

Joint Statement of  
Michael Thibault and Christopher Shays, Co-Chairs  
The Commission on Wartime Contracting in Iraq and Afghanistan

**“Commission on Wartime Contracting:  
Interim Findings and Path Forward”**

Subcommittee on National Security and Foreign Affairs,  
U.S. House Committee on Oversight and Government Reform

Washington, DC, June 10, 2009

---

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for inviting us to speak to you today about our Interim Report.

We are appearing on behalf of the Commission on Wartime Contracting in Iraq and Afghanistan. We are the Commission's Co-Chairs, Michael J. Thibault and Christopher H. Shays. We are accompanied by two fellow Commissioners, Professor Charles Tiefer and Grant S. Green, who have particular subject-matter expertise that you may draw upon during the question period.

The Commission has four other members; they are Clark Kent Ervin, Linda J. Gustitus, Robert J. Henke, Dov S. Zakheim. As you know, Congress established the Commission by statute in 2008 as an independent, bipartisan body to assess a range of issues relating to wartime contracting.

We will keep our opening statements brief to allow maximum time for discussions and questions of the Members' choice. We respectfully request that the full text of our prepared statement, as well as a copy of our Interim Report to Congress, be incorporated into the record of this hearing.

**INTRODUCTION AND BACKGROUND**

The precipitating event for Chairman Tierney's inviting us here today is the official release of that Interim Report to Congress, entitled *At What Cost? Contingency Contracting in Iraq and Afghanistan*.

Our report identifies many long-standing issues for awarding, managing, and auditing the vital contracts that support logistics, security, and reconstruction missions during U.S. contingency operations. These include shortages in the federal acquisition workforce, poorly defined and poorly executed contracts, inadequate planning, weak provisions for accountability, unnecessary work and costly rework—problems that are undermining attainment of national objectives and wasting billions of taxpayer dollars.

The disturbing implications go far beyond questions of good management and financial responsibility. They directly involve our nation's ability to achieve policy objectives and provide proper support and protection for our warfighters and civilian employees engaged in contingency operations. We will describe some of our preliminary observations, highlight several issues that we believe merit your immediate attention, and outline the work that we will pursue in the months to come. We are scheduled to release a Final Report in August of next year.

As Congress intended, the Interim Report is preliminary and tentative. *At What Cost?* provides an interim statement on key focus areas, which are listed on Report page 1 ("Rep. 1"). To summarize those focus areas—placing all of the following in the context of contingency contracting—they include:

- agency leadership, culture, and accountability, pre-deployment planning, and acquisition staffing and training;
- contract requirements, pricing, competition, and inherently governmental functions;
- contractor performance and cost effectiveness, and foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

Since 2001, Congress has appropriated about \$830 billion to fund U.S. operations in Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts related to those operations. More than 240,000 contractor employees—about 80 percent of them foreign nationals—now work in Iraq and Afghanistan, supporting the Department of Defense. Additional contractor employees support the Department of State and the U.S. Agency for International Development (USAID).

These 240,000-plus contractor employees actually outnumber U.S. military personnel in the two theaters. They provide critical support, and like our military personnel, many have paid a personal price. As of May 27, 2009, 4,973 men and women of America's military and at least 13 civilian employees of the Department of Defense have died in Iraq and Afghanistan. It is less well known that more than 1,360 contractor employees have also died. Criticisms of the contingency contract system and suggestions for reform in no way diminish their sacrifices.

In discussing the major subject areas of *At What Cost?* we specifically address several "issues of immediate concern." Such issues matter now — right now. They are so important that the Commission is urging corrective action well ahead of its Final Report. Evidence already in hand shows that these issues require prompt action to avoid further undermining U.S. objectives and wasting more taxpayer money. These "issues of immediate concern" have been underlined for emphasis. The entire list of "issues of immediate concern" appears in an endnote to this statement.<sup>1</sup>

## SUBJECTS OF *AT WHAT COST?*

### **Management and Accountability**

The report's first chapter on "Management and Accountability" addresses a number of cross-cutting management themes. The linchpin of contingency contracting is human capital: acquisition, especially in contingencies, depends on its government workforce. The contracting officer's representatives (CORs) serve a critical role. They are the individuals on the front line of contractor performance. They are in charge of making sure that the contractor does what it is supposed to do. They monitor, for instance, whether a construction contractor does work soundly, or defectively. *At What Cost?* Identifies the process for designating and training CORs as an issue of immediate concern, and concludes that the process is essentially broken.

There are too few CORs. They are inadequately trained. They often learn of their added duty of contractor supervision only after arriving in theater, when acquiring training is more difficult. And, they are often vastly overworked. For example, in Afghanistan, one COR told the Commission that he was responsible for overseeing 15 contracts and conducting four performance reviews — all as extra duty after he completes his three primary duties. (Rep. 11). The broken COR system, combined with other issues like a severe shortage of subject-matter

experts to inspect electrical and other specialized work, is a perfect storm for our government's contracting workforce.

As to the subject of financial accountability, the Commission has found a large number of ineffective contractor business systems, including management of subcontractors -- with a large number of unresolved audit findings. The Commission analyzed \$43 billion in awards to 15 of the largest contractors in Iraq and Afghanistan. Fifty percent of contractor billing systems (used for billing the government) and 42 percent of estimating systems (used for contract proposals) contained significant deficiencies. (Rep. 27). Since the Interim Report was prepared for printing, DCAA has identified three more business systems at DynCorp International as inadequate, including the labor and billing systems that are essential to document and review costs. Shortcomings in these systems increase the time and effort required to obtain contractor corrections material system deficiencies.

These facts make it clear that too many contractor business systems are inadequate and must be fixed. The Commission's May 2009 hearing heard that, through fiscal year 2008, the DCAA has taken exception to over \$13 billion in questioned and unsupported costs associated with the efforts in theater. In short, the environment in Iraq and Afghanistan has been and continues to be susceptible to waste, fraud, and abuse. (Rep. 28).

Additionally, there is an immediate need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of contract work, but government has very little visibility into their operations. For example, DCAA auditors reported inadequacy in KBR's purchasing system, which inhibits government's ability to effectively monitor subcontractor activities. The use of an inadequate purchasing system to execute urgent projects using subcontractors, many of them foreign, contributes to ineffective contract management and further increases the potential for waste, fraud, and abuse. (Rep. 35).

The Commission has surveyed all of the reports by Inspectors General and other oversight entities and has tallied 537 reports with 1,287 recommendations. (Rep. 25). Agencies have not fully implemented those recommendations. Even when they mark recommendations "closed," some of the same problems continue. As an issue of immediate concern in this area, the effectiveness of contractor support to expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those concerning poor coordination among agencies. (See Rep. 5 and 19).

## Logistics

The U.S. government uses, as its key logistics program in theatre, LOGCAP (the Army's Logistics Civil Augmentation Program). This is a multi-billion-dollar contract that covers a myriad of services from vehicle maintenance to dining-hall operation. The third iteration of this contract, LOGCAP III, was awarded to KBR Inc. as sole vendor. The LOGCAP IV contract awarded in 2008 requires task-order competition among three vendors: KBR, Fluor, and DynCorp. But LOGCAP III still predominates. Billions of dollars in wasteful spending has occurred and may be still occurring under the LOGCAP III contract that has KBR as the sole prime contractor.

DCAA Director April Stephenson stated at the Commission's May 2009 hearing, "I don't think we're aware of [another] program, contract, or contractor that has had this number of suspensions or referrals." (Rep. 48). In its recent response to that DCAA testimony, the LOGCAP III contractor, KBR, implied that most referrals for possible fraud (called "suspected irregular conduct" by DCAA) have been resolved by contracting officers. However, DCAA has advised us that as of our May 4 hearing date, *none* of its referrals for possible fraud had been resolved—and that resolution of suspected irregular-conduct referrals would be performed by DoD's Defense Criminal Investigative Service or by the Department of Justice, not by contracting officers.

As an issue of immediate concern, the benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.

Both the Iraq drawdown and the Afghanistan buildup raise serious logistics contracting issues. The Commission has learned that American bases in Iraq hold more than 600,000 kinds of property—trucks, generators, spare parts, clothing, tools, and much more. Because of poor documentation in the early days of Iraq operations and a shortage of property-management officers, base commanders often do not know what property is on the base, who owns it, or whether it has been properly maintained.

Billions of dollars of property must be moved elsewhere in the region, returned for stateside use, handed over to the government of Iraq, sold, or scrapped, but the lack of information, resources, and planning for this transition have set the

stage for massive confusion and loss.

As an issue of immediate concern, the drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property. (69).

The Commission identified more than \$2 billion in new projects in Iraq—yet a number of the projects in the pipeline may be unnecessary. For example, during an April 2009 visit to Camp Delta in Iraq, the Commission identified a \$30 million construction contract—a new dining facility being built near a recently expanded and upgraded facility. The new facility is due to be completed in December 2009—a year before U.S. troops are required to be out of Iraq. Prompt review of such projects in the pipeline could save taxpayers many millions or billions in unnecessary spending.

As for the Afghanistan buildup, the government continues to suffer from chronic staffing shortages for oversight personnel—as with the rest of LOGCAP, only more so. (Rep. 57). Moreover, property management is already a major problem in Afghanistan. Given all the many issues of concern related to contracting in Afghanistan, the Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case. (Rep. 5).

We would note that U.S. Army Central Command is undertaking an organizational evaluation of the possibility of installing a major-general level officer with overall responsibility and a separate commander in each theater location. The concept is for contracting-related information to flow directly to CENTCOM and enable consolidated oversight and management of matters that too often receive only fragmented attention. We believe this is an encouraging sign of active measures to seek better structures and processes for contingency contracting.

## **Security**

Chapter 3 of *At What Cost?* addresses the subject of private security contractors, one of the major subjects set forth specifically in the Commission's statutory mandate. The report traces the significant events that shaped the subject, from the beginning of outsourcing in the 1980s and 1990s to the incident of the killing

of Iraqi civilians by Blackwater employees in Baghdad's Nisur Square in 2007. After that incident, the Secretaries of Defense and State, as well as Congress, implemented significant reforms. (Rep. 63-65). The reforms appear to have worked. The State Department reported 11 deadly-force incidents involving its Worldwide Personal Protective Services contract in July 2007. For the full year ending in May 2009, however, there were only two.

The Commission identified a number of specific concerns with respect to private security contracts as a result of its visits to Iraq and Afghanistan. As an issue of immediate concern, the Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

Among specific issues, the Commission found, during its recent visit to Iraq, a shortage—sometimes a complete lack—of government employees with the requisite skill set to oversee private security. Some contractors in Iraq may be limiting training and not providing basic equipment (Rep. 71). Private security contractors may not be receiving sufficient training in the Rules for the Use of Force – which may lead to an inappropriate use and escalation of force as well as a failure to use force in a manner consistent with the circumstances of a situation. (Rep. 73).

In Afghanistan, the Armed Contractor Oversight Division (ACOD)—the office which oversees private security contractors -- has such a large role for its contractor, Aegis, as to raise issues about conflicts of interest, and about contracting of inherently governmental activity. The post of Deputy Director of ACOD is occupied by an Aegis contractor. Since Aegis can bid on work overseen by ACOD, an obvious conflict of interest could arise. Also, the distribution of weapons to contractor employees may violate regulations and cut vital government overseers out of the loop. (Rep. 76).

## **Reconstruction**

Reconstruction programs range from infrastructure repair and construction, to democracy building and training for police and security forces. Over \$80 billion appropriated for reconstruction in Iraq and Afghanistan have produced mixed results, to say the least, and include up to \$5 billion of waste in Iraq reconstruction. At the Commission's February hearing, the Special Inspector General for Iraq Reconstruction confirmed that failure of sustainability—ensuring local people's capacity to operate and maintain projects like water

plants and electric grids after the United States turns them over to Iraqi control— could turn out to be the biggest source of waste in reconstruction contracting

The government must learn from its missteps in Iraq as large sums of money will soon be obligated for reconstruction contracts of all types in Afghanistan. In general, this includes greater international cooperation, greater interagency coordination, and improvement of the metrics used to assess the success of contracts dealing with less tangible subjects, such as the development of democracy and civil society. Such contracts amount to billions of dollars, but as recent IG reports have shown, agencies such as USAID do not yet have a firm sense of how to assess progress in key areas like drug eradication. Moreover, the programs and contracts managed by USAID require greater coordination with Commander's Emergency Response Program (CERP), which the military has used effectively to promote local support for reconstruction efforts.

The Commission's trip to Afghanistan in 2009 underlined already-acute contracting problems in reconstruction. Serious shortages of U.S. government civilians are all too likely to trigger heavy reliance on contractors in, for example, the vital Provincial Reconstruction Teams.

Reports both by SIGIR and USAID's inspector general indicate a lack of contract oversight and the metrics necessary to assess progress. For example, a January 2009 inspector general report on agency obligations since FY 2002, totaling over \$7.2 billion, discussed the greatest obstacles beyond security. The USAID-IG's audits found that "the most frequent problem affecting USAID development efforts in Iraq involves inadequate contract oversight or project management (29 percent;" another problem was "noncompliance with contract procedures (20 percent)."

## **On the Agenda**

Chapter 5 provides a summary of activities the Commission has in progress or slated for study in the near future. There are over thirty bullet items, including a number of complex and far-reaching studies. The Commission encourages examination of the full list (Rep. at 92-94). We offer illustrative excerpts here:

### *EXCERPTS FROM "ON THE AGENDA"*

#### MANAGEMENT AND ACCOUNTABILITY



- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.

## LOGISTICS

- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

## SECURITY

- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and of Reserve components.

## RECONSTRUCTION

- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and "soft" developmental initiatives).
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.

## OTHER MATTERS

### **Commission organizational matter**

Finally, we would like to mention one issue of some complexity regarding support of operations. This concerns whether the Commission can obtain transportation and other support from the Department of Defense on a non-reimbursable basis, as the 9/11 Commission did from its designated support agency.

This Commission's authorizing statute lacked explicit support language that was included in the 9/11 Commission bill. Uncertainty or inability to obtain non-reimbursable support would pose a major problem for a Commission as it actively seeks to travel to sites in-theater for oversight and inspection, and as the need for more intense work in Afghanistan develops.

### **Authorizing statute and other information**

The appendices in *At What Cost?* contain the Commission's statute (Appendix A), Commission Milestones (Appendix B), Methodology (Appendix C), and Commission Staff Roster (Appendix D).

Our governing statutory language is Section 841 of the National Defense Authorization Act for FY 2008 (Pub. L. 110-181). The relevant heart of it is section (c)(3), supplemented by directives in (d)(3) as to what the final report should address):

- (3) PARTICULAR DUTIES.-In carrying out the study under this subsection, the Commission shall assess-
  - (A) the extent of the reliance of the Federal Government on contractors to perform functions (including security functions) in Iraq and Afghanistan and the impact of this reliance on the achievement of the objectives of the United States;
  - (B) the performance exhibited by Federal contractors for the contracts under review pursuant to paragraph (1), and the mechanisms used to evaluate contractor performance;
  - (C) the extent of waste, fraud, and abuse under such contracts;
  - (D) the extent to which those responsible for such waste, fraud, and abuse

have been held financially or legally accountable;

(E) the appropriateness of the organizational structure, policies, practices, and resources of the Department of Defense and the Department of State for handling program management and contracting for the programs and contracts under review pursuant to paragraph (1);

(F) the extent to which contractors under such contracts have engaged in the misuse of force or have used force in a manner inconsistent with the objectives of the operational field commander; and

(G) the extent of potential violations of the laws of war, Federal law, or other applicable legal standards by contractors under such contracts.

## **Activities**

A full description of the Commission's milestones is in the report's Appendix B. In brief, the Commission members were named by July 2008. The Commission selected a professional and administrative staff approaching 40 by January 2009. During September and October of 2008, Commissioners received briefings from more than 25 key organizations and programs, and they also met with leading scholars and writers on contracting issues and with contractors.

On February 2, 2009, the Commission held its first public hearing. The hearing featured testimony from the Inspector General for Iraq Reconstruction (SIGIR), including SIGIR's two-year, book-length study released that day, *Hard Lessons: The Iraq Reconstruction Experience*. Also testifying were three departmental Inspectors General and three Senators: Clair McCaskill (D-MO), James Webb (D-VA) – the original Senate sponsors of the legislation establishing the Commission – and Senator Susan Collins (R-ME), the ranking member of the Homeland Security Committee.

On May 4, 2009, the Commission's second hearing – here in Room 2154 of the Rayburn House Office Building – focused on the multi-billion-dollar LOGCAP contract for logistical support services. Rep. John F. Tierney of Massachusetts, chairman of this Subcommittee, offered welcoming remarks. Witnesses included April Stephenson, the Director of the Defense Contract Audit Agency, and senior officials of three contracting agencies.

Commissioners and staff have made two trips to Iraq and Afghanistan to inspect work sites, review documents, conduct interviews, and receive briefings from officials on the ground. The first trip took place in early December 2008, with an itinerary that included agency briefings in Baghdad and Kabul, as well as

reviews of construction of the Baghdad Police College and task orders for construction and repair of the Bagram Air Base in Afghanistan.

A 10-day investigative trip in early April 2009 comprised a 15-person group of Commissioners and staff that broke into three teams: one team worked in Iraq, the other two in Afghanistan. They conducted more than 125 meetings with employees of the Departments of Defense and State, USAID, the military, and employees of contractors working on a range of projects.

In addition to meetings in Baghdad and Kabul, the teams visited projects in the provinces and military forward operating bases, including Camps Hammer, Victory, and Delta in Iraq, and Camps Phoenix, Eggers, and Shank, as well as Bagram Air Base in Afghanistan. Two main issues of the trip were private security contracting and LOGCAP.

The Commission continues to develop tasks for research and investigation to extend and deepen its knowledge and to cope with new or changing issues. Our plans include more trips to theaters of operation; additional hearings involving government agencies, non-governmental organizations, academics, and members of the contracting community; and continued liaison with Congress.

Before we conclude, we would like to say a few words about the Commission staff, whose subject-matter expertise, contracting and technical experience, analytical and project-management prowess, and editing skills made publication of the Interim Report possible. We start with Robert Dickson, the Commission's Executive Director. A former executive director of the State Department's Bureau of Administration and director of acquisitions, he is also a retired Army colonel with 30 years' service. He has done an exemplary job of assembling, directing, and motivating a diverse staff.

Virtually all of the Commission's staff are federal employees. Some are detailed from agencies and services including the Army, the Air Force, the Departments of State and Defense, the U.S. Agency for International Development, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the U.S. Army Corps of Engineers. Some have served one or more tours of duty in theater, including working for the Special Inspector General for Iraq Reconstruction or as senior contracting officers supporting the Joint Contracting Command in Afghanistan. Others have served on Congressional staff; worked in GAO, State, and Defense; and held important positions in the commercial industries which are the focus of our study. They bring hundreds of years of

combined experience and education in many fields to bear on our mission and have performed valuable work for their country.

## CONCLUSION

The Commissioners and staff of the Commission on Wartime Contracting in Iraq and Afghanistan take very seriously the tasks that Congress has assigned us. We appreciate how important they are to improve support for our warfighters and our diplomatic employees.

We thank you for the opportunity to describe our work to you today, and pledge our best efforts to provide information and recommendations that will help you make good decisions on contingency operations. Thank you.



---

# <sup>1</sup> Issues of Immediate Concern

- The drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property.
- There is a critical shortage of qualified contract-management personnel in theater and those that are there are stretched too thin. In particular, the process for designating and training contracting officer's representatives to check contractor performance in theater is broken.
- The benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.
- Too many contractor business systems are inadequate and must be fixed.
- There is a need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of the work, but government has very little visibility into their operations.
- The effectiveness of contractor support of expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those about poor coordination among agencies.
- The Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case.
- The Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

###