

Joint Statement of
The Commission on Wartime Contracting in Iraq and Afghanistan

Hearing:
**‘Examining the Final Report to Congress of the
Commission on Wartime Contracting’**

Before the Committee on Oversight and Government Reform,
U.S. House of Representatives
2154 Rayburn House Office Building, Washington, DC
10:00 AM., Tuesday, October 4, 2011

[As prepared for delivery.]

Chairman Issa, Ranking Member Cummings, Members of the Committee, good morning. Thank you for inviting us to testify.

I am Robert Henke, a member of the Commission on Wartime Contracting in Iraq and Afghanistan, which completed its official work last Friday. I have also served as Assistant Secretary for Management at the Department of Veterans Affairs (Chief Financial Officer and Chief Acquisition Officer), and as Principal Deputy Under Secretary of Defense (Comptroller).

I am presenting this statement on behalf of Commission co-chairs Christopher Shays, who is sitting with me and Michael Thibault, and my fellow Commissioners Clark Kent Ervin, Katherine Schinasi, Charles Tiefer, and Dov Zakheim, who are here, and Grant Green, who could not be with us today.

I respectfully request that our full written statement and a copy of *Transforming Wartime Contracting*, our final report to Congress, be included in the official record of this hearing.

The Commissioners appreciate the opportunity to appear before the Committee on Oversight and Government Reform. This Committee has consistently and

forcefully demanded that government work better, and deliver better result for taxpayers. Our eight reports to Congress are a direct match with this Committee's mandate: the need for better oversight and fundamental reforms.

For their part, the Commissioners would emphasize that we have operated not only as a *bipartisan* body, with four Democrat and four Republican appointees, but also as a *non-partisan* body. Our reports have no dissenting or alternative views. We are *unanimous* in our findings and in our recommendations.

We unanimously conclude that the need for change—change in laws, policies, practices, and organizational culture—is urgent, for five reasons.

1. First, reforms can still save money in Iraq and Afghanistan, avoid unintended consequences, and improve foreign policy outcomes there. For example, as the U.S. draws down its troops in Iraq, the State Department is hiring thousands of new contractors for security and other functions.
2. Second, the dollars wasted and at risk are significant. The Commission estimates that at least \$31 billion, and possibly as much as \$60 billion, of the \$206 billion spent on contracts and grants in Iraq and Afghanistan has been lost to waste and fraud. We have also warned that many billions—possibly exceeding the billions already lost to waste and fraud—more may turn into waste if host governments cannot or will not *sustain* U.S.-funded programs and projects. Reforms can reduce adding to the waste
3. Third, although U.S. policy has for more than 20 years considered contractors to be part of the “total force” for contingency operations, the federal government went into Afghanistan and Iraq unprepared to manage and oversee the thousands of contracts and contractors used there. Some improvements have been made, but after a decade of war, the government remains unable to ensure that taxpayers and warfighters are getting good value for contract dollars spent. The government also remains unable to

provide fully effective interagency planning, coordination, management, and oversight of contingency contracting.

4. Fourth, new contingencies, whatever form they take, *will* occur. This year's rapid emergence of civil war in Libya and U.S. involvement there show that it would be very unwise to assume that we are done with contingency operations, or that they will give us ample warning to prepare. Moreover, federal agencies have acknowledged that they cannot mount and sustain large operations without contract support.
5. And finally, failure to enact powerful reforms will guarantee that new cycles of waste and fraud will accompany the response to the next contingency.

Our work in Iraq and Afghanistan found problems similar, or even identical, to those in peacetime contracting, including poor planning, limited or no competition, weak management of performance, and insufficient recovery of over-billings or unsupported costs.

The wartime environment brings tremendous additional complications, which we address in our recommendations. The dollar volumes swell: more than \$206 billion has been spent on contingency contracts and grants in Iraq and Afghanistan since Fiscal Year 2002. The urgency of dynamic operations and ever present hostile threats directly impact contracting decisions, execution, and oversight. And the overseas place of performance entails limited legal jurisdiction over foreign contractors, supporting documentation in foreign languages if available at all, and limited deployability of federal-civilian oversight personnel to theater.

We are clear that contracting has provided vital and for the most part highly effective support for U.S. contingency operations.

However, the bottom line is: we rely on contractors too heavily, manage them too loosely, and pay them too much. The wasteful contract outcomes in Iraq and Afghanistan demonstrate that federal agencies dependence on contractors is just

not thought to be important enough to warrant thorough the planning and effective execution that a contingency – that wartime – requires. The Commission has concluded that the problems are multi-faceted and need to be attacked on several levels.

The first is holding contractors accountable. Federal statutes and regulations provide ways to protect the government against bad contractors and to impose accountability on them, including suspension and debarment from obtaining future contracts, as well as civil and criminal penalties for misconduct. Unfortunately, we found that these mechanisms are often not vigorously applied and enforced. And incentives to constrain waste are often not in place.

The Commission's research has shown, for example, that some contractors have been billing the government for years using inadequate business systems that create extra work for federal oversight personnel and auditors. Compelling cases for charging fraud may go unprosecuted because other, possibly more headline-grabbing, cases are given priority. Recommendations for suspension and debarment go unimplemented with no documentation for the decision. Data that would be important for past-performance reviews often go unrecorded. Staffing shortages have led to a Defense Contract Audit Agency backlog of nearly \$600 billion, delaying recovery of possible overpayments.

The government has also been remiss in promoting one of the most effective of all disciplines: competition. It is perfectly reasonable to say that exigent, wartime circumstances may require sole-source or limited-competition awards in the early phases of a contingency operation. It is not at all reasonable that a decade into an operation, multi-billion-dollar tasks orders are still being written with no break-out or recompetition of the base contract.

We recommend better application of existing tools to ensure accountability, and strengthening those tools. Our report contains recommendations to bolster competition, improve recording and use of past-performance data, expand U.S. civil

jurisdiction as part of contract awards, require official approval of significant subcontracting overseas, and provide incentives for contractors to take active steps against human trafficking by subcontractors and labor brokers.

These and other recommendations will go a long way toward reducing waste, fraud, and abuse among contractors.

The second level is holding the government itself more accountable for the decision to use contractors and the subsequent results. Taking a harder look at what projects and programs to undertake with contractors must also include thinking more carefully about *whether* to use contractors. Our report recommends careful consideration of risks created by contracting, and phasing out the use of private security contractors for some functions.

We support the recent policy guidance from the Office of Management and Budget regarding inherently governmental functions, which incorporates a risk-sensitive approach to determining which functions could or should be reserved for government performance. As our report explains, the inherently governmental test is a necessary, but not a sufficient condition, for making contingency-contracting decisions. The policy also calls out the provision of security in a combat zone as a function that requires careful, thoughtful and strategic attention. This, likewise, is an area we call out in our report.

Another part of the problem is resources. As you know, both the military and the federal acquisition workforce were downsized during the 1990s. This reaction to the end of a 55-year Cold War was understandable. But it ensured that if a large and prolonged contingency should develop, the military would greatly increase its reliance on contractors while, at the very same time, its ability to manage and oversee those contractors had been significantly reduced.

Even when the government has sufficient policies in place, effective practices, ranging from planning and requirements definition, to providing adequate oversight

of performance and coordinating interagency activities, are lacking. The principal agencies involved in contingency operations—Defense, State, and USAID—have all made improvements in these and other areas. But opportunities for improvement exist and much work remains to be done.

We have recommended steps that would improve the government's handling of contingency contracting. They include developing deployable acquisition cadres, elevating the positions of agencies' senior acquisition officers, and creating a "J10" contingency-contracting directorate at the Pentagon's Joint Staff, where the broad range of contracting activities is treated as a subset of logistics.

Another critical recommendation is that agencies pay much more attention to the matter of sustainability before committing taxpayer dollars to projects and programs intended to support military, political, or development objectives in contingency zones. Our recommendation includes agency evaluations of sustainability and rejecting or cancelling projects that have no credible prospect of survival without long-term U.S. funding.

Considering this Committee's broad and inter-departmental mandate, I would also call special attention to two recommendations embodying a whole-of-government approach that will improve efficiency and effectiveness in contracting.

The first is to establish a dual-hatted position for an official who would serve at the Office of Management and Budget, and participate in National Security Council meetings. Such a dual-hatted position would promote better visibility, coordination, budget guidance, and strategic direction for contingency contracting.

The second is to create a permanent inspector-general organization for use during contingencies and for providing standards and training between contingencies. The work of the special inspectors general for Iraq and Afghanistan reconstruction have shown the drawbacks of creating organizations limited in functional authority, geographic location, and time. SIGIR and SIGAR have

performed valuable service for the country, but they will go away, leaving the need to reinvent them with attendant accept delays in deploying IG staff when the next contingency emerges. A permanent contingency IG with a small but deployable and expandable staff, trained in the special circumstances of a contingency operation, can provide interdepartmental oversight from the outset of a contingency.

More details on these and other recommendations appear in our final report, *Transforming Wartime Contracting*.

In compliance with its authorizing statute, our Commission has closed its doors. But the problems we have diagnosed remain very much alive. Corrective action, in some cases requiring financial investments, are essential on both the government and the contractor side of the equation to reform contingency contracting and prevent or reduce new outbreaks of waste, fraud, and abuse.

Further, sustained attention during and after the reform process will be essential to ensure that compliance extends to institutionalizing reforms and changing organizational cultures. That is why our recommendations include requiring periodic, independent progress reports on the pace and the results of reform initiatives. Without such a requirement, agencies can all too easily succumb to complacency, forget the lessons learned in Iraq and Afghanistan, and reassure Congressional committees that they “agree with the substance” of our reform recommendations and are already addressing them—even if nothing ever comes of the effort.

Contracting reform is an essential, not a luxury good. Whatever form it takes, there *will* be a next contingency.

Perhaps we can avoid hostilities related to unfriendly regimes in east Asia, the Horn of Africa, the Mediterranean, the Balkans, and Latin America. Perhaps we will not be called upon to mount vast humanitarian interventions overseas. Even if we are lucky enough to avoid those contingencies, we remain vulnerable to catastrophic

floods, earthquakes, storms, fires, and mass-casualty terror attacks here at home. And the responses will all but certainly require contractor support.

The government would be foolish to ignore the lessons of the past decade and refuse to prepare for better use of contracting resources. But once the wars in Iraq and Afghanistan recede into the past, it will be all too easy to put off taking action. Your Committee is in a good position to prevent exactly that from happening.

Members of Congress will also be obliged to make hard choices about the federal budget. In that context, we would re-emphasize Recommendation 14 from our final report to Congress. It says,

Congress should provide or reallocate resources for contingency contracting reform to cure or mitigate the numerous defects described by the Commission.

With reduced budgets, agency officials will naturally be inclined to preserve as much core capability as possible by concentrating personnel cuts in what they perceive to be “support functions”. But acquisition is far more than a support function; it is how agencies get much of their mission done. Accordingly, we would caution against any major cuts to the acquisition workforce.

We have been down that road before. As it did in the 1990s, that road can only lead to greater reliance on contractors—as well as reduced management and oversight capability—when the next contingency develops. That is a recipe for more waste, fraud, and abuse.

Sustaining and improving the acquisition workforce is essential. Agencies involved in contingency operations should seek savings through better planning and requirements definition, increased use of competition, more effective management and oversight, and better coordination of procurement and contracting functions.

We urge the Members of this Committee to take care that economy drives are conducted with a balanced view of *all* requirements for contingency operations, and today that includes the acquisition workforce.

Mister Chairman, this concludes our formal statement. We appreciate this opportunity to speak with you, and will be happy to answer any questions you may have.

#