Defense Logistical Support Contracts in Iraq and Afghanistan: Issues for Congress

Valerie Bailey Grasso
Specialist in Defense Acquisition

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Summary

This report examines logistical support contracts for troop support services in Iraq and Afghanistan (for Afghanistan, beginning with LOGCAP IV) administered through the U.S. Army's Logistics Civil Augmentation Program (LOGCAP). LOGCAP is an initiative designed to manage the use of civilian contractors that perform services during times of war and other military mobilizations. On April 18, 2008, DOD announced the Army's LOGCAP IV contract awards to three companies—DynCorp International LLC, Fort Worth, TX; Fluor Intercontinental, Inc, Greenville, SC; and KBR, Houston, TX, through a full and open competition. The LOGCAP IV contract calls for each company to compete for task orders. Each company may be awarded up to $5 billion annually for troop support services with a maximum annual value of $15 billion. Over the life of LOGCAP IV, the maximum contract value is $150 billion. Under LOGCAP IV, the U.S. Army Sustainment Command awarded the first performance task order on September 25, 2008 to Fluor Intercontinental, Inc., for logistical support services in Afghanistan.

The U.S. Army's Logistics Civil Augmentation Program (LOGCAP), an Army program designed to manage civilian contractors, is now in transition. The current LOGCAP III contractor supports the drawdown in Iraq by providing logistical services, theater transportation, augmentation of maintenance services, and other combat support services. According to Army contracting officials, all LOGCAP requirements in Kuwait have successfully transitioned from LOGCAP III to LOGCAP IV contracts. The transition of requirements is continuing from LOGCAP III to LOGCAP IV contracts, and will be used for combat support services in Afghanistan.

Congress is concerned about the Federal oversight and management of DOD contracting in Iraq and Afghanistan, particularly under programs like LOGCAP. Recent assessments from the Government Accountability Office (GAO), DOD Office of the Inspector General (DOD-IG), and the Special Inspector General for Iraq Reconstruction (SIGIR) reveal a lack of accountability for large sums of money spent for Iraq contracts. According to the recent congressional testimony of Charles Williams, Director of the Defense Contract Management Agency, there are more than 600 oversight positions still vacant in Iraq and Afghanistan. Congress is also concerned about contractor insurance premiums through the Defense Base Act (DBA); such premiums comprise significant costs under LOGCAP. The DBA requires that many Federal government contractors and subcontractors provide workers' compensation insurance for their employees who work outside of the United States. The U.S. Army's LOGCAP contract covers costs for DBA insurance and includes significant overheard and other costs beyond the costs of the actual insurance claims

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Purpose and Scope

This report will examine logistical support contracts for troop support services (also known as service contracts[1]) in Iraq, primarily administered through a smaller program, the United States Air Force Contract Augmentation Program (AFCAP) and a larger program, the United States Army's Logistics Civil Augmentation Program (LOGCAP).[2] This report will focus primarily on contracts involving Department of Defense (DOD) appropriated funds, although some projects involve a blending of funds from other agencies.[3]

Air Force Contract Augmentation Program

The U.S. Air Force has a smaller contingency contracting support program for services in Iraq. The Air Force Contract Augmentation Program (AFCAP) administers logistical support service contracts in Iraq. AFCAP is the largest contingency support contract awarded by the Air Force. AFCAP is an "umbrella" contract, similar to the U.S. Army's LOGCAP. It was designed to provide an on-call capability for troop sustainment and support. The program was established in 1997 for a wide-range of non-combatant, civil engineering services during wartime, contingency operation, and humanitarian efforts. AFCAP provides for contractor support to relieve active duty and air reserve personnel in the areas of food service, lodging, carpentry, plumbing, electrical, mechanical, air conditioning, laundry plant operations, fire protection emergency management, project and program management.

Initially, AFCAP began as a five-year, $475 million program; now it is a 10-year, $10 billion program. AFCAP is managed by the Air Force Civil Engineer Support Agency at Tyndall Air Force Base and the Air Force Services Agency in San Antonio, Texas. The contract consists of administrative task orders awarded to six companies: Washington Group International, CH2M Hill Global Services, URS/Berger JV, Bechtel National, DynCorp International and Readiness Management Support. The AFCAP contractor maintains a core staff in theater to plan, organize, and acquire resources on an as-needed basis.[4]

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[1] Federal Acquisition Regulation (FAR) 37, Subpart 37.1 defines "service contracts" as contracts that directly engage the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

[2] Department of the Army. Logistics Civil Augmentation Program (LOGCAP). Army Regulation (AR) 700-137, Introduction, 1-1. Purpose, p. 1.

[3] For a fact sheet on the application of federal procurement statutes to contracts for the reconstruction of Iraq, see CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey; for a discussion on Iraqi Relief and Reconstruction Fund (IRRF) contracting issues, see CRS Report RL31833, *Iraq: Reconstruction Assistance*, by Curt Tarnoff. For a discussion on private security contracting see CRS Report RL32419, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, by Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura. For a discussion of war-related costs see CRS Report RL33110, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, by Amy Belasco. For a discussion on the FY2008 DOD appropriations and authorization bills, refer to CRS Report RL33999, *Defense: FY2008 Authorization and Appropriations*, by Pat Towell, Stephen Daggett, and Amy Belasco.

[4] $10 Billion AFCAP III Award Provides Expeditionary Engineering. *Defense Industry Daily*: *Military Purchasing News for Defense Procurement Managers and Contractors*, at http://www.defenseindustrydaily.com/10b-afcap-iii-program-contract-provides-expeditionary-engineering-01468/.

Logistics Civil Augmentation Program

LOGCAP was established by the U.S. Army on December 6, 1985 with the publication of Army Regulation 700-137. LOGCAP is an initiative to manage the use of civilian contractors who perform services in support of DOD missions during times of war and other military mobilizations. The use of LOGCAP contracts augments combat support and combat service support to military forces.[5]

In September 2006 the Army Sustainment Command (ASC) was created to serve as the "logistics integrator" for the contingency contracting and sustainment needs of the military worldwide. ASC oversees about 65,000 contractors and manages about $25 billion in contracts.[6] The Defense Contract Management Agency (DCMA) manages the task orders issued under the LOGCAP contract.[7]

In recent testimony before the Senate Homeland Security and Governmental Affairs Subcommittee, U.S. Army officials discussed the status of combat support operations under the LOGCAP program, as describes in excerpts taken from the hearing transcript.

> All **LOGCAP** requirements in Kuwait have successfully transitioned from **LOGCAP** III to **LOGCAP** IV and **LOGCAP** requirements are in the process of transitioning in Afghanistan. The current **LOGCAP** III contractor supports the responsible drawdown in Iraq through base closure and de-scoping of **LOGCAP** services which began in May 2009 and continues through August 2010. The two contractors that were awarded the **LOGCAP** IV Afghanistan task orders, Fluor and DynCorp will increase their support as troops transition to the Afghanistan theater. The competitively bid pricing matrixes for the Afghanistan task orders will be used to adjust the cost estimate for the increased support associated with the President's decision.
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> We are currently conducting a fair opportunity competition for Transportation and Corps Logistics Support Services requirements in Iraq that will result in requirements transitioning from **LOGCAP** III to **LOGCAP** IV. The next anticipated action involves Base Life Support. We are in the presolicitation phase for that acquisition with a draft Request for Proposal issued the week of December 7, 2009.
>
> The Army anticipates that the **LOGCAP** III contractor will provide logistics services in support of the Iraq drawdown with theater transportation assets, augmentation of maintenance services, and support for the supply support activities in the retrograde of supplies and equipment from theater. The **LOGCAP** III contractor also possesses other capabilities in support of the responsible drawdown of forces, such as packaging, blocking, bracing, and crating of equipment for shipment, wash rack operations, and cleaning of equipment for agriculture and customs. These services are available to the supported unit upon request. We expect the **LOGCAP** IV contractor to provide the same level of services

[5] LOGCAP contracts have been previously awarded for work in Rwanda, Haiti, Saudi Arabia, Kosovo, Ecuador, Qatar, Italy, southeastern Europe, Bosnia, South Korea, Iraq, and Kuwait. Under LOGCAP, private sector contractors are used to provide a broad range of logistical and other support services to U.S. and allied forces during combat, peacekeeping, humanitarian and training operations.

[6] http://www.aschq.army.mil/home/missionvision.htm.

[7] U.S. Congress. Deficient Electrical Facilities at U.S. Facilities in Iraq. Hearing before the House Oversight and Government Reform Committee. Statement of Jeffrey P. Parsons, Executive Director, Army Contracting Command, U.S. Army Materiel Command, July 30, 2008.

in support of the responsible drawdown but only for those bases that will remain after August 2010.[8]

LOGCAP Contracts (1992-2007)

The first LOGCAP contract (LOGCAP I) was awarded on August 3, 1992 to Brown and Root Services of Houston, Texas (also know as KBR). Reportedly, the contract was competitively awarded and consisted of a cost-plus-award-fee contract for one year followed by four option years. The Army Corp of Engineers reportedly held a competition to award the second LOGCAP contract (LOGCAP II). The contract, a cost-plus award fee contract for one base year followed by four option years was awarded to Dyncorp on January 1, 1997. The third LOGCAP contract (LOGCAP III) was awarded in 2001 to Halliburton/KBR.[9]

LOGCAP III, a ten-year contract (one base year followed by nine option years), was awarded to Halliburton/KBR to perform a variety of tasks. Initial press reports indicated that the 2001 LOGCAP III contract would be for the development of a contingency plan for extinguishing oil well fires in Iraq; however, subsequent press reports indicate that the contract included such tasks as providing housing for troops, preparing food, supplying water, and collecting trash. This contract was awarded under a cost-plus-award-fee, Indefinite-Delivery/Indefinite-Quantity (ID/IQ) contract.[10] The 2001 contract was based on specific task orders which are issued individually and only for those services that DOD felt were necessary to support the mission in the near term. During 2003, LOGCAP III contract rose to more than $3.5 billion. According to one press account, Halliburton/KBR reportedly earned a fixed 1% profit above costs on LOGCAP III, with the possibility of an additional 2% incentive bonus,[11] while another press account reported that the Halliburton/KBR LOGCAP III contract was a cost-plus, award fee contract that earned a 2% fixed fee with the potential for an extra 5% incentive fee.[12]

The fourth LOGCAP contract (LOGCAP IV) was executed with a different acquisition strategy. According to the Army, the LOGCAP IV contract award as based on a full and open competition. Instead of using a single contractor, the contract called for multiple contractors. Competitions were held and the contracts were awarded based on what represented the best value to the government.[13] In best value source selections, the government may make trade offs to make awards based on factors other than costs or technical superiority. The use of multiple LOGCAP contractors is reportedly intended to reduce the government's risk. Under the new strategy, the three performance contractors may compete for individual LOGCAP task orders, creating a competitive environment meant to control costs and enhance quality.

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[8] U.S. Congress. Senate Homeland Security and Governmental Affairs Subcommittee. Contracting Oversight Hearing on Afghanistan Contracts: An Overview. Edward Harrington, Deputy Assistant Secretary of the Army for Procurement, U.S. Department of the Army, and Jeffrey Parsons, Executive Director, Army Contracting Command, U.S. Department of the Army, December 17, 2009.

[9] KBR was formerly known as Brown and Root Services. Brown & Root Services was the original LOGCAP contractor.

[10] Indefinite delivery/indefinite quantity contracts, also known as ID/IQ contracts, supply an indefinite quantity of supplies, goods, or materials for an indefinite period of time. See FAR, Part 16, Types of Contracts.

[11] Jaffe, Greg and King, Neil, Jr. U.S. General Criticizes Halliburton. *Wall Street Journal*, March 15, 2004.

[12] See the Center for Public Integrity's website at http://www.publicintegrity.org/wow/ under the section for Windfalls of War, U.S. Contractors in Afghanistan and Iraq.

[13] FAR, Part 15. Contracting by Negotiation.

LOGCAP IV Contract Awards

The planning contract was awarded to Serco

In August 2006 the Army held a competition to select a logistical planning and program support contractor for LOGCAP IV. Two proposals were received and in February 2007 the ASC selected Serco, Inc., of Vienna, VA. This contract will have a minimum value of $613,677 with a contract period of one base year followed by up to four one-year options with a maximum annual contract value of $45 million and a maximum contract value of $225 million.[14]

The ASC news release announcing the initial award selection described the range of logistical and program services provided under the contract. They appear on ASC website.

- Augmenting the Army's capability to develop and update worldwide management and staffing plans for contingencies;
- working with LOGCAP IV performance contractors to assure that they understand these plans;
- helping theater planners integrate LOGCAP into their plans;
- assisting planners in incorporating a broad range of contracted logistics support;
- developing scopes of work officially referred to as procurement work statements;
- preparing independent government cost estimates which are compared against the contractor's bids to assure valid costs for task orders;
- conducting analysis of how performance contractors will do the work outlined in the task orders' scopes of work;
- analyzing performance contractors' costs;
- working with the Army to measure LOGCAP IV contractor performance; and
- recommending process improvements in the above actions.[15]

ASC selected the performance contractors

The Army conducted a competition to select up to three performance contractors for services similar to those rendered under LOGCAP III.[16] Solicitations were issued in October 2006 and six

[14] U.S. Army Sustainment Command, February 16, 2007; News Release, U.S. Army Sustainment Command, June 27, 2007.

[15] Ibid., p. 1.

[16] From the Army's FY2008 Budget Estimates for the Global War on Terrorism: LOGCAP augments combat support and combat service support force structure by reinforcing military assets with civilian contract support. The program provides primarily base life support services to the forces in theater. Base life support services provide a full spectrum of services, including food service, power generation, electrical distribution, facilities management, dining facility operations, pest management, hazardous and non-hazardous waste management, latrines, water systems, billeting management, fire fighting and fire protection services, and laundry service operations. In Iraq, the program provides for the Multi-National Force—Iraq base logistics support, base camp reorganization, the International Zone, Camp Bucca Prisoner of War base operations support, and contractor support management in theater. In Afghanistan, the program manages base operations support for the Coalition Joint Operations Area—Afghanistan, and the Kabul, Bagram, (continued...)

proposals were received. In June 2007 the ASC selected three companies to serve as performance contractors—DynCorp International LLC, Fort Worth, TX; Fluor Intercontinental, Inc, Greenville, SC; and KBR, Houston, TX.

Protests

On June 27, 2007 the losing companies filed protests with GAO over the LOGCAP IV award decision.[17] GAO sustained the protests on October 5, 2007. The Army reopened the competition. Five companies submitted bids. On April 17, 2008, the Army announced that it would re-award the LOGCAP IV contract to the three companies previously awarded contracts under LOGCAP IV.

Contract Details

The LOGCAP IV contract will cover a range of services:

- supply operations, including food, water, fuel, spare parts, and other items
- field operations, including food, laundry, housing, sanitation, waste management, postal services, and morale, welfare and recreation activities; and
- other operations, including engineering and construction; support to the communication networks; transportation and cargo services; and facilities and repair.[18]

LOGCAP IV contracts were awarded as ID/IQ contracts with one base year followed by nine option years. Each company will compete for task orders. Each of the three contracts will have a maximum value of $5 billion per year, with a collective annual maximum value of $15 billion and lifetime maximum value of $150 billion for LOGCAP IV.[19]

Performance Task Orders

The U.S. Army Sustainment Command announced the award of the first performance task order under LOGCAP IV, on September 25, 2008, to Fluor Intercontinental, Inc. The purpose of the task order is to provide logistical support services in Afghanistan to personnel (both U.S.

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Kandahar, and Salerno airfields. In Kuwait, the program manages Camps Spearhead, Udari, Arifjan; theater Retrograde operations; the theater-wide transportation mission; theater oil analysis and test facilities; management and diagnostic equipment, and bulk fuel operations. Army Operations and Maintenance, Volume 1, February 2007, p. 13, at http://www.asafm.army.mil/budget/fybm/fybm.asp.

[17] Kelley, Matt. GAO Challenges $150B Contract Awarded By Army: Urges Review of 10-year Deal to Support Troops. *USA Today*, October 31, 2007, p. 5A. According to the article, the ASC spokesperson identified was Daniel Carlson. According to Dan Gordon, a GAO official identified in the article, the ruling was issued under seal. Also, see GAO Upholds Protests to Army's Award of $50 Billion for LOGCAP 4. *Engineering News-Record*, November 5, 2007, Construction Week; pg. 9, Vol. 259, No. 16. An ASC spokesperson announced that the LOGCAP III contract would be extended while the Army made a final decision.

[18] Sheftick, Gary. Three Firms to Vie for LOGCAP Services in Theater. *Department of Defense, U.S. Army Release.* April 18, 2008.

[19] U.S. Army Sustainment Command. ASC Selects LOGCAP IV Contractors, June 27, 2007, at http://www.aschq.army.mil/commandnews/default.asp.

personnel and coalition forces) in the field. The performance period is from September 25, 2008 through September 24, 2009, and the task order is valued at $68 million.[20]

In a recent hearing before the Senate Commission on Wartime Contracting, the Executive Director for the U.S. Army Contracting Command, Army Material Command, testified on the status of the LOGCAP IV contract. Excerpts of his remarks appear below.

> Eight task orders have been awarded to date, including five task orders for performance and three task orders for project management offices (one for each contractor). Services are transitioned from LOGCAP III to LOGCAP IV as task orders are awarded. In addition to protests against the award of the basic contracts, nearly all the task orders issued or awarded to date under LOGCAP IV have been protested.[21]

Congressional Interest

Policymakers continue to express concern over the oversight of Iraq contracts for several reasons—including the expense and difficulty of managing logistical support contracts; allegations and reported instances of contract waste, fraud, abuse, and financial mismanagement; and questions regarding DOD's ability and capacity to manage such contracts. Some policymakers have raised questions as to whether DOD has the right mix of acquisition workforce personnel trained and equipped to oversee these large-scale contracts. Due to these and other concerns, Congress extended the tenure of the Office of the Special Inspector General for Iraq Reconstruction (SIGIR) from March 2004 through September 2009.[22] SIGIR conducts audits and investigations and presents recommendations for improving the management of Iraq reconstruction and relief activities.[23] The SIGIR has identified at least two ongoing investigations into LOGCAP activities, as reported in the SIGIR's latest quarterly report to Congress.[24]

Recent assessments from GAO, DOD's IG, and the SIGIR reveal a lack of Federal oversight, management, and accountability for funds spent for Iraq contracting. According to Charles Williams, Director, Defense Contract Management Agency, there are vacancies for more than 600 oversight positions in Iraq and Afghanistan.[25] An audit conducted by the DOD IG revealed that

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[20] Theis, Linda, HQ, ASC. First LOGCAP IV Performance Task Order Awarded. *Army.mil/News*, at http://www.army.mil/-news/2008/09/30/12832-first-logcap-iv-performance-task-order-awarded.

[21] U.S Congress. Military Logistics Contracts: Committee on Senate Commission on Wartime Contracting in Iraq and Afghanistan. Statement of Jeffrey P. Parsons, Executive Director, U.S. Army Contracting Command, U.S. Army Materiel Command, May 4, 2009.

[22] P.L. 110-252.

[23] See the Special Inspector General for Iraq Reconstruction, Quarterly Report to Congress, April 30, 2009, at http://www.sigir.mil/reports/quarterlyreports/default.aspx. The SIGIR replaced the Inspector General for the Coalition Provisional Authority (CPA-IG). As provided for in P.L. 108-106, the SIGIR provides an independent and objective audit, analysis, and investigation into the use of U.S.-appropriated resources for Iraq relief and reconstruction. The SIGIR, Stuart W. Bowen, Jr., was appointed as CPA-IG on January 20, 2004. He reports to both the Department of State and the Department of Defense, provides quarterly reports and semi-annual reports to Congress, and has offices in Baghad and Arlington, VA. For a summary of the history of U.S. reconstruction assistance in Iraq, see CRS Report RL31833, *Iraq: Reconstruction Assistance*, by Curt Tarnoff.

[24] Ongoing Oversight Activities of Other U.S. Agencies: DOD, Project Number D2009-DIPOAI-0141, "Review of Army Decision Not to Withhold Funds on the Logistics Civil Augmentation Program (LOGCAP) III Contract, initiated 1/29/09; and DOD, D2008-D000AS-0270.000, Transition Planning for the Logistics Civil Augmentation Program IV Contract, initiated 8/25/08. See http://www.sigir.mil/reports/quarterlyreports/Apr09/pdf/Section5_-_April_2009.pdf.

[25] LOGCAP: Support Contracting Challenges in Iraq and Afghanistan. Public Hearing Before the Commission on (continued...)

the Federal government failed to substantiate the disbursement of at least $7.8 billion of $8.2 billion dollars spent for goods and services in Iraq. In a May 22, 2008 congressional hearing before the House Oversight and Government Reform Committee, DOD officials revealed estimates that the Army disbursed $1.4 billion in commercial payments that lacked the minimum supporting justification and documentation for a valid payment—such as certified vouchers and invoices. In one reported instance, a $320 million payment in cash was made without justification beyond a signature.[26]

The FY2009 National Defense Authorization Act (P.L. 110-417) contains provisions that impact federal contracting. Some key highlights are provided here.[27]

- Section 832 offers a "Sense of Congress" provision that security operations in "uncontrolled or unpredictable high-threat environments" should ordinarily be performed by the military forces; that private security contractors should not perform inherently governmental functions in the area of combat operations, but that it should be in the "sole discretion of the commander of the relevant combatant command" to determine whether such activities should be delegated to individuals not in the chain of command;
- Section 833 amends 10 U.S.C. 1705 by designating an expedited hiring authority for the DOD acquisition workforce;
- Section 834 sets certain acquisition personnel requirements for military personnel in the acquisition field;
- Section 841 establishes a policy to address personal conflicts of interest by employees of federal government contractors;
- Section 842 requires the Secretary of Defense to ensure that DOD contractors inform their employees, in writing, of employee whistleblower rights and protections under 10 U.S.C. 2409, as implemented by Subpart 3.9, Part I, Title 48, Code of Federal Regulations;
- Section 844 requires the Comptroller General to provide a report to the House and Senate Armed Services Committees on the use of off-shore subsidiaries by DOD contractors;
- Section 845 sets requirements for the Secretary of Defense in the area of defense industrial security;
- Section 851 clarifies the pay and annuities of certain Members and staff related to the Commission on Wartime Contracting in Iraq and Afghanistan;

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Wartime Contracting in Iraq and Afghanistan, May 4, 2009. According to the testimony of Charles Williams, Director, Defense Contracting Management Agency: "At present, we have 57 unfilled SME (Subject Matter Expert) theater requirements: 36 SMEs in Iraq and 21 SMEs in Afghanistan. We have unfulfilled requirements for 335 CORs (Contractor Officer Representatives) in Iraq and 335 CORS in Afghanistan."

[26] U.S. Congress. Accountability Lapses in Multiple Funds for Iraq. Testimony of Mary L. Ugone, Deputy Inspector General for Auditing, U.S. Department of Defense, Office of the Inspector General. Hearing before the House Oversight and Government Reform Committee, May 22, 2008.

[27] The following provisions can be found, in their entirety, in S. 3001, the Duncan Hunter National Defense Authorization Act for 2009, P.L. 110-417. Excerpts are provided here.

- Section 852 calls for the Army Audit Agency, the Navy Audit Services, and the Air Force Audit Agency to each conduct a comprehensive audit of spare parts purchases and depot maintenance and repair equipment activities for operations in Iraq and Afghanistan, the purpose of which is to identify potential waste, fraud, and abuse in the performance of DOD contracts, subcontracts, and task and delivery orders, and make such audits available to the Commission on Wartime Contracting in Iraq and Afghanistan;
- Section 853 sets additional reporting requirements for contractors that perform security functions in areas of combat operations and are involved in the discharge of a weapon or other active, non-lethal countermeasures; and
- Section 854 sets additional reporting requirements for contractors related to alleged crimes by or against contractor personnel in Iraq and Afghanistan.

Finally, P.L. 110-417 contains Subtitle G – Government Wide Acquisition Improvement, which includes provisions that affect all federal contracts. These provisions are known as the Clean Contracting Act of 2008. Key highlights are provided here.

- Section 862 limits the length of certain federal executive agency and DOD contracts (for any contract in an amount greater than the simplified acquisition threshold) by certain conditions: (1) the contract may not exceed the time necessary to meet the "unusual and compelling requirements" of the work to be performed; (2) the contract may not exceed the time necessary for the executive agency to enter into a competition for a new contract; and (3) the contract may not exceed one year unless the head of the executive agency determines that exceptional circumstances apply.
- Section 863 amends the Federal Acquisition Regulation (FAR) to require competition for the procurement of property and services, in excess of the simplified acquisition threshold, that is made under a multiple award contract, unless the contracting officer waives the requirement on the basis of certain determinations, and justifies the determination in writing.
- Section 864 requires a revision of the FAR to address the use of cost-reimbursement contracts, including guidance when they are to be used; under what circumstances; justification; and what appropriate workforce resources are necessary to award and manage cost-reimbursement contracts. This provision also requires that the Inspector General for certain federal executive agencies review the agency's use of cost-reimbursement contracts for compliance with such regulations, and that the Director of the Office of Management and Budget (OMB) submit an annual report by March 1 of each year on each agency's use of cost-reimbursement contracts, and submit such a report to certain congressional committees (House Oversight and Government Reform, Senate Homeland Security and Governmental Affairs, House and Senate Appropriations, and the House and Senate Armed Services Committees).
- Section 865 requires that the OMB Director submit a comprehensive report on the use of interagency contracts, and include guidelines to improve the management of such contracts.
- Section 866 amends the FAR to minimize the excessive use of contracts by contractors, subcontractors, or tiers of subcontractors, that add none or negligibly

no value to the work. This practice is sometimes referred to as "pass-through charges or fees." This provision would eliminate a contractor, subcontractor, or tiers of subcontractors, from receiving indirect costs or profit on work performed by a lower-tier contractor, to which the higher tier adds no value or negligible value to the work. This section of the provision applies to any cost-reimbursement contract type, contract, or task or delivery order in an amount greater than the simplified acquisition threshold. DOD will continue to be subject to guidance pursuant to Section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364).[28]

- Section 867 amends the FAR to provide federal executive agencies (excluding DOD) with guidance on the appropriate use of award and incentive fees in federal acquisition programs. DOD will continue to be subject to guidance pursuant to Section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364).[29]
- Section 868 amends the FAR to clarify the procurement of items from (and minimize the abuse of) the commercial services inventory.
- Section 869 authorizes the preparation and completion of the Acquisition Workforce Development Strategic Plan for federal agencies (except DOD) to develop "a specific and actionable 5-year plan to increase the size of the acquisition workforce," and to operate a government wide, acquisition intern program for such federal agencies. The plan is to be completed within one year of the enactment of this act and "in a fashion that allows for immediate implementation of its recommendations and guidelines."
- Section 870 amends the Office of Federal Procurement Policy Act to establish a Government Wide Contingency Contracting Corps. The Corps is under the authority of the Administrator of General Services. Members of the Corps shall be available for deployment in responding to an emergency or major disaster, or contingency operation, both within and outside the continental United States.

Legislation passed in the FY2008 National Defense Authorization Act (P.L. 110-181) required increased oversight and accountability for DOD contracting during combat operations. Overall these provisions sought to enhance competition, reduce sole-source contracts, improve the acquisition workforce, address waste, fraud, and mismanagement, and provide mechanisms for greater oversight and transparency. A group of twenty-four provisions included in the bill known as the Clean Contracting Act of 2008, were introduced in the 109th Congress and enacted in the 110th Congress.[30]

The Defense Base Act (DBA) and LOGCAP

Congress is also interested in costs under the Defense Base Act (DBA). The DBA requires that many Federal government contractors and subcontractors provide workers' compensation

[28] Section 852. Report and Regulations on Excessive Past-Through Charges. This section applies to contracts for or on behalf of DOD made on or after May 1, 2007.

[29] Section 814. Linking of Award and Incentive Fees to Acquisition Outcomes.

[30] P.L. 110-417 was enacted into law on October 14, 2008.

insurance for their employees who work outside of the United States.[31] The U.S. Army's LOGCAP covers costs for DBA insurance and includes significant overheard and other costs beyond the costs of the actual insurance claims. In testimony before the Commission on Wartime Contracting in Iraq and Afghanistan, the Director of the Defense Contract Audit Agency stated that from 2003 to 2007 KBR incurred $592 million in costs for DBA insurance premiums.[32]

The Duncan Hunter National Defense Authorization Act of 2009 (P.L. 110-417) includes a provision that requires the Secretary of Defense to adopt an acquisition strategy to acquire insurance under the Defense Base Act; such a strategy should minimize overhead and coverage costs, provide a low level of risk to DOD, and present a competitive marketplace strategy. A report is due to congressional committees within 270 days of the date of the Act's enactment into law.[33]

In September 2007, the USAAA (U.S. Army Audit Agency) released its audit report of DBA costs under LOGCAP and uncovered rising program costs and wide fluctuations in insurance rates. In early 2007, an audit of the DBA program was initiated by the U.S. Army Audit Agency (USAAA) due to several factors, including the growing complexity of the DBA program, rising program costs, and wide fluctuations in insurance rates.[34] The audit report stated that the costs of DBA insurance charges were paid through the Army's LOGCAP contract with KBR. Chairman Waxman offered the following testimony on the DBA financial transactions under the LOGCAP contract.

> On September 28,2007, the Army Audit Agency 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 Logistics Civil Augmentation Program (LOGCAP). The findings in this audit provide an illustration of the waste in the DBA program.
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> In its audit, the Army Audit Agency reported that the Army had reimbursed KBR for DBA charges of $284 million made by its insurance company AIG through fiscal year 2005. Of this amount, the auditors reported that AIG would be required to pay out only $73 million in actual claims. 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 Army Audit Agency concluded that AIG's rates appear "unreasonably high" and "excessive," warning of an "increased risk that the Army could be overcharged." The audit

[31] The provisions of the Defense Base Act (DBA) are provided in statute at 42 U.S.C. §§ 1651-1654 and as part of the Longshore and Harbor Workers' Compensation Act (LHWCA) at 33 U.S.C. §§ 901-950. Regulations implementing the DBA are provided in Parts 701-704 of Title 20 of the Code of Federal Regulations (CFR) and in the Federal Acquisition Regulation at 48 C.F.R. §§ 28.305, 52.228-3, and 52.228-4.

[32] Commission on Wartime Contracting in Iraq and Afghanistan. Testimony of April Stephenson, Director of the Defense Contract Audit Agency, May 4, 2009.

[33] Section 843. Requirement for Department of Defense to Adopt An Acquisition Strategy for Defense Base Act Insurance. P.L. 110-417, enacted into law on October 14, 2008.

[34] The USAAA does not publicly release its audit reports. However, the House Committee on Oversight and Government Reform has posted a copy of this report, titled *Audit of Defense Base Insurance for the Logistics Civil Augmentation Program, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom*, on its website at http://oversight.house.gov/documents/20080515102103.pdf.

report found that there is "a high risk that the contractor may have been paying more than necessary for this insurance" and that "significant annual increases insurance companies made to DBA insurance rates don't appear to be consistent with the risk." Army auditors also raised concerns about the cost-plus nature of these charges.

As the auditors stated, "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. To the contrary, under the LOGCAP contract, KBR itself is paid its fee as a percentage of these DBA costs, ranging from 1% to 3%, meaning that KBR may have received between $2.8 million and $8.4 million on top of AIG's[35] profits. 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."[36]

Background

Awarding of Defense Contracts

In most cases, federal government contracts are awarded under "full and open competition." However, there are exceptions, particularly during times of war.

Full and Open Competition

In general, authorities that govern the awarding of most federal government contracts can be found in the United States Code (U.S.C.) and the Federal Acquisition Regulation (FAR). The Competition in Contracting Act of 1984[37] explicitly states that the federal government "shall obtain full and open competition through use of the competitive procedures in accordance with the requirements of this title and the FAR."[38] The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) give DOD at least seven exceptions to the use of other than full and open competition in the awarding of contracts.[39]

[35] AIG stands for American International Group, Inc.

[36] U.S. Congress. House Oversight and Government Reform Committee Hearing. Defense Base Act Insurance: Are Taxpayers Paying Too Much? Supplemental Information on Defense Base Act Insurance Costs. Memorandum from the Majority Staff, to the Members of the House Oversight and Government Reform Committee, May 15, 2008, p. 7.

[37] 41U.S.C. 253. CICA can also be found in Title 10 U.S.C., Chapter 137, and was included in Section 805 of the FY2004 National Defense Authorization Act (P.L. 108-136).

[38] 41 U.S.C. 253 (a)(1)(A).

[39] The Defense Federal Acquisition Regulation and AIDAR are supplements to the FAR. See DFARS, Subpart 206.3, and AIDAR, Subpart 706.3, Other Than Full and Open Competition. The exceptions are: (1) There is only one responsible source available to fulfill the contract requirements; (2) the federal agency's need for these goods or services is of such an unusual and compelling urgency that the federal government would be seriously injured if this contract were not awarded; (3) the federal government needs to ensure that suppliers are maintained in the event of a national emergency, or to achieve industrial mobilization, or to establish or achieve or maintain an engineering, development, or research capability; (4) The federal government has an international agreement to make this acquisition through means other than through full and open competition; (5) a statute specifically authorizes or requires that the contract be made through a specific source; (6) The use of full and open competition may compromise national security; (7) The public interest would be better served by use of other than full and open competition. The procedures (continued...)

Two of the seven circumstances are (1) when the Secretary of Defense determines that DOD's need for a property or service is of such an "unusual and compelling urgency" that the United States would be seriously injured unless DOD is permitted to limit the number of sources from which it solicits bids or proposals; and (2) when the use of full and open competition would compromise national security.

Emergency Contracting Authorities

Title 41 USC Section 428a grants special emergency procurement authority to heads of executive agencies where it is determined that a procurement is to be used in support of a contingency operation, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

Contingency Contracting

Contingency contracting differs from emergency contracting—the first usually describes situations where urgent requirements are necessitated by disasters, while the second usually describes military, humanitarian, or peacekeeping operations.[40] DOD has developed initiatives to strengthen DOD contracting operations, particularly in contingency contracting situations.[41] Section 817 of the National Defense Authorization Act for Fiscal Year (FY) 2006[42] directs the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to develop a joint policy for contingency contracting during combat operations and post-conflict operations no later than one year from the bill's enactment. Sections 815 and 854 of the John Warner National Defense Authorization Act for FY2007required DOD to report to Congress on contingency contracting requirements and program management, and to develop instructions to implement a contingency contracting program. The report was issued in October 2007.[43]

Rapid Acquisition Methods

Section 811 of the FY2005 National Defense Authorization Act[44] grants the Secretary of Defense limited rapid acquisition authority to acquire goods and services during combat emergencies.

(...continued)

for submitting written justifications to use other than full and open competition, including review requirements and delegation of authority, are outlined in DFARS, Subparts 206.303-1 and 206.304, and AIDAR 706.3. For a more detailed discussion on the seven exceptions to the use of full and open competition, refer to CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

[40] Drabkin, David, and Thai, Khi V. Emergency Contracting in the US Federal Government. *Journal of Public Procurement 2007*, Vol. 7, No. 1, p. 84.

[41] For further information on DOD Procurement and Acquisition Policy governing contingency contracting, refer to http://www.acq.osd.mil/dpap/pacc/cc/about.html.

[42] P.L. 109-16.

[43] Report on DOD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel during Contingency Operations, accompanied by a memorandum to the Honorable Richard B. Cheney from the Honorable P. Jackson Bell, Deputy Under Secretary of Defense for Logistics and Materiel Readiness, October 15, 2007. Section 815 covers the implementation of DOD Instruction (DODI) 3020.41,Contractor Personnel Authorized to Accompany Armed Forces, October 3, 2005, at http://www.dtic.mil/whs/directives/corres/html/302041.htm.

[44] Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note) is amended through the passage of Section 811.

Also, Title 10, Section 2304 outlines the use of ID/IQ task orders, sealed bidding, certain contract actions, and set-aside procurement under section 8(a) of the Small Business Act[45] as examples of ways to expedite the delivery of goods and services during combat operations or post-conflict operations.

Audits, Investigations, and Reports

Role of Federal Agencies

No one federal agency has the sole mission to audit, investigate, or oversee DOD-appropriated funds for troop support services under LOGCAP. Multiple agencies share responsibility, among them the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), the Army Audit Agency (AAA), and the DOD Inspector General.

Special Inspector General for Iraq Reconstruction (SIGIR)

Media reports suggests that a perceived lack of transparency in the earliest Iraq contracts led to the appointment of the Special Inspector General for the Coalition Provisional Authority (now SIGIR). SIGIR Stuart Bowen has audited and investigated contracts for Iraq reconstruction and relief funds, although some projects have involved a blending of IRRF funds with DOD appropriated funds.[46] The SIGIR's additional investigations into LOGCAP contracts have largely described LOGCAP contracts as lacking transparency, oversight, and financial accountability, and his investigations have documented some cases of waste, fraud, abuse, and financial mismanagement. According to the Congressional Budget Office, the SIGIR has produced more than 150 reports, audits, or investigations of reconstruction-related activities.[47] Estimates have been made that the SIGIR's work has resulted in significant benefits to the federal government.[48]

In June 2007 the SIGIR released a report based on its partial audit of Task Order 130, awarded to KBR on April 27, 2006 to provide support services to officials at the U.S. Embassy in Iraq as well as other Iraq sites. This report found substantial deficiencies in both KBR's ability to provide enough data for the SIGIR to perform an adequate audit and investigation of (what appeared to be) gross overcharges for fuel and food services. Additionally, the report found that the government's oversight and management of the contract was inadequate and contributed to the SIGIR's inability to completely audit and investigate the contract—including an evaluation of the government's ability to provide oversight and management.[49]

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[45] 15 U.S.C. 637(a).

[46] For a discussion of contract funds for Iraqi Relief and Reconstruction projects, see CRS Report RL31833, *Iraq: Reconstruction Assistance*, by Curt Tarnoff. Also, for a discussion on federal procurement statutes as they affect Iraq reconstruction projects see CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

[47] Paying for Iraq Reconstruction. An Update of the January 2004 analysis. Congressional Budget Office, December 8, 2006.

[48] Senator Collins Works To Extend The Term of the Office that Oversees Billions in Iraqi Reconstruction Dollars. Press Release of the United States Senate Committee on Governmental Affairs, November 13, 2006. Also, see SIGIR website http://www.sigir.mil/ for audits reports.

[49] Logistics Civil Augmentation Program Task Order 130: Requirements Validation, Government Oversight, and Contractor Performance. SIGIR 07-001, June 22, 2007, at http://www.sigir.mil/reports/pdf/audits/07-001.pdf.

Overall, the SIGIR has recommended that the federal government "generally avoid the use of sole-source and limited-competition contracting actions."[50] The report concludes that the use of sole-source and limited competition contracting in Iraq should have ended sooner, and that contracts issued previously under limited or sole-source competition should have been subject to re-competition.

Latest SIGIR Review

The latest LOGCAP review is a continuation of a past review of LOGCAP Task Order 130 (awarded on April 27, 2006 with an estimated value of $283 million) and a new review of LOGCAP Task Order 151 (awarded on June 6, 2007 with an estimated value of $200 million). Both task orders were awarded to KBR for support services to the Chief of Mission and Multi-National Force-Iraq staffs (located at the U.S. Embassy-Iraq) and for services at other Chief of Mission sites within Iraq (located in Baghdad, Basra, Al Hillah and Kirkuk.) SIGIR conducted its review at KBR sites in Baghdad and involved interviews with personnel responsible for the administration and oversight from DCMA, DCAA, and DOS; personnel with the Joint Area Support Group-Central appointed as the Contracting Officer's Technical Representatives (COTRs); the LOGCAP Task Order 151 Support Officer; personnel at the Army's Logistic and Budget Offices, and KBR managers and operational personnel. [51] From the report, here is an excerpt which described the costs.

> Because these task orders provided support to both the Department of Defense (DOD) and Department of State (DOS) missions in Iraq, DOD and DOS agreed that the reimbursement of costs associated with these task orders would be shared 60% by DOS and 40% by DOD. The total cost of these four task orders is approximately $1.5 billion.[52]

Overall, the SIGIR's audit and investigation found that the federal government and KBR had improved its oversight and management of Task Orders 130 and 151. However, the report identified areas where the government should make specific improvements in both oversight and management.[53]

DOD Inspector General

Thomas F. Gimble, Principal Deputy Inspector General for the Department of Defense, testified at the September 20, 2007 hearing before the House Armed Services Committee on "Accountability During Contingency Operations: Preventing and Fighting Corruption in Contracting and Establishing and Maintaining Appropriate Controls on Materiel."[54] In his

[50] Lessons in Contracting from Iraq Reconstruction. Lessons Learned and Recommendations from the SIGIR, July 2006.

[51] Both Task Orders are a continuation of services previously awarded under Task Order 100 and Task Order 44. Logistics Civil Augmentation Program Task Orders 130 and 151: Program Management, Reimbursement, and Transition. SIGIR-08-002, October 30, 2007, **Appendix A**, Scope and Methodology p. 22, at http://www.sigir.mil/reports/pdf/audits/08-002.pdf

[52] Logistics Civil Augmentation Program Task Orders 130 and 151: Program Management, Reimbursement, and Transition. SIGIR-08-002, October 30, 2007, pages 1-2, at http://www.sigir.mil/reports/pdf/audits/08-002.pdf.

[53] Ibid, pp. 4-20.

[54] Statement of Mr. Thomas F. Gimble, Principal Deputy Inspector General, Department of Defense, before the House Armed Services Committee, September 20, 2007.

testimony he described DOD's past and present efforts to provide oversight for contracting during contingency operations.

> To date, over $550 billion has been appropriated to the Department of Defense in support of the men and women of our Armed Forces in Southwest Asia and the fight against terrorism. To provide oversight, we have over 225 personnel working on 29 audits and 90 investigations that address a wide variety of matters to include contracting, accountability, and required documentation. Additionally, we are working with other DoD organizations, such as the Army Audit Agency, the Army Criminal Investigation Command, and the Defense Finance and Accounting Service, to evaluate and provide recommendations for actions addressing these critical mission support areas.[55]

He also described the formation of a new partnership to combine the efforts of multiple federal agencies to combat both waste, fraud, abuse, and mismanagement of Iraq reconstruction contracts.

> More recently, as a result of the magnitude of alleged criminal activities within the Iraqi theater, a group of Federal agencies has formalized a partnership to combine resources to investigate and prosecute cases of contract fraud and public corruption related to U.S. Government spending for Iraq reconstruction. The participating agencies in the International Contract Corruption Task Force (ICCTF) are DCIS; Army CIDs Major Procurement Fraud Unit; the Office of the Inspector General, Department of State; the FBI; the Special Inspector General for Iraq Reconstruction; and the Office of the Inspector General, Agency for International Development.
>
> The ICCTF has established a Joint Operations Center which is a case coordination cell and criminal intelligence element aimed at achieving maximum interagency cooperation to successfully prosecute fraud and corruption cases in support of the war effort in Iraq. The mission and objectives of the ICCTF are a shared responsibility of the participating agencies. Case information and criminal intelligence are shared without reservation and statistical accomplishments will be reported jointly.
>
> As a result of closed and ongoing investigations, five Federal criminal indictments and ten Federal criminal information have been issued, and two Article 32 hearings under the Uniform Code of Military Justice have been conducted. As a result of the investigations, nine U.S. persons and one foreign person have been convicted of felonies, resulting in a total of approximately fifteen years of confinement and eleven years of probation. Four individuals and one company were debarred from contracting with the U.S. Government; nineteen companies and persons were suspended from contracting; and two contractors signed settlement agreements with the U.S. Government. In all, $9.84 million was paid to the U.S. in restitution; $323,525 was levied in fines and penalties; $3,500 was forfeited; and $61,953 was seized.[56]

Government Accountability Office (GAO)

GAO has identified DOD contract management as a high risk area and monitors DOD's performance with periodic progress updates.[57] GAO has conducted numerous studies of Iraq

[55] Ibid, p. 1.

[56] Ibid, pp. 11-13.

[57] "High Risk Area: Defense Contract Management." GAO-05-207, February 2005.

contracting including several studies of logistical support contracts.[58] Since 2003 GAO has issued a number of Iraq-related reports and testimonies to Congress.

The Comptroller General David Walker appeared in July 2007 before the Senate Homeland Security and Governmental Affairs Committee to discuss four specific challenges facing federal agencies in the oversight and management of contracts. There he made several important observations:

> Managing risks when requirements are in transition requires effective oversight. DOD lacked the capacity to provide sufficient numbers of contracting, logistics, and other personnel, thereby hindering oversight efforts. The challenges faced in Iraq are a symbol of systematic challenges facing DOD. DOD cannot develop a complete picture of the extent to which it relies on contractors to support its operations. Information on the number of contractor employees, and the services they provide, is not aggregated within DOD or its components. DOD recently established an office to address contractor support issues, but the office's specific roles and responsibilities are under study. DOD and its contractors need to clearly understand DOD's objectives and needs. To produce desired outcomes with available funding and within required time frames, they need to know the goods or services required, the level of performance or quality desired, the schedule, and the cost.[59]

Potential Oversight Issues

Potential contract oversight issues that Congress may choose to examine include various aspects of contract administration such as contract costs, development of contract requirements, costs-reimbursement and sole-source contracts; transparency and the size, shape, and skill diversity of the acquisition workforce.

Contract Oversight

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. Some Members of Congress may want DOD to develop a long-term plan to restore in-house expertise to make the government a smarter customer. Because of several cases in which high profile weapons acquisition programs have been affected by escalating costs and technical shortcomings, Congress may choose to review the management of individual programs and the evolution of DOD's acquisition management processes with an eye toward using the FY2008 funding bills to strengthen the government's hand in dealing with industry. As an example, Secretary of the Navy Donald C. Winter and Chief of Naval Operations Adm. Michael G. Mullen have reported that the Navy intends to reclaim some of the authority over ship design it has ceded to industry. Congress may also choose to study the Army's Future Combat System (FCS) and may

[58] GAO-04-854, Military Operation. DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight. July 2004.

[59] GAO-07-358T, p. 13. Also see GAO-07-1098T. Federal Acquisitions and Contracting. Systemic Challenges Need Attention. Statement of David M. Walker, Comptroller General of the United States, July 17, 2007; GAO-07-145. Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 2006, p. 53.; and GAO-04-854. Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight. July 2004, p. 67.

question the amount of managerial discretion the Army has vested in the Lead System Integrator (LSI).[60]

Contract Administration

Contract administration includes contract management and contract oversight. FAR Part 37 states that "agencies shall ensure that sufficiently trained and experienced professionals are available to manage contracts."[61] The burden rests with the federal government to ensure that enough appropriately-trained professionals are available to manage contracts. This is essential, particularly before the requirements generation process, when the government determines the scope of work to be completed. Contract management is also described in the Office of Federal Procurement Policy's (OFPP) "Guide To Best Practices for Contract Administration" where it states that "The technical administration of government contracts is an essential activity ... .absolutely essential that those entrusted with the duty ensure that the government gets all that it bargains for ... and they must be competent in the practice of contractor administration."[62]

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. For example, 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.[63]

Two former OFPP administrators, Steven Kelman and Allan Burman, stated that the current contracting situation creates a crisis. Here they offer their assessment.

> Hiring contracting officials is hardly the way to dress for political success—who wants to bring in more "bureaucrats?"—but there can't be well-managed contracts without people to manage them. The current situation creates a vicious circle: Overstretched people make mistakes, producing demands for more rules, creating additional burdens, giving people even less time to plan effective procurement and manage performance.[64]

It is important that both civilian and military procurement sectors have qualified and experienced contract professionals. In the case of service contracts, having professionally trained contracting personnel could be even more critical than contracts for tangible goods. With tangible goods,

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[60] For a discussion of the LSI concept, see CRS Report RS22631, *Defense Acquisition: Use of Lead System Integrators (LSIs)—Background, Oversight Issues, and Options for Congress*, by Valerie Bailey Grasso; CRS Report RL33753, *Coast Guard Deepwater Acquisition Programs: Background, Oversight Issues, and Options for Congress*, by Ronald O'Rourke; and CRS Report RL32888, *Army Future Combat System (FCS) "Spin-Outs" and Ground Combat Vehicle (GCV): Background and Issues for Congress*, by Andrew Feickert and Nathan Jacob Lucas.

[61] FAR Part 37.

[62] OFPP Guide at http://www.acqnet.gov/comp/seven_steps/library/OFPPguide-bp.pdf.

[63] Logistical support units write performance statements of work, prepare independent government cost estimates, and review contractor estimates on behalf of the government. See GAO-04-854. Military Operations: DOD's Extensive Use of Logistics Support Contracts Strengthen Oversight, July 21, 2004.

[64] Burman, Allan and Kelman, Steven. "Better Oversight of Contractors," *The Boston Globe*, January 16, 2007, p. A9.

there is an identifiable product. In the absence of a product, it becomes even more important that DOD and the contractor both exercise good stewardship of federally appropriated dollars.

DOD Contracting Officials

Contracting officials are expected to make tough decisions. As an example, Ms. Bunnatine Greenhouse, formerly the highest ranking civilian at the U.S. Army Corps of Engineers (USACE), raised important questions on the rationale for awarding KBR contracts without competition. She objected to the awarding of one contract award as well as the five-year contract term.[65] 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 (RIO) 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.[66] 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."[67] The contract was later investigated by the SIGIR.[68] 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.[69]

Another senior DOD civilian testified that he made a decision to award KBR a task order under the LOGCAP contract without conducting any competition. Michael Mobbs, then-Special Assistant to the Undersecretary of Defense for Policy, testified that he made the decision to award KBR the contingency planning contract over the objections of an attorney with the Army Materiel Command. The attorney had determined that the oil-related task order was outside of the scope of the LOGCAP troop support contract. Later, GAO concluded that the lawyer's position was the correct one and that the work "should have been awarded using competitive procedures."[70]

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[65] Schnayerson, Michael. "Oh, What a Lucrative War," *Vanity Fair*, April 2005, p. 9.

[66] For additional information, see CRS Report RL32229, *Iraq: Frequently Asked Questions About Contracting*, by Valerie Bailey Grasso et al.

[67] Vanity Fair, p. 149.

[68] It should be noted here that the KBR sole-source contract, according to the SIGIR, complied with applicable federal regulations for sole-source contracts, according to the SIGIR. The SIGIR concluded that "the justification used was that KBR had drafted the Contingency Support Plan (CSP), had complete familiarity with it, had the security clearances necessary to implement it, and the contract needed] to be immediately available to implement." Lessons In Contracting and Procurement. Iraq Reconstruction. Special Inspector General for Iraq Reconstruction. July 2006, p. 20.

[69] Witte, Griff. Halliburton Contract Critic Loses Her Job. *Washington Post*, August 29, 200, p. A11. For additional information, see the following documents: Letter to Tom Davis, Chairman, Committee on Government Reform, House of Representatives, from Henry A. Waxman, Ranking Minority Member, House of Representatives, November 10, 2004; Testimony of Bunnatine Greenhouse before the Senate Democratic Policy Committee, June 27, 2005; and Letter to Donald Rumsfeld, Secretary of Defense, from Senators Byron L. Dorgan and Frank Lautenberg, and Representative Henry A. Waxman, August 29, 2005.

[70] Briefing by Michael Mobbs, Special Assistant to the Undersecretary of Defense for Policy, for staff of the House Government Reform Committee, June 8, 2003. Also, see GAO-04-605. Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges, June 2004.

Development of Contract Requirements

LOGCAP contracts have often by-passed the process to define realistic funding, appropriate time frames, and other important requirements through the use of "undefinitized" contract actions. Undefinitized contract actions[71] do not require that the DOD contracting official write a completed performance work statement before the work is performed. Some proponents of undefinitized task orders have stated that they give the contractor more flexibility in getting work started sooner. However, recent DCAA audits have found that these undefinitized task orders have given KBR a significant cost advantage. Auditors have found that DOD contracting officials were more willing to rely on KBR's costs estimates, estimates later found to be greatly inflated. According to DCAA auditors, DOD contracting officials rarely challenged these cost estimates. The estimates became the baseline from which KBR established their costs upon which to bill the government, which later increased their overall profit.

In testimony before the Senate Armed Services Committee, the SIGIR stated that contracting personnel must be provided with an adequate description of a customer's needs. The inability to properly define and prepare requirements appeared to be a significant oversight challenge in the Iraq contracting process.[72]

Use of Indefinite-Delivery/Indefinite-Quantity Contracts

FAR Subpart 16.5 defines ID/IQ contracts.[73] In the case of ID/IQ contracts, task and delivery orders are issued; these orders do not define a firm quantity of goods or services.[74] Task orders are the "to do" portion of the contract, the contractor's action list. LOGCAP contracts allow task orders to be approved as needed without being subject to competition among multiple contractors. Each task and delivery order acts like a single contract, potentially allowing costly amounts of work to be performed on a non-competitive basis. Task Order 59 was one of the largest single task orders on the LOGCAP III contract. It was issued in May 2003 and includes various discrete functions, supporting up to 130,000 U.S. troops, and has reportedly resulted in estimates of charges to the government of about $5.2 billion dollars from June 2003 through June 2004.

Costs and the Use of No-Bid and Sole-Source Contracts

Much has been written in the media about the use of sole-source contracting in Iraq.[75] In general, most authorities believe that government contract costs are influenced significantly by the degree

[71] Also referred to as undefinitized task orders.

[72] Testimony of the Special Inspector General for Iraq Reconstruction, before the Senate Armed Services Committee, February 7, 2006.

[73] FAR Subpart 16.5 Indefinite delivery/indefinite quantity contracts, also known as IDIQ contracts, supply an indefinite quantity of supplies, goods, or materials, for an indefinite period of time. See FAR, Part 16, Types of Contracts. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949, requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

[74] Indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

[75] Sole-source contracts are contracts which are not subject to competition.

of competition; that having several competitors will reduce overall cost. However, questions have been raised as to whether contract costs in a war zone are inherently uncontrollable. DOD has argued that Iraq contracting costs are expensive because of the uncertainty of war-related requirements for goods and services. Government contingency contracting in times of war has often favored using programs such as LOGCAP because it enables contracting officials to move quickly to secure contractors, who in turn can be deployed quickly into the combat theater.

While full and open competition is the standard for government contracting, full and open competition has not been the standard for contracting for troop support services under LOGCAP. One report stated that of the $145 billion in non-competitive contracts awarded by the federal government in 2005, $97.8 billion was awarded in "no-bid" contracts. Of that $97.8 billion in contracts, $63.4 billion was awarded under the rationale that only one contractor could supply the needed goods or services. The remaining $34.4 billion was awarded in no-bid contracts under a variety of other exceptions to full and open competition. $8.7 billion was awarded for emergency situations, and $2.9 billion was awarded for circumstances where a statute authorizes or requires restricted competition.[76] Finally, $47.2 billion in contracts was awarded in cases where the competitive range was limited to a small group of companies (referred to as a "limited" competition).

The Special Investigations Division of the House Government Reform Committee has issued a report titled "Dollars, not Sense: Government Contracting Under the Bush Administration." According to this report, in 2000 the federal government awarded $67.5 billion in non-competitive contracts; that figure rose to $145 billion in 2005, an increase of 115%. While the contracts awarded were larger, the value of contracts overseen by the average government procurement official rose by 83% (between 2000-2005).

Cost-reimbursement Contracts

Cost-reimbursement contracts can be: (1) cost-plus award fee; (2) cost-plus incentive fee; or (3) cost-plus fixed fee.[77] In 2000, the federal government spent $62 billion on cost-plus contracts; in 2005, that figure increased to $110 billion. Nearly half of all costs-plus contracts ($52 billion) were costs-plus award fee contracts. LOGCAP was the single largest cost-plus award fee contract, and at one time was valued at about $16.4 billion.[78] In costs-plus contracts, contractor's fees rise with contract costs. Increased costs means increased fees to the contractor. There is no incentive for the contractor to limit the government's costs.

Use of Overhead Fees

The SIGIR's past investigations into reconstruction contracts revealed that, in some contracts, overhead expenses accounted for more than half of the costs that Kellogg, Brown, and Root (KBR) billed the federal government. A recent audit report, "Review of Administrative Task Orders for Iraq Reconstruction Contracts," found that relatively high overhead costs were

[76] Dollars, Not Sense: Government Contracting Under the Bush Administration. United States House of Representatives, Committee on Government Reform - Minority Staff, Special Investigations Division, p. 7-9.

[77] Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

[78] Army Field Support Command, Media Obligation Spreadsheet, April 20, 2006.

charged, and that these costs were significantly higher than work performed by other companies in Iraq. For these contracts, overhead costs ranged from 11% to 55% of projected contract budgets. For example, the SIGIR found that in five KBR projects, administrative costs outdistanced the costs of the projects alone. For example, the report cites a project where administrative costs totaled about $52.7 million, while the actual project costs were about $13.4 million. In another case, the combined administrative costs for five contractors totaled about $62 million, while the direct construction costs totaled $26.7 million.[79] The SIGIR found that overhead expenses accounted for more than half of the costs KBR billed the federal government.

Overhead fees can also result as a part of fees passed from one contractor to another. One such example is the case of Blackwater Security Firm's contract for private security services in Iraq. Blackwater's contract paid workers who guarded food trucks a salary of $600 a day. The company added overhead costs and a 36% markup to its bill, then forwarded the bill to a Kuwaiti company. The Kuwaiti company then added costs and profit, then sent the bill to the food company. The food company did the same, and finally sent the bill to KBR. KBR passed its cost to DOD. Yet the U.S. Army stated in a congressional committee hearing that it had never authorized KBR to enter into a subcontracting relationship with Blackwater. The matter remains pending.[80]

Transparency

Transparency allows the federal government to better administer contracts and oversee contractors. For example, the federal government has had difficulty getting certain contractors to provide important information on their invoices and billing statements. The SIGIR released a series of audit and investigative reports which drew attention to barriers that hampered the government's efforts. In one report, SIGIR Bowen reported that it was difficult to complete the investigation into the KBR contracts because KBR "routinely and inappropriately marked their data as proprietary."[81]

Another problem with a lack of transparency is the relationship between the federal government, the prime contractor, and the subcontractors. The federal government has a contractual relationship with the prime contractor, not with subcontractors. Thus the government may be somewhat limited in providing full accountability for tax-payer dollars. While the prime contractor-subcontractor relationship is between private sector companies, the monies are from public funds.[82]

Acquisition Workforce

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

[79] Powers, Mary Buckner. Congress Moves To Reinstate Iraq Contracting Overseer. Engineering News-Record, Vol. 257, No. 19, p. 13. November 13, 2006.

[80] "Watching War Costs," *The News & Observer*, Raleigh, NC, December 9, 2006. Retrieved January 21, 2007, at http://www.nexis.com/research/search/submitViewTagged.

[81] Powers, Mary Buckner. Congress Moves To Reinstate Iraq Contracting Overseer. Engineering News-Record, Vol. 257, No. 19, p. 13. November 13, 2006.

[82] "Commentary: Watching War Costs," *The News & Observer*, Raleigh, NC, at http://www.nexis.com/research/search/submitViewTagged.

full-time government positions, and hiring an additional 10,000 defense acquisition workforce employees by 2015. 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. At the same time, statements issued by President Obama have signaled his intention to reduce defense contracting spending by reviewing DOD's acquisition processes prior to the commencement of the next Quadrennial Defense Review. President Obama has reportedly announced that he may perform a line-by-line review of the federal budget, eliminate government programs that are not performing, reduce federal spending on contractors by at least ten percent, and 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.[83]

According to DOD, its acquisition workforce has been reduced by more than 50 percent between 1994-2005.[84] In future years, between 2006-2010, half of the federal acquisition workforce will be eligible to retire.[85] It has been reported that DOD does not have sufficient numbers of contractor oversight personnel, particularly at deployed locations. This limits DOD's ability to assure that taxpayer dollars are being used in a judicious manner. 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.[86] The GAO official also stated that one 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."[87]

Earlier mandates to reduce the size of the DOD acquisition workforce reflected Congress' view that the workforce had not been downsized enough—that reductions continued to lag in proportion to the decline in the size of the overall defense budget, in general, and to the

[83] See the following two documents: Defense Budget Recommendation Statement, as prepared for delivery by Secretary of Defense Robert M. Gates, Arlington, VA, Monday, April 06, 2009; and The White House, Office of the Press Secretary, Government Contracting: Memorandum for the Heads of Executive Departments and Agencies, March 4, 2009.

[84] In 1998, the House National Security Committee asked GAO to review DOD's progress in achieving a 25-percent reduction in the acquisition organizations' workforce, examine the potential savings associated with such reductions, determine the status of DOD efforts to redefine the acquisition workforce, and examine DOD's efforts to restructure acquisition organizations. GAO concluded that "DOD has been reducing its acquisition workforce at a faster rate than its overall workforce and is on schedule to accomplish a 25-percent reduction by the fiscal year 2000. However, potential savings from these reductions cannot be precisely tracked in DOD's budget. In addition, some of the potential savings from acquisition workforce reductions may be offset by other anticipated costs. Such costs include those for contracting with private entities for some services previously performed by government personnel (i.e., substituting one workforce for another." U.S. Congress. General Accounting Office. Defense Acquisition Organizations: Status of Workforce Reductions. Report to the Chairman, Committee on National Security, House of Representatives. GAO/NSIAD-98-161. June 1998. 20 pages. For another source of data on the federal acquisition, see Report on the Federal Acquisition Workforce, FY2003-2004, Federal Acquisition Institute Report, Executive Summary, p. vii.

[85] S. Assad, Director, Defense Procurement and Acquisition Policy, in testimony before the Acquisition Advisory Panel, June 13, 2006, p. 57-58 (excerpted from the Final Panel Working Draft, Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Congress, December 2006.

[86] GAO-07-359T. Defense Acquisitions: DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services. Statement of Katherine V. Schinasi, Managing Director, Acquisition and Sourcing Management, before the Subcommittee on Readiness and Management Support Committee on Armed Services, United States Senate, January 17, 2007.

[87] GAO-07-359T, p. 8.

acquisition portion of the defense budget, in particular. At that time, Congress and DOD were at odds over the need for further reductions in the defense acquisition workforce. Reducing the defense acquisition workforce had been viewed by the Congress, in the past, as a necessary requirement for eliminating wasteful spending, and providing DOD with increased funding for other priorities.

Staffing shortages in the defense contracting personnel to oversee Iraq contracts have become part of a larger, systemic problem within DOD.[88] 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. With the growth in service contracting; the increase in the number of complex, billion dollar contracts; and the decline in the number of federal acquisition workforce employees, some officials have asserted that there are not enough DOD contracting officials, onsite in Iraq, who are available and experienced enough to manage the complexities of the new acquisition programs, or oversee private sector contractors.

It appears to some that DOD has downsized the federal acquisition workforce, particularly those that oversee large-scale contracts like LOGCAP, to dangerously low levels. They note that 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. There are concerns over potential deficits and imbalances in the skills and experience levels of personnel who manage large-scale weapon acquisition programs and defense contracts.

The Gansler Commission

The Secretary of the Army commissioned a study headed by former Deputy Secretary of Defense Jacques Gansler to analyze "structural weaknesses and organizational deficiencies in the Army's acquisition and contracting system used to support expeditionary operations." Dr. Gansler has recently presented the Commission's findings and recommendations before Congress.[89] Here is an excerpt of the Commission's analysis of the acquisition workforce.

> The expeditionary environment requires more trained and experienced military officers and non-commissioned officers (NCOs). Yet, only 3 percent of Army contracting personnel are active duty military and there are no longer any Army contracting career General Officer (GO) positions. The Army's acquisition workforce is not adequately staffed, trained, structured, or empowered to meet the Army needs of the 21st Century deployed war fighters. Only 56 percent of the military officers and 53 percent of the civilians in the contracting career field are certified for their current positions. Notwithstanding a seven-fold workload increase and greater complexity of contracting, the Institutional Army is not supporting this key capability. Notwithstanding there being almost as many contractor personnel in the Kuwait/Iraq/Afghanistan theater as there are U.S. military, the Operational Army does not yet recognize the impact of contracting and contractors in expeditionary operations and on

[88] The same observations were made about the U.S. Coast Guard's Deepwater contract. According to Admiral Thad Allen, Commandant, the issue concerns "the capacity of our acquisition staffs to deal with the myriad definitization of task orders, particular line items, the ability to interact with the extensive amount of nodes that you have in Integrated Coast Guard Systems ... I'm not sure that we understood going how much we had to be prepared to handle the work load in terms of capacity and competency in human capital, and that's one of the main things I'm focusing on." Cavas, Christopher P. Millions for Deepwater, No One to Spend It. U.S. Coast Guard Adds Acquisition Experts for Modernization. *Defense News*, Vol. 22, No. 2, January 8, 2007, p. 1.

[89] Senate Armed Services Committee, Subcommittee on Readiness and Management Support on December 6, 2007. http://armed-services.senate.gov/e_witnesslist.cfm?id=3048.

> mission success. What should be a core competence—contracting (from requirements definition, through contract management, to contract closeout)—is treated as an operational and institutional side issue.[90]

The Commission's report recommends that the Army makes systemic and fundamental changes in the way it conducts business, and has divided its recommendations into four major areas as described here.

- Increase the stature, quantity, and career development of military and civilian contracting personnel (especially for expeditionary operations);
- Restructure the organization and restore responsibility to facilitate contracting and contract management in expeditionary and CONUS operations;
- Provide training and tools for overall contracting activities in expeditionary operations; and
- Obtain legislative, regulatory, and policy assistance to enable contracting effectiveness in expeditionary operations.[91]

Independent Panel to Examine the Defense Contract Audit Agency

DOD has asked the Defense Business Board to examine the performance of the Defense Contract Audit Agency (DCAA) and report their findings within 60 days.[92] DCAA has come under increased scrutiny, in part, because of a July 2008 GAO report which investigated certain complaints it received from the FraudNet hotline alleging questionable and improper auditing irregularities. GAO found that the allegations were substantiated; the report concluded with the following observations, as stated below.

> In the cases we investigated, pressure from the contracting community and buying commands for favorable opinions to support contract negotiations impaired the independence of three audits involving two of the five largest government contractors. In addition, DCAA management pressure to (1) complete audit work on time in order to meet performance metrics and (2) report favorable opinions so that work could be reduced on future audits and contractors could be approved for direct-billing privileges led the three DCAA personnel to take inappropriate short cuts—ultimately resulting in noncompliance with GAAS and internal DCAA CAM guidance. Although it is important for DCAA to issue products in a timely manner, the only way for auditors to determine whether "prices paid by the government for needed goods and services are fair and reasonable" is by performing sufficient audit work to determine the adequacy of contractor systems and related controls, and contractors compliance with laws, regulations, CAS, and contract terms. Further, it is important that managers and supervisory auditors at the three locations we investigated work

[90] U.S. Army. Urgent Attention Required: Army Expeditionary Contracting, Report of the Commission on Army Acquisition and Program Management, November 1, 2007, p. 10, at http://www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf.

[91] Ibid, p. 13.

[92] From the Defense Business Board's website: "The Defense Business Board, under the provisions of the Federal Advisory Committee Act of 1972, as amended, shall provide the Secretary of Defense, through the Deputy Secretary of Defense, independent advice and recommendations on effective strategies for the implementation of best business practices of interest to the Department of Defense. The ultimate objective of this advice is to enhance the efficiency and effectiveness of organizational support to the nation's warfighters." Board members are appointed by the President and serve for two-year terms. For further information, refer to http://www.defenselink.mil/dbb/charter.html.

> with their audit staff to foster a productive, professional relationship and ensure that auditors have the appropriate training, knowledge, and experience.[93]

Potential Options for Congress

Congress may choose to consider the following options when examining DOD contracts for troop support: (1) implementing of the Gansler Commission's recommendations; (2) broadening of the jurisdiction of the SIGIR to include DOD contracts for troop support services (like LOGCAP contracts); (3) convening of a study of the federal employee and contractor workforce; (4) requiring more detail to give Congress better information to perform its oversight role; and (5) establishing a dedicated office to conduct audits and investigation of DOD contracts.

Option 1: Implementing the Gansler Commission Recommendations

Perhaps the most significant recommendation of the Gansler Commission is that the Army address some institutional and cultural issues that may provide an obstacle to moving forward. The Commission interviewed a number of knowledgeable Army officials and concluded with the following observations about the challenges that the Army will face in making significant improvements in its business operations, as described here in the report:

> Those charged with getting the job done have provided valuable insight into the doctrine, policies, tools, and resources needed for success. Clearly, the Army must address the repeated and alarming testimony that detailed the failure of the institution (both the Institutional Army and the Department of Defense) to anticipate, plan for, adapt, and adjust acquisition and program management to the needs of the Operational Army as it has been transformed, since the end of the Cold War, into an expeditionary force. The Institutional Army has not adjusted to the challenges of providing timely, efficient, and effective contracting support to the force in Operation Iraqi Freedom (more than half of which is contractor personnel). Essentially, the Army sent a skeleton contracting force into theater without the tools or resources necessary to adequately support our war fighters. The personnel placed in that untenable position focused on getting the job done, as best they could under the circumstances—where support is needed in a matter of hours, or, at best, days. They used their knowledge, skill, limited resources, and extraordinary dedication to get contracts awarded. Alarmingly, most of the institutional deficiencies remain four-and-a-half-years after the world's best Army rolled triumphantly into Baghdad.[94]

Option 2: Expanding the SIGIR's Jurisdiction

Another option is to give the SIGIR the authority to audit and investigate DOD logistical support contracts in Iraq. The SIGIR has already established a presence in Iraq, and has issued more than

[93] U.S. Government Accountability Office. DCAA Audits: Allegations That Certain Audits at Three Locations Did Not Meet Professional Statements Were Substantiated. Report to Congressional Addressees, GAO-09-857, July 2008, p. 65. Also, see Peters, Katherine McIntire. Defense Taps Independent Panel to Examine Contracting Agency. *Government Executive*, August 12, 2008; and Brodsky, Robert. Defense Audit Agency Maps Out Response to Damaging Report. *Government Executive*, August 14, 2008.

[94] Ibid, p. 16.

150 reports, including audits and investigations. His efforts have largely resulted in the arrest of five people, and the convictions of four of them, with more than $17 million in assets seized.[95] The SIGIR has made several recommendations related to his audit and investigation of contracts under his jurisdiction. His observations and insights may be relevant and appropriate for the contract administration and oversight of DOD contracts for troop support services.[96]

Option 3: Convening a Study of the Federal Employee and Contractor Workforce

Congress may want to convene a study of the federal employee and contractor workforce. The study could examine three important questions: (1) Is there an appropriate balance of federal employee and contractor roles? (2) Is there an appropriate federal role and presence in the oversight area? and (3) Is the federal government attracting the right types of acquisition professionals?

Congress could require a separate report, from each military service, on the size, scope, costs, and structure of its acquisition workforce (including military, civilian, and contractor personnel).

Option 4: Requiring More Detail for Better Oversight

Congress could require DOD to provide more details for better congressional oversight. There are five questions that Congress could consider: (1) Should DOD move to limit sole-source or limited competition for Iraq contracts? (2) Should DOD use more fixed-priced contracting in Iraq? (3) Should task and delivery orders have certain dollar constraints? (4) Should task orders be subject to public notice? and (5) Should larger contracts be divided into smaller contracts, with better-defined, discrete tasks?

To create more transparency and openness in defense acquisitions regarding contract administration, costs, and performance, Congress could require a separate report from each military service. Each report could include data on the size, scope, costs, and structure of all contracts, particularly no-bid, sole-source, and costs-reimbursement contracts.

Congress also could require that specific criteria be met before certain contract arrangements can be approved by DOD or by Congress. In addition, Congress could require a periodic re-competition of certain types of contracts, like LOGCAP, that have the potential of spanning for many years. Congress could also require, for example, that task orders beyond a certain size be treated as a separate contract, and thus subject to competition among multiple contractors.

And finally, Congress could require that large defense contracts be subject to competition and that a minimum of three contractors be selected for contracts beyond a certain size.[97] Some have suggested based on available press accounts that some contracts for services in Iraq might have

[95] Senator Collins Works To Extend The Term of the Office that Oversees Billions in Iraqi Reconstruction Dollars. Press Release of the United States Senate Committee on Governmental Affairs, November 13, 2006.

[96] As an example, the SIGIR recommends the creation of an "enhanced contingency FAR" to simplify the rules governing contingency contracting. SIGIR, Lessons in Contracting and Procurement, July 2006, p. 97.

[97] On April 18, 2008, DOD announced that the Army had awarded contracts to three companies under LOGCAP IV. Each company will compete for task orders.

been segregated (into smaller contracts) and opened for competitive bidding. Financial oversight might be more manageable in administering smaller contracts. Small businesses may have more of an ability to compete for contracts.

Option 5: Establishing a Dedicated Office to Conduct Audits and Investigation of DOD Contracts

One of the recommendations of the SIGIR is to "designate a single, unified contracting entity to coordinate all contracting in theater."[98] One way to accomplish this is to establish a Contingency Contracting Corp (a DOD initiative currently underway is studying the issue) that will deploy to Iraq and establish a standing presence. However, what additional resources might be necessary in order to provide better contract management and oversight of DOD-appropriated funds?

Given that the mission of the DOD Inspector General's office is to promote "integrity, accountability, and improvement of Department of Defense personnel, programs and operations to support the Department's mission and to serve the public interest",[99] should the DOD Inspector General have a stronger presence in Iraq? Given the many problems associated with LOGCAP contracts, oversight agencies like the DOD IG could have a pivotal role in preventing future contractor waste, fraud, or mismanagement.

Congress may want to consider creating a singularly dedicated office for the audit and investigation of DOD contracts for troop support services.

[98] Lessons in Contracting and Procurement, SIGIR, July 2006, p. 95.

[99] From the DOD Inspector General's website at http://www.dodig.osd.mil/mission.htm.

Appendix A. Selected Reports

During the last four years, the Congressional Research Service, General Accounting Office, Department of Defense Inspector General, Army Audit Agency, Air Force Audit Agency, and the Special Inspector General for Iraq Reconstruction have issued numerous reports on Iraq contracting issues, including those listed below.

Congress

Dollars, Not Sense: Government Contracting Under the Bush Administration. Prepared by the Special Investigations Division, Committee on Government Reform-Minority Staff, U.S. House of Representatives, June 2006.

Congressional Research Service

CRS Report RS22923, *Department of Defense Fuel Costs in Iraq*, by Anthony Andrews and Moshe Schwartz.

CRS Report RL34026, *Defense Acquisitions: How DOD Acquires Weapon Systems and Recent Efforts to Reform the Process*, by Moshe Schwartz.

CRS Report RL33110, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, by Amy Belasco.

CRS Report RL32419, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, by Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura.

CRS Report RS21555, *Iraq Reconstruction: Frequently Asked Questions Concerning the Application of Federal Procurement Statutes*, by John R. Luckey.

CRS Report RL31833, *Iraq: Reconstruction Assistance*, by Curt Tarnoff.

CRS Report RL32229, *Iraq: Frequently Asked Questions About Contracting*, by Valerie Bailey Grasso et al.

Congressional Budget Office

Contractor's Support of U.S. Operations in Iraq, Congressional Budget Office, August 2008.

Government Accountability Office

GAO-08-857. DCAA Audits: Allegations That Certain Audits at Three Locations Did Not Meet Professional Standards Were Substantiated. Report to Congressional Addressees, July 2008.

GAO-07-1098T. Federal Acquisitions and Contracting. Systemic Challenges Need Attention. Statement of David M. Walker, Comptroller General of the United States, July 17, 2007.

GAO-07-359T. Defense Acquisitions: DOD Needs to Exert Management and Oversight to Better Control Acquisition of Services. Statement of Katherine V. Schinasi, Managing Director, Acquisition and Sourcing Management. Testimony Before the Subcommittee on Readiness and Management Support, Committee on Armed Services, U.S. Senate, January 17, 2007.

GAO-07-145. Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 16, 2006.

GAO-06-800T. DOD Acquisitions: Contracting for Better Outcomes. September 7, 2006.

GAO-06-838R. Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse, GAO-06-838R, July 7, 2006

GAO-05-274. Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts, March 17, 2005.

GAO-05-207. GAO, High Risk Series: An Update, January 2005.

GAO-04-854. Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004.

Special Inspector General for Iraq Reconstruction

Department of Defense Inspector General, Quarterly Report to Congress, April 30, 2008

Semi-Annual Report to Congress. October 1, 2006-March 31, 2007.

Semi-Annual Report to Congress. April 1, 2006-September 30, 2006.

Semi-Annual Report to Congress. October 1, 2005-March 31, 2006.

Semi-Annual Report to Congress. April 1, 2005-September 30, 2005.

Semi-Annual Report to Congress. October 1, 2004-March 31, 2005.

Army Audit Agency

(The website is restricted to military domains (.mil) and to the Government Accountability Office)

Report Number A-2005-0043-ALE Logistics Civil Augmentation Program in Kuwait, U.S. Army Field Support Command, November 24, 2004.

Gansler Commission

U.S. Army. Urgent Attention Required: Army Expeditionary Contracting, Report of the Commission on Army Acquisition and Program Management, at http://www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf. Published November 2007.

Appendix B. Selected Legislative Initiatives on Iraq Contracting

Selected Legislation Introduced in the 110th Congress

The House has approved the following bills, as noted below.

H.R. 5658, National Defense Authorization Act for FY2009

Passed House, 5/22/08; placed on Senate Legislative Calendar, 6/3/08.

H.R. 3033, Contractors and Federal Spending Accountability Act of 2008

This provision would require the Administrator of General Services to establish and maintain a database on defense contractors containing updated information on criminal, civil, or debarment and suspension proceedings as well as establish the Interagency Committee on Debarment and Suspension. Congress would require a report within 180 days of the act's enactment.

H.R. 5712, Close the Contractor Fraud Loophole Act

This provision would require federal contractors to report violations of federal criminal law and over-payments on contracts valued greater than $5 million.

H.R. 3928, Government Contractor Accountability Act of 2007

This provision would require "covered" government contractors to submit certification and other financial disclosure requirements in cases where the contractor receives 80 percent or less of their annual gross revenue from federal contracts. Contractors covered by this provision are those receiving more than $25 million in annual gross revenues from federal contracts, but are not publicly traded companies required to file reports with the Security and Exchange Commission.

H.R. 4881, Contracting and Tax Accountability Act of 2008

This provision would require tax compliance as a prerequisite for receiving federal contracts, and would prohibit contract awards to certain delinquent federal tax debtors.

Several other bills have been introduced during the 110th Congress. Each could potentially impact DOD contracting in Iraq, as described below.

H.R. 4102/S. 2398, Stop Outsourcing Security Act

This provision would require that only U.S. federal government personnel provide security to personnel at U.S. diplomatic or consular mission in Iraq by six months after enactment, and require the President to report to Congress s on "the status of planning for the transition away

from the use of private contractors for mission critical or emergency essential functions by January 1, 2009, in all conflict zones in which Congress has authorized the use of force."

S. 2147, Security Contractor Accountability Act of 2007

This provision would expand the coverage of the Military Extraterritorial Jurisdiction Act (MEJA) to include all persons "while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in a region outside the United States in which the Armed Forces are conducting a contingency operation."

H.R. 528, Iraq Contracting Fraud Review of 2007

This provision would require the Secretary of Defense, acting through the Defense Contract Audit Agency, to review all Iraq defense contracts for reconstruction or troop support involving any contractors, subcontractors, or federal officers or employees indicted or convicted for contracting improprieties.

H.R. 663, New Direction for Iraq Act of 2007

These bill contains provisions addressing war profiteering, the recovery of funds from terminated contracts, and other issues A select number of additional legislative initiatives, proposed during the 110th Congress, that may impact defense contracting will follow.

H.R. 4102, Stop Outsourcing Security Act

This provision would require that only U.S. federal government personnel provide security to personnel at U.S. diplomatic or consular mission in Iraq within six months after bill enactment, and would require that the President report to specified congressional committees on "the status of planning for the transition away from the use of private contractors for mission critical or emergency essential functions by January 1, 2009, in all conflict zones in which Congress has authorized the use of force."

S. 2147, Security Contractor Accountability Act of 2007

This provision would broaden the Military Extraterritorial Jurisdiction Act (MEJA) to include all persons "while employed under a contract (or subcontract at any tier) awarded by any department or agency of the United States, where the work under such contract is carried out in a region outside the United Sates in which the Armed Forces are conducting a contingency operation."

H.R. 897, Iraq and Afghanistan Contractor Sunshine Act

This provision would require the Secretaries of Defense, State, Interior, and the Administrator of the U.S. Agency for International Development to provide Congress with copies and descriptions of all contracts and task orders valued at over $5 million.

H.R. 3695, Freeze Private Contractors in Iraq Act

This provision would prohibit an increase in the number of private security contractors employed by DOD, State, and USAID that perform certain security functions in Iraq.

Selected Legislation Passed in the 110th Congress

P.L. 110-181, the FY2008 National Defense Authorization Act, H.R. 4986 (formerly H.R. 1585)

Several provisions contained in H.R. 4986 focus on the management and oversight of DOD contracts.[100] Key provisions are listed below.

- Section 802 prohibits future contracts for the use of new Lead System Integrators;[101]
- Section 813 requires the Comptroller General to report to Congress on potential modifications to the organization and structure of DOD Major Defense Acquisition Programs;
- Section 816 directs the Under Secretary of Defense for Acquisition, Technology, and Logistics to conduct an annual review on the systematic deficiencies in Major Defense Acquisition Programs;
- Section 830 directs the Comptroller General to report to Congress on DOD's use of noncompetitive awards;
- Section 841 establishes a commission to study federal contracting in Iraq and Afghanistan, called the "Commission on Wartime Contracting;"
- Section 842 requires the DOD Inspector General, the SIGIR for Iraq Reconstruction, and the SIGIR for Afghanistan Reconstruction to collaborate on the development of comprehensive plans to perform a series of audits on DOD contracts, subcontracts, and task and delivery orders for the performance of logistical support activities of coalition forces in Iraq and Afghanistan, as well as audits for federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan;
- Section 851, which would require that the Secretary of Defense (as part of the Strategic Human Capital Plan for 2008) include a separate section of the report focused on the military and civilian acquisition workforce;

[100] Excerpts from H.R. 1585 discuss the rationale for legislative initiatives focused on the oversight and accountability for contracts in Iraq and Afghanistan: "The committee remains concerned about the level of oversight for contracting in Iraq and Afghanistan. These countries present uniquely complex challenges for contracting and contract oversight, but U.S. efforts in these countries will continue to require significant contractor support. The committee believes that government responsibilities for a range of issues involving contracting in Iraq and Afghanistan are unclear. The committee believes that clarification of roles and responsibilities for contracting in Iraq and Afghanistan and increased oversight will enhance the effectiveness of U.S. Government efforts in both countries.

[101] For a brief discussion on the role of the Lead System Integrator, see CRS Report RS22631, *Defense Acquisition: Use of Lead System Integrators (LSIs)—Background, Oversight Issues, and Options for Congress*, by Valerie Bailey Grasso.

- Section 852 establishes a Defense Acquisition Workforce Development Fund;
- Section 861 requires coordination between the DOD, the Department of State, and the United States Agency for International Development through the creation of a Memorandum of Understanding between the three agency heads on matters relating to contracting in Iraq and Afghanistan;
- Section 862 requires that the Secretary of Defense prescribe, within 120 days of enactment, regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract or covered subcontract in a combat area. These regulations would include processes for registering, processing, and accounting for such personnel; and authorizing and accounting for weapons, and investigating the death and injury of such personnel, their discharge of weapons, and incidents of alleged misconduct. The regulations would also provide guidance to combatant commanders on orders, directives, and instructions to contractors and subcontractors performing private security functions relating to force protection, security, health, safety, relations and interaction with locals, and rules of engagement;
- Section 863 requires the Comptroller General to review annually all contracts in Iraq and Afghanistan and report to Congress on the total number of contracts and task orders, total number of active contracts and task orders, total value of all contracts and task orders, the degree to which DOD has awarded noncompetitive contracts, the total number of contractor personnel (including the total number of contractor personnel performing security functions and the total number of contractor personnel killed or wounded); also, Section 863 would require the Secretaries of Defense and State to provide the Comptroller General full accesses to the database as described in Section 861;
- Section 871 establishes a Defense Materiel Readiness Board;
- Section 872 grants authority to the Secretary of Defense to designate critical readiness shortfalls; and
- Section 941 requires the Secretary of Defense to conduct a comprehensive assessment of the roles and missions of the military forces, known as a quadrennial roles and missions review.

Author Contact Information

Valerie Bailey Grasso
Specialist in Defense Acquisition
vgrasso@crs.loc.gov, 7-7617