

February 2, 2009



Expected Release
9:30 a.m.

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Department of Defense

before the
Commission on Wartime Contracting

on

"Oversight of Wartime Contracting in Iraq and Afghanistan"

Chairman Thibault, Chairman Green, and members of the Commission, thank you for the opportunity to appear before you this morning to discuss our oversight efforts regarding wartime contracting. Today I will discuss the historical trends in contingency contracting, the importance of coordination between oversight organizations, observations pertaining to contracting in a war zone, lessons learned, and areas that continue to need attention.

BACKGROUND

The volume and complexity of purchase requirements have increased in order to provide the additional support needed by the warfighter for Operation Iraqi Freedom and Enduring Freedom. Efforts to increase the speed of the procurements to meet urgent warfighter needs have resulted in less than prudent contracting practices. Every acquisition dollar that is not appropriately spent is a dollar that is not available to fund other top priorities of the Department of Defense and wastes taxpayer dollars.

In particular, the size and skill of the DoD acquisition workforce has not kept pace with the growth of contracts, especially when we surged our operations in Iraq and Afghanistan. Historically, contracting challenges show that there were similar contracting concerns related to overpricing, contractor fraud, inadequate goods, and the lack of Government oversight. For example, in 1777, during the Revolutionary War:

- General Washington wrote of his concern of the exorbitant prices charged by vendors of required goods.¹
- Continental Forces suffered gravely at the hands of suppliers who engaged in fraudulent practices.²

¹ *Writings of George Washington*, Government Printing Office, 1993, as cited in *History of Government Contracting*, Nagle, 1999

² *History of Government Contracting*, p19, Nagle, 1999

- Contractors provided the Continental forces with barrels of meat that were filled with stones and tree roots or provided other food rations that were spoiled such as flour. The contractors also provided Continental forces with gunpowder that was debased and unusable.³

During the Civil War, soldiers were provided shoddy supplies from contractors such as clothes, blankets, and shoes that after one day's march or a little rain would cause the items to fail.

Since the early 1990s, the Inspector General of the Department of Defense and the Government Accountability Office have identified Contracting as a high-risk area within the Department. Also, interagency contracting has been a GAO high-risk area since 2005. It is no surprise that the existing contracting challenges and risks are exacerbated when applied in supporting operations in Iraq and Afghanistan and other efforts such as humanitarian assistance/disaster recovery efforts related to Hurricane Katrina.

Today, instead of empty barrels of meat, contractors produced inadequate or unusable facilities that required extensive rework. Like the Continental Forces who encountered fraud, the DoD also encounters fraud. Because of the magnitude of DoD's purchasing power and the global presence of DoD resources, we are faced with daunting challenges in:

- Contract Oversight and Administration
- Property Accountability
- Contingency Contracting Support Systems, People, and Processes

³ *History of Government Contracting*, p19, Nagle, 1999

COORDINATION

As this commission knows, the DoD IG has the primary responsibility within the Department of Defense for providing oversight of defense programs and funds appropriated to the Department at home and around the world, to include Southwest Asia (SWA). In this role, the DoD IG office oversees, integrates, and attempts to ensure there are no gaps in the stewardship of DoD resources. We spearhead the DoD oversight community in auditing, investigating, and inspecting accountability processes and internal controls, in areas such as acquisition, contracting, logistics, and financial management. We also work in close partnership, through the Southwest Asia Joint Planning Group (JPG) and the International Contract Corruption Task Force (ICCTF), with other oversight organizations, such as the Government Accountability Office (GAO), the Special Inspectors General for Iraq and Afghanistan Reconstruction (SIGIR and SIGAR), the Federal Bureau of Investigation (FBI), the U.S. Army Criminal Investigation Command (Army CID), the Department of State Office of Inspector General (DoS OIG), and the U.S. Agency for International Development Office of Inspector General (USAID OIG).

The DoD IG jointly established and chairs the interagency Southwest Asia JPG. The JPG meets quarterly and provides oversight of potential fraud, waste, abuse, and criminal activities in the Southwest Asia region. The JPG allows for coordination and cooperation among the organizations toward the common objective of providing oversight. This unity of effort includes the Military Inspectors General and Service Auditors General, Combatant Commands Inspectors General, the Defense Contract Audit Agency, the Defense Finance and Accounting Service, the Defense Contract Management Agency, the Inspectors General of State and the U.S. Agency for International Development, the Special Inspector General for Iraq Reconstruction, and the Special Inspector General for Afghanistan Reconstruction. The mission of the Southwest Asia JPG is to better coordinate and integrate oversight activities in the region

to identify and recommend improved mission support to military units conducting operations. We used the Southwest Asia Joint Planning Group to facilitate the compilation and issuance of the Comprehensive Audit Plan for Southwest Asia in response to the FY 2008 National Defense Authorization Act (P.L. 110-181), Section 842, "Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan," January 28, 2008.

In addition to the issuance of the Comprehensive Audit Plan for Southwest Asia, the DoD OIG, through the Southwest Asia JPG, has initiated a coordination process with the Joint Chiefs of Staff and U.S. Central command to identify oversight projects that will impact CENTCOM assets and resources with minimal disruption of their personnel in theater while ensuring that oversight agencies are provided information and data needed to accomplish their review objectives.

Comprehensive Audit Plan for Southwest Asia. The FY 2008 National Defense Authorization Act (P.L. 110-181) Section, 842, requires the Inspector General of the Department of Defense to develop a comprehensive plan for a series of audits of Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan.

The Comprehensive Audit Plan for Southwest Asia was expanded beyond the requirements identified in the language of the statute to include not only oversight efforts related to contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan, but oversight efforts related to other critical areas being performed by the members. In effect, the comprehensive oversight plan can be considered a nearly complete source of oversight being performed and expected to be performed in support of Southwest Asia operations. The Plan includes the individual audit plans of the Inspectors General of the Department of Defense, Department of State, and the U.S. Agency for International Development; and the Special Inspector General

for Iraq Reconstruction. It also includes the planned audit work of the Army Audit Agency, Naval Audit Service, Air Force Audit Agency, and Defense Contract Audit Agency. In November 2008, working with the Southwest Asia Joint Planning Group members, the OIG facilitated the FY 2009 update to the Comprehensive Audit Plan for Southwest Asia originally issued in June 2008.

We and the Southwest Asia JPG members plan on updating the Comprehensive Audit Plan in April 2009 to include new and ongoing oversight efforts related to Section 842 and the requirements of the FY 2009 National Defense Authorization Act (P.L. 110-417), Section 852, “Comprehensive Audit of Spare Parts Purchases and Depot Overhaul and Maintenance of Equipment for Operations in Iraq and Afghanistan.”

Section 852 requires that the Army Audit Agency, the Naval Audit Service, and the Air Force Audit Agency, in coordination with the Inspector General of the Department of Defense develop a comprehensive plan for a series of audits for Department of Defense contracts, subcontracts, and task and delivery orders for depot overhaul and maintenance of equipment for the military in Iraq and Afghanistan; spare parts for military equipment in Iraq and Afghanistan; and Department of Defense in-house overhaul and maintenance of military equipment used in Iraq and Afghanistan.

Joint Criminal Investigative Actions (ICCTF). One of the best stories regarding wartime contracting in Southwest Asia and certainly the best outcome for law enforcement organizations investigating and prosecuting GWOT cases is the formation of the International Contract Corruption Task Force (ICCTF) and its main operational body, the Joint Operations Center (JOC). While cooperation and mutual support were evident during the early deployments of agents from separate law enforcement entities (military, inspectors general, and the FBI), the formalization of this cooperation has created the ideal fraud and corruption fighting federation.

The ICCTF, an outgrowth of the National Procurement Fraud Task Force, was established to produce and oversee a comprehensive approach to international corruption and procurement fraud cases. The ICCTF was established in October 2006 with the following members: FBI; U.S. Army Criminal Investigation Command's Major Procurement Fraud Unit; the Defense Criminal Investigative Service of the Department of Defense Office of Inspector General; the Department of State Office of Inspector General; the United States Agency for International Development, Office of Inspector General; and the Special Inspector General for Iraq Reconstruction. The Office of the Special Inspector General for Afghanistan Reconstruction, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations are expected to join the ICCTF.

The mission of the ICCTF is to deploy criminal investigative assets worldwide to detect and investigate corruption and contract fraud resulting primarily from the Global War on Terrorism (GWOT) and to successfully prosecute those cases. This task force is led by a Board of Governors derived from senior representatives of agencies who pursue major GWOT cases to defend the interests of the United States overseas. The Joint Operations Center serves as the nerve center for the collection and sharing of criminal intelligence focused on corruption and fraud relating to GWOT funding. The JOC coordinates intelligence-gathering, deconflicts case work and deployments, disseminates intelligence, and provides analytic and logistical support for the ICCTF agencies.

This effective organization and the commitment of the agencies and their investigators and prosecutors to adhere to the precepts and their practical application in the field has resulted in a model for investigations where multiple Federal agencies are involved in major procurements. This is especially true in a high risk environment with extreme restrictions on mobility and access and with complex and resource intensive cases often with international implications and with activities in disparate locations in CONUS and OCONUS. This model has brought laudable results and has been

extraordinarily efficient and effective. There is no duplication of effort; information and intelligence are shared; resources (e.g., testing and polygraph support) are shared; and agents consult and assist each other. The level of cooperation is unprecedented.

ISSUES RELATED TO CONTRACTING IN A WAR ZONE

The DoD Office of the Inspector General has identified issues specific to contracting in a war zone which have resulted in enhanced potential for fraud, waste, and abuse. Most examples involve reduced oversight resulting from the need to engage in contingency contracting. From inception of the Global War on Terrorism, military and civilian contract administration personnel engaged in contingency contracting designed to obtain much-needed goods and services as quickly as possible. Contract administrators focused primarily on timely mission accomplishment versus ensuring strict adherence to traditional contract administration procedures, many of which are designed to reduce the risk of corruption and abuse. When engaging in contingency contracting, administrators may not consider the risk of increased levels of fraud resulting from lower levels of oversight, as the mission is to provide goods and services as promptly as possible. When left unchecked, this mind set can become pervasive to the extent contract administrators begin to view oversight responsibilities as unwelcome burdens conflicting with their ability to effectively perform their duties.

By way of example, DCIS, the Defense Finance and Accounting Service (DFAS), and DoD IG's Audit component, assisted by the Defense Contract Audit Agency, the U.S. Army Audit Agency, and the FBI, are conducting a proactive project involving analysis of over \$10 billion in Iraq payment vouchers stored at the DFAS, Rome, NY, facilities. Many of the vouchers relate to transactions carried out by the Army shortly after initiation of the GWOT. During this period, the Army was operating in contingency contracting mode. The primary goal of this project is to identify fraudulent activity related to the war effort through utilization of data mining techniques; however,

haphazard record keeping by administrators responsible for overseeing purchases has made it nearly impossible for investigators and auditors to assess the legitimacy of certain acquisitions.

Inexperienced and Insufficient Contracting Personnel. Effective oversight of the diverse functions performed under high dollar value logistics and support contracts requires a sizeable cadre of highly-trained Government contracting personnel with specialized knowledge and significant acquisition expertise. Collective results of work conducted throughout Southwest Asia have led the DoD IG to conclude that a relatively small number of inexperienced civilian or military contract administrators and support personnel were assigned far-reaching responsibilities for an unreasonably large number of contracts. In some instances, contract administrators' lack of experience and training may have resulted in poorly constructed contracts which failed to include provisions designed to discourage fraud or contracts which contained ambiguities that could potentially be exploited by unscrupulous contractors. For example, investigators encountered circumstances in which junior members of the military with little or no contracting experience or specialized training were responsible for administration and oversight of significant contracts. This factor has been especially prevalent when exploring allegations of corruption and abuse related to funds administered via the Commander's Emergency Response Program (CERP), which was designed to fund development of local programs and institutions.

CERP funds are appropriated through the DoD and allocated through each major command's sector of operations in Iraq and Afghanistan. Up to \$500,000 can be allocated to individual CERP projects, and CERP beneficiaries often receive payments in cash. We have also identified occasions where soldiers with limited contracting experience were responsible for administering CERP funds. In some instances, there appeared to be scant, if any, oversight of the manner in which funds were expended. Complicating matters further is the fact that payment of bribes and gratuities to

government officials is a common business practice in some Southwest Asia nations. Taken in combination, these factors result in an environment conducive to bribery and corruption.

Contract administrators must be assigned a reasonable workload, or their ability to engage in effective oversight and identify potential fraud, waste, and abuse will continue to suffer. Likewise, civilian and military contract administrators and contract technical representatives must be career contracting professionals adequately trained in the trade. The standard training regimen for contracting personnel responsible for oversight of funds related to efforts in Southwest Asia should include indicators of potential fraud, waste, and abuse. Training should also take into consideration unique cultural considerations, and should provide guidance regarding contracting officers' responsibilities to proactively identify and report potentially inappropriate activities to appropriate investigative agencies.

Lack of Adequate Oversight. Work conducted throughout Southwest Asia has revealed many instances where a lack of adequate contractor/contracting official oversight resulted in an environment ripe for corruption. The Department depends on responsible agency officials with oversight responsibility to monitor contract performance, implement internal controls designed to deter abuse, and refer potential fraudulent activity uncovered through proactive internal reviews. However, it appears that resources have been inadequate, especially early in the deployment, to help identify latent abuses. For example, the Defense Contract Management Agency (DCMA) is responsible for oversight of the DoD's use of global logistics support contracts in support of the Global War on Terrorism, to include the U.S. Army Logistics Civil Augmentation Program (LOGCAP), a multi-billion dollar program which provides life and logistics support to forces in Iraq, Afghanistan, Kuwait, and Djibouti. The U.S. Army functions as the executive agency responsible for day-to-day administration of the LOGCAP program. The Army works in conjunction with DCMA to oversee contractor activities and to

ensure contractors fulfill obligations and perform in a manner which is in the best interest of the Government. While DCMA and the Army have fulfilled the majority of their diverse responsibilities in this respect, more robust oversight program by both entities would surely have identified significant fraud earlier and prevented a more extensive criminal enterprise.

Predominance of Crimes Involving Military Members. A significant number of investigations conducted by DCIS and partner agencies have focused on members of the military who have engaged in criminal activity - particularly, bribery and corruption. The majority of our GWOT investigations identified crimes committed by military members and civilian contractor counterparts. Unique factors contribute towards individual military members' decisions to engage in corrupt activities. Some examples include:

- Continuous exposure to offers of bribes, gratuities, and kickbacks resulting from differing cultural views regarding corruption;
- Temptation resulting from prior lack of exposure to profuse funds, exacerbated by the extent to which cash is utilized to conduct business;
- Perception of lax oversight;
- Personal financial hardships;
- Opportunity for personal enrichment (greed); and
- Stress and morale issues resulting from multiple deployments.

IG OBSERVATIONS RELATED TO CONTRACT OVERSIGHT

Historically, concerns over contract pricing and inadequate surveillance have existed within the Department of Defense or its predecessors since as early as the Revolutionary war and continues today. Our work has continuously identified problems with the pricing in the award of contracts and the subsequent oversight of these contracts. These problems have only been exacerbated as the level of DoD spending has dramatically increased since 2001, while the acquisition workforce remained at lower levels after large decreases during the 1990s. The need for urgent procurements in an expeditionary environment since the Global War on Terrorism began has also added to the stress and strain on the acquisition workforce.

Maintaining public support for Defense programs requires good contract oversight and prompt identification of any problems. When running the Truman Commission, President Truman, then Senator Truman indicated “I have had considerable experience in letting public contracts and I have never yet found a contractor who, if not watched, would not leave the government holding the bag.”⁴ We are not doing him a favor if we do not watch him.” Senator Truman’s concerns on oversight remain viable today.

Contract oversight and administration are especially important on cost type contracts. In addition, the increased use of contractors and service contracts has heightened the need for close surveillance on contracts. With more use of contractors in the war environment, it is important to clearly draw the line between Government activity and contractor activity and ensure that they do not have undue influence on the decision making process. As reported by the Congressional Research Service (CRS), the number of DoD contractors in Iraq is significant. According to DoD, as of July 1, 2008, there were 200,000 DoD contractor personnel in Iraq and Afghanistan, compared to 180,000 uniformed military personnel. The CRS estimated that from 2003 through 2007, DoD

⁴ *History of Government Contracting*, p408, Nagle, 1999

obligated \$54 billion for contractors working in Iraq.⁵ Also, cost type contracting in recent years accounted for about a third of DoD spending and became more prominent because of the uncertainties associated with expeditionary contracting for the Global War on Terrorism and to support natural disasters such as Hurricane Katrina. Lack of adequate oversight and surveillance has led to waste and abuse on DoD contracts.

Challenges, including the standing challenges in contracting, are magnified in wartime and other contingency contracting efforts such as DoD support to disaster recovery efforts. It is absolutely essential the military, whether executing military operations or providing humanitarian assistance, are provided the goods and services required for their mission. The volume and timeframe for providing the right goods and services during contingency operations exposes and amplifies the risks of the quality of the goods and services received as well as the prices charged for those goods and services supporting the DoD. To effectively support the exigencies of these missions, DoD contingency support processes, including contracting must be dynamic, adaptable, and operate within acceptable tolerances.

As reported by the Congressional Research Service⁶, since the end of the Cold War there has been significant increase in contractors, and the type of work being performed and according to DoD, post-Cold War budget reductions resulted in significant cuts to military logistical and support personnel, requiring DoD to hire contractors to “Fill the gap.” DoD experienced significant and recurring systemic challenges in contract management, specifically contract oversight and providing adequate training to the personnel that were performing oversight of contractors supporting OIF and OEF. Without an adequate number of personnel to perform oversight of the contractors, DoD increased its risks that contractors are not meeting contract requirements.

⁵ *Training the Military to Manage Contractors During Expeditionary Operations: Overview and Options for Congress*, p2, Congressional Research Service, December 17, 2008

⁶ *Training the Military to Manage Contractors During Expeditionary Operations: Overview and Options for Congress*, p1, Congressional Research Service, December 17, 2008

In November 2008, the GAO reported that DoD is revising and developing new joint policies in each of four areas requiring requirements definitions, contingency program management, contingency contracting, and training for personnel outside the acquisition workforce; however, these policies were not finalized by April 2008 as required by the John Warner National Defense Authorization Act for Fiscal Year 2007.⁷

Inadequate contract oversight on service contracts both overseas and in the United States has been a recurring problem identified in reports issued by the DoD IG.

OBSERVATIONS & LESSONS LEARNED IN IRAQ

Although not necessarily unexpected, the significance and amount of challenges that face a fraud and corruption investigations program in a war zone have been extensive. Among these are the complexity of the fraud or corruption schemes, the prevalence of conspiracies, the multi-national and multi-cultural aspect of investigations involving foreign contractors, and the necessity to work with foreign governments and foreign security forces. Also, criminal activity often crosses venues, with actions in furtherance of a criminal venture occurring in SWA, the United States, and frequently other countries, and concomitantly, the evidence is spread throughout. Other complications include intricate logistics, use of translators, evaluation of foreign evidence, and hefty costs associated with deploying civilian criminal investigators for extended periods of time. Added to these are the restrictions and dangers associated with operational tempo and persistent insurgent activity, the difficulties in locating witnesses who redeploy or leave military service, and precautionary transportation restrictions imposed by the U.S. Forces. Despite these challenges, DCIS and its law enforcement partners have assertively pursued the important mission to investigate DoD-related criminal activity concerning fraud and public corruption and to devote substantial

⁷ GAO-09-114R DOD Developed Draft Guidance for Operational Contract Support but Has Not Met All Legislative Requirements, November 20, 2008

resources to projects and investigations designed to proactively identify potential fraud, waste, and abuse relating to SWA.

Reporting of Disbursements and Collections. In our report on controls over cash and other monetary assets, we identified an issue within the processes in Afghanistan. DFAS Disbursing Operations did not record disbursements and collections made by deputy disbursing officers in Afghanistan on a timely basis. Deputy disbursing officers prepare a DD 2665, “Daily Agent Accountability Summary,” which summarizes transactions for each business day. Normally, these records are used to record disbursements and collections in the SRD-1 system. However, because personnel in Afghanistan lacked scanning equipment to update SRD-1, disbursements and collections made by deputy disbursing officers in Afghanistan were not recorded in SRD-1. DFAS Disbursing Operations personnel stated that the deputies in Afghanistan lacked scanning equipment because of budget issues. This inability to scan caused significant reporting delays. Fund balance sheet Cash and Other Monetary Assets line was overstated by approximately \$114 million.

Control and Accountability of Goods and Services Provided to Afghanistan. In one of our recent Afghanistan-related reports, we validated the accountability of Afghanistan Security Forces (ASF) funded real property construction as listed on contracts awarded by Air Force Center for Engineering and Environment (AFCEE) at the direction of Combined Security Transition Command-Afghanistan (CSTC-A). We determined that AFCEE and CSTC-A maintained sufficient documentation and records to track accountability of real property constructed to support the Afghanistan National Army (ANA). However, CSTC-A did not have a formal process in place to transfer real property to the ANA.

Construction Contracting Procedures Implemented by the Joint Contracting Command Iraq/Afghanistan. In our report, we identified that the Regional

Contracting Command (RCC) Bagram contracting officials accepted construction projects that required extensive rework by another contractor to be usable. The audit looked at 42 contracting actions for \$1.9 million of construction. Two contract files were missing and 40 contract files lacked quality assurance surveillance plans and contracting officer's representative designation letters. The contracting personnel stated there was often a lack of qualified personnel available to serve as contracting officer representatives. Examples of rework performed include rewiring of troop housing units, reinstalling sewer lines for latrines and repairing flooring that was installed improperly. RCC Bagram did not adhere to the Federal Acquisition Regulation guidance on contract documentation and quality oversight requirements that would have prevented the substandard quality of the construction projects. RCC Bagram did not follow required Federal Acquisition Regulation standards for contracting procedures relating to: price reasonableness, quality assurance, and contract oversight. We recommended that the Joint Contracting Command-Iraq/Afghanistan ensure independent Government cost estimates are prepared during all solicitations and ensure that quality control plans and quality assurance surveillance plans are prepared for all construction projects

Military Extraterritorial Jurisdiction Act. The Military Extraterritorial Jurisdiction Act (MEJA) was initially intended to allow for criminal prosecution of military personnel, their family members, and civilian contractors directly supporting DoD missions overseas. The act was amended to allow for prosecution of contractors employed by other Federal agencies in support of DoD missions overseas. Although MEJA affords law enforcement agencies important authorities required to ensure contractor accountability, prosecutions related to the act have been limited. The majority of MEJA prosecutions pursued by the Department of Justice have focused on "general crimes" (crimes against persons and property, e.g., assault, rape, murder, theft) committed by military and contractor personnel assigned to Southwest Asia versus significant corruption and fraud allegations of the nature investigated by DCIS and other members of the International Contract Corruption Task Force. However, pursuing MEJA

charges may become more commonplace as prosecutors become increasingly familiar with provisions of the Act.

Further, prosecutors may forego pursuing contractors accused of fraud and corruption violations via MEJA when offenders are citizens of the host nation. In such instances, prosecutors work in conjunction with the host nation's legal system barring unusual circumstances.

Uniform Code of Military Justice (UCMJ). DCIS special agents and partner agencies serving in Southwest Asia work under the auspices of the ICCTF, which is closely aligned with the U.S. Department of Justice. Thus, the majority of investigations conducted by DCIS in Southwest Asia are prosecuted by the Department of Justice. Upon receiving criminal allegations, Department of Justice representatives and military prosecutors (typically, representatives from the U.S. Army Judge Advocate General's Corps) normally engage in consultations regarding whether charges should be pursued by court-martial under the Uniform Code of Military Justice or through the Federal district court system. In many circumstances, UCMJ charges levied against members of the military result in court-martial penalties which significantly exceed sentences handed down in Federal district courts system, arguably providing greater deterrent effect. Prosecutors, however, are prone to pursue charges via Federal civilian courts when the investigation targets military members and civilian contractor personnel. Also, using district courts allows investigators to work in conjunction with the Department of Justice to forfeit the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate fraudulent activity. This option is not generally available when pursuing charges under the UCMJ.

Mandatory Disclosure Rule. The final rule issued November 12, 2008, was strongly championed by the Department of Justice, Inspectors General, and law enforcement agencies. It amends the Federal Acquisition Regulation (FAR) to establish

mandatory disclosure requirements for certain violations of federal criminal law and also for violations of the civil False Claims Act for Federal government contracts and subcontracts. The rule requires a contractor or subcontractor to make a disclosure if it has "credible evidence" of a violation. The rule also requires government contractors to establish a business ethics awareness and compliance program, and it mandates the minimum requirements of an internal control system. The rule adds to the potential causes for suspension and debarment the failure to timely disclose potential violations of criminal law and potential violations of the civil False Claims Act, as well as significant overpayments. Of course beyond suspension and debarment, a company that knowingly fails to disclose a violation exposes itself to enhanced criminal sanctions.

While it is expected that this new requirement will be a boon to ethical contracting, its execution will likely cause a significant workload increase for investigators and prosecutors. Greater revelations of misconduct under the rule will bring more investigations and prosecutions. As such, it will require perhaps considerably more law enforcement agents to investigate the crimes from the beginning or to conduct verification investigations when contractors are allowed to conduct their own investigations. Similarly, more DoJ attorneys will be needed if prosecutions are to be timely and effective or undertaken at all. Clearly, most of these organizations will not be budgeted for such an increase in business, and without fiscal help, presumably from Congress; the advantage of the new rule will be lost.

AREAS REQUIRING INCREASED ATTENTION

Property and Cash Accountability. A lack of clear and focused policies and procedures led to inconsistencies and inefficiencies including challenges in accountability and visibility over DoD assets and equipment destined for the sovereign government of Afghanistan and Iraq. The Defense oversight community and GAO have identified more than a billion dollars in assets that DoD was unable to demonstrate adequate

accountability and visibility over. Asset and property accountability will continue to be a challenge to the Department as DoD starts its drawdown.

The Commander, U.S. Central Command, requested that the OIG lead a planning effort with the Service Audit organizations to review the asset accountability for all U.S. funded assets in Iraq so as to ensure that CENTCOM is prepared for the down size and eventual withdraw of MNF-I from Iraq. The Commander requested that the OIG work with the Service Audit organizations to prepare a comprehensive approach to ensure that U.S. funded assets are properly accounted for and that there is a process for the proper transfer, reset, or disposal of these assets from military units, support staff, and contractors as the foot print becomes smaller in the AOR. We are working with the Service Audit Agencies and DCAA to address the Commander's request.

During our Munitions Assessment Team's first assessment (MAT I), from Sept – Oct, 2007, we found that the Multi-National Security Transition Command Iraq (MNSTC-I) Security Assistance Office (SAO), and the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) were not requiring in their respective contracts that weapons serial numbers be listed on the outside or inside of the shipping containers. Nor was the SAO requiring that a list of serial numbers of the weapons being shipped be forwarded to them by email. As a result, weapon shipments arrived in Iraq without the SAO knowing the serial numbers or having an efficient method for capturing them. As a result of the MAT I assessment team recommendations to facilitate the capturing of weapon serial numbers, MNSTC-I and JCC-I/A contracts now:

- Require vendors attach a list of serial numbers of the weapons inside a shipping container to the outside of the shipping container.
- Require vendors put a list of serial numbers of the weapons inside a shipping container for easy access.

- Require vendors send MNSTC-I a list of serial numbers of the weapons they are shipping to MNSTC-I.

Commanders' Emergency Response Program. As referenced above, investigators' experience in theater has been that Contingency Contracting, specifically the Commander's Emergency Response Program, is highly vulnerable to fraud and corruption due to a lack of oversight. This is to a large extent sanctioned by necessity because field commanders are primarily concerned with getting money into the community to improve conditions for the local population and thus create good will and reduce hostile action against Coalition forces. It would appear that even a small amount of contract training provided through command channels and some basic ground-level oversight that does not impinge on the CERP's objective would lower the risk in this susceptible area. These requirements would be particularly effective in view of the reality that CERP funds are often controlled by lower grade non-commissioned officers who are dealing with large amounts of money, in cash, for the first time in their lives.

In our audit of DoD's Implementation of the Commanders' Emergency Response Program in Afghanistan,⁸ we reported that the Commander, Combined Forces Command Afghanistan established controls over the Commanders' Emergency Response Program (CERP); however, they were not effective in all cases. As a result: of the 16 pay agents, 15 did not have appropriate physical security for storing cash, the sixteenth pay agent did not hold cash because the pay agent is collocated with a finance office. Of the 16 pay agents, 2 inappropriately disbursed cash; some of the projects we reviewed did not fully achieve the intent of the CERP; weaknesses in administrative processes led to inconsistent program implementation, unnecessary requirements, and insufficient documentation. We recommend that the Commanding General, Third Army U.S. Army Central: develop and implement procedures so that projects meet the intent of the Commanders' Emergency Response Program to comply with DoD Financial

⁸ D-2007-064, Implementation of the Commanders' Emergency Response Program in Afghanistan, 2/28/2007.

Management Regulation guidance on CERP and the keeping and safeguarding of public funds, develop and implement a standardized quality assurance and quality control program for all subordinates units and organizations administering CERP projects; and using unit Commanders' Emergency Response Program Managers, provide additional training for pay agents.

Contingency Contracting Support Systems, People, and Processes. DoD has a world class military and weapons systems but DoD has challenges for contingency contracting and support systems. Our current oversight in this area includes looking at the effectiveness of DoD initiatives such as Controls over Common Access Cards, the Joint Contracting Command – Iraq/Afghanistan (JCC-I/A), assignment and training of Contracting Officers Representatives, and training of the DCMA workforce. A description of related ongoing audit work is contained in the Appendix to the hearing statement.

Controls over Contractor Common Access Cards. We are conducting a series of reviews regarding controls over common access cards within the DoD, to include Southwest Asia. Contractor Common Access Cards permit contractor personnel access to Department installations, resources and sensitive information. In our report on the Contractor Common Access Cards we identified several problems in the management process. Government sponsors could not identify an estimated 32,782 cards to a contract and did not have the card expiration linked to contract completion for 35,383 cards.

Also, about 25,400 contractor employees were not required to get mandatory background checks prior to receipt of a card. We also reported that 40,000 contractors had common access cards that identified the contractor person as having a government general schedule pay grade. Further 208,636 contractors had e-mail addresses that misclassified the contractor personnel as U.S. Government personnel. This misidentification is a security risk because contractors could misrepresent themselves in

person and on DoD networks to improperly obtain sensitive information. The Department agreed with the report and was implementing corrective actions. However, the Department did not provide an acceptable solution for the problem of contractors with Department of Defense email addresses and we requested additional comments.

Without adequate controls in place, the contractors have used the Common Access Cards to steal DoD property. One DoD contractor stole 10 million gallons of fuel in Iraq and used a Common Access Card to gain access to the fuel locations. The contractor obtained the Common Access Cards by falsely representing to the U.S. Army that the drivers and escorts were employees of a DoD contractor when in reality, the individuals were not employees of any DoD contractor. Controls must be in place to ensure that Common Access Cards can not be used as a means to pilfer assets from the DoD.

Additional controls over contractor Common Access Card (CACs) are needed and existing controls need improvement. Specifically, contractor CACs were not consistently approved, issued, re-verified, revoked, or recovered across DoD. Also, better Army oversight is required for a Kellogg, Brown, and Root, Inc. (KBR) Real-time Automated Personnel Identification System (RAPIDS) site that issued 25,428 CACs to contractors deploying to Southwest Asia. Overall, CAC life-cycle weaknesses pose a potential national security risk that may result in unauthorized access to DoD resources, installations, and sensitive information worldwide. To tighten controls over contractor CACs, we recommend implementing: joint, DoD-wide, contractor CAC life-cycle policy; improved Army oversight at the KBR CAC issuance site; additional system controls for Contractor Verification System (CVS) and RAPIDS; and procedures to ensure CAC sponsors are current Government employees.

Closing

We are committed to providing effective and meaningful oversight that assists DoD to address its challenges in conducting operations, safeguarding and deterring

taxpayer monies from waste, fraud, and abuse, and most importantly, ensuring our brave military, civilian, coalition, contractors and the Iraqi and Afghanistan citizens supporting a free and sovereign democratic state are as safe as possible. We recognize there is a vast and important mission to support DoD's efforts and are proud to be part of this historic and important effort. This office is on firm footing to provide the necessary oversight. We thank the Commission for the opportunity to discuss our ongoing efforts and observations and look forward to continuing our strong working relationship with all oversight organizations engaged in Iraq and Afghanistan.

APPENDIX

Ongoing Efforts in Southwest Asia

DOD CRIMINAL INVESTIGATIVE PRESENCE AND EFFORTS

The Department of Defense main fraud and corruption investigative core in Southwest Asia consists of 9 DCIS special agents and 14 U.S. Army Criminal Investigation Command (Army CID) special agents. Agents are deployed in Iraq, Kuwait, and Afghanistan and are backed up by special agents in CONUS and Germany.

During the period from January 15, 2008, to January 15, 2009, 148 investigations related to GWOT in Southwest Asia were initiated. DCIS opened 69 investigations, and Army CID opened 79 investigations. To date, DCIS and Army CID have investigated a total of 287 cases; of that combined total, 143 were jointly investigated by DCIS and Army CID. The current open cases chart below details the types of cases, number of cases per type, the subjects, and agencies that have participated in one or more of these cases.

GWOT Joint Investigative Efforts -- Open Cases			
As of January 15, 2009			
Investigative category	No.	Joint Agencies	Subject types
Public corruption - Bribery - Gratuities - Conflicts of Interest - Kickbacks	68	DCIS, FBI, ICE, IRS-CID, DoJ, ATF, SIGIR, USACIDC, NCIS, AFOSI, AID-OIG, NASA-OIG, Other Foreign Agency	U.S. & foreign contractor & subcontractor personnel, U.S. military & government personnel, foreign nationals, & other
Procurement fraud - False claims & statements - Undelivered products - Defective products - Cost/labor mischarging - Bid rigging	61	DCIS, FBI, ICE, IRS CID, ATF, SIGIR, USACIDC, NCIS, AFOSI, AID-OIG, DOC-OIG, USDA-OIG, Other Federal OIG	U.S. & foreign contractor & subcontractor personnel, U.S. military & government personnel, civilian dependents, foreign nationals & other
Theft & technology protection - Theft of funds, property, equipment, and supplies - Export violations: U.S. technology & vehicles	20	DCIS, FBI, ICE, SIGIR, ATF, IRS CID, USACIDC, DOC-OEE, DOS-OIG, Other Federal Agency	U.S. & foreign contractor personnel, U.S. military & government personnel, foreign nationals, & other
Miscellaneous - Terrorism related or not defined	5	DCIS, FBI, ICE, IRS CID, NCIS, USACIDC	U.S. subcontractor, U.S. military, foreign nationals, civilian dependents, & other

Public Corruption involves the investigation of bribery, acceptance or payment of gratuities, conflicts of interest and the paying of kickbacks involving U.S. or foreign contractors, subcontractors, U.S. military or U.S. government personnel, foreign nationals and other miscellaneous entities. Procurement Fraud involves the investigation of false claims and statements, undelivered products, defective products, cost/labor mischarging and bid rigging involving U.S. or foreign contractors and subcontractors, U.S. military or U.S. government personnel, civilian dependants, foreign nationals and others. Theft and technology protection encompass thefts of funds, property, equipment and supplies, as well as export violations of U.S. technology and vehicles involving U.S. or foreign contractors and subcontractors, U.S. military or U.S. government personnel, foreign nationals and others. The below chart details the ongoing investigative efforts as of January 15, 2009, for GWOT investigations:

TOTAL RECOVERIES	
Restitution to U.S. Government	\$31.85 Million
Forfeitures (Civil and Criminal)	\$2.36 Million
Recovered Government Property	\$2.18 Million

TOTAL PROSECUTIVE ACTIONS	
Federal Criminal Indictments	40
Federal Criminal Informations	37
Convictions	42
Fines and Penalties Levied	\$1,517,375
Years of Confinement	76
Years of Probation	49

TOTAL ADMINISTRATIVE ACTIONS	
Settlement Agreements (Civil & Admin)	5
Individuals Debarred From US Government Contracting	10
Companies Debarred From US Government Contracting	4
Companies and Individuals Suspended From US Government Contracting	43

DOD IG AUDIT EFFORTS

The DoD IG has adopted an expeditionary workforce model to support efforts throughout all of SWA. The DoD IG has core staff forward deployed at all times. The core contingent is composed of individuals serving between 6 and 12 month deployments. Expeditionary team members deploy on temporary duty orders for as long as needed to complete reviews. The actual number of auditors, investigators, and inspectors in SWA fluctuates on a daily basis depending on the requirements.

In coordination with the Commanding General, Multi-National Force-Iraq and the U.S. Central Command, the DoD IG established field offices in Iraq at Camp Victory and the International Zone. The Iraq offices are staffed with up to five auditors at a time. In addition, the DoD IG has assigned auditors in Iraq to provide the Defense Criminal Investigative Service (DCIS) support for ongoing criminal investigations pertaining to contract fraud. In coordination with the U.S. Central Command, the DoD IG established a field office in Afghanistan at Bagram Air Base. The DoD IG Afghanistan Field Office is staffed by three full time auditors, who, along with expeditionary teams conduct projects in Afghanistan. In addition, the DoD IG established a field office in Qatar collocated with the U.S. Central Command Air Forces on Al Udeid Air Base, Qatar. The Qatar office provides administrative operations support to the DoD IG SWA field offices. The Qatar office can also conduct audits as required in Iraq, Afghanistan, or throughout the U.S. Central Command area of responsibility. The Qatar office staff facilitates, and may augment, other teams that require temporary travel in theater to conduct specific reviews.

For contract-related oversight in Iraq, Afghanistan, and GWOT, we have issued 34 reports, have 41 ongoing and 20 planned projects. Below are a few examples of recently completed, ongoing, and planned audit work to provide an idea of the types of oversight work the audit component is engaged in.

COMPLETED

Construction Contracting Procedures Implemented by the Joint Contracting Command Iraq/Afghanistan. In our report,⁹ we identified that the Regional Contracting Command (RCC) Bagram contracting officials accepted construction projects that required extensive rework by another contractor to be usable. The audit looked at 42 contracting actions for \$1.9 million of construction. Two contract files were missing and 40 contract files lacked quality assurance surveillance plans and contracting officer's representative designation letters. The contracting personnel stated there was often a lack of qualified personnel available to serve as contracting officer representatives. Examples of rework performed include rewiring of troop housing units, reinstalling sewer lines for latrines and repairing flooring that was installed improperly. RCC Bagram did not adhere to the Federal Acquisition Regulation guidance on contract documentation and quality oversight requirements that would have prevented the substandard quality of the construction projects. RCC Bagram did not follow required Federal Acquisition Regulation standards for contracting procedures relating to: price reasonableness, quality assurance, and contract oversight. We recommended that the Joint Contracting Command-Iraq/Afghanistan ensure independent Government cost estimates are prepared during all solicitations and ensure that quality control plans and quality assurance surveillance plans are prepared for all construction projects

Joint Service Armor Protected Vehicles. In our report on the Procurement and Delivery of Joint Service Armor Protected Vehicles, we identified positive news that the Marine Corps officials took effective actions to accelerate delivery of MRAP vehicles and addressed material shortfalls. In addition, Army and Marine Corps officials developed MRAP requirements based on theatre commander assessments. We found that the Marine Corps Systems Command did not properly determine that contract prices were

⁹ D-2008-119, Construction Contracting Procedures Implemented by the Joint Contracting Command-Iraq/Afghanistan, September 29, 2008.

fair and reasonable when they awarded nine firm fixed price contracts for Mine Resistant Ambush Protected (MRAP) vehicles. As of June 30, 2008, the contracts were valued at \$9.1 billion. Contracting officials relied on competition as the basis for price reasonableness even though they awarded nine separate contracts for dissimilar vehicles at nine different contractor-proposed prices. All of the contracts were awarded firm-fixed-price without price negotiation discussions. For Category I vehicles prices ranged from \$306,000 to \$1,089,000. Although orders were not placed for the most expensive or least expensive CAT 1 vehicles, the current lead contracting officer could not explain how the price evaluation team concluded prices were fair and reasonable. For \$1.2 billion of non-vehicle items we found no corresponding independent Government cost estimates for evaluation. The Marine Corps also did not obtain volume pricing discounts from two contractors, for orders in excess of 1,500 vehicles.

We estimated that for one contractor there was about \$45 million in lost potential savings because of a failure to obtain volume discount similar to other contractors. One contractor self-initiated price reductions and quantity discounts in 2007. We recognized the price discounts but believe they indicate the initial prices were inflated. We believe the best approach would have been to use the Truth in Negotiations Act to obtain cost or pricing data and ensure fair and reasonable prices.

We concluded that the contracting officials did not adequately evaluate prices during source selection. As a result, the Marine Corps had no assurance that prices paid were fair and reasonable and likely paid more than it should have for the vehicles. Marine Corps officials disagreed with our conclusions related to MRAP contract prices. However, the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, agreed with our conclusions that Marine Corps officials did not properly determine that MRAP contract prices were fair and reasonable and that quantity discounts should have been sought.

ONGOING/PLANNED

Army's Use of Award Fees on Contracts that Support the Global War on Terrorism. We are determining whether the Army award fees paid to contractor in support of the Global War on Terrorism are justified. Specifically, we will evaluate the effectiveness of Army procedures for awarding fees and properly allocating award fees on contracts.¹⁰

Selection of Modes for Transporting Materiel in Support of Operations in Iraq and Afghanistan. We are determining whether contracts for the transportation of materiel in support of operations in Iraq and Afghanistan are effective. We are focusing on contracts/task orders involving ground transportation in the Kuwait and Iraq area of operations. The acquisition was for the contractors to provide heavy-lift vehicles for the movement of equipment, cargo, and personnel.

Logistics Support for the United States Special Operations Command. We are determining whether contracts providing logistics support to the U.S. Special Operations Forces were properly managed and administered.

Contracts Supporting the DoD Counter Narcoterrorism Program. We are determining whether contracts supporting the DoD counter narcoterrorism program were properly managed and administered.

Price Reasonableness for Contracts at U.S. Special Operations Command. We are determining whether the pricing of 15 GWOT related contracts with a total estimated value of almost \$2 billion complied with Federal Acquisition Regulation requirements for determining price reasonableness.

¹⁰ D2008-D000AE-0251.000, Army's Use of Award Fees on Contracts That Support the Global War on Terror.

Joint Contracting Command Iraq/Afghanistan Transition to the Standard Procurement System-Contingency. We are determining whether the JCC I/A transition to the Standard Procurement System - Contingency was properly planned and executed. The Standard Procurement System - Contingency is a new module of the Standard Procurement System. The Business Transformation Agency developed the Standard Procurement System - Contingency for use as a contracting system in contingency environments.

Assignment and Training of Contracting Officer's Representatives at Joint Contracting Command-Iraq/Afghanistan. We are determining whether personnel assigned as Contracting Officer's Representatives to the Joint Contracting Command-Iraq/Afghanistan have proper training and expertise to perform their duties.

Defense Contract Management Agency Acquisition Workforce for Southwest Asia. We are determining whether the Defense Contract Management Agency (DCMA) requirements to support Southwest Asia contracting operations and the number of available DCMA civilian, military, foreign national, and support contractors supporting such operations. We are also looking at whether the DCMA Acquisition workforce for Southwest Asia is adequately trained and certified.