

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

Hearing:
**Final Report of the Commission on Wartime
Contracting in Iraq and Afghanistan**

Before the Subcommittee on Readiness and Management Support,
U.S. Senate Committee on Armed Services
232 Russell Senate Office Building
Washington, DC, October 19, 2011

Chairman McCaskill, Ranking Member Ayotte, Members of the Subcommittee, good morning. Thank you for inviting us to testify.

I am Dov Zakheim. With me is Katherine Schinasi. We had the honor to serve as members of the Commission on Wartime Contracting in Iraq and Afghanistan until its statutory sunset on September 30, 2011.

My prior government service includes three years as Under Secretary of Defense (Comptroller) and Chief Financial Officer from 2001 to 2004 and as the Department of Defense Civilian Coordinator for Afghanistan Reconstruction from 2002-2004. I am currently a Senior Advisor to the Center for Strategic and International Studies and Senior Fellow at CNA, a federally funded research and development center. Ms. Schinasi has served 31 years with the Government Accountability Office, most recently as Managing Director for acquisition and sourcing

management. Her portfolio included work on issues affecting the Departments of Defense and State. More recently she has been a Senior Advisor to The Conference Board, a non-profit research organization.

As noted, the Commission on Wartime Contracting no longer exists, so we are speaking today in our capacity as private citizens. We can assure you, however, that nothing in our testimony conflicts with the solid consensus that developed among the eight members of the Commission.

In the often-rancorous atmosphere that permeates Washington these days, the Commission's consensus deserves notice. The Commission was designed to have a balanced, bipartisan membership—four Democratic and four Republican appointees. But we went beyond that and functioned as a *non*-partisan body. Our work sessions, travels, and public hearings featured lively discussions and debates, but were never marred by dissension along partisan lines. Our reports have no dissenting or alternative views. We are *unanimous* in our findings and our recommendations, especially so in the final report that we submitted to Congress on August 31, 2011.

We have provided copies of our report, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks*, to the Subcommittee. We respectfully request that the report, as well as our statement, be included in the official record of this hearing.

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

reasons.

1. First, although U.S. policy has for more than 20 years considered contractors to be part of the “total force” for contingency operations, the federal government went into Afghanistan and Iraq unprepared to manage and oversee the thousands of contracts and contractors used there. Some improvements have been made, but after a decade of war, the government remains unable to ensure that taxpayers and warfighters are getting good value for contract dollars spent. The government also remains unable to provide fully effective interagency planning, coordination, management, and oversight of contingency contracting.
2. Second, reforms can still save money in Iraq and Afghanistan, avoid unintended consequences, and improve outcomes there. For example, as the U.S. draws down its troops in Iraq, the State Department is poised to hire thousands of new contractors for security and other functions.
3. Third, the dollars wasted and at risk are significant. The Commission estimates that at least \$31 billion , and possibly as much as \$60 billion, of the \$206 billion spent on contracts and grant sin Iraq and Afghanistan has been lost to waste and fraud. We have also warned that many more billions—possibly exceeding the billions that have already been lost—may turn into

waste if the government cannot or will not sustain U.S.-funded programs and projects.

4. Fourth, new contingencies, whatever form they take, *will* occur. This year's rapid emergence of civil war in Libya and of U.S. operational involvement shows that it would be imprudent to assume that we are done with contingency operations, or that they will give us ample warning to prepare. Meanwhile, federal agencies have acknowledged that they cannot mount and sustain large operations without contract support.
5. Finally, failure to enact powerful reforms will guarantee that new cycles of waste and fraud will accompany the response to the next contingency. In the current period of budget constraints, the opportunity cost of wasted funds is exceptionally high.

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

The wartime environment brings additional complications, which we address in our recommendations. The dollar volumes swell: more than \$206 billion has been spent on contingency contracts and grants in Iraq and Afghanistan since Fiscal Year 2002. Urgency and hostile threats bear on contracting decisions, execution, and oversight. And the overseas place of performance entails limited legal jurisdiction over foreign contractors, supporting documentation in foreign languages if

available at all, and limited deployability of federal-civilian oversight personnel to theater.

These general observations apply with special force to the Department of Defense. While the Department of State, the U.S. Agency for International Development, and other federal agencies have been heavily involved with contractors and grantees in Iraq and Afghanistan, the preponderance of contracting activity and spending has resided with DoD.

DoD's Director of Defense Procurement and Acquisition Policy, told the Senate Homeland Security Committee last month that DoD "agrees in principle" with the 11 DoD-focused recommendations in the Commission's final report, that Defense doctrine "now includes operational contract support." He also stated that the Department is making progress on matters such as developing deployable acquisition cadres,ⁱ which would appear to be a first step toward meeting the intent of Section 854 of the Fiscal Year 2007 National Defense Authorization Act (NDAA), which calls for the creation of a contingency contracting corps.

We welcome signs of progress at the Department of Defense. Progress is vital, for we face a world beset by emerging geopolitical threats and what seem to be increasingly destructive natural disasters as populations grow and urbanization intensifies. In addition, rising demands to restrain and redirect federal spending will force the Department of Defense and other federal entities to be more disciplined

in their use of taxpayer dollars. That use includes dollars spent on contracting.

As an officer's essay in *Army Logistician* observed, ""In the future, the Army will find it difficult, if not impossible, to fight without external support. In essence, wartime host-nation support and contingency contracting have become operational necessities."ii

Unfortunately, that recognition of reality was published in 1993. The Commission has concluded, nearly 20 years later, that the U.S. military and other federal agencies are *still* not fully prepared to plan and manage large-scale use of contracting in contingency operations.

A striking reminder of that fact is that just last fall, General David Petraeus felt obliged to issue a memo to the allied forces operating in Afghanistan explaining that "Contracting has to be 'Commander's business'" and must not be treated as a peripheral matter.iii

We are not alone in our concern. The Government Accountability Office has had Defense contract management on its "High-Risk List" since 1992. And in this year's update, GAO called attention to problems observed in Iraq and Afghanistan with planning for use of contractors, vetting security contractor personnel, and training non-acquisition personnel to manage security contracts.iv In light of the GAO's report it is difficult to state that the government has fulfilled the provisions of section 862 of the Fiscal Year 2008 NDAA, which calls for government-wide regulation of private security contractors.

In addition, former Under Secretary of Defense Dr. Jacques Gansler, who chaired the Army Commission on Acquisition and Program Management in Expeditionary Operations, raised related concerns before our Commission last year, saying “Contracting should be a core capability of the Army, but it currently is treated as an operational and institutional side issue.” He added, “DoD has an extremely dedicated corps of contracting people. The problem is they are understaffed, overworked, under-trained, under-supported, and, I would argue, most importantly, under-valued.”^v

We appreciate that the Defense Department—supported and in many cases led by this Subcommittee and others in Congress—is taking steps to improve its use of contractors. Policy memos, DoD Instructions, flag-officer appointments, speeches and other signs of change have been encouraging. So have been the creation of Task Force Shafafiyat to combat corruption in Afghanistan, and its subordinate task forces, 2010 and Spotlight, the former focusing on corruption in contracting and the latter on security contractors.

The hard reality, however, is that changing values, doctrine, expectations, practices, and other aspects of organizational culture in a vast and complex enterprise is like herding ice bergs—a slow process requiring heroic exertions, sustained attention, and unrelenting leadership. As the Defense Business Board reported to the Secretary in January,

The stovepipe structure of the Department and turf protection behavior make it difficult for cultural and institutional change. ... Cultural resistance within the Department is overwhelming and real.^{vi}

Inertia and other institutional barriers to change are a common problem for reform everywhere. That is why one of the recommendations in our final report is that Congress require regular, independent reports on agencies' progress and on the barriers to progress.

Without regular reporting to and attention by Congress to contracting reform, the risk is great that leadership exertions and lessons learned will fade, leaving us still unprepared for the next contingency and doomed to new cycles of waste and improvised remedial reactions.

That would be a grave mistake. Contracting has provided vital and for the most part highly effective support for U.S. contingency operations. But we rely on contractors too heavily, manage them too loosely, and pay them too much. The wasteful contract outcomes in Iraq and Afghanistan demonstrate that federal agencies still do not see the heavy reliance on contractors as important enough to warrant thorough planning for and effective execution of the goods-and-services acquisitions that contingencies require.

The Commission has concluded that the problems are multi-faceted and need to be attacked on several levels.

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

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

The government has also been remiss in promoting one of the most effective of all disciplines: competition. It is perfectly reasonable to say that exigent circumstances may require sole-source or limited-competition awards in the early phases of a contingency operation. It is not at all reasonable that a decade into an operation, multi-billion-dollar

tasks orders are still being written with no break-out or recompetition of the base contract.

We recommend better application of existing tools to ensure accountability, and strengthening those tools. Our report contains recommendations to bolster competition, improve recording and use of past-performance data, expand U.S. civil jurisdiction as part of contract awards, require official approval of significant subcontracting overseas, and provide incentives for contractors to take active steps against human trafficking by subcontractors and labor brokers. Our report indicates that implementing many of these recommendations will require legislation.

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

The second level is holding the government itself more accountable for the decision to use contractors and for the subsequent results of those decisions. Part of the problem is resources. As you know, both the active military and the federal acquisition workforce were downsized during the “peace dividend” days of the 1990s. This reaction to the end of a 55-year Cold War was understandable. But it ensured that if a large and prolonged contingency should develop, the military’s reliance on contractors would greatly increase, even as its ability to manage and oversee them had atrophied.

We must be careful not to repeat the mistake of the 1990s. We cannot allow budget constraints to permit a further downsizing of our

acquisition and contracting workforce. On the contrary, we must augment that force, especially if planned military end-strength reductions move forward, and there is even greater pressure to rely on contractors.

Even when the government has sufficient policies in place, effective practices, ranging from planning and requirements definition, to providing adequate oversight of performance and coordinating interagency activities, are lacking. The principal agencies involved in contingency operations—Defense, State, and USAID—have all made improvements in these and other areas. But opportunities for improvement exist and much work remains to be done.

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

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

We support the recent policy guidance from the Office of Management and Budget regarding inherently governmental functions, which incorporates a risk-sensitive approach to determining which functions could or should be reserved for government performance. As our report explains, the inherently governmental test is a necessary, but not a sufficient condition, for making decisions to hire contractors in a contingency environment. We note that OMB's action takes the government considerably closer toward meeting the intent of Section 832 of the Fiscal Year 2009 NDAA.

Considering this Subcommittee's broad mandate, we would also call special attention to two recommendations embodying a whole-of-government approach that will improve efficiency and effectiveness in contracting. Both recommendations would require legislation in order to be implemented.

The first is to establish a top-level dual-hatted position for an official who would serve both as a Senate-confirmed Deputy Director of the Office of Management and Budget, and on the National Security Council staff as Deputy Assistant to the President. Such a dual-hatted position would promote better visibility, coordination, budget guidance, and strategic direction for contingency contracting.

The second is to create a permanent inspector-general organization for use during contingencies and for providing standards and training between contingencies. The work of the special inspectors general for Iraq and Afghanistan reconstruction have shown the drawbacks of

creating organizations limited in functional authority, geographic location, and time. SIGIR and SIGAR have performed valuable service for the country, but they will go away, leaving the need to reinvent them with attendant delays in deploying IG staff when the next contingency emerges. A permanent contingency IG with a small but deployable and expandable staff trained in the special circumstances of contingency operations can provide interdepartmental oversight from the outset of a contingency.

More details on these recommendations, both of which will require legislative actions, as well as other recommendations appear in our final report, *Transforming Wartime Contracting*.

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

As we have already indicated, sustained attention during and after the reform process will be essential to ensure that compliance extends to institutionalizing reforms and changing organizational cultures. That is why our recommendations include a requirement for periodic, independent progress reports to the Congress on the pace and results of reform initiatives. Without such a requirement, agencies can all too easily succumb to complacency, forget the lessons learned in Iraq and

Afghanistan, and blandly reassure the Congress that they “agree with the substance” of reform recommendations and are already addressing them—even if nothing comes of the effort.

Contracting reform is a necessity, not a luxury good, because whatever form a future contingency may take, there *will* be a future contingency.

Perhaps we can avoid hostilities related to unfriendly regimes in east Asia, the Horn of Africa, the Mediterranean, the Balkans, and Latin America. Perhaps we will not be called upon to mount vast humanitarian interventions overseas. Even if we are lucky enough to avoid those contingencies, we will remain vulnerable to catastrophic floods, earthquakes, storms, fires, and mass-casualty terror attacks here at home. And the responses to such disasters will most likely require contractor support as well as Department of Defense involvement, as occurred with Hurricane Katrina.

The government would be foolish to ignore the lessons of the last ten years and refuse to prepare for better use of contracting. But once the wars in Iraq and Afghanistan recede into the past, it will be all too easy to put off taking action. Your Subcommittee is in a good position to prevent such a tragic sin of omission.

Members of Congress will also be obliged to make hard choices about the federal budget, including funds for the Department of Defense. The Army and the Marine Corps have already announced plans to reduce

force strengths by tens of thousands, and budget debates to come will likely require further cuts in Defense.

In that context, we would re-emphasize Recommendation 14 from our final report to Congress. It says,

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

As DoD officials and senior commanders make cuts in budgets and resources, they will be inclined to preserve as much combat capability as possible in the years ahead by concentrating personnel cuts among support functions.

We advise against reducing the size of the acquisition, contracting and oversight workforce. Sustaining and improving that workforce is essential. Cutting it would be a false economy. Defense should instead seek offsetting savings through better planning and requirements definition, increased use of competition for contracts, more effective management and oversight, and better coordination of procurement and contracting functions.

We urge the Members of this Subcommittee to take care that economy drives are conducted with a balanced view of *all* requirements for contingency operations, not just those that involve combat units. If maintaining a balance of essential capabilities leads to a more careful

review of the scope and extent of operations, such an outcome would surely be a constructive development.

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

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ⁱ Written statement of Richard T. Ginman for Senate HSGAC hearing, "Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting," September 21, 2011, pp. 2, 3, 9.

ⁱⁱ Major Anthony H. Kral, "Need for External Support: Don't Try Fighting Without It!" *Army Logistician*, January-February 1993, p. 31.

ⁱⁱⁱ General David H. Petraeus, commander, NATO International Security Assistance Force (Afghanistan), memo, "COMISAF's Counterinsurgency (COIN) Contracting Guidance," September 8, 2010, p. 1.

^{iv} GAO Report 11-278, "High-Risk Series, An Update," February 2011.

^v Written statement of Dr. Jacques S. Gansler for Commission hearing, "Urgent Reform Required: Army Expeditionary Contracting," September 16, 2010, p. 3.

^{vi} Defense Business Board Report to the Secretary of Defense, "Task Group on A Culture of Savings: Implementing Behavior Change in DoD," Report FY11-01, January 2011, p. 2.