

**HOLD UNTIL RELEASED
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ON OVERSIGHT AND GOVERNMENT REFORM**

TESTIMONY OF

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BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

June 22, 2010

Chairman Tierney, Ranking Member Flake, and members of the Committee, thank you for the opportunity to appear before you today to discuss the program management and oversight of private security contracts.

As the Quadrennial Defense Review (QDR) acknowledged, contractors are part of the total force, providing an adaptable mix of unique skill sets, local knowledge, and flexibility that a strictly military force cannot cultivate or resource for all scenarios. Contractors provide a broad range of supplies, services, and critical logistics support in many capability areas, while reducing the military footprint and increasing the availability and readiness of resources. Typically, there is a higher reliance on contracted support during the post-conflict phases of an operation (Phase IV- Stabilization and Phase V - Enable Civil Authority).

Current operations in the U.S. Central Command (USCENTCOM) Area of Operations require Private Security Contractors (PSCs) to fulfill a variety of important security functions for the Department of Defense (DoD), the Department of State (DoS), and other U.S. Government (USG) entities supporting Operation IRAQI FREEDOM and Operation ENDURING FREEDOM. Relief, recovery, and reconstruction of a post-conflict region are traditionally civilian functions, and thus it is entirely appropriate for civilian resources to be used to protect these activities from theft, extortion, vandalism, terrorism, and other unlawful violence. DoD contracts with PSCs to protect personnel, facilities, and activities. The roles of PSCs are analogous to civilian security guard forces, not combat forces. By using civilian resources to accomplish selected civilian tasks, military forces can focus on the military mission.

PSC personnel presently account for about 14% of the entire DoD contracted workforce in USCENTCOM, but the US PSC workforce constitutes only a minority of the total private security sector workforce protecting public, private, and international assets in theater. As of the 2nd quarter, FY 2010,

USCENTCOM reported that there were approximately 11,030 armed DoD contracted PSC personnel in Iraq and approximately 16,400 armed DoD PSC personnel in Afghanistan. Table 1 below illustrates the distribution of DoD PSC personnel by nationality and delineates between the total number of PSC personnel and the number of those PSC personnel who are armed.

Table 1
Number of DoD PSCs in Iraq and Afghanistan as of 2nd Quarter 2010

	Total	U.S. Citizens	Third Country National	Local/Host Country National
Total DoD PSC Personnel in Afghanistan	16,733	140	980	15,613
Armed DoD PSC Personnel in Afghanistan	16,398	137	960	15,301
Total DoD PSCs in Iraq	11,610	1,081	9,376	1,153
Armed DoD PSC Personnel in Iraq	11,029	1,027	8,907	1,095

These numbers include most subcontractors and service contractors hired by prime contractors under DoD contracts.

If contractors were not used to perform selected security functions, DoD would have no choice but to expand the number of troops required to support our increased commitment in Afghanistan. Based on rotation and dwell time models for military personnel, it would take 3 troops to replace each individual in the PSC workforce. A further complication in revising the make-up of the existing PSC personnel population is that it is not possible to draw a 1:1 correlation between US or Third Country National (TCN) PSC personnel and local national PSC personnel. Local national PSC personnel generally live off the military installation and work standard 8 hour days, whereas US and TCN PSC personnel, co-located with the military, tend to work longer shifts. Additionally, because local labor is less expensive, hiring local nationals can reduce costs for

the PSCs and the Government; a difference between a salary of hundreds of dollars per month for a local national hired by the PSC versus thousands of dollars per month for a U.S. or coalition citizen hired for a similar position by the PSC, plus the costs of the housing.

DoD's requirements for PSCs to hire local nationals to perform private security functions supports the USCENTCOM Commander's counterinsurgency strategy and, according to the previous USCENTCOM Commander, has significantly enhanced force protection in the Combined Joint Operations Area. DoD's requirement for PSCs to hire local nationals creates local jobs. These local national jobs are central to DoD's counterinsurgency (COIN) operations. Contracting for local labor provides valuable connections with local and regional populations, boosts the local economy, and reduces unemployment in theater. In Afghanistan, over 90% of the DoD PSC workforce are local nationals. As such, they have assumed risk and have sacrificed to protect key movements and facilities, freeing up critical combat capability (an inherently governmental function). Table 2 below reflects the numbers of DoD PSC personnel in Afghanistan either killed in action or wounded in action as reported by the Armed Contractor Oversight Directorate.

Table 2
DoD PSCs in Afghanistan KIA / WIA

June 2009 – April 2010	Reconstruction	Logistics Convoys
PSC Personnel Killed in Action	81	194
PSC Personnel Wounded in Action	145	411

Even as the COIN strategy is enhanced by the employment of local nationals as armed PSC personnel, security and reliability concerns must be considered. As required by statute, DoD's policies on armed PSC personnel apply to any contractor personnel at any contract tier. With impetus from senior

DoD leadership, there has been a concerted effort to improve compliance with those policies. A number of significant challenges impact this effort: 1) the rapid buildup and surge of DoD forces in Afghanistan and the associated ramp up of contracted support with PSCs unfamiliar with oversight processes and procedures, 2) the lack of host nation national identity cards or any host nation federated national database of personal information, 3) a lack of reliable internet connectivity allowing timely registration in the US contractor database, 4) societal and security concerns about providing personal identification information, and 5) a culture where armed individuals are the norm and oversight, management and accountability are eschewed. DoD is working to address these challenges to facilitate compliance. For example, the Biometrics Task Force is working to determine if local biometric scans can be used in lieu of Afghan-generated identity papers, and whether these biometric scans can then be federated with existing Government biometric programs and with the U.S. contractor database.

In spite of these challenges, DoD policy requires all contractor personnel, regardless of nationality, to comply with the DoD regulations, as well as with applicable laws of the United States and of the host country. Since January 1, 2009 both Iraq and Afghanistan have exercised unambiguous national sovereignty over the operations of PSCs within their borders. In Iraq, a Stationing Agreement (SA) between the United States and the Republic of Iraq replaced the Coalition Provisional Authority Order 17 (CPA 17) that expired December 31, 2008. In Afghanistan, there is no immunity clause to protect contractors from local law. DOD continues to face challenges working with the host nation to ensure the creation of a responsive licensing regime. In both countries, USG PSCs are required to comply with host nation registration requirements and to be properly licensed to carry arms in accordance with host nation law. Further, DoD PSC personnel are subject to the Military Extraterritorial Jurisdiction Act (MEJA) and the Uniform Code of Military Justice (UCMJ) as well as local laws.

DoD PSC personnel are also required, consistent with the terms of their contracts, to obey the orders of the commander of the area in which they are operating. Violations of such orders would provide grounds for terminating a PSC’s contract for cause, and may subject the individual to prosecution under the UCMJ. Finally, individual companies have their own standards of conduct and DoD contractors have demonstrated a consistent pattern of terminating the employment of individuals who violate those standards.

To support the legal framework, DoD has instituted a broad range of management policies and operational procedures to achieve more effective oversight and coordination of PSC operations. Notwithstanding media coverage regarding incidents involving PSCs, the frequency of serious incidents by DoD PSCs is extraordinarily low. Table 3 shows the number of arrests involving DoD PSC personnel in Afghanistan and their disposition.

Table 3
DoD PSC Personnel Legal Actions (Afghanistan)

Legal Action	Number
Arrests	5
Convictions	2

These numbers seem to demonstrate that, on the whole, US PSCs are operating in accordance with the host nation laws and support the overall COIN objectives. In fact, Afghan government officials have commented favorably on the performance of DoD PSCs, stating that they are, in most cases, better disciplined than members of the Afghan National Police force.

The previous Government of the Islamic Republic of Afghanistan (GIROA) Minister of the Interior (MOI) has endorsed US efforts regarding the oversight

and management of PSCs, and has indicated his recognition of the fact that as the increased troop commitment in Afghanistan progresses, the need for PSCs, with a sustained focus on expanding their hiring of local nationals, will continue to rise. The existence of these highly-trained and professional PSCs will have a long-term benefit for the Afghans, as the PSCs will represent a natural and ready source of potential police and military recruits for their governments as the use of PSCs eventually begins to be reduced. The Minister's long term focus and plan has been to accelerate development of the Afghan National Police (ANP) as one means of eliminating the need for PSCs in five years. In other words, the MOI intends to begin to recruit current PSC personnel as part of its efforts to build, train and professionalize the ANP. I have every reason to believe the current GIRoA Minister of the Interior supports this vision.

As stated above, PSCs contracted to perform security functions for the DoD are still only a fraction of the total number of PSCs in Iraq and Afghanistan. This is one of the reasons that OSD is supporting the initiative of the Swiss Government to move beyond the Montreux Document and implement an industry-led, government-supported, international accountability regime that will apply to all PSCs in all operational environments. An industry-generated standard, recognized by the U.S. Government and other States contracting with PSCs and incorporated into contracting tools, will be an important step towards ensuring that the operations of all USG PSCs in a contingency environment are consistent with U.S. national policy and support the long-term stability of the region in which they operate; and that PSCs under contract with other States will operate in a similar manner.

The first step in this effort is to produce a universal standard of conduct (Standard) broadly endorsed by the PSC industry. A draft of this Standard has been developed and is being refined by a working group drawn from the U.S., UK, and Swiss Governments, with equal participation from the PSC industry and

non-governmental organizations active in human rights law and the law of armed conflict. The aim of the working group is to finalize the Standard and the principles for the accountability mechanism for PSCs later this year.

Looking to the future, DoD continues to analyze the factors around contract support that influence force structure and workforce mix. To assist DoD in better understanding its utilization of contract support, the Chairman of the Joint Chiefs of Staff (CJCS) established a task force to study the Department's dependence on contractor support in contingency operations. The study found that during the later stages of Operation Iraqi Freedom, the majority (80%) of contracts supported the Logistics joint capability area (JCA) while 5% supported the Protection JCA. This 5% represents about $\frac{1}{4}$ of the overall manpower undertaking security functions with the remaining $\frac{3}{4}$ being accomplished by the military. These figures are consistent with our position that PSCs are appropriately utilized for certain functions during post-conflict operations, consistent with the commander's risk and force protection assessments.

In response to a congressional mandate, the Office of Management and Budget (OMB) recently issued a public notice that provides proposed policy for determining when work must be performed by federal employees. In particular, DoD welcomes the discussion of "critical functions" introduced in the OMB draft policy letter, which are functions that, while not inherently governmental, are needed for an agency to effectively perform its mission and maintain control of its operations. This concept may pave the way for the development of a small cadre of government civilian PSCs that could be leveraged in selected circumstances. There is great potential in this area.

Hopefully, this testimony provides a documentary baseline of the topics I was asked to address at this hearing. I will be happy to answer any questions you have regarding these areas of concern and interest. Thank you.