one goal; to defeat IEDs. This includes testing and evaluating systems in theater, and providing intelligence support for tactical-level operations, route clearance missions, and law enforcement professionals. JIEDDO relies heavily on contractor support to accomplish its mission. JIEDDO does not effectively identify, track, and report all government and contractor personnel as provided for in DoD Directive 1100.4. Identifying all government and contractor personnel is important to JIEDDO's management and oversight responsibilities and contributes to its ability to effectively plan for its future workforce needs. When the Senate Appropriations Committee directed that JIEDDO provide a comprehensive accounting of all of its personnel, including contractors, by May 2007, JIEDDO had to rely on an ad hoc process to develop the report, which resulted in several inaccuracies and inconsistencies.¹⁶ JIEDDO must develop an effective internal control system and establish a means to comprehensively identify, track, and report all personnel, including contractors providing support for the deployed Counter-IED (C-IED) systems.

The GAO reported that higher-level action is required to address long-standing problems with the management and oversight of contractors supporting deployed forces. To address this problem Congress has taken a number of actions to increase oversight of contractors. Among these, the National Defense Authorization Act for Fiscal Year 2008 (NDAA for FY2008) directed DoD, the Department of State, and United States Agency for International Development (USAID) to sign a memorandum of understanding (MOU) regarding maintaining a common database of information on contracts and contractor personnel. According to GAO, these agencies signed the MOU in July 2008 agreeing that a Web-based system, designed and used by DoD, would be the system of record for the statutorily-required contract and contractor personnel information including third country and local nationals.¹⁷ The MOU specified that Synchronized Pre-deployment Operational Tracker (SPOT) would include information on DoD, State, and USAID contracts with more than 14 days of performance in Iraq or Afghanistan or valued at more than the simplified acquisition threshold, which the MOU stated, was \$100,000, as well as information on the personnel working under those contracts.¹⁸ Congress required that SPOT contain all contract-related information for Iraq and Afghanistan.¹⁹ DoD directed contractor firms to enter personnel data for contracts performed in Iraq and Afghanistan.²⁰ In implementing SPOT, the three agencies' specified criteria for determining which contractor personnel are entered into SPOT varied and were not consistent with the criteria in the MOU. For example, DoD, State, and USAID officials stated that the primary factor in deciding to enter contractor personnel into SPOT was whether they needed a SPOT-generated letter of authorization (LOA) required to receive military identification cards, travel on

U.S. military aircraft, or, for security contractors, receive approval to carry weapons. Using this criterion, individual's needing LOAs were entered into SPOT even if their contracts did not meet the MOU's 14-day of performance or \$100,000 thresholds.²¹ Thus local nationals were not being entered into SPOT as they did not need LOAs. However, because of varying criteria on which contractor should be entered into the system, the information in SPOT does not present an accurate picture of the total number of contractors in Iraq and Afghanistan.²² Further, the GAO report states that the three agencies could not verify the accuracy or completeness of the contractor personnel data they provided, and officials acknowledged that they are likely undercounting the actual number of contractors working in Iraq and Afghanistan. Officials from the three agencies stated they lack the resources to verify the information being reported by their contractors, their primary source of data.²³

When contractor employees are involved in supporting an operation, they must be accounted for in a similar manner as military and civilian personnel. In order to accurately account for contractors, agencies must hold government and contractor personnel accountable for proper reporting, eliminate conflicting guidance, and ensure that criteria for entering contracts and contractor personnel into SPOT is consistent with the MOU and NDAA. Agencies must also lower the threshold to track contractor personnel and expand SPOT capability to generate reports on contractors wounded and killed. Until SPOT is effectively implemented, agencies and Congress will not receive reliable information on contracts and contractor personnel to improve oversight and decision making. Further, the government not contractors should be required to enter data into SPOT and Congress must designate a lead manager for SPOT.

Lack of Effective Financial Management

Questions have been raised about federal spending on contractors. The Chairmen of the Commission on Wartime Contracting (CWC) estimates that the United States has wasted tens of billions of the nearly \$200 billion that has been spent on contracts and grants since 2002 to support military, reconstruction, and other U.S. operations in Iraq and Afghanistan.²⁴ The principal motivation behind creation of the CWC was that the State Department could not provide a line-by-line accounting of the money it had spent on reconstruction in Iraq.²⁵ The commission has also highlighted overspending on contracts as a key concern.²⁶

The Federal Managers Financial Integrity Act of 1982 establishes the overall requirements with regard to internal controls. Accordingly, an agency head must establish controls that reasonably ensure that (1) obligations and costs are in compliance with applicable law; (2) all assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (3) revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.²⁷ For example, JIEDDO's financial management processes do not provide adequate assurances that its financial information is accurate. As a result, the GAO reports that JIEDDO is unable to provide full transparency over the cost of its operations.²⁸ In reviewing funding transactions totaling \$795 million, 18 of 24 initiatives were not properly authorized in accordance with internal control standards. As a result, funds may be used without proper scrutiny and without a mechanism to detect, correct, or address this control failure. Further, JIEDDO does not have controls to ensure that transactions are properly categorized. For example, of the \$1.34 billion in fiscal year

2007 commitments reviewed, JIEDDO inaccurately categorized at least 83 percent of these dollars under one category that should have been applied to others.²⁹ This could distort information used in assessing trends and prioritizing funds.

Another example involves the U.S. Army's largest contract, the Logistics Civil Augmentation Program (LOGCAP). LOGCAP funding provides life support services and other combat logistics support to Soldiers, Sailors, Airmen, Marines, civilians, and contractors in Operation Enduring Freedom and Operation Iraqi Freedom.³⁰ In 2004, the U.S. government released a Design-Build (DB) Request for Proposal to provide construction services in Iraq. Between January and March, 2004, twelve DB cost-reimbursement contracts worth \$5.8 billion were awarded to nine contractors (two contractors received multiple contracts). Due partly to political changes on the ground in Iraq, the five contracts under the new Administrative Task Orders (ATOs) were largely idle from March to November 2004.³¹ During this period, the contractors were fully mobilized and incurred expenses to house, manage and protect their employees. The companies submitted invoices for \$62.1 million in indirect costs, while claiming just \$26.7 million in direct costs.³² The highest ATO costs involved the Kellogg Brown and Root (KBR) DB contract. Although KBR was issued its mobilization task order in February, 2004, ATOs were not issued until June, 2004, almost four months after the mobilization task order. Substantial direct project activity did not occur until November, 2004.³³ For this contract, KBR ATO costs were \$52.7 million, direct project (actual job) costs were \$13.4 million,³⁴ and mobilization costs were \$5.8 million.³⁵ In August 2004, the contracting officer wrote to KBR expressing concern that the company was "accruing exorbitant costs at a rapid pace," according to the Special Inspector General

for Iraq Reconstruction (SIGIR) report.³⁶ The SIGIR attributed the lag time to poor planning on the government's part.³⁷ In addition, audits conducted by the Defense Contract Audit Agency (DCAA) found that contractors' had inadequate accounting and billing systems.

A company's costs can also be higher by hiring layers of subcontractors to do their work for them through overhead fees being passed from one contractor to another. For example, under Blackwater Security Firm's contract for private security services in Iraq, the contract paid workers guarding food trucks a salary of \$600 a day. The company added overhead costs and a 36% markup to its bill, and forwarded the bill to a Kuwaiti company. The Kuwaiti company added their costs and profit, and sent the bill to the food company. The food company did the same, and finally sent the bill to KBR. KBR passed its cost on to DoD. In a congressional committee hearing the U.S. Army stated that it had never authorized KBR to enter into a subcontracting relationship with Blackwater.³⁸

The Coalition Provisional Authority (CPA) provided less than adequate control for approximately \$8.8 billion of Development Fund for Iraq funds provided to Iraqi ministries through the national budget process. The CPA did not establish or implement sufficient managerial, financial, and contractual controls to ensure that funds were used in a transparent manner.³⁹ Consequently, there was no assurance that the funds were used for purposes mandated by United Nations Security Council Resolution 1483 that required funds to be used for humanitarian needs, economic reconstruction and infrastructure repair. Furthermore, KBR did not provide the CPA with sufficiently detailed cost data to evaluate overall project costs and whether specific costs for

services were reasonable and neither LOGCAP contract nor the Task Order 44 required detailed cost data. The LOGCAP contract was awarded to KBR even though the contractor did not have certified billing or cost-and-schedule reporting systems.⁴⁰

JIEDDO, LOGCAP, and CPA are few examples where comprehensive financial management controls were not effectively implemented. Taxpayer dollars are at risk when contractors have questionable and inadequate business practices and fail to provide access to internal information that is important for efficient audit and oversight.⁴¹ Some of these concerns can be alleviated using past performance data. However, past performance data is not being properly recorded by all agencies or government officials in the federal database. Agencies should consistently record contractor's performance evaluation in past performance databases such as the Contractor Performance Assessment Reporting System and use the information during the source selection process. Agencies' failure to record contractor performance increases the risk of agencies' awarding contracts to habitually poor performers and limits the agencies' ability to expand the competitive pool of good performing contractors. Other tools include suspending and debarring contractors from doing business with the federal government who do not maintain acceptable business practices and ensuring that the prime contractors meet their legal obligation to adequately manage their subcontractors.⁴² Strengthen civilian agencies' authority to withhold payments for poor contractor business practices, and train government including senior leadership on the use of contracting. Contract requirements should include tracking, billing and monitoring of direct and indirect costs to include work stoppages, and project planning should be conducted to minimize contractor down-time by the government.

Lack of Adherence to the Acquisition Process

A lack of clearly defined requirements and noncompliance with steps of the acquisition process required by applicable regulations, directives and guidance, reduces transparency and accountability.

For example, JIEDDO has the ability to quickly field its initiatives through the use of an expedited acquisition process called the Joint IED Capability Approval and Acquisition Management Process (JCAAMP). JIEDDO's goal is to place C-IED initiatives in the hands of warfighters within two to eight months. The GAO report states that JIEDDO inconsistently applied JCAAMP allowing initiatives to bypass some or all of the process's key milestone decision reviews and approval steps. As a result, JIEDDO and the services lack full visibility over C-IED initiatives thus limiting visibility over C-IEDs efforts across DoD.⁴³ This lack of visibility could lead to duplication of efforts. The GAO report stated that the exclusion of initiatives from JCAAMP, coupled with noncompliance with steps of the process required by applicable guidance, reduces transparency and accountability of JIEDDO's actions internally, as well as with the Deputy Secretary of Defense, the Services, and other DoD components. Without management oversight at important milestones in the approval and acquisition process, some funds appropriated for JIEDDO may be used to support efforts that do not clearly advance the goal of countering IEDs.⁴⁴

Each armed service has its own distinct processes and organizations for managing deployed contractor personnel, such as the Army's LOGCAP, the Navy's Construction Capabilities Contract Program, and the Air Force's Contract Augmentation Program. These programs remain separate and uncoordinated, which results in disjointed policies, duplication of capabilities, and different styles of management.⁴⁵

The LOGCAP III contract contained Federal Acquisition Regulation (FAR) clause 52.216-26, and it applied to LOGCAP III undefinitized task orders. In February 2004, more than 3 years after awarding LOGCAP III, the Army learned that it had failed to withhold a portion of contractor reimbursements required by the clause. Therefore, in noncompliance with FAR clause 52.216-26, the Army had paid the contractor for all of its incurred costs on the task orders. After postponing enforcement of the clause for several months in 2004, the Army asked the Director of Defense Procurement and Acquisition Policy to grant a deviation from FAR clause 52.216-26 which would allow the Army to reimburse all costs billed on these task orders. The Director of Defense Procurement and Acquisition Policy granted the deviation on February 2, 2005.⁴⁶ The contractor claims that the withholding of funds might impact vital support services to the troops influenced the Army's position not to implement the 15 percent withhold.⁴⁷ Despite having to modify the LOGCAP III contract each year to extend the performance period, Army Sustainment Command (ASC) failed to recognize the need to develop an alternative plan to ensure continued LOGCAP III services as DoD Instruction 3020.37 requires. In addition, the failure to enforce the clause from the inception of the contract in December 2001 (nearly 3 years) represents a significant internal control weakness that put the Government at significant risk for overpayment.⁴⁸ The Commanding General's sole reliance on the prime contractor and its subcontractors concerning the estimated impact on battlefield operations without verification or performance of a thorough and independent review of the estimated impact diminished the government's leverage in enforcing critical contract clauses such as FAR clause 52.216-26.⁴⁹ ASC

has since changed its acquisition strategy on LOGCAP IV to avoid the reliance on one contractor and to help ensure that enforcement of contract clauses is not jeopardized.

Unfinitized contract actions do not require that the DoD contracting official write a completed performance work statement before the work is performed. Although unfinitized task orders allow the contractor to begin work quicker, they carry associated risks to the Government. Recognizing those risks, the FAR and Defense Federal Acquisition Regulations (DFARS) place limits on the length of time a contract action can remain unfinitized, and the percentage of costs that can be reimbursed before definitization. For example, DFARS 217.7404-3 generally requires definitization within 180 days after work begins. In two separate reports issued in June and July of 2004, the GAO noted that the Army had not definitized several LOGCAP III task orders in a timely manner. As of June 2004, the Army had not definitized thirty-one LOGCAP III task orders, and several of those exceeded the 180-day limit.⁵⁰

The inability to properly define and prepare requirements appeared to be a significant oversight challenge in the Iraq contracting process. Poorly defined requirements, insufficient competition, and lack of properly trained personnel could lead to waste, fraud and abuse. The GAO reported that military officials utilizing LOGCAP had little understanding of LOGCAP or their contract management responsibilities. Additionally, some logistical support units intended to assist military commanders had no prior LOGCAP or contracting experience.⁵¹ The Secretary of the Army, Pete Geren, who appointed "Special Commission on Army Acquisition and Program Management in Expeditionary Operations" to review contracting linked to the war effort said, "We also need to do a better job in training our commanders on their responsibilities for

requirements definition and contractor performance."⁵² Government officials must be trained in the acquisition processes and improved procedures or internal control methods related to contract clause enforcement and compliance with the FAR, DFARS and other applicable DoD regulations, directives and instructions relating to the acquisition processes are required.

Lack of Acquisition Skilled Workforce

The 1996 DoD Authorization Act required DoD to reduce its acquisition workforce by 25 percent by fiscal year 2000. After these reductions, DoD has not increased its acquisition workforce even when appropriations have gone up significantly since 9/11 and despite the increased complexity of contracting. In fact, the workforce has been declining.⁵³ The CWC reported that managerial shortages and limited oversight of contractors led to potentially unnecessary construction, such as a new \$30 million dining facility to be completed a year before U.S. troops were required to leave Iraq, even though a then-recently upgraded dining facility was located nearby.⁵⁴ The single greatest shortfall in contracting practices in Iraq and Afghanistan was that Washington lacked the capacity to oversee the unexpected massive volume of contracts. An adequate workforce helps to prevent waste, fraud and abuse by providing oversight and accountability and defining requirements. There cannot be well managed contracts without people to manage them. The Gansler Commission report concluded that Army expeditionary contracting had the following deficiencies: increased workload, increased complexity, increased tempo, declining capability and questionable Army Acquisition Management.⁵⁵ FAR part 37 states that "agencies shall ensure that sufficiently trained and experienced professional are available to manage contracts." The burden rests with the federal government to ensure that enough appropriately trained professionals

are available to manage contracts.⁵⁶ As the SIGIR noted, “the shortage of personnel (and the widespread lack of required skill and experience among those available) affected all facets of reconstruction assistance.”⁵⁷ DoD lacked the capacity to provide sufficient numbers of contracting, logistics, and other personnel, thereby hindering oversight efforts. One rationale often cited for the outsourcing of program management to industry is that DoD no longer has the in-house expertise needed to manage such complicated acquisition programs.⁵⁸ Over the past few years the size, shape, and complexity of logistical support service contracts have grown with the technical requirements. However, the size of the federal contractor workforce has decreased. There is now an imbalance. There are fewer federal contracting officials to manage the large-scale contracts and in some cases the government has sought to hire contractors to do the job that federal employees use to perform. Secretary Gates has announced a move to significantly increase the size of the defense acquisition workforce, primarily achieved by converting about 10,000 private-sector contractor positions to full-time government positions, and hiring an additional 10,000 defense acquisition workforce employees by 2015.⁵⁹ According to DoD officials, the long-term goal is to increase the size of the organic defense acquisition workforce to its 1998 levels of approximately 147,000 employees.⁶⁰ At the same time, statements issued by President Obama have signaled his intention to reduce contractors by 10% and defense contracting spending by reviewing DoD’s acquisition processes prior to the commencement of the next Quadrennial Defense Review, and to require each federal agency to justify the use of cost-reimbursement (also known as costs-plus) and sole-source (also known as non-competitive) contracts with possible implications for DoD acquisition policy.⁶¹

DoD's ability to assure that taxpayer dollars are being used judiciously is limited because it does not have sufficient numbers of contractor oversight personnel. For example, in recent testimony before Congress, a GAO official reported that if adequate staffing had been in place, the Army could have realized substantial savings on LOGCAP contracts in Iraq. The GAO official also stated that one Defense Contracting Management Agency (DCMA) official, who is responsible for overseeing the LOGCAP contractor's performance at 27 locations, reported that he was "unable to visit all of those locations during his six-month tour to determine the extent to which the contractor was meeting the contract's requirements."⁶² In reducing the size and shape of the federal acquisition workforce, an unanticipated result has been the increase in the growth of the private sector service contracts and with not enough contracting officials. The past downsizing of the defense acquisition workforce has resulted in the loss of technical personnel and a talent drain on DoD's ability to meet its mission and objectives.⁶³

Congress is concerned about the federal oversight and management of DoD contracting in Iraq and Afghanistan, particularly under programs that involve large sums of money such as LOGCAP. According to the congressional testimony of Charles Williams, director of the DCMA, there are more than 600 oversight positions still vacant in Iraq and Afghanistan.⁶⁴ Recent assessments from GAO, DoD IG, and the SIGIR reveal a lack of federal oversight, management, and accountability for funds spent for Iraq contracting.⁶⁵ The Gansler report determined that the Army contracting process is undermanned, overworked, inexperienced, and undervalued by the operational Army. Urgent reforms in Army contracting and acquisition expeditionary operations is required

such as (1) Increased stature, quantity and career development for contracting personnel for both military and civilian, particularly for expeditionary operations;⁶⁶ (2) Restructure of the organization and responsibility to facilitate contracting and contract management;⁶⁷ (3) Training and tools for overall contracting activities in expeditionary operations; and⁶⁸ (4) Legislative, regulatory, and policy assistance to enable contracting effectiveness, important in expeditionary operations.⁶⁹

The workforce has not been adequately expanded, trained, structured, or empowered to meet warfighter needs⁷⁰ and ceilings on military and civilian personnel have led senior leaders to rely on contractors. It is therefore important that both civilian and military sectors have qualified and experienced contract professionals. To enhance this capability, DoD should develop a long-term plan to restore in-house expertise e.g. contracting officials and logisticians reducing the number of contractors, identify workforce qualifications and skills and training needs, offer competitive salaries and bonuses, use full authorities (such as direct-hire authority and annuitants without offsetting salaries) to hire highly qualified experts and skilled acquisition professionals to maintain appropriate balance between contractor roles and federal employee's. The government employees must have the required education and training, support tools, and authorities to do their job. Senior military officers and civilian must be familiar and knowledgeable about the contracting process.

Contract Management

Contracting officials are expected to make tough decisions. The April 28, 2010 issue of the Congressional Research Service report states that Ms. Bunnatine Greenhouse, formerly the highest-ranking civilian at the U.S. Army Corps of Engineers, raised important questions on the rationale for awarding KBR contracts without

competition.⁷¹ She objected to the awarding of one contract award as well as the five-year contract term. The basis for her refusal to approve the proposed five-year, sole-source contract between KBR and the U.S. Army (for the Restore Iraqi Oil contract) was because (1) KBR had been paid \$1.9 million to draft a contingency plan to design the “guts” of the contract, including the process, budget, and other details; and (2) selecting KBR for the five-year contract would violate procurement protocol, as (reportedly, Ms. Greenhouse stated) contractors who draw up a contingency plan cannot be allowed to bid on the job to execute the same plan. She stated that bidding on the contract would give KBR an unfair advantage over any competitors. When pressured to sign the KBR contract, Ms. Greenhouse added the following contract language: “I caution that extending this sole source effort beyond a one-year period could convey an invalid perception that there is not strong intent for a limited competition.”⁷² The contract was later investigated by the SIGIR. Various media reports suggested that in the case of Bunnatine Greenhouse, a trained and experienced senior DoD contract management official was eventually demoted and later fired for doing her job.⁷³

In another incident involving ASC, without authority, two ASC Commanding Generals postponed enforcement of FAR clause 52.216-26 for several months in 2004.⁷⁴ They directed a contracting officer to postpone the withholding of funds on the LOGCAP III contract in noncompliance with the FAR.⁷⁵ According to DoD IG, ASC later obtained a FAR deviation in February 2005, which authorized ASC not to implement the clause; the deviation request did not include complete or accurate information. While the timing of two employee reassignments raised the possibility that they could have been related to the individuals' efforts with regard to the 15 percent withhold issue as

previously mentioned, DoD IG did not find sufficient evidence to substantiate that the efforts of the two ASC contracting officials to implement the FAR clause was the basis for their removal from the LOGCAP III contract.⁷⁶

Congress is also concerned about the amount of money spent on contractor insurance premiums through the Defense Base Act (DBA). These premiums comprise significant costs under LOGCAP. A supplemental memo dated May 15, 2008 distributed to the Members of the Committee on Oversight and Government Reform states:

On September 28, 2007, the U.S. Army Audit Agency (AAA) issued a report examining DBA payments under the single largest contract in Iraq, KBR's \$27 billion contract to provide meals, housing, laundry, and other logistical support to the troops, also known as the LOGCAP.....In its audit, the AAA reported that the Army had reimbursed KBR for DBA charges of \$284 million made by its insurance company AIG through fiscal year 2005. The auditors observed that the cost of DBA insurance substantially exceeded the losses experienced by the LOGCAP contractor. The data the Committee received from AIG indicate that expenses in providing DBA insurance are typically 40% of premiums. Using this estimate, AIG's expenses under the LOGCAP contract would be \$114 million, and its underwriting profit would be \$97 million. The AAA concluded that AIG's rates appear 'unreasonably high' and 'excessive,' warning of an 'increased risk that the Army could be overcharged.' Army auditors also raised concerns about the cost-plus nature of these charges because the LOGCAP contract is primarily a cost-reimbursable contract the cost of this insurance is ultimately passed on to the government. As a result, there is little incentive for KBR to control its costs for DBA insurance.....although the Army auditors found that 'Army personnel at all levels appear to be aware of, and concerned with, the high cost of DBA insurance,' they concluded that 'sufficient action hadn't been taken to scrutinize these costs.' The auditors also warned that 'we believe similar problems could exist on other contracts outside the LOGCAP arena.'⁷⁷

In addition, the Gansler Commission and the Army Contracting Task Force's efforts followed investigations and audits which have cited contractors and government contracting officials for corrupt activity related to contingency contracting. While the

cases vary in severity and complexity, most involve bribery. There are confirmed bribes in excess of \$15 million. Contracts valued at more than \$6 billion are affected. The Army has reorganized its contracting office in Kuwait, replaced its leaders, and increased the size of the staff and provided more ethics training.⁷⁸

Contracting professionals do not bear the sole responsibility for contracting. Responsibility for managing, overseeing, and evaluating contractors falls not only to contract specialists, but also to those who define mission requirements, allocate resources, plan tasks and operations, promulgate policies and programs, and use contractor services⁷⁹ to include senior military and civilian officials. Care must be taken to avoid improper influence and decision making left in the hands of responsible officials who have the skills, knowledge, attributes, and capabilities to do the right thing.

Conclusion and Recommendation

Contractor support has been a part of military operations in the past, and it will be part of operations in the future. Getting contracting right is a fundamental responsibility of good governance and essential for fiscal responsibility particularly when supporting national security activities. To turn government contracting from a liability into a competitive advantage requires a transformation in businesses practices.⁸⁰

Government officials must define clear requirements to include documentation and avoid improper command influence on the contracting process, effectively implement a comprehensive database, and review and update policies and instructions to ensure best value for the federal government and track financial performance. They must hold contractor's accountable and ban companies from doing business with federal agencies who have exploited the system, and avoid use of sole-source and limited competition,⁸¹

that is, subject large defense contracts to competition and that a minimum of three contractors be selected for contracts beyond a certain size, or break large contracts into smaller contracts thus allowing small businesses to compete for contracts. In addition, they must build human capital and contracting officer support system as the key to improving the efficiency and effectiveness of contracting by increasing more military and civilian acquisition personnel, and identify training needs for non-acquisition personnel and develop programs to improve training of government personnel to manage contractors by introducing courses on contract support and contract operations into mission readiness exercises.⁸²

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