

Testimony of David Isenberg

Publisher, *PMSC Observer* and Author, *Shadow Force: Private Security Contractors in Iraq*,

before the House Committee on Oversight and Government Reform,
Subcommittee on Technology, Information Policy,
Intergovernmental Relations and Procurement Reform, on
**“Are government contractors exploiting workers overseas?
Examining enforcement of the Trafficking Victims Protection Act”**

November 2, 2011

Chairman Lankford, Ranking Member Connolly, other Members of the Subcommittee,

Thank you for the opportunity to testify at this hearing.

I commend you for examining the issue of whether government contractors exploit workers overseas. It is unquestionably a problem. Though it has come up elsewhere it has not yet received the sustained attention it merits. As the Commission on Wartime Contracting in Iraq and Afghanistan noted in its final report:

U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit. Their actions bring discredit to the United States and act as a barrier to building good diplomatic relations.¹

The subject also means you have to look at the relationship between prime contractors and their subcontractors, which is another problem. It is often, to cite Winston Churchill, a riddle, wrapped in a mystery, inside an enigma.

I am pleased to be here to discuss the *The Najlaa Episode Revisited* report that I co-authored, which was published by the Project on Government Oversight this past June. I have a prepared statement which I ask be included in the hearing record in its entirety, along with the POGO report. In the interest of time I will just summarize some of the main points.

But first, let me outline where I stand on the ongoing debate over the outsourcing and privatization of functions that used to be considered inherently governmental. I am not and opponent of private military and security contractors. Nor am I am a fervent supporter. Over the years I have documented problems with the claims of both sides. Personally, I think most contractors, especially those operating in the field, are decent, honorably men and women, doing necessary, even vital work, under harsh and demanding conditions. Some of them, I believe, especially on the security side, are underpaid. But in the end I am simply an interested observer and chronicler, who, like the Mr Spock character on the Star Trek television series, finds it a “fascinating” phenomenon worthy of continued study and analysis.

Speaking of science fiction we might note that the use of private actors in war and conflict is something that sc-fi writers have long written about, as in Gordon Dickinson’s Dorsai novels.² So, in one sense, the subject of today hearing is an example of life imitating fiction.

First, let me address why this is important. For years industry advocates have been claiming that thanks to private military contractors (PMC) U.S. military forces have the best supported, supplied military in any military operation in history. It is inarguably true that PMC are now so intertwined and critical that the U.S. military simply can’t operate without them.

But that is not an unmitigated benefit. Many PMC have had problems implementing contracts. Some have committed outright fraud, thus wasting U.S. taxpayer’s money, and indirectly, negatively affecting U.S. military operations.

While the seven plus years has seen increased attention paid to the oversight of and accountability of PMC most of that attention has been at the level of prime contractors. Only now is government beginning to turn to the issue of subcontractors. This attention is long overdue. As the Center for Public Integrity noted last year:

Subcontracting is among the most challenging parts of the U.S. government's widespread outsourcing of war-related tasks. It works like this: A government agency - most likely the Defense Department, State Department, or U.S. Agency for International Development - will award work to a "prime" contractor. That prime contractor, usually a large American company like Kellogg, Brown and Root (KBR) or DynCorp International, will often subcontract some or even a majority of its work to other companies, including foreign-owned firms. Those subcontractors sometimes then turn around and subcontract part of the work, and so on.

...

But in footing the bill for all this work by a network of companies, the U.S. government often doesn't know who it is ultimately paying. And that can lead to fraud, shoddy work, or even taxpayer funds ending up in the hands of enemy fighters.

...

Prosecutions often rely on whistleblowers inside a company to report suspected fraud. But whistleblower protections typically do not extend to subcontractors' employees. Furthermore, many foreign subcontractors do not feel the need to cooperate with U.S. law enforcement or auditors.³

Our report documented various violations of the law and irregularities with regard to third country nationals. Some may say that is unfortunate but since nobody was killed or wounded what is the big deal? The answer is two-fold.

First, as any competent military commander will tell you, wars not fought and won by machines and tools. They are fought and won by people. Given how tightly integrated private military contractors are with regular military forces treating people badly on the private side can adversely impact people on the public side.

Second, there is a cost when contractors are improperly used and treated and I'm not talking about money. Although it is not widely recognized the use of private contractors among the complex of national defense, security and foreign policy departments and agencies is so widespread and so wide in scope that their impact can be strategic, as opposed to the merely operational and tactical. If you think I am exaggerating consider the recent news that the United States will be withdrawing all its military forces from Iraq by the end of the year. This was not done because the Obama administration wanted to do so. It was done because it could not work out a deal regarding immunity for U.S. military forces. But given the events of September 16, 2007 at Nisoor Square in Baghdad when Blackwater security contractors shot and killed 17 Iraqi civilians,⁴ no Iraqi government was ever going to be able to grant an immunity deal. Now, like it or not, that is strategic impact.

In other words, there is a reputational cost when contractors do bad things or are treated badly. As retired Marine Corps Colonel T.X. Hammes wrote:

To start, three inherent characteristics of contractors create problems for the government. First, the government does not control the quality of the personnel that the contractor hires. Second, unless it provides a government officer or noncommissioned officer for each construction project, convoy, personal security detail, or facilities-protection unit, the government does not control, or even know about, their daily interactions with the local population. Finally, the population holds the government responsible for everything that the contractors do or fail to do. Since insurgency is essentially a competition for legitimacy between the government and insurgents, this factor elevates the issue of quality and tactical control to the strategic level.

...

Since the government neither recruits nor trains individual armed contractors, it essentially has to trust the contractor to provide quality personnel. In this case, the subcontractor took shortcuts despite the obvious risk to the personnel manning the recruiting stations. Even if the government hires enough contracting officers, how can it determine the combat qualifications of individuals and teams of armed personnel? The U.S. military dedicates large facilities, major exercises, expensive simulations, and combat-experienced staffs to determine if U.S. units are properly trained. Contractors do not. We need to acknowledge that contracting officers have no truly effective control over the quality of the personnel the contractors hire. The quality control problems are greatly exacerbated when the contractor uses subcontractors to provide services. These personnel are at least one layer removed from the contracting officer and thus subject to even less scrutiny.⁵

Although he is referring to security contractors in the above quote his point applies equally well to the unarmed, food service workers we wrote about in our report.

I'd also note that shabby recruiting and labor practices aren't just a problem for logistics workers. As I wrote in my book *Shadow Force*:

Triple Canopy recruited men from El Salvador to be guards, paying them a minimum of U.S. \$1,700 a month. The problem is that not everyone recruited had a military or even security background. One person recruited in El Salvador used to be a mason's assistant.

...

In September 2006 it was reported that about three dozen former Colombian soldiers were engaged in a pay dispute with Blackwater USA, saying their salaries for security work in Iraq turned out to be one-quarter what they had been

*promised by recruiters in Bogota. The Colombians alleged that recruiters had promised them salaries of \$4,000 a month. They said it was only when they were given their contracts barely hours before leaving Bogota that they learned they would be paid \$34 a day, or about \$1,000 a month.*⁶

Third, while industry officials and advocates often say that they welcome regulation, it often comes with the caveat that it should not be intrusive or burdensome. They note that they already comply with all existing national and international laws and regulations and best practices.

While it is true that government regulation could unnecessarily interfere with the proper functioning of the private sector it is equally true that the unconstrained activities of the marketplace, especially in the chaos of battlefields and warzones, is a surefire recipe for problems. In truth, the free market and regulation can go together. As professor of economics Lester C. Thurow wrote in his 1996 book *The Future of Capitalism*, “History also teaches us that the survival-of-the-fittest versions of capitalism do not work. The free market economies that existed in the 1920s imploded during the Great Depression and had to be reconstructed by government, Maybe survival-of-the-fittest capitalism can be amde to work, but no one has yet done so.”⁷

Fourth, contractor advocates also point to their own efforts to ensure ethical conduct, notably through company, trade association, or international codes of conducts. While this is commendable and even necessary it is hardly sufficient. Some codes have mechanisms, at least theoretically, for ensuring effective oversight. For example, the International Code of Conduct for Private Security Service Providers⁸ has a section

- a) Establish objective and measurable standards for providing Security Services based upon this Code, with the objective of realizing common and internationally-recognized operational and business practice standards; and*
- b) Establish external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies' compliance*

with the Code's principles and the standards derived from the Code, beginning with adequate policies and procedures, Auditing and Monitoring of their work in the field, including Reporting, and execution of a mechanism to address alleged violations of the Code's principles or the standards derived from the Code.

But most codes do not. Perhaps some day they will. But for now they are more likely to operate on the Joe Isuzu model, i.e., just trust us. My view is that we should, to cite the words of President Ronald Reagan, trust, but verify.⁹

A 2008 paper¹⁰ by the Geneva Center for the Democratic Control of Armed Forces, which examined the mission statements and web sites of 235 private military contractors, found that a mere 72 of them -- less than a third -- profess their compliance with normative and ethical values. Only nine companies -- less than 4 percent -- expressly advocate the recognition of human rights, and one dozen -- or just about 5 percent -- acknowledge the necessity of their activities being regulated.

Only 44 companies, or fewer than one in five, were prepared to formulate their adherence to values in a code of conduct or in terms of internally binding principles.

While I am not opposed to codes of conduct, per se, I believe that in order to make it really work some other things need to go along with it.¹¹ It is necessary to remember that the groups which have promulgated codes of conduct are not regulatory agencies and do not exercise regulatory functions. Thus, they have no power to ensure proper conduct. A company may very well decide that violating a code's provision is just another cost of business and a worthwhile one at that.

As Amnesty International USA noted in an analysis of a past version of the International Peace Operations Association Code of Conduct (renamed the International Stability Operations Association): one of the larger PMSC trade associations.

If the IPOA code is to evolve into more than a set of aspirational standards, there must be some means of independent, preferably third-party, oversight to regularly assess member companies on their efforts to implement the Code and to remediate instances of non-compliance. Companies should also have internal systems in place to monitor their in-house efforts to put Code standards into practice. Creating mechanisms for personnel to internally report suspected breaches of the Code is a positive step, but cannot substitute for regularized and comprehensive systems for measuring compliance with standards.¹²

A paper published in September 2010¹³ examined the regulation of private warfare through the framework of Global Administrative Law (GAL). Note that GAL is actually sympathetic to industry efforts. But consider, for example, what the author writes about the Code of Conduct of IPOA.

Through IPOA's complaint mechanism, companies as well as individuals may submit a complaint to the association for alleged violations of the association's code of conduct. This complaint, which may remain anonymous if appropriately specified, must be filed in a set form to the Chief Liaison Officer of the Standards Committee, "who is an employee of IPOA and is not affiliated with any company." Of course IPOA may not consider complaints against companies that are not members of the association. When responding to a complaint, IPOA Standards Committee follows a Standards Compliance and Oversight Procedure. The Standards Compliance and Oversight Procedure provides that the monitoring/sanctioning will take place in four steps: (1) an administrative panel will look at the complaint and decide whether it is worthy of review; (2) a review panel will hear the complaint which will determine whether a violation of IPOA's code of conduct has occurred; (3) a compliance panel will suggest and impose remedies and monitor the compliance of the company subject of the complaint; and (4) a disciplinary panel which will provide a final ruling on expulsion. As "IPOA is not a law enforcement or judicial organization," it "will not attempt to prove the guilt or innocence of a member company in a criminal or civil legal case."

Although a unique three-level enforcement mechanism is contemplated, the only sanction envisaged by the association itself is the expulsion of noncompliant members. Expulsion alone sidesteps true accountability. While the model of industry-led accountability is attractive at the procedural level - it avoids the need for new monitoring/enforcement bodies; cost is borne by individual companies which ought to punish 'bad actors'; and there are no guarantees of non-repetition - it fails on the substantive level. It would be preferable for IPOA to play a role in reporting violations of international humanitarian and human rights law to relevant authorities, rather than leaving it to the companies. In any event, the expulsion of non-compliant members remains too limited a sanction.

...

In addition to being disorderly and thus difficult to track, self-regulation often lacks the teeth necessary to attain its full potential. What is lacking, in other words, are the monitoring and - even more so - the sanctioning mechanisms needed to ensure compliance with the standards elaborated voluntarily by and within the industry. ...

The private military industry currently finds itself between the first and the second stage of this evolution toward self-regulation: it has succeeded in elaborating standards that can be applied industry-wide, but has yet to create robust monitoring mechanisms capable of enforcing these standards. Sanctioning is still at an embryonic stage. Under the vast majority of voluntary regulatory schemes, noncompliant contractors face only the termination of their employment contracts. Non-compliant companies may, theoretically, face expulsion from important industry associations; but such instances have not been documented. Only in rare cases does the self-regulation contemplate any type of real and effective sanctions - let alone the involvement of police or other law-enforcement authorities.

Similarly, Ren'ee De Nevers, Assistant Professor in the Department of Public Administration of the Maxwell School at Syracuse University, wrote in a journal article that:

The private security industry lacks the incentive and capacity to adopt and implement effective self-regulation on its own. “Effective” or “obligatory” self-regulation includes both establishing industry standards for appropriate corporate behavior and creating mechanisms to ensure that companies comply with the standards they commit to by joining selfregulatory schemes. I use effective and obligatory to describe self-regulation that incorporates monitoring and sanctions to ensure compliance. To date, self-regulation by this industry has been both aspirational in character and lacking in oversight mechanisms. Absent external pressure from increased regulation or loss of contracts, private security companies are unlikely to take the steps needed to make industry self-regulation a useful complement to state and international regulation.¹⁴

Fifth, even if a company has high standards and devotes significant resources to trying to implement them, and we noted in our report that this was the case with respect to KBR, the implementation of standards becomes problematic when it comes to ensuring that a prime's subcontractors adhere to them.

For example, KBR has an extensive code of conduct,¹⁵ which has a section on health, safety, and environment. That section states, “The Company will comply with all applicable Laws and relevant industry standards of practice concerning protection of health and safety of its Employees in the work place and other persons affected by its business activities and the prevention of environmental pollution.” If that section had been followed by KBR's subcontractor NICS the employees would never have been housed in the deplorable conditions found in their camp.

Najlaa International Catering Services (NICS)

In regard to the subject of today's hearing, the exploitation of overseas worker, Najlaa International Catering Services (NICS), the KBR subcontractor, was solicited by KBR in the spring of 2008 to provide a Request for Proposal (RFP) for approximately 32 Dining Facilities (DFAC) Services under LOGCAP (Logistics Civil Augmentation Program) III in the Iraq Theatre. Those RFPs are typically governed by the Federal Acquisition Regulations (FAR),¹⁶ Labor Practices and Scope of Work (SOW). NICS adopted illegal pricing strategies during its preparations of the bids which were in direct violation of the guidelines set forth by the RFP Documents and SOW; these specific strategies gave NICS questionable and unfair advantage over all other bidders for the same RFP.

Specifically, the pricing tactics and strategies were to waive the mobilization charge based on NICS's recruiting efforts where NICS contracted several specialized manpower suppliers from India, Sri Lanka, Nepal, Bangladesh, Dubai, Iraq and Kuwait to provide the labor force for the project. The agreement was for all agencies to charge the individual laborer a fee of approximately USD \$2000 – 3000 to cover the costs of medical screening, airline travel costs from their home country to Baghdad and all entry visa fees for UAE and Iraq. NICS would, therefore, not incur any costs to mobilize its labor force; this is in direct violation of TIPS rules.

This was an example when KBR did not exercise proper oversight. KBR chose to close the chapter on this matter despite clear violations of the TIPS rules; evidence of the employment contracts language of the labor force was not inspected. Clearly, the contracts were executed between the employees and NICS. KBR in fact sub contracted with NICS and not its agents

KBR headquarters in Houston, Texas were contacted by at least one U.S. government agency via e-mail and the e-mail communication was relayed to KBR's LOGCAP III Head Quarters at Victory Base Camp (VBC). KBR concealed those facts from the US Military which was fully aware of human tragedies taking place right outside VBC.

Once the media acquired all of these violations, NICS began to demobilize the labor force at its own costs by chartering flights out of Baghdad International Airport (BIAP) temp camps. Clearly, acting as the responsible sponsor (in total contradiction of claiming those responsibilities) fell on the shoulders of the agencies. The damage was done, the laborers spent months stranded and paid huge amounts of money out of their own pocket in hopes of earning money in Iraq. What they received was perhaps one month salary amounting in most cases to USD \$300.

This is not to say that all of KBR's actions were bad. For example, a KBR Special Inspection done Nov. 11, 2008, after the riot, conducted at the NAJLAA temporary labor camp noted numerous deficiencies. Nine days later KBR notified NICS that KBR was formally rescinding the Notices of Award and subcontracts issued to NICS for DFAC Services. It also said:

KBR will report suspected Trafficking in Persons violations discovered at various labor camps to the appropriate authorities. The conditions these personnel are living in must be corrected at once. Food, water, medical care and basic hygiene are lacking at these camps.

On Dec. 1 KBR sent out a notice to all its subcontractors, including NICS, which, in part, said:

*Recently, it has come to our attention that some KBR subcontractors and/or their agents may be utilizing temporary labor camps located around the Baghdad International Airport known as SATCO Hotel, Elite Camp, and First Kuwaiti Camp. An inspection conducted November 20, 2008 by KBR's Health/Safety/Environment (HSE), Security and Trafficking in Persons (TIPs) teams, revealed serious and deplorable conditions in the immediate area outside the SATCO Hotel and inside the Elite Camp and 1st Kuwaiti Camp. The conditions at these facilities could have a direct impact on the health and welfare of not only the personnel forced to stay there, **but ultimately our client as well** [emphasis added]. None of the aforementioned facilities comply with the KBR LOGCAP III Scope of Work for Temporary Labor Camps and their utilization by KBR subcontractors or their agents will not be tolerated under any circumstances.*

Another letter, dated Dec. 2, 2008, sent to NICS said:

It appears that Najlaa International Catering Company (Najlaa) and/or their agent are still utilizing temporary labor camps located in the vicinity of the Baghdad International Airport known as SATCO, Elite Camp, and First Kuwaiti Camp. As you know, our inspection conducted 20 November 2008 by KBR's Health/Safety/Environment (HSE), Security and Trafficking in Persons (TIPs) teams, revealed serious and unacceptable conditions within these facilities. The conditions observed could have a direct impact on the health and welfare of not only the personnel housed in these areas, but ultimately our client as well.

The following day KBR sent Bill Baisey, the NICS CEO, emails detailing how they felt NICS poor performance was giving them a “black eye” with their primary client, the U.S. military.

From: Mark Brannen [mailto:Mark.Brannen@kbr.com]

Sent: Sunday, January 11, 2009 6:20 PM

To: bbaisey@easternsolutionsgroup.com

Importance: High

Bill – appreciate your view, but it does not change the fact that the US Government is extremely upset at KBR right now and most of that frustration comes from Najlaa. Your man camp outside BIAP has become a corporate embarrassment that has the visibility of the US Ambassador to Iraq, the Army Leadership here at Victory Base and our Defense Contract Administrators.

...

One last point, Bill. The US Military has become increasingly less tolerant of subcontractors operating on their Coalition Bases. The recurring complaints by your employees across various sites about their conditions and the mounting issues at BIAP, could lead to a debarment of Najlaa from all MNF-I bases in Iraq. We do not want this to occur and would encourage you to take the immediate steps to correct the situation at BIAP within the next 24 hours by flying these personnel home, or taking up the UN offer to do so on your behalf.

Yet NICS continued business as usual and KBR allowed them to get away with such violations. It is quite possible these violations still occur while NICS continues to do

business with KBR which reflects directly on the US government. If so, this is appalling. To find out KBR would only need need to conduct a simple audit to:

- Check the language of the employment contracts of NICS employees
- Interview NICS employees in theatre to verify what they paid to the employment agencies.
- Verify NICS procedure to dock each employee the cost to wire-transfer their monthly salaries to their home bank accounts.

However, we do not know whether KBR is doing that.

Several questions come to mind at this point in terms of what has taken place.

- Did KBR conduct a thorough bid evaluation on NICS? Were NICS prices within the natural competitive lines among all bidders? Were the highest and lowest bids ruled out?
- Did KBR inspect and verify the financial stability of NICS?
- Why has the majority of KBR's LOGCAP III – Iraq senior management left since the TIPS violations that were uncovered in December 2008?
- Why was NICS awarded an extension of the first option year of the contract? Is it an extension for convenience?
- Is NICS in compliance with the basic SOW requirements today? Including sixty (60) days of on hand consumable supplies, issuance of six (6) uniforms per employees, provide approved Personal Protection Equipment (PPE) per employee

as specified, provide one (1) week salary advance to the employees, pay salaries on time, provide proper safety shoes, etc.

Although I did not cover it in the POGO report there are two other aspects of NICS activities that merit mention.

First, my investigation documented that NICS had a confirmed chicken pox case and 37 of its employees were supposed to be quarantined. NICS disputed with GlobalMed, its KBR-approved medical service provider, that it was a chicken pox case. NICS began to release the employees from the quarantine tent and put them back to work at the dining facilities (DFAC). This so disturbed GlobalMed that it sent an email to KBR notifying it that it was terminating its contract with NICS, effective immediately. The reasons were twofold: lack of payment, and professional medical ethical concerns:

On November 10, 2008, I was asked via email by the same senior member of your management team to submit a fraudulent medical report regarding the release of quarantined patients to your client KBR. This request for the fraudulent report was not entertained by GlobalMed. KBR did find out about the premature release and the NICS staff were returned to quarantine. These staff are still under quarantine as of this date. The early release of these staff, which was against out medical advice and done without our knowledge could possibly have caused a serious disease outbreak that could have had very negative impact to the health of all coalition forces.¹⁷

This was a clear violation of NICS' contract with KBR, as the KBR Statement of Work for the LOGCAP Task Order which NICS was working under states:

The contractor shall comply with all requirements of TB MED 530 requirements, including food safety, ensuring all employees have appropriate medical screening to document they are free from communicable diseases in accordance with MNC-

I Surgeon's Memorandum requiring screening and maintenance of screening documentation and all employees have appropriate food sanitation training.

Second, another example of the opacity of subcontracting is that NICS contracted with Aram Media, a registered Iraqi company, to build at least one mancamp for Najlaa so they could meet the requirements of their new DFAC contracts. Najlaa was awarded so many DFAC contracts at one time they could not even build their own mancamps with their own manpower, so they subcontracted it to Aram, a minority owned Iraqi company. According to Aram, Najlaa still owes them \$1.5 million for contracted services to build Najlaa mancamps so they could be in compliance with their KBR DFAC contracts.

In October 2009, in its effort to get paid for its work, Aram contacted KBR directly. Subsequently, after some email back and forth an Aram company official emailed Barbara Nelson, KBR subcontracts supervisor and explained the Najlaa issue again. Subsequently, the following exchange of emails took place:

Barbara: "I have been asked by Najlaa to refer you to them ... On contractual matters, especially regarding money issues this is best settled between Najlaa and yourselves".

Samir: "As per our previous communication, we followed your suggestion and contacted Najlaa Directly to collect the debt they owe us. We sent an e-mail to Houry and Bill Baeisi; neither one of them acknowledged the e-mail nor responded to our notice, knowing they received the e-mail. Please advise what is our next step in such a case? Is it the IG office and the Garrison Command our next option?"

Barbara : "I am sorry I cannot help you"

Samir: "We understand that this matter might be out of your hand, but can you please let us know who in your organization deals with such issues?"

Barbara Nelson: "No one that I am aware of"

From the perspective of U.S. taxpayers if Najlaa invoiced KBR for mobilization costs that they didn't actually incur because they didn't pay Aram Media for the mobilization work they did, and KBR in turn invoiced the DoD for those incurred costs, then that's fraud because no cost was incurred because Najlaa never paid Aram what it owed.

Aside from the mistreatment of workers one of the most depressing aspects of the whole affair was, for the most part, the lack of urgency by people in a position to do so to do anything about it. This applies to the U.S. government as well as KBR. For example, this past January 23, an agent of the Defense Criminal Investigative Service, Department of Defense-Office of the Inspector General contacted the person who had been courageous enough to reveal NICS misdeeds. That person had originally contacted USAID by letter on or about March 19, 2010. I can think of no reason it should take ten months to respond.

A Sri Lankan company that supplied laborers to Najlaa told POGO it complained about Najlaa's abusive practices to both KBR and the U.S. government, but said that U.S. law enforcement agencies never followed up.

Despite the handwringing between the U.S. government and KBR and between KBR and Najlaa over the deplorable conditions of the laborers and subsequent media attention that came after the labor camp exploded in protest, the ultimate consequence for Najlaa was basically a slap on the wrist. Although KBR warned of the possibility it did not suffer a suspension of contract payments or lose award fees. It was not terminated for default. It was not disbarred.

As we noted in our report, KBR said to us that:

“Najlaa responded without delay to KBR's demand for corrective action, and the matter was resolved appropriately. KBR fully disclosed the incident to our U.S. government clients including all remedial actions taken by both KBR and Najlaa,”

However, KBR's statement that Najlaa "responded without delay" to KBR is not borne out by the numerous KBR emails to Najlaa that POGO has obtained, some of which are cited above.

POGO asked KBR about this inconsistency in a follow-up question. POGO gave KBR over two weeks to respond. KBR eventually did email a statement that said "Najlaa has been a supplier of ours since 2004, and when challenges have arisen in providing support to the military, we have brought them to their attention and worked with them to appropriately resolve." KBR also emailed that "We continue to work with Najlaa and other subcontractors today in providing much needed services to our troops."

If KBR continues to work with Najlaa despite Najlaa's well documented violations of the law what does that say about KBR's seriousness in ensuring proper oversight of and accountability towards its subcontractors.?

The bottom line, as our report concluded, is this:

In the case of Najlaa, KBR says neither it nor the U.S. military is responsible. There is a litany of reasons to believe they do have responsibility: as recounted above, emails by its very own employees on the ground in Iraq to Najlaa suggest otherwise. The chain of contracting down the manpower suppliers is fueled by U.S. taxpayer dollars, billions of which KBR receives. Unrest by the labor force of a DOD subcontractor in a country with an ongoing major military operation can be detrimental to U.S. interests. It should be no wonder that elements of the U.S. military in Iraq were angered by the conditions of the Najlaa laborers, and KBR employees threatened to cut off Najlaa's subcontracts as a result. Ultimately, however, Najlaa did not lose its business with KBR or the U.S. government.

Recommendations

From an oversight perspective there are more effective measures that can be taken. Aside from the recommendations by such experts as Sam W. McCahon, which I know the

committee is familiar with, and my report co-author Nick Schwellenbach, I would also commend some of the measures suggested by law professor Laura Dickinson, author of *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs*.¹⁸ Recommendations that are particularly relevant include:

Enforcing Domestic Criminal Law

- *Congress should eliminate current ambiguities by expanding the Military Extraterritorial Jurisdiction Act to apply to all contractors accused of committing federal crimes, no matter which government agency is the contracting party and no matter where in the world the criminal acts occurred.*
- *Congress should require the Department of Justice to establish a dedicated office for investigating and prosecuting criminal cases involving contractors abroad. This office should be required to report regularly on the status of contractor investigations and prosecutions.*
- *Congress should require the FBI to establish "theater investigative units" to deploy in theater to work in partnership with military investigators in cases involving allegations of serious abuses.*
- *The military should use its new authority to pursue criminal enforcement actions under the Uniform Code of Military Justice against contractors serving with or accompanying an armed force in the field.*

Enforcing Domestic Civil Law

- *Courts should clarify that civil tort suits against contractors do not implicate the political question doctrine.*
- *Courts and/or Congress should clarify that the Federal Tort Claims Act does not immunize contractors from suit or preempt civil suits unless the contractors are operating within the military chain of command.*

The industry might also try to create a code of standards for logistics contractors, as opposed to just a code of conduct. Currently there is no such thing as an ANSI (American National Standards Institute) for such workers. But it is worth noting that this past March

the Defense Department awarded a contract to ASIS International to develop an ANSI standard that provides principles and requirements for a quality assurance management system for private sector security organizations to abide by and demonstrate accountability to internationally recognized norms of civil and human rights while providing quality assurance in the provision of their products and services.¹⁹

¹ *Transforming Wartime Contracting: Controlling costs, reducing risk*, Final Report to Congress, August 2011, p. 92.

² Dorsai, <https://secure.wikimedia.org/wikipedia/en/wiki/Dorsai!>

³ Nick Schwellenbach “The Struggle to Police Foreign Subcontractors in Iraq and Afghanistan Billions at Stake, but U.S. Investigators Stymied by Murky Rules, Enforcement Obstacles,” August 29, 2010, Center for Public Integrity, <http://www.publicintegrity.org/articles/entry/2368>.

⁴ Blackwater Baghdad shootings, https://secure.wikimedia.org/wikipedia/en/wiki/Blackwater_Baghdad_shootings.

⁵ “*Private Contractors in Conflict Zones: The Good, the Bad, and the Strategic Impact*,” Strategic Forum, Institute of National Strategic Studies, National Defense University, October 2010, http://www.ndu.edu/inss/docUploaded/SF%20260_final%20for%20Web.pdf.

⁶ David Isenberg, *Shadow Force: Private Security Contractors in Iraq*, (Westport, CT: Greenwood), 2009, p. 40.

⁷ Lester C. Thurow, *The Future of Capitalism: How Today’s Economic Forces Shape Tomorrow’s World*, New York: Wiliam Morrow and Company, 1996, p. 250.

⁸ https://docs.google.com/viewer?url=http://www.rightrespect.com/wp-content/uploads/2010/10/PSC-2010-10-08-International-Code-of-Conduct_final-4.pdf&embedded=true&chrome=true.

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[Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor](#)

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Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor

The Najlaa Episode Revisited

By DAVID ISENBERG and NICK SCHWELLENBACH



A laborer participating in the December 2008 protest speaks to a reporter.

In December 2008, South Asian workers, two thousand miles or more from their homes, staged a protest on the outskirts of Baghdad. The reason: Up to 1,000 of them had been [confined in a windowless warehouse](#) and other dismal living quarters without money or work for as long as three months.

In a typical comment made by the laborers to news organizations at the time, Davidson Peters, a 42-year-old Sri Lankan man, [told a McClatchy Newspapers reporter](#) that "They promised us the moon and stars...While we are here, wives have left their husbands and children have been shut out of their schools" because money for their families back home had dried up.

The men came to Iraq lured by the promise of employment by Najlaa International Catering Services, a subcontractor performing work for Houston-based KBR, Inc. under the Army's Logistics Civil Augmentation Program (LOGCAP) III contract.

Now, a cache of internal corporate and government documents obtained by POGO offer insight into this episode of alleged war zone human trafficking by companies working for

the U.S.—and suggest that hardly anyone has been held accountable for what may be violations of [U.S. law](#).

The subcontractor, Najlaa, appears to have suffered no repercussions for its role in luring hundreds of South Asian workers to Iraq with promises of lucrative jobs only to turn around and warehouse at least 1,000 of them in dismal living conditions without work—and pay—for several months. In fact, Najlaa [continues to win](#) government contracts.

Despite strongly worded “[zero tolerance](#)” policies against human trafficking, the U.S. has directly awarded contracts to Najlaa after the December 2008 protests, including one contract that [lasts through 2012](#).

The Najlaa Incident: An Accountability Case Study

The freshly unearthed documents show that for several months, KBR employees expressed exasperation at Najlaa’s apparent abuse of the laborers and said the subcontractor was embarrassing KBR in front of its main client in Iraq: the U.S. military. But despite its own employees’ strongly worded communications to Najlaa, to this day, KBR continues to award subcontracts to the company.

KBR's responsible official for preventing trafficking-in-persons said in an email that Najlaa rehired three former KBR employees who were terminated against the terms of Najlaa's subcontract with KBR. It is not clear if these employees were alleged to have engaged in human trafficking, and what, if any, repercussions these employees faced besides their termination. KBR did not address POGO's questions on these three former KBR employees directly.

Additionally, the documents raise questions about government officials’ response in the wake of the 2008 protests by Najlaa employees. Although, at the time, the press [reported](#) that the U.S. government was investigating alleged trafficking by Najlaa, it has not led to any prosecution or termination of the subcontract. A Sri Lankan company that supplied laborers to Najlaa told POGO it complained about Najlaa’s abusive practices to both [KBR](#) and the U.S. government, but said that U.S. law enforcement agencies never followed up.

A Two-Tiered System?

Labor trafficking is one of the highest profile human rights issues raised by the U.S. government’s mass reliance on third-country nationals hired by contractors and their subcontractors, particularly in Iraq. It often appears that a two-tiered system of treatment exists—one for Western contractor employees and another for recruits from non-Western countries, which often arrive via specialized manpower suppliers.

The U.S. government’s contracting rules, known as the Federal Acquisition Regulation (FAR), specifically [prohibit trafficking in persons](#), or TIPS. The pertinent provisions of

the FAR were created, in part, [in response](#) to past scandals concerning sex trafficking by contractor employees in the [former Yugoslavia](#) and [labor trafficking in Iraq](#). Labor trafficking falls within the rubric of TIPS and [indicators of it include](#) poor working and living conditions; delayed compensation or an employer's failure to uphold the original terms of compensation; taking of a laborer's passport, which limits freedom of movement in a foreign country; contractual terms that impose coercive restrictions; and threats.

“At the heart of this phenomenon are the myriad forms of enslavement – not the activities involved in international transportation,” according to a 2010 State Department [report](#) on trafficking. The Najlaa episode may involve one of two types of abuse practices: bonded labor or debt bondage. Bonded labor is “a form of trafficking in persons,” according to the State Department report. “Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment.”

“Abuses of contracts and hazardous conditions of employment for migrant laborers do not necessarily constitute human trafficking,” the report notes. “However, the attribution of illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country, can contribute to a situation of debt bondage.” This is possible even when the “worker's status in the country is tied to the employer as a guestworker in the context of employment-based temporary work programs.” A [2004 memo](#) by the Secretary of Defense is direct: “Trafficking includes involuntary servitude and debt bondage. These trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations.”

An Estimated Quarter of a Million Victims

There are no definitive numbers on the scale of labor trafficking. However, [writing in *Fraud magazine*](#), supply chain compliance consultant Sindhu P. Kavinamannil and former federal prosecutor Sam McCahon estimate that “DOD contractors and their subcontractors in Iraq have victimized more than 250,000 men. That number does not include other agencies, such as the U.S. Agency for International Development, which uses TCN-contracted labor in support of its operations.” TCN stands for third country nationals.

The laborers' protest in December 2008 did not mark the first time questions were publicly raised about Najlaa and KBR's commitment to protecting their laborers' well being in Iraq. A [lawsuit](#) brought by the family of deceased Najlaa employee Tareq Alhalabi in federal court in Houston alleged that KBR, Najlaa and other companies put Alhalabi at unnecessary risk leading to his wrongful death. The lawsuit was filed in late October 2008 and was dismissed in July 2010 due to inactivity on the part of the plaintiffs.

Other episodes of alleged labor trafficking by KBR subcontractors were recounted at a [Wartime Contracting Commission hearing last year](#). Two referrals of suspected misconduct by KBR or its subcontractors were sent to Defense Criminal Investigative

Service from April 2009 through March 2010 by the Defense Contract Audit Agency (DCAA) involve allegations of possible trafficking, according to [information made available](#) at another hearing before the Commission by DCAA Director Patrick Fitzgerald.

A [July 2010 CENTCOM Contracting Command memo](#) to all contractors in Iraq reveals evidence of broader contractor disregard for laborers. “[E]ight third country nationals (TCNs), several from countries whose current domestic laws prohibit their citizens from working in Iraq, were discovered to have been left behind by their previous employers at various contractor controlled camps (aka ‘mancamps’) throughout Iraq,” the memo states. “This raises numerous concerns about whether contractors are complying with travel and work restrictions.”

The Road to Man-Camp: Trouble from the Outset?



Men living in makeshift tents outside the Baghdad Airport, lured to Iraq by the prospect of work (December 1, 2008).

The third country national labor force that moves dirt, serves meals, cuts hair, cleans laundry, builds buildings, takes out the trash, and provides numerous other services for the U.S. military to this day in Iraq and Afghanistan, and other places such as Kuwait, is created and put in place by an extensive network of companies. The most visible to the American public are the big U.S. prime contractors (or “primes”), such as KBR, that have a direct contractual relationship with the U.S. government. The primes typically subcontract out a great deal of work to an often bewildering array of subcontractors (who often, in turn, hire other subcontractors). One special type of subcontractor is the manpower supplier. In order to provide the labor force for projects in Iraq, Najlaa contracted with several manpower suppliers from India, Sri Lanka, Nepal, Bangladesh, Dubai, Iraq and Kuwait. To understand the conditions these workers face in Iraq, you have to understand how they got there—and what price they paid to get there.

Najlaa had agreements with its suppliers to charge the individual laborers a fee of approximately \$2,000 to \$3,000 to cover the costs of medical screening, airline travel costs from their home country to Baghdad and all entry visa fees for the United Arab Emirates and Iraq, according to the source familiar with KBR and Najlaa (the source requested anonymity out of fear of retaliation). Najlaa would, therefore, not incur any costs to mobilize its labor force.

Sam McCahon, the former federal prosecutor and a former general counsel for [Agility](#), a Kuwaiti-based contractor, believes the recruitment fees charged to laborers are grossly inflated. “The cost of a medical exam, visa and airfare from the Indian subcontinent would amount to approximately \$500 USD maximum, not \$2,000-\$3,000,” he told POGO. The source, mentioned above, said the cost breakdown should be: \$250 for medical screening, \$350 for airfare and \$100 for Iraq’s visa entry fee. McCahon said that labor recruiters are typically only responsible for getting workers to Dubai, Kuwait, or Jordan, and that subcontractors then usually have to get them into Iraq. McCahon has written on trafficking by U.S. contractors and has on-the-ground experience interviewing dozens of laborers.

\$2,000 to \$3,000 is a crushing amount for many of these laborers to pay. The only reason many agree to pay is due to the fact that the recruiting firms often lie or mislead the laborers into thinking they will make far more money than they usually do—assuming they even get work.

"We do not have any money to celebrate Christmas...I have spent three months without getting anything. We have been turned into beggars."

-- [Sanjaya Jayawardhana](#), a 29-year-old father who was brought into Baghdad by Najlaa

Early Warning Signs

Documents show there were signs that something was wrong at the camp for Najlaa's laborers in the months before the December 2008 protests. KBR [awarded subcontracts to Najlaa](#) in July and September 2008 to provide food services at 18 dining facilities (DFACs) at various military camps in Iraq under the Army's Logistics Civil Augmentation Program (LOGCAP) III program. Najlaa was to begin its food service at these DFACs in November 2008.

Even before Najlaa was slated to serve its first meals at the dining facilities, KBR rescinded some of the awards to the subcontractor because KBR believed Najlaa was "endangering the performance of DFAC Services by the scheduled first meal served dates," according to [a September 19, 2008 KBR letter to Najlaa](#). "Najlaa has failed to mobilize personnel, materials, equipment or Temporary Labor Camp requirements" to many of the sites, the letter states. "[O]nly marginal progress has been made at the remaining sites."

When Najlaa started moving labor power in place, other problems arose.

According to a November 10, 2008, email to Najlaa CEO Bill Baisey from Alaa N. Habib, a manager with Elite Home Group, which provided temporary housing for Najlaa's laborers, a storm of discontentment was building up among the laborers. As Habib wrote, "your people made big and dangerous problems in my camp and with my people, Many of my assists [sic] broken and some of my people injured. We tried to know the reasons, it is appeared that they want to work or take a salary from your company."

The same day, 2008 KBR conducted a [special inspection](#) at the Najlaa Temporary Labor Camp and discovered a host of problems. "Living accommodations were not kept in a clean, orderly and sanitary condition," the inspection found, and "[n]o Subcontractor

employees had protective body armor to include a Kevlar ballistic helmet and a ballistic vest with inserted plates and these items are not onsite and readily available.” The lack of body armor is troubling since insurgents in Iraq have killed many subcontractor laborers on base or traveling [on convoys](#). To insurgents, third country national laborers are seen as part of the soft underbelly of the U.S. presence in Iraq, meaning they are seen as vital to U.S. efforts, but are not protected the way U.S. servicemembers are. The KBR inspection found that laborers had inadequate living space as well.

Within weeks, KBR acted on their findings. On November 20, 2008, a KBR manager sent [an email to Baisey](#), providing a “formal notification that Kellogg Brown & Root Services, Inc is formally rescinding the Notices of Award and subcontracts issued to Najlaa International Catering Services for DFAC Services” at some KBR sites.

The email added that “KBR will report suspected Trafficking in Persons violations discovered at various labor camps to the appropriate authorities.”

It is fair to say that Bill Baisey was not happy. An email he sent that day to other Najlaa managers said, “See this shit,” referring to the KBR cancellation of its work with Najlaa.

Then, [on November 24, 2008](#), KBR manager William Young told Baisey that conditions at several Najlaa sites “are endangering performance of the Subcontracts and jeopardizing the lives of all personnel.” Young also stated that unless Najlaa could correct the deficiencies within 10 days, “KBR may terminate these subcontracts for default.”

U.S. Government Officials, Criminal Investigators Take Notice

In early December 2008, U.S. Embassy officials in Iraq “confirmed media reports of some 1,000 third country nationals (TCN) living in transit housing facilities, ‘man camps,’ near the Baghdad airport while waiting for employment with MNF-I [Multi National Forces-Iraq] contractors,” [according to a January 2009 State Department cable](#). The cable’s contents, marked “SBU,” or sensitive but unclassified, said the laborers worked for “Najlaa Catering Company, a subcontractor of MNF-I contractor Kellogg, Brown and Root (KBR).” Najlaa “procures such workers through independent labor brokers who operate in the workers’ home countries,” the cable said.

“KBR has fully cooperated with the Defense Contract Management Agency (DCMA) and MNF-I Criminal Law Division to investigate possible trafficking in persons (TIP) and human rights violations,” the cable stated. The U.S. Embassy “is seeking ways to ensure USG [U.S. Government] contractor and subcontractor compliance with appropriate labor, health, and safety standards.” It was also noted that there could be “corrupt, but lucrative, relationships between labor brokers, subcontractors and GOI [government of Iraq] officials.”

The FBI took notice too. An [email from FBI Special Agent Michael F. McMahon](#) with the International Contract Corruption Task Force on December 15, 2008, addressed reports that many Najlaa employees had not been paid.

“We have learned many of the TCN [third country national] service personnel employed by Najla [sic] at the Coalition Café have not been paid - in some cases for several months,” McMahon wrote to two KBR employees, including KBR’s Rita D. Wellborn, who was a company point person on human trafficking. “It may be that some of your personnel (KBR) in the field aren’t aware of the role of the TIPS program, or if they are, perhaps you have already heard of the situation with Najla [sic].” TIPS, as mentioned earlier, is a reference to “trafficking in persons.”

“On its face the issue of non-payment of wages can be rather nebulous. If, however, there is an effort underway to withhold wages for purposes of controlling the behavior of these men - there would likely be consequences,” McMahon wrote.

The FBI did not respond to a voicemail and an email from POGO requesting comment.

After the Protests

Baisey still did not appear to get the message after two months. On January 10, 2009, Derrick White, a KBR subcontracts supervisor, [told Baisey that problems still existed](#). White wrote, “this matter is being tracked by the highest levels of both LOGCAP III and the United States military,” and demanded Baisey respond by the next day.

Baisey forwarded the comment to his colleagues and wrote: “This is a very bad one, we need to be very careful in responding to this one and our response must be acceptable.”

The following day [KBR sent Baisey emails](#) detailing how they felt Najlaa’s poor performance was giving them a “black eye” with their primary client, the U.S. military. Mark Brannen, a KBR deputy program manager, was blunt with Baisey, who denied a raft of allegations levied against Najlaa in an email earlier that day on January 11, 2009. “[T]he US Government is extremely upset at KBR right now and most of that frustration comes from Najlaa,” Brannen wrote. “Your man camp outside BIAP has become a corporate embarrassment that has the visibility of the US Ambassador to Iraq, the Army Leadership here at Victory Base and our Defense Contract Administrators.”

“During the meeting today the United Nations offered to fly all of your employees from the BIAP camp to their homes at no cost to Najlaa. Najlaa refused,” Brannen further wrote. “I can only assume that your decision not to accept the UN’s offer was based upon some misguided idea that the Taji DFAC decision was negotiable. This is not the case.”

Brannen ended his email with a stern warning: “The US Military has become increasingly less tolerant of subcontractors operating on their Coalition Bases. The recurring complaints by your employees across various sites about their conditions and

the mounting issues at BIAP, could lead to a debarment of Najlaa from all MNF-I bases in Iraq,” he wrote.

M. Faizer Mackeen, Chairman of Transtours, the company that supplied the laborers to Najlaa, explained what happened to the workers. “After three or three and a half months of staying under the poor conditions, these workers were forcibly repatriated,” Mackeen told POGO. He said that the workers themselves paid out of their own pocket to go home and that neither KBR nor Najlaa reimbursed them. “Even the cost of recruitment and sending these workers to the destination was not refunded,” he said. “It was not resolved peacefully, but by force.”

“These Najlaa workers were located on a transitory camp for which KBR and the U.S. government had neither responsibility nor authority, and which was located outside of any military base in Iraq,” KBR told POGO through a spokeswoman. It also said, “KBR continues to work closely with our subcontractors, including the regular inspection of foreign nationals’ living camps on the various bases on which we operate, to ensure that all subcontractors are in compliance with both the U.S. government and KBR Code of Business Conduct.”

The Blame Game

It did not take long for the blame game to start once the media started to pay attention.

On December 4, 2008, Deborah Haynes, a reporter with *The Times of London*, contacted Baisey with queries regarding the laborers and their claims that they were victims of human trafficking. Baisey forwarded Haynes’ email to Najlaa employees, and wrote, “what do you suggest we do.. Respond or what. Please let me [sic] so we can prepare some thing if you guys elect for us to respond.. In all cases I agreed that we will not mention KBR at any point of time.”

The next day Baisey emailed Rushdi Al Ayad, the director of Transtours, and wrote that “your staff have been creating riots and threatening other staff who wants [sic] to leave the site back to their home country to beat them. This is not acceptable.”

“These people never paid [Najlaa] any money to come to Iraq.. this was done between you and them,” Baisey wrote, adding that Najlaa’s “responsibility for these people starts when they move into the working location inside the camp, yet we are working diligently now to overcome the problem.”

Al Ayad disagreed. “[Y]our contention that your responsibility commence [sic] once they moved into their working locations inside camp cannot be accepted in spite of the fact they have arrived on your visa and may be you have your contractual obligation with KBR and not with us,” Al Ayad wrote. “I have boarded these workers on you [sic] instruction and confirmed acceptance by you and your company, so the responsibility lies with you and your company,.” A few weeks later, on December 18, [Al Ayad contacted KBR’s Houston offices](#) with issues he had with Najlaa.

He also denied trafficking the men. “I or my company did not traffic these people illegally to Baghdad, but on your full authority and fully legalized,” Al Ayad wrote in the email to Baisey.

Baisey refused to accept Al Ayad’s denials. “Even if I accept the content of your email which I don’t, then these people are under the 3 months probation period.. the company has the right to terminate them during this 90 days,” he wrote, adding, “The circumstances we are currently in is not of our own making. Yet the people on the ground are not making it any easier to solve the issue at hand.”

“[W]e have to sort out this issue now and have to get these people under control,” Baisey also wrote.

After the *Sunday Times* ran an article on some of the workers, Al Ayad followed up with an email to Baisey on December 7, 2008. Given the newspaper coverage, the issue needs “your serious attention as our labour license and reputation at stake because of your action and will be facing legal actions by the government authorities,” he wrote. “[Y]ou have been acting against your promise, to provide employment in Kuwait until the camps in Iraq are ready for placement.”

To Sam McCahon, the former federal prosecutor, Najlaa’s position “does not ring true.”

“The subcontractor responsible for requesting the person to perform the labor is responsible for their welfare while they are in country. In the case of Kuwait, it is a law that the contractor must provide transportation, food, accommodations, medical care and compensation. In the case of Iraq, everyone who works on a military base must have a sponsor,” he said.

“How could a labor supplier on the Indian subcontinent, who has never even traveled to Iraq, much less be allowed to live in the Green Zone or a military base, be responsible for the welfare of the workers whom it retained? Clearly, this is a cover-up and ruse by the subcontractor,” McCahon said.

“The subcontractor fabricates the story with the belief that no one will ever be able to make contact with the recruiter to validate the account. The reason the subcontractors ‘warehouse’ laborers is because the prime contractor typically makes payment to the subcontractor based on man days provided.”

Did Najlaa Defraud the Government?

There could be more to this story than trafficking violations. Consider the [employment contract between Najlaa and an employee](#). A contractual clause requires the employees to pay \$2,500 if they resign “before completion of one year of service” – that one year of service entails working 12 or more hours a day for seven days a week. This cost is covered by the mobilization cost KBR should have paid Najlaa; it could be considered a

double dip by Najlaa as they might be getting paid twice for the same cost—once by KBR, and again by the employee—according to a source familiar with KBR’s subcontracting practices, who was not willing to be named. Keep in mind, as mentioned earlier, that individual laborers paid \$2,000 to \$3,000 in recruitment fees to pay for travel and other expenses from their home countries to Iraq.

McCahon, the former federal prosecutor, told POGO that “from a legal perspective, the ramifications are far greater than double dipping. The process, depending on how it is executed, may constitute procurement fraud against the government.”

He added, “if the subcontractor never incurred the cost, mobilization or demobilization but was reimbursed for the same, then there would be a fraud against the government.”

It is customary for KBR to pay its subcontractors an average amount of \$2,500 per person as a mobilization fee and approximately the same amount to demobilize, according to a person who is familiar with KBR’s subcontracting practices in Iraq and Kuwait. McCahon said “It is my understanding that the LOGCAP contract does allow for a mobilization/demobilization fee to the subcontractors.”

McCahon believes there also could be a kickback arrangement between Najlaa and its labor suppliers.

“The whole scenario seems to be missing some elements and sounds more like a subcontractor’s efforts to conceal a kickback by explaining the direct payment of money to a recruiter,” said McCahon. “Why would an agreement between the sub and recruiter specify the amount charged by the recruiter to the laborer?” Najlaa utilized several manpower recruitment companies that recruited from various parts of South Asia.

Najlaa did not respond to multiple requests for comment over several weeks.

Ex-KBR Employees Ended Up at Najlaa

Around the time of the protests, emails show that KBR discovered that some of its employees who were terminated were working for Najlaa. Najlaa was not to retain any former KBR management employees within a year of their departure from KBR, according to KBR emails.

“[Y]ou will need to make sure Najlaa removes these three men from any of the contracts that are supporting KBR until one year from their termination date,” KBR’s Mark Brannen wrote to other KBR employees on December 29, 2008.

Earlier, in an email to other KBR employees, KBR’s Rita D. Wellborn, who was a company point person on trafficking in persons, wrote, “former KBR expats” who “were terminated after investigation” in February 2008. “They are now direct hires for Najlaa,” she noted.

“KBR’s business ethics and values expressly state that our employees, subcontractors, and business partners be treated with dignity and respect,” KBR told POGO. “Employees, contractors, and subcontractors are expected and required to adhere to KBR’s entire code of business ethics—the KBR Code of Business Conduct (COBC). When KBR becomes aware of potential violations of our COBC, we investigate the issue and take appropriate action to address what happened and prevent recurrence.”

KBR did not specifically address POGO’s question on the termination of employees in its response.

The Aftermath: Where’s the Accountability?

Najlaa did not respond to multiple emailed queries to the contact email address listed on its website, emails to its CEO Bill Baisey, or to emails to its parent company, Eastern Solutions Group. The Louisiana phone number for its U.S. office is currently disconnected. In one of the earliest news reports on the December 2008 protests by laborers, [Najlaa told *The Times of London*](#), “We work to very strict rules. We do not accept people being mistreated or mishandled.” More recently, a representative of a Najlaa’s associated firm in Amman, Jordan [told *The New Yorker*](#) which briefly mentioned the December 2008 protests, that “the workers’ mistreatment had been due to a temporary ‘cash money problem.’”

A spokeswoman for U.S. Forces Iraq (U.S.F-I), the successor organization to MNF-I, said “U.S.F-I does not have any records prior to Operation New Dawn. Operation Iraqi Freedom records are held at CENTCOM and I forwarded your query to them.” According to the State Department cable mentioned earlier, MNF-I Criminal Law Division investigated the alleged labor trafficking and other problems involving Najlaa laborers.

The spokesman for the U.S. military’s Central Command (CENTCOM) told POGO that “We do not have any documents regarding these allegations here. These were not CENTCOM contracts—U.S. Army Logistics Civil Augmentation Program (LOGCAP) managed food service in theater. Any investigation findings would have been forwarded to them.” After he said he contacted several other government offices, the spokesman added that he could not “find a public affairs office that has situational awareness of this” and recommended POGO file a Freedom of Information Act (FOIA) request for more information. CENTCOM is responsible for the region of the world where the alleged labor trafficking and worker abuses by Najlaa took place. According to [a DOD-specific provision](#) of the Federal Acquisition Regulation, military commands such as CENTCOM are supposed to be notified of instances where there are indications of human trafficking by DOD contractors and subcontractors in their area of responsibility. CENTCOM said there were no responsive documents in response to a FOIA request filed last year for documentation of all trafficking instances in their possession, pursuant to the Federal Acquisition Regulation provision.

POGO also emailed and called Army Sustainment Command (ASC), which is responsible for LOGCAP, but was told by a spokeswoman that “after checking with

subject matter experts in ASC, this is not an issue specific to KBR or LOGCAP. You need to contact Central Command, Tampa, Florida, since their area of responsibility includes Southwest Asia.” As mentioned above, CENTCOM told POGO that investigative findings related to LOGCAP would be forwarded to LOGCAP, i.e. the Army Sustainment Command.

While Najlaa has not responded to numerous requests for comment, Mackeen, the chairman of Transtours, one of Najlaa’s labor suppliers, provided an extensive emailed reply to POGO.

“Najlaa never paid any recruitment fees or cost of air ticket to Transtours, but workers agreed to incur initial expenses like medical, transport, and administrative cost and other expenses. Transtours was expecting Najlaa to make payment as agreed with them, which was not paid at all.”

Mackeen told POGO that Najlaa approached Transtours and several other manpower suppliers in Asia and said that “Transtours was called upon to recruit Sri Lanka workers via Dubai and Kuwait, as recruitment of workers directly from Sri Lanka was not permitted at that time of period.” He added that Najlaa sent one of its officials to Sri Lanka to interview and select prospective personnel.

Mackeen said Transtours submitted complaints “to the U.S. Army and other authorities” asking them to stop payments to Najlaa until the laborers and Transtours were paid, but said the complaints were not acknowledged and that there were no inquiries. POGO was provided with copies of the complaints Mackeen said he provided to the U.S. government.

250,000

Estimated minimum number of men victimized by DOD contractors and their subcontractors in Iraq, according to supply chain compliance consultant Sindhu P. Kavinamannil and former federal prosecutor Sam McCahon.

Mackeen placed some of the blame at KBR's feet. He said since the U.S. puts a great deal of emphasis on human rights he is "confident that this matter will be taken up" eventually and is "very happy to receive" POGO's questions.

A [Pentagon Inspector General \(IG\) report noted](#) "one report of preliminary investigative activity of a contractor in Iraq" in fiscal year 2009 for labor trafficking violations. The case was briefed to the Justice Department and prosecutors "determined facts and circumstances did not warrant further action." The "contractor took corrective action," the Pentagon IG said. The Pentagon IG did not respond to POGO's query asking whether the contractor was Najlaa, although Najlaa was a defense contractor suspected of labor trafficking in fiscal year 2009 that had come under investigation.

KBR's response mirrors some of the language (e.g. "corrective action" was taken) used in the Inspector General report. "Najlaa responded without delay to KBR's demand for corrective action, and the matter was resolved appropriately. KBR fully disclosed the incident to our U.S. government clients including all remedial actions taken by both KBR and Najlaa," KBR told POGO in an emailed statement via a spokeswoman. However, KBR's statement that Najlaa "responded without delay" to KBR is not borne out by the numerous KBR emails to Najlaa that POGO has obtained. POGO asked KBR about this inconsistency in a follow-up question. POGO gave KBR over two weeks to respond. KBR eventually did email a statement that said "Najlaa has been a supplier of ours since 2004, and when challenges have arisen in providing support to the military, we have brought them to their attention and worked with them to appropriately resolve." KBR also emailed that "We continue to work with Najlaa and other subcontractors today in providing much needed services to our troops."



KBR Tower in Houston, TX

In its communications with POGO, KBR put a great deal of emphasis on its code of conduct. However, at least in the case of Najlaa, KBR says neither it nor the U.S. military is responsible. There is a litany of reasons to believe they do have responsibility: as recounted above, emails by its very own employees on the ground in Iraq to Najlaa suggest otherwise. The chain of contracting down the manpower suppliers is fueled by U.S. taxpayer dollars, billions of which KBR receives. Unrest by the labor force of a DOD subcontractor in a country with an ongoing major military operation can be detrimental to U.S. interests. It should be no wonder that elements of the U.S. military in Iraq were angered by the conditions of the Najlaa laborers, and KBR employees threatened to cut off Najlaa's subcontracts as a result. Ultimately, however, Najlaa did not lose its business with KBR or the U.S. government.

POGO has confirmed in conversations with sources that have requested anonymity that federal investigators this year have begun re-examining allegations of trafficking and other possible misconduct by Najlaa and other companies. However, Transtours' CEO told POGO via email in late April that the U.S. government investigators had still not contacted his company.

Revisiting the December 2008 episode isn't just a historical exercise. Besides its continuing work with KBR, Najlā is still winning government contracts, [such as a recent \\$3 million contract](#) to provide food services for the U.S. Agency for International Development (USAID) in Baghdad from February 2010 to February 2012.

According to a [2006 State Department report on human trafficking](#), a “DOD investigation, prompted by [late 2005 media allegations](#) of labor trafficking in Iraq, identified a number of abuses, some of them considered widespread, committed by DOD contractors or subcontractors of third country national (TCN) workers in Iraq.” The State Department said in response to the investigation that the “Department of Defense has responded swiftly with a number of measures to closely monitor the hiring and employment of foreign laborers.” The DOD’s response, the State Department assured, would “ensure the U.S. employs a ‘zero tolerance’ policy against human trafficking.” But clearly having policies on the books alone did not ensure anything -- besides the Najlā episodes, there have been [many instances of alleged trafficking](#) and third country national worker abuse. Is it really “zero tolerance” when there are no repercussions?

David Isenberg has been an observer and commentator on private military and security contracting since its modern birth in the 1980s. He is the author of the book [Shadow Force: Private Security Contractors in Iraq](#). His blog [The PMSC Observer](#) is the leading online resource for news and current events pertaining to subject of private military and security. Nick Schwellenbach is POGO's Director of Investigations.

Photo credit for photos of protesters, men living in temporary camp: Adam Ashton/MCT/Landov. Photo of KBR tower: [WhisperToMe](#).

David Isenberg is an independent analyst and writer. He is the author of *Shadow Force: Private Security Forces in Iraq* (Praeger, December 2008). He wrote the weekly United Press International “Dogs of War” [column](#) on private military contracting (January 2008 - March 2009). In 2010 he started up the [PMSC Observer](#) blog, regarded as a leading online resource for news and current events pertaining to subject of private military and security. He also blogs on the subject for the [Huffington Post](#).

He was the lead author of [Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor](#) published by the Project on Government Oversight on Jun 14, 2011.

He has been researching and writing on the private military and security contracting industry since the 1980s. He has previously worked at Business Executives for National Security, Center for Defense Information, DynCorp, British American Security Information Council, and, most recently, the Peace Research Institute, Oslo (PRIO) in Norway. He is a [CATO Institute Adjunct Scholar](#): and an [Independent Institute Research Fellow](#). His most recent academic publication is [Private Military Contractors and U.S. Grand Strategy](#), (PRIO Report, October 2009). He is an honorably discharged U.S. Navy Vietnam era veteran.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name: _____

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am not testifying on behalf of anyone beside myself. But I was commissioned by the Project on Government Oversight (POGO) to research and write the original draft of the article "The Najlaa Episode Revisited" for which I was paid \$750.00.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature: _____

Date: _____

October 28, 2011