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**INHERENTLY GOVERNMENTAL—WHAT IS  
THE PROPER ROLE OF GOVERNMENT?**

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HEARING

BEFORE THE

READINESS SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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HEARING HELD

MARCH 11, 2008



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**INHERENTLY GOVERNMENTAL—WHAT IS THE PROPER  
ROLE OF GOVERNMENT?**

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
READINESS SUBCOMMITTEE,  
*Washington, DC, Tuesday, March 11, 2008.*

The subcommittee met, pursuant to call, at 2:07 p.m., in room 2118, Rayburn House Office Building, Hon. Solomon Ortiz (chairman of the subcommittee) presiding.

**OPENING STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, CHAIRMAN, READINESS SUBCOMMITTEE**

Mr. ORTIZ. This hearing will come to order. And good afternoon and welcome to each and every one of you.

This afternoon our subcommittee will try to answer a couple of questions that not only concern me, but concern the rest of the members of the subcommittee and members of the full committee. And this is what is the proper role of government, and the companion question: What is the proper role for the private sector?

Dating back to the founding of our country, we have understood that we need both government employees and private sector employees—to fulfill agency missions, making sure our citizens get the services that they expect to acquire and require from the government. But the question for today is have we gone too far in recent years by perhaps relying too much on contractors? I hope our witnesses can shed some light on this issue today.

In the 1990's we were all eager to reap the benefits of the peace dividend. We had won the Cold War. We moved forward with significant reforms in the way the government bought goods and services and to take greater advantage of the commercial market as part of the reforms and to get the savings from the peace dividend. We decided we could do more with less.

The Department of Defense (DOD) workforce, from headquarters staff to those in field offices, was drastically cut, and a lot of experience was lost. But the 25 percent reduction in workforce did not mean a comfortable reduction in the workload—just the opposite. As technology has become more complicated, so is the work of government.

At the same time, there has been a tremendous growth in service contracting, from advanced information technology (IT) systems to major base operations contracts. Much of this work is commercial, so we have tapped into the expertise found in the private sector.

There are good reasons for turning to private sector. As the Government Accountability Office (GAO) has noted, one advantage of

using private contractors is the flexibility to take care of immediate needs. Using contractors allows the government to acquire hard to find skills, to have the private sector do the work that is not inherently governmental, to augment capacity on an emergency basis, and to save money and reduce the size of government.

The downside, as GAO has consistently reported, is that we may not be saving as much money as we expected. We also need to be aware of any potential conflicts of interest for using contractor employees.

Another downside is that agencies may be turning to contractors to fulfill even their own missions. One example is the use of lead systems integrators. This is where a contractor is actually in charge of putting the entire thing together and handling overall contract management. We have seen that with the Future Combat Systems.

We have now published a letter defining inherently governmental functions. The Office of Federal Procurement Policy issued guidance in 1990 in its Policy Letter 99-1. The intent was to ensure the agency employees avoided an unacceptable transfer of official responsibility to government contractors.

The Federal Acquisition Regulations have outlined the processes for making the determination of what is inherently governmental, and Congress codified this section with the passage of the Federal Activities Inventory Reform of 1998.

We also have the statutes. They claim that DOD retain certain core logistic capabilities as a matter of national policy. Commercial items are not considered core, and the private sector does play a big role now in defense maintenance in many areas. The Department has turned to the private sector in its efforts to improve basic housing, lodging and even utilities.

On Thursday we will hear more about DOD energy policies, which is another area where we are tapping into the private sector expertise.

But my question is have we gone too far? I have heard from many base commanders that perhaps companies are doing too much of the work. The commanders had no arguments about the contractors on their particular basis. Their concern is one that relates to overall national policy.

Are the bases losing the ability to do any of the work themselves? Just because work is called commercial, does that mean only the private sector can or are to do it?

The flip side to that concern is this. If the needs of the warfighter are being taken care of, should we really care who is performing the work?

The Acquisition Advisory Panel in its 2007 report highlighted the increasing reliance on buying commercial services and using more contractors to fulfill agency missions. As a result, the panel stated that federal agencies need to maintain sufficient in-house expertise, an expertise to manage contractors' performance and the risk that is involved with any customer-contractor relationship.

But, as the panel further stated, agencies are finding it hard to recruit and retain the type of skilled professionals needed to do the complex work that is now part of their mission.

I have highlighted some of the challenges we face embellishing the role of the government with the proper use of private contractors, and I look forward to hearing testimony from our witnesses today. And I hope you can tell us what statutory or regulatory barriers might be in your way to grow the workforce and what new assistance might you need.

Do we need a new definition for inherently governmental? Or do we simply need to focus our efforts on getting results and giving the work to whomever is the best to get the job done? What steps need to be taken to ensure proper government oversight when we do use contractors? How do we answer fundamental questions of what is the proper role of government and the role of the private sector?

But before turning to my colleague for his opening statement, I would like to first say a few words about one of our witnesses. Today is a bittersweet day, I guess, since it is the last day that David Walker will appear before this committee, at least in the role of GAO Comptroller General. After tomorrow he will be off to new challenges and new adventures.

David has had a tremendous government career and has had an influence on all of us. He was responsible for putting accountability back into government oversight. I think that all of us owe David a debt of gratitude for his forthright leadership at the helm of GAO.

David, I know my colleagues will agree when I say that you will be missed.

And now I would like to turn to my good friend from the Commonwealth of Virginia, Randy Forbes, for any remarks that he might want to make.

[The prepared statement of Mr. Ortiz can be found in the Appendix on page 35.]

**STATEMENT OF HON. J. RANDY FORBES, A REPRESENTATIVE FROM VIRGINIA, RANKING MEMBER, READINESS SUB-COMMITTEE**

Mr. FORBES. Mr. Chairman, as always, we thank you for your leadership and for holding this hearing today.

And to all of our witnesses, we thank you for your patience as we work through our technological difficulties. But hopefully, we are on track now. It is a pleasure to have you here, and we are all looking forward to listening to your testimony.

We hope that we can have a substantive dialogue about how the Department of Defense determines which jobs to in-source and which jobs to outsource. I say "dialogue," because this hearing topic is slightly different than most we have at this time of the year.

The subject of inherently governmental functions is not linked directly to the fiscal year 2009 budget submission, but rather it is an omnipresent question that gets to the core of our military readiness. I hope that, through a discussion with our panel of experts, the members can learn more about the existing authorities governing outsourcing, the long-term constraints facing DOD, and the balance of the force today.

Private contractors have been paid to accompany and support U.S. military forces, as the chairman mentioned, since the Revolu-

tionary War. The use of such contractors in a peace and wartime environment is not new. However, over time the size of the contracted workforce has grown significantly.

Since the end of the Cold War, successive Administrations and Congress itself have made calculated decisions to reduce the size of the military and civilian workforce. We have encouraged the practice of outsourcing, where possible, to save money, to gain expertise, and to more easily surge the workforce when needed, as we have done over the last five years.

By now, we are all quite familiar with the use of private security contractors and contracted logistics support in Iraq and Afghanistan, but what has garnered slightly less media attention is the prevalent use of contractors back here in the United States for functions such as guarding military bases, repairing equipment, designing and contracting for weapons systems development and providing other acquisition support services.

In and of itself, the use of contracted labor to supplement the DOD civilian and military workforce is not problematic. Indeed, the men and women who serve as DOD contractors are dedicated, patriotic citizens doing an honorable job for the taxpayers. They are the backbone of the U.S. military and a significant part of what makes our armed forces so capable.

So the question is not whether these individuals are properly or improperly motivated to do some of the jobs we have asked them to do. Instead, the question is whether or not it is fair to ask them to do some of the jobs we have asked them to do. Are we making the best personnel decisions for the long-term health of our military, rather than for short-term benefit?

We should want private U.S. companies to make a profit on honest labor. Therefore, we should think carefully before putting contractors in a position where they must choose between best value for the taxpayer and maximizing shareholder value. The reason we have government is to make those decisions for the collective good. It is in the strategic interests of this country not to delegate that responsibility.

I think we can all agree with these sentiments. Therefore, the issue really comes down to identifying which functions are inherently governmental and ensuring that the Department has all the resources it needs to staff accordingly.

I am aware that the term "inherently governmental" is defined by the Office of Federal Procurement Policy Letter 92-1 and has subsequently been codified and incorporated in the Federal Acquisition Regulations. The question, then, is one of interpretation.

For example, I note that in recent testimony to the Senate Homeland Security and Governmental Affairs Committee, Mr. Bell, you stated that security guards defending bases are not involved in offensive operations and thus are not performing inherently governmental functions. Yet the regulatory definition does not specifically address offensive versus defensive questions or operations.

It does state that an inherently governmental function does involve determining, protecting and advancing the United States economic, political or other interests by military or diplomatic action, contract management or otherwise. One could argue, at least, that private security personnel are protecting or advancing U.S. political



interests. This is simply one example of the dilemma we face in deciding what is or is not inherently governmental.

We also face these decisions on the acquisition front. Over the last several years, this committee has sought to curb the use of lead systems integrators for the procurement of military hardware. We now struggle with the use of such prime contractors on services contracts.

What is the right way to obtain the expertise and efficiency DOD needs without compromising competition and fairness? These are difficult choices in the best of times, and I recognize that there are budgetary pressures facing the Department, and I also recognize how long it takes to recruit and train civilian and military personnel. Retention is equally as challenging.

I look forward to understanding more of the facts of these problems by the end of today's hearing, and I would like to conclude, as the chairman did, by thanking our witnesses for their service to our Nation and for being here with us today.

And in particular I would like to thank Mr. Walker, as we all understand this is your last hearing as Comptroller General. You have served this Nation admirably, and I wish you the very best in your future endeavors. And thank you for being here with us.

And, Mr. Chairman, thank you. And I yield back the balance of my time.

[The prepared statement of Mr. Forbes can be found in the Appendix on page 38.]

Mr. ORTIZ. This afternoon we have a distinguished panel of experts: Mr. Jackson Bell, Deputy Under Secretary of Defense for Logistics and Materiel Readiness; Mr. Shay Assad, Director of DOD's Office of Defense Procurement, Acquisition Policy, and Strategic Sourcing; and the Honorable David Walker, Comptroller General of the Government Accountability Office.

This is such an important issue that we are not going to time you. Just go ahead and finish your statement, because this is a very, very important issue.

And, Mr. Bell, you can proceed.

**STATEMENT OF P. JACKSON BELL, DEPUTY UNDER SECRETARY OF DEFENSE, LOGISTICS AND MATERIEL READINESS, DEPARTMENT OF DEFENSE**

Secretary BELL. Thank you, Chairman Ortiz.

Thank you, Member Forbes, other members of the committee.

It is an honor to be here to appear before you with David Walker and to thank him for his terrific, dedicated service to this government.

And thanks for this opportunity to discuss the question of inherently governmental functions and the role of government in providing services and fulfilling agency core missions. My oral testimony today will briefly summarize my written testimony, and we will be available to answer questions on that as well.

DOD's use of contractors, including private security contractors, is consistent with existing U.S. Government policy on inherently governmental functions. We are guided by three main documents, when determining whether an activity is inherently government, as has been mentioned already: the Federal Acquisition Regulations,

or the FAR; the Federal Activities Inventory Reform Act, or the FAIR Act of 1998; and the Office of Management and Budget (OMB) Policy Letter 92-1, which was issued in 1992, later replaced by A-76, but also incorporated there by reference.

Both the OMB policy letter and the FAR define an inherently governmental function as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by government employees. OMB Policy Letter 92-1 is actually quite specific, when identifying those functions considered to be inherently governmental and those functions not considered to be inherently governmental.

The DOD policy is not to contract out any functions defined as inherently governmental.

As has been pointed out, several factors have shaped DOD's increasing reliance on contractor in the last decades: first of all, the shift to an all-volunteer force in the 1970's; second, an effort to capture a peace dividend following the collapse of the Soviet Union, which led to a significant reduction of both DOD military and civilian forces; and, of course, the increasing technical complexity of DOD weapons systems and equipment, which requires a level of specialized technical expertise, but of limited scope the DOD does not believe can be cost effectively supported by a military force capability.

The current global war on terrorism deployments of our DOD military forces are actually the first major contingency operations to reflect the full implications of the shift to reliance on deployed DOD contractor personnel.

For example, as of the end of the first fiscal quarter of 2008, which ended December 31st, 2007, the U.S. Central Command (CENTCOM) reported about 223,221 DOD contractor personnel working in the CENTCOM area of operations (AORs). This included 163,591 DOD contractor personnel in Iraq, 36,520 contractor personnel in Afghanistan and 23,110 contractors in other CENTCOM AORs.

These contractor personnel provide a broad range of services, including construction, reconstruction, base support, transportation, communications, translator interrogator support, interpreter support and security. DOD, the GAO, OMB, the Congressional Budget Office and the Congressional Research Service have all continuously reviewed the expanded use of contractors and the appropriateness and the manner in which they are employed.

In 2005 the Congressional Budget Office conducted a study of the relative cost of contractors versus military personnel, from both a short-term and a long-term perspective. Their conclusion was that when all relevant costs are considered, in the short term costs are comparable, but in the long term the use of military personnel is about 90 percent more expensive.

It is also worth noting that, using the analytical framework of the 2005 Congressional Budget Office study, it would take about nine new brigades' worth of military personnel to replace the current number of private security contractors in Iraq and Afghanistan. This would represent a significant challenge for DOD to resource such a requirement.

DOD has been refocusing efforts not only on the management of DOD contractors, but also on interagency management and oversight of all U.S. Government contractors deployed forward.

On December 5th of 2007, DOD and the State Department signed a memorandum of agreement, or an MOA, defining a framework for strengthening the management of government private security companies (PSCs) in Iraq. The scope of this MOA is covered in some detail in my written testimony.

DOD is also working with State and U.S. Agency for International Development (USAID) on additional measures to meet congressional mandates to improve oversight and management of our deployed contractors. These efforts will fully comply with the requirements of Section 861 and 862 of the 2008 National Defense Authorization Act (NDAA).

Both State and DOD support legislation to strengthen the legal accountability of non-DOD U.S. Government contractors overseas. The DOD-State effort in these areas builds on the DOD's strategic framework already developed for managing contractors deployed with our military forces. The framework will be issued in final form in April of 2008 in accordance with the requirements of Section 854 of the 2007 NDAA.

We are also strengthening the training and career development of our deployable contractor management forces and the training of our operational military leaders at all grades on the management of contractors deployed with our forces. DOD has made significant improvements in the management of our deployed contractors, and we continue to focus on strengthening our capabilities going forward.

Subsequent to my submission of my written testimony, we met with members of your staff, who indicated an interest in discussing other aspects of inherently governmental function, including the preservation of core capabilities within DOD. I will be happy to address any of these questions on this subject that you would like to take up in the Q&A period of the hearing.

In closing, I would like to say DOD does appreciate the interest and support that Congress continues to provide for this important effort. Thank you.

[The prepared statement of Secretary Bell can be found in the Appendix on page 40.]

Mr. ORTIZ. Thank you, Mr. Secretary.

Mr. Assad.

**STATEMENT OF SHAY ASSAD, DIRECTOR, DEFENSE PROCUREMENT, ACQUISITION POLICY, AND STRATEGIC SOURCING, DEPARTMENT OF DEFENSE**

Mr. ASSAD. Chairman Ortiz, Representative Forbes, distinguished members of the House Armed Services Subcommittee on Readiness, thank you for the opportunity to discuss the question of inherently governmental functions and the proper role of government in providing services and fulfilling the Department of Defense core missions.

Before I begin my oral testimony, I have a written statement that I would like to submit to the record, Chairman Ortiz, and just summarize with brief oral comments.

Mr. ORTIZ. We will include it for the record, sir.

Mr. ASSAD. Thank you.

And also before I begin, I would like to recognize the Honorable David Walker for his outstanding government service and thank him for the same.

I serve as the Director of Defense Procurement, Acquisition Policy and Strategic Sourcing. In terms of my experience prior to assuming this role in April of 2006, I was the senior contracting official in the Marine Corps.

Prior to that I spent 25 years in industry. I served in several different roles. I was a senior vice president of contracts. I was a president and chief operating officer with one of Raytheon Company's major subsidiaries, and finally a chairman and chief executive officer of one of their subsidiaries.

I am a graduate of the Naval Academy. I served in the United States Navy two tours on destroyers and last served as a naval procurement officer.

Today's hearing goes to the heart of two questions. What is the core capability that government must maintain, if it is to continue to provide our warfighters the equipment and support services they require, while ensuring that taxpayers' money is spent wisely? And what is the proper role of contractors that are supporting the Department of Defense in that effort?

We must ensure that government personnel perform the inherently government functions associated with the acquisition and procurement of defense goods and services. The fact that contractors may be performing or appear to be performing these inherently governmental functions is a matter of concern to me.

I would like to focus initially on the role of industry versus government employees and military personnel in the contracting and procurement mission within the Department of Defense. The Federal Acquisition Regulations identify functions which are considered inherently governmental, and it is an extensive list, but it is also not totally inclusive.

My perspective centers around the government's business decisionmaking process and specifically the personnel and processes we use to contract now for over \$300 billion of goods and services within the Department of Defense. My view is that the role of industry must be carefully and particularly scrutinized, when contractors are involved in the pre-award phases of government procurement and acquisition.

Among the areas which should be scrutinized are the determination of an acquisition approach and our business strategies, the selection of who will perform the work, the negotiation of cost and price of our contracts, the negotiation of contract terms. And except in those cases where technical expertise does not reside within the government, what we do during the pre-award decisionmaking process should not be performed by contractors, in my view.

The role of contractors in procurement and contracting activities should be confined to administrative support, whenever possible. Even in those areas, we need to assure that anything that provides access to the decisionmaking process in the aforementioned areas must be carefully examined.

At the present time, approximately five percent of the total procurement and contracting workforce consists of contractors—that is, industry folks. In a number of instances, these contractors are providing appropriate administrative support.

However, while not pervasive within the Department, there are occasions when contractor personnel are performing contracting roles similar to those that I previously described.

A small number of contracting organizations have resorted to utilizing contractors. And why are they doing so? Well, among the reasons are increased workload, a lack of billets, a lack of experienced personnel and an inability to recruit personnel effectively.

In spite of the aforementioned, I believe that we must find a way to enable these organizations to staff their operations with government employees, not contractors.

Examples of solutions are increased billets, where justified; use of retired annuitants, when it makes sense; and use of interagency contracting services, when that makes sense. I can assure you that we are working to change those instances where I believe that contractors are performing functions which could be inherently governmental in the contracting process.

It is essential that we in government fully recognize that government contracting personnel hold positions of trust and have a fiduciary responsibility to our taxpayers. We should not outsource that responsibility. We should hold government employees accountable to do it.

We cannot overlook the potentials for conflicts of interest, both personal and organizational, when contractors—that is, industry folks—are working in a contract environment. This is a concern that has been raised by the General Accounting Office, and we are working to address those concerns. Recently, GAO put out a report on this matter, and we fully concur with their views.

There are several significant initiatives, which we have taken in the Department, to address the issues of integrity and the training and improvement of our contracting workforce. We have a panel of contracting integrity, and Section 813 required that. We are conducting extensive contracting competency modeling, which I will be happy to talk to you about. We have also invoked a series of management structures for the management of our services contracts.

The Department's goal is to continuously strive for improvement in all that we do. We will not lose sight of the tenet that, while we endeavor to provide our warfighters the very best, we must also ensure that we do so while being good stewards of the taxpayers' funds. Our warfighters deserve nothing less, and our taxpayers rightfully should insist on nothing less.

Mr. Chairman, I thank you and the members of this committee for your interest in our efforts, and we will be happy to discuss any questions, which you may have for me. Thank you very much.

[The prepared statement of Mr. Assad can be found in the Appendix on page 50.]

Mr. ORTIZ. Thank you so much.

Mr. Walker.

**STATEMENT OF HON. DAVID M. WALKER, COMPTROLLER  
GENERAL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. WALKER. Thank you, Chairman Ortiz, Ranking Member Forbes, other distinguished members of this subcommittee. Thank you for your kind comments. It is a pleasure to be back before this subcommittee for what will be my last hearing as Comptroller General of the United States.

I am pleased to be here today to discuss the increased reliance of the United States Government in general and the Department of Defense in particular on the use of contractors in connection with government related activities.

In fiscal 2007 the Federal Government spent about \$254 billion on contractor services. That amount has doubled over the past decade. The Department of Defense's obligations for service contracts, for example, expressed in constant, inflation adjusted dollars, rose from \$85 billion 1996 to \$151 billion in 2006, a 78 percent increase.

DOD has become increasingly reliant on contractors, both overseas and in the United States, to perform a wide variety of services and other activities. For example, DOD has recently estimated that the number of contractors in Iraq and Afghanistan is about 196,000 individuals, roughly the same as our deployed forces.

In addition to the support contractors provide the military forces overseas, we are also having an increased use of contractors for other services, including for various aspects of weapons systems logistics support and depot-level maintenance.

While contractors, along with military personnel and civilians, are part of the total force employed by DOD, it is important to focus on which types of activities are appropriate for contractors to use, and which are not.

And if I can, I would ask, Mr. Chairman, that my entire statement be included in the record, and I will now move to a few comments that I think would be particularly interesting to this subcommittee.

I think when you are talking about the Department of Defense, you are talking about military personnel, civil servants and contractors. Those represent the total force.

There are a number of factors, I think, that are causing the Defense Department to use contractors to a greater extent, one of which, as has been mentioned, is the move to the all-volunteer force. The military, especially the Army, is stretched and strained. It has a capacity problem. And therefore, if it doesn't have adequate capacity to be able to perform certain functions, it must look to alternatives.

Second, candidly, the Federal Government's hiring practices, classification and compensation systems in some cases do not facilitate being able to hire the number and type of people that you need as quickly as you need them.

With regard to the issue of inherently governmental, in my mind you should never contract out any representational role for the United States in whatever way it might be, and second, you should never contract out any role or function that can involve the discretionary use of government power. And that includes financial resources, both as to value and risk, as well as enforcement, regu-

latory interpretation and other types of activity. These are inherently governmental. Those should not ever be contracted out.

On the other hand, when you look at a broader sourcing strategy, once you define what those are, then you have to look at, for what is left of government, what is core and what is non-core. And if it is not core, in general you should contract it out, because the government should not be in the business of competing with the private sector in the normal course.

And many times when you are talking about non-core capabilities, because of the competition that exists in the private sector and because of the ability to leverage investments, because they have a capital budget and the ability to achieve economies of scale and benefit from new technologies quicker than typically the government does, one can obtain cost effectiveness and efficiencies.

And then last, but certainly not least, one has to look at what is a recurring need versus a non-recurring need, because if it is a recurring need, generally you want to provide for it within the government, but if it is a non-recurring need, such as a surge need, a contingency operation, there will be circumstances where it is prudent and appropriate to go to contracting, because it is not a recurring need. It is not something you are going to need in the long term.

Three thoughts on what the Federal Government needs to think about doing in this area. First, extra flexibility for the Defense Department and other government agencies to be able to hire a limited number of civil servants at any level for up to a stated period of time for a maximum percentage of the workforce on a non-competitive basis to do whatever needs to be done.

The Comptroller General of the United States has this authority. I have the authority to hire up to one-half of one percent of our allocated account to do whatever I think needs to be done non-competitively for up to three years, and if they want status, they have to convert after that. Think how that could have helped in an Iraq situation, in a Katrina situation and in others.

Second, we need to use re-employed annuitants to a greater extent to try to achieve two objectives: number one, to deal with the retirement wave and transition to a new workforce; and second, to deal with surge and contingency needs in order to be able to tap that capacity.

And third—last, but not least—most fundamentally, the Federal Government needs to re-examine its entire classification and compensation systems, because they are not market-based, they are not performance-oriented, they do not generate the type of value for money that the taxpayer should expect and demand.

So with that, Mr. Chairman, I am happy to answer any questions that you might have, and the other members of the subcommittee. Thank you.

[The prepared statement of Mr. Walker can be found in the Appendix on page 61.]

Mr. ORTIZ. Thank you so much for your testimony. And I am going to ask a question, and maybe all of you will have a chance to respond. My question is have you been able to determine if the Department of Defense has saved money by the extensive use of contractors?

For example—and this is just an example—if it cost \$1 billion to build an active duty brigade, and the Army will need three brigades of military police (MPs) to replace contractor-provided personnel protective security now used in Iraq and Afghanistan, couldn't we afford more military police instead of using contractors? And this \$1 billion is just an example.

Mr. WALKER. Well, I will start, Mr. Chairman. It really is all facts and circumstances. It really depends upon what are the skills and knowledge that you are talking about. The simple fact of the matter is the Federal Government has generous benefits. The Federal Government, depending upon what level you are in the government, either pays competitively, underpays as compared to market, or in some cases overpays as compared to the private sector.

So depending upon what are the roles and functions you are talking about, you either can save the Federal Government money, or in some cases could cost the Federal Government money, a lot more. But then you have to ask yourself, "Okay, is this going to be something that we are going to need to do on a recurring basis, or is it something we just need temporarily?"

And so I think you need to consider the cost, but you need to consider all the factors that I talked about, because, depending upon the facts and circumstances, it may be best value to pay somewhat more, but it doesn't make sense to do that over an extended period of time for a recurring need.

Mr. ORTIZ. Anybody else here?

Secretary BELL. Congressman Ortiz, as I indicated earlier, Congressional Budget Office did do a study on this in 2005. It was focused specifically on logistics personnel, and their analysis—and again, as Comptroller General Walker has said, it is a matter of facts and circumstances and skill sets—but looking at logistics personnel, their conclusion was in the short term it was a wash. In the long term, because of the career benefits, retirement benefits, health care benefits and such, it cost about 90 percent more.

So that is an envelope within which we work. But in many cases we are talking about—particularly as we are looking at the situation in Iraq—a situation where we got greater responsiveness out of the private sector for certain key skills and capabilities that we needed by mobilizing contractors than we would have, for example, by attempting to mobilize Reserve or National Guard forces for those missions.

Mr. ASSAD. I think, Mr. Chairman, that it really does boil down to what are the skill sets that you need and how long are you going to need them for? As Comptroller General Walker said, if you need them over a sustained period of time, then you really have to examine are these decision making processes? Are these roles where we are obligating the government to do certain things?

If the answers to those questions are yes, then I think we need government employees to do that kind of stuff. On the other hand, if it is a specialized capability that is a short-term response, as Mr. Bell mentioned, the reality is that we are probably better off using contractors to do that. But I am not aware of any study that has been done within the Department to measure that.

Mr. ORTIZ. All right. I have been here 26 years, and one of the battles that we have fought has been the A-76 studies. And what



those studies would do is they would go inside the civilian workforce at the depots to see what they could contract out. But I never did see them going out to see what they could bring in to the depots.

But, Mr. Walker, when you called for a fundamental re-examination of the use of contractors to support agency missions, how do you think the Congress can support such a re-examination? And I believe we need to do that.

Mr. WALKER. Well, first, Mr. Chairman, as you may recall, the Congress had asked me several years ago to chair the Commercial Activities Panel, and I did that, and we put together a very prestigious group and submitted a report to the Congress, which made recommendations to Congress and the Administration. I would commend to you and other Members of Congress to take another look at that.

It dealt with the A-76 issue. And one of the concerns, frankly, that I have about the A-76 process is it only deals with functions and activities that we are thinking about engaging in competitive sourcing activities about. And, frankly, that is a small fraction of the Federal Government.

We ought to be trying to achieve most efficient organizations throughout the Federal Government, even though we may not ever go through a competition process. And we ought to be asking ourselves not just what might be able to be done more efficiently and cost effectively externally, but what might make sense that is being done externally that should be considered to be done internally.

So I think one of the things that we recommended, as it relates to DOD, is that DOD needs to engage in a more formalized, possibly like a Quadrennial Defense Review (QDR) type of process, where it learns lessons from the existing contingency operations—namely, Iraq and Afghanistan—and that it fundamentally reassess what makes sense on a going forward basis. We don't know what the next contingency operation will be, but we know there will be one. We don't know when and where it is going to be.

But more fundamentally, I think, we need to kind of periodically re-examine what are we doing in this area and does it make sense? We have also recommended in the past that the Office of the Secretary of Defense should have somebody who is focused on this issue, as well as contractor oversight, because contractor oversight is a problem now.

That deals with DOD. Frankly, I think it is a governmentwide issue. I just think it is particularly significant in the Defense Department, because it is the biggest contractor of any department of the Federal Government.

Mr. ORTIZ. Anybody else would like to—

Secretary BELL. I would like to make a follow-up comment on that, Chairman Ortiz. What David has pointed out there is something we actually began addressing in 2006, which is the question of how should we structure, from a strategic point of view, putting together a framework for managing contractors on the battlefield going forward?

It did not look at the issue of whether the types of contractors were appropriate, but it made the assumption that, given roughly the level of contracting and scope of contracting activities we have,

we recognize that we have to fundamentally change the approach strategically for how we approach even using contractors to accompany the military forces.

That is the report I indicated earlier will be submitted to Congress here in April, our final report and our final recommendation on how we plan to proceed going ahead.

Also, to the point of appointing an individual, I am the senior DOD official responsible for management of deployed contractors. Shay Assad is the senior official responsible for contracting policy for DOD. And so we are moving in the direction that he is suggesting that we need to.

I think, though, that he is raising a more fundamental strategic question, which is appropriate roles for contractors, compared to the government functions.

Mr. ORTIZ. Anybody else? If not, let me yield to my good friend, Mr. Forbes. We are having some motions to adjourn. Somebody wants to go home. Who wants to stay here?

Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

And once again, let me thank all of you. I am honored just to have your wisdom in here, and maybe by osmosis we can pick up some of it today.

But, Mr. Walker, as I understand one of your comments, we have about 196,000 contract employees currently in Iraq. Was that—

Mr. WALKER. My capable staff has told me, and my testimony includes, that that is a recent estimate by the Department of Defense—196,000 personnel.

Mr. FORBES. The question I would ask for any of our witnesses is do we currently in our war plan take into account an immediate withdrawal of the United States forces from Iraq and how it would impact those 196,000 contractors that are there—not which plans we may be looking at now, but what currently we have in our war plans—how would we deal with them if we made a decision to load our troops on ships tomorrow and bring them home?

Secretary BELL. Actually, we have been doing a number of detailed studies on that subject exactly, looking at both the specific contractor taskings that would need to be accomplished to support the drawdown of forces, as well as the repositioning of the contractor personnel themselves.

Mr. FORBES. Mr. Bell, Mr. Secretary, my question, though, is, with all due respect, not what we are looking at, but do we have a plan in place now, if we were to have an immediate withdrawal of our troops today, of how we would deal with those contractors that are in Iraq?

Secretary BELL. How we would deal with them operationally in terms of their withdrawal?

Mr. FORBES. How do we make sure that they are protected, their safety, we get them back today? Do we have an operational plan to deal with that, if we pull the plug, we quit, we walk away tomorrow?

Secretary BELL. My understanding—the last time I was over there and talked with General Petraeus was in November—is such planning was in an advanced stage at that point in time.

Mr. FORBES. And again, without picking words, planning is one thing. Do we have that in place now? It is one thing to be planning for it, but if we made the decision today to withdraw our troops, do we have a plan in place today as to how we could protect the contractors that are there?

Secretary BELL. I would like to take that as a question for the record (QFR) to make sure that the planning that was done has reached the state you are actually looking for here.

Mr. FORBES. If you could get that to us, because obviously that is a big concern for a lot of us. If somebody makes the decision to talk about pulling our troops out immediately, where does that place these 196,000 contractors that are out there?

Secretary BELL. I understand the question. I would be glad to take that for the record.

[The information referred to can be found in the Appendix beginning on page 105.]

Mr. FORBES. Thank you, Mr. Secretary. The other thing I would ask is what are some of the unintended consequences that have resulted from previously enacted legislation aimed at streamlining or reforming the acquisition workforce? Are there particular statutes that in your judgment—either the three of you—make that difficult?

Secretary BELL. I would certainly defer to David on that one for the beginning.

Mr. ASSAD. I don't think it is an issue of statutes that have been enacted by Congress that are causing the problem. I do believe that, as we look back on a number of the things that have been done in terms of acquisition reform, you have to wonder if in retrospect, now that we have gotten some time to look in hindsight at several of the things that have happened, did we get the benefits of several of the intentions of acquisition reform?

Certainly, one could argue that it has made things easier to do in terms of getting things under contract. I say that anecdotally, although I have no factual basis for that. But I do believe, however, that it did not result—I haven't seen any evidence that we are in fact paying less for the goods and services that we procure as a result of acquisition reform.

It is also not clear to me that—I liken it to if you have a football field, and it has got all the lines on it, it has got goalposts and has hash marks on it, people understood when the ball landed, where it should be and how to play the game. When I spoke to Mr. Creve about this before he left government service, I likened it to removing all of the lines from that field, and you have folks on board, who—somebody has got a baseball bat, someone has a basketball, somebody is dressed up in a hockey uniform, someone has a football uniform on, and they are not quite sure how the game should be played.

What acquisition reform did was it was a perfect environment for a very experienced and seasoned workforce to operate in. But that experienced and seasoned workforce over time has diminished. We have got a bathtub right now in the procurement contracting environment.

We have over 22,000 folks who do contracting, both military and civilian. And if you look at that workforce, a significant portion of

it has got 15 years of experience and beyond. We are doing a pretty good job of bringing some of the younger folks in, from 0 to 5 years of experience—younger in terms of experience, not necessarily age—but between 5 years and 15 years of experience, we have got this huge dip. And that is the element of the workforce that, in retrospect, we depended upon to be very experienced.

And so we have got a somewhat inexperienced workforce trying to deal in an environment that requires significant experience. That is why we are doing the competency modeling that we are doing right now. We are trying to get a sense of—recognizing that that has happened, we are looking in the mirror and saying, “Well, where are we? What is our capability to do procurement and contracting in the Department of Defense?”

And so we have established a competency modeling process. We had over 400 very experienced contracting officers put that model together. We have had over 5,000 contracting people go through the model already. We will have another 5,000 go through it this month of March. By the end of June, the entire contracting workforce will have gone through that process.

It will give us a better sense of what our level of capability is in the environment of acquisition reform that we have created, and then it will allow us to do three things: number one, to carefully examine the acquisition environment to see if there are suggested changes that we can ask Congress to consider; to look at our capabilities and experience levels to see what we need to do in that regard; and then, third, to examine our capability to actually do work and decide how many folks do we actually need over and above that which we presently have.

Mr. FORBES. And, Mr. Walker, if you don't mind, if you could submit yours for the record. The only reason is we have to get over for this vote, and I want to yield back.

Mr. WALKER. No problem.

[The information referred to can be found in the Appendix beginning on page 105.]

Mr. FORBES. And the last thing I would just leave with you also for the record. We are not just talking about acquisitions on the battlefield, but we are also talking about training capabilities. And I am just concerned, too, that we don't find ourselves in the position where we are not able to train the way we need to. So any of your comments that you could put in the record later on that, asking how we protect there, we would appreciate that.

Mr. Chairman, thank you. I yield back.

[The information referred to was not available at the time of printing.]

Mr. ORTIZ. Thank you. We are having an adjournment vote, and we might have another one, but we will try to come back very quick, because this is a very, very broad issue that, hopefully, by working together we can get a hold of it and try to put the genie back in the bottle so we can work it out. But we will be right back. We will have a short recess. Thank you.

[Recess.]

Mr. ORTIZ. We are going to continue with our hearing. And Ms. Boyda, do you have any questions?

Mrs. BOYDA. Thank you very much, Mr. Chairman. This is obviously an issue that is of huge importance to our entire country, and in some respects it has some issues in Kansas that I think people are asking me, "What is going on?"

In Kansas we have a Parsons Army Ammunition Plant that we have now contracted to Canada. We closed the plant and contracted to Canada. We have a tire facility that was built in World War II, and we basically contracted the whole procurement of our tires for the Humvee to a French company, Michelin. We are looking at clearly an issue that has hit Kansas right between the eyes, and that is Boeing.

As we keep moving away from our industrial base and letting our industrial base leave the United States, what is the impact, Mr. Bell, we were talking about? What is the impact that that has on our ability to respond in a timely manner?

Secretary BELL. Thank you for the question. The issue we have been facing, as I think everyone knows here, for the past several decades has been largely the multinationalization in manufacturing, with a lot of the actual physical manufacturing moving off-shore. And that does, in some sense, challenge our capabilities in that most manufacturers, particularly very large manufacturers of complex systems, are sourcing key components outside the U.S.

And we were just talking earlier about the Mine Resistant Ambush Protected vehicle (MRAP) situation, where obviously a decision was made within the Department of Defense to maximize the production of these vehicles, because they are saving lives over in Iraq and Afghanistan.

What is not as well known is the challenges that we faced in terms of the capabilities of our domestic industrial base to produce key components for those vehicles. Even though they were being produced by a number of different companies, they shared many of the same components.

For example, we, during the critical period of ramping up manufacturing, basically were consuming almost all of the globally available—at least free world globally available—ballistics steel armor, thin ballistic sheet steel. The tires for the load range of MRAPs were only being produced by Michelin in France at that time, and in fact, some of the key axle and transmission castings were being produced in France.

So we increasingly have to look at the global industrial base to support our requirements in DOD, and the MRAP program is a good case in point of how we have to reach out and manage the complexity of that.

Mrs. BOYDA. Thank you very much.

Again, let me just state again in Atcheson, Kansas, we have got a foundry that would be happy to make those castings for you. We have got a facility—as I said, the World War II facility—that could make those tires, have made them for years—my point being, as I think your point is, that as we have just said, we are going to turn our backs on the industrial base here in the United States. It actually affects our readiness in ways that I think America is beginning to understand on a daily basis.

And my personal belief is that this committee needs to address some of those and to make sure that we have an industrial base left that is in fact ready to respond when we need it at any time.

Let me just go back at the larger issue of the number of contractors that we have. And the chairman and I were speaking during the break here that we have 196,000 contractors in Iraq and Afghanistan and 150,000 or 160,000 active duty in Iraq.

Secretary BELL. It is about a one-to-one ratio both in Iraq and Afghanistan.

Mrs. BOYDA. Basically, when you look at that, tell me how that affects the long-term viability of our Army and our Marines, our Air Force and our sailors, when in fact when we are trying to recruit men and women into our armed forces—and I am on the Personnel Subcommittee as well—what is the impact there?

I hear from our DOD active duty that in fact they can make so much more in the short term, but they can make much more money as a contractor. Would each of you respond to what that means again to our military readiness?

Secretary BELL. Let me answer that question, if I may, in several parts. One of the challenges that I think we deal with in sound bytes that you hear from time to time about compensation for the people is that clearly the people who are the most highly compensated over there, other than technical specialists, tend to be the private security contractors, which is in fact a very specialized skill that our normal military personnel, while they are trained in combat operations, are not trained in security operations. And that has been the most sensitive.

I think in terms of the real cost, most of the other functions, other than technical functions and private security functions, tend to be reasonably comparable, and that is in fact what the Congressional Budget Office study was in 2005.

It is, as Comptroller General Walker said, when you look at the total all end cost, not just the differential in salary cost, one of the things the 2005 study indicated is only about 43 percent of the total compensation of a military person is actually their cash compensation, where for many of these contractors, their only compensation is their cash compensation. So the differential, while it is accurate, is not representative of the total compensation issue. So that is one of the issues that I think we face.

The other one, of course, is the important flexibility that we get from being able to hire contractors. While we might and initially may have had some concerns about the willingness and the ability of the private sector to step up and deploy personnel with us, side by side with us in our forward operating bases, we have actually found, much to our surprise and satisfaction, that they have been very responsive, and we have had relatively few, very short term personnel shortages.

We find there are a lot of former military personnel that are happy to be back, engaged with the troops, and they are very patriotic. And so, in addition to having the contracting for, let us say, basic work services, we actually have embedded technical personnel with many of our fighting units. Our Apache units, our Stryker units have a high component of technical service personnel

actually embedded in the combat units, but they typically stay on the forward operating bases.

Is that responsive?

Mrs. BOYDA. Yes, it is. And actually I will come back. I wanted to just follow up with the conversation, so I will yield. And thank you very much.

Mr. ORTIZ. Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much.

And to the witnesses, I had a chance to say hello. Thank you for your service to our Nation. Many of you have been in the military. Thank you for that service as well.

And to my good friend, David Walker, thank you for still trying to convince the American people that this country had better wake up before it goes broke. I will leave it at that.

My question is a general question about the contractors. And I understand and I have no problem with the fact that contractors are being more and more a part of the world we live in with terrorism, and they do have a place. I want to make that clear.

My concern is the checks and the balances. And I will tell you why. Mr. Bell, I know you were in the Marine Corps. I believe I understood that.

And I will never forget back in 2006 I was at Camp Lejeune to visit the base and see some of the good things that were being built at Camp Lejeune, and I met a gunny sergeant who had been to Iraq three times. And it was late in the day, and I just happened to be introduced to him, and something he said to me I have never forgotten. "Will this country ever know how much money Halliburton has made off the war in Iraq?" And I thought that was so profound. Obviously, I haven't forgotten it, because I just brought it up.

The issue of that is what has concerned me. Recently, I took the Marine that I went on the floor for five weeks and defended—Ilario Pantano. He was the Marine that had been charged with murder in Iraq, and the Marine Corps did drop the charge—not because of anything I did. I will make that clear. But I have gotten to be very close with him, and he had just returned from working with a foreign contractor, and at this point, since I don't have his permission, I am not going to say the name of the company.

And he came, and with documentation after documentation, that the contractor has been paid by American taxpayers. It is a foreign entity. And he was in charge of this company for about four months. The issue came down to this. They were buying their weapons—AK-47s—from Afghan gun dealers. That was their policy.

He, obviously, was very concerned because of two reasons. One, the weapons many times didn't work. They would pay \$400 for a weapon, knowing that \$200 or \$250 would go back to the Taliban. So he goes to the State Department and reaches an agreement with the State Department that this is how they would be buying their weapons from this day forward. Well, by the company he was terminated. I have seen all these emails.

Now I am going back to the point. Mr. Walker has been going around this country, and I am sure you and Mr. Assad know this as well. We owe China \$447 billion right now. We are borrowing

money from China each and every day. You work with the Department of Defense. There is one thing the Constitution says for sure—that we must have a military, that we have got to have a defense for this country.

But yet this country continues to get more and more into debt. You made the point about steel, I believe, that you were trying to meet the responsibilities of building the MRAPs, and the fact was you are running short on resources, so you go overseas and buy.

My point to all three of you is this. Not because of your position, but as American citizens, are you concerned that this Nation has gotten too weak that we are borrowing money to pay our bills that we are having to outsource? And again, I am not talking about the contractors. We have go to outside sources to get materials to build weapons and machinery for our military. Is there going to be a point—in both of those I have made—of no return?

And I will start with you, Mr. Walker.

Mr. WALKER. Well, the issue that I have been talking about the most, as you know, Congressman Jones, is there are a lot of areas where we are having to rely upon foreign players, not just with regard to providing critical goods and materiel that we need. We are having to rely upon foreign players to provide capital. Sovereign wealth funds are now starting to invest in a lot of American enterprises.

They are doing that because the dollar is in the tank, because a number of enterprises need capital infusions and because, frankly, in many ways America's on sale right now, and second, because Americans generally are pretty good at spending. They are generally pretty lousy at saving.

And as a result, when you are running huge deficits like we are, you have to get the money from somebody, and so increasingly we are relying upon foreign central banks and other investors to be able to lend us the money. That is a very high-risk strategy, because if, for economic or political or other reasons, they decide they don't want to continue to do that, then our interest rates will go way up, and that will end up causing a vicious cycle.

The bottom line is I am so concerned about the unsustainable path that we are on in a range of areas, not just fiscal, that I am resigning my job as Comptroller General of the United States, and I am going to go to a new position where I will have more flexibility, more discretionary financial resources to be able to be more specific about what I think needs to be done and to engage in more proactive efforts, because I think we have got 5 to 10 years as a country to start dealing with some of these serious sustainability challenges, or we could end up having economic disruption like we haven't seen in decades—much, much worse than any recession.

By the way, I didn't get the memo that the business cycle was repealed. Nobody likes recessions. We may or may not be in one now. We may or may not be able to avoid one now. We want to avoid them forever.

Mr. JONES. Mr. Assad, would you pick up on what Mr. Walker said and also on what I was saying, that this could be a security issue of great magnitude that we cannot protect this country, and we cannot take care of our—if you would speak to your concerns, if you have those concerns.



Mr. ASSAD. Well, I think from my perspective, what we are interested in is ensuring that we do have the adequate companies that can compete for the goods and services that we are buying. My focus in life is to, frankly, ensure that we have got competition whenever we can get it. That means we have to have a sustainable industrial base to do that.

Now, as Mr. Bell mentioned, this is a global economy. There are very few major corporations that don't have business relationships with companies outside the United States. It is just a fact of life. And so we can't ignore the fact that we are in a global economy.

I do share many of the concerns as a private citizen, frankly, that Mr. Walker has talked about. But from my concern, I just want to make sure that we are doing what is necessary, that when we wake up in the morning and we decide we want to buy something for our warfighters, that I can compete it, because at the end of the day, when American industry—frankly, when world industry—is in competition, they are at their very best. When we don't have that environment, it costs the taxpayers dearly.

Mr. JONES. Mr. Bell, I would like for you to answer that question. What Mr. Assad said is the whole issue—that he said, “as long as we can buy.” The problem to many of us in both parties is that you get to a point that the dollar has no value, you can't really buy.

This is what my concern is and why again I appreciate the chairman and the ranking member holding this hearing, because quite frankly, I think this country is getting exactly where Russia was when President Reagan made Russia compete with us in the arms race. And they had a war in Afghanistan for 10 years, and they got into such an economic condition that for about 8 to 10 years—they are coming out of it now—they couldn't even buy bread on the streets of the Soviet Union.

I don't want to see that happen to this great Nation. Anyway, if you want to speak, I guess I have got that much time.

Secretary BELL. My comment on that—and I have been an observer of this from my private sector experience for some 35 years—is we have all watched the economy switch from a national industrial base to a global industrial base. We actually encouraged it. We congratulated ourselves on shifting from a manufacturing-based economy to a service-based economy.

During the period that was happening, we were not heavily engaged in military conflict. We watched many of the significant industries that were at one point in time a significant component of our economy move offshore—at least the manufacturing capability to move offshore.

So I think the question we have to ask ourselves is in order to supply and support our national military needs, as well as our national government needs, is the whole question of what core capabilities need to be resident within the United States. And I think that is a very significant policy issue that the legislative branch and the executive branch need to address over time.

Mr. JONES. Thank you, Mr. Chairman.

Mr. ORTIZ. The lady from Arizona, Ms. Giffords.

Ms. GIFFORDS. Thank you, Mr. Chairman.

Mr. Walker, is today your last day?

Mr. WALKER. Tomorrow.

Ms. GIFFORDS. Tomorrow is your last day.

Mr. WALKER. And I am taking Wednesday night off, before I start my new job.

Ms. GIFFORDS. I want to thank you and other members of the panel for being here today.

Mr. Walker came down to southern Arizona and did a presentation on the fiscal wake-up tour that he has done around the country, and I am still hearing very, very positive feedback from the people in southern Arizona about the message that we don't do a good job of getting out here in Washington.

I think people feel it. They see the headlines. They feel it in terms of the layoffs and their families, the foreclosures they see. But we do have a spiraling situation, a downturn of the economy.

And I am concerned, as we move into even the earmarking process right now that we are going through—and there has been a lot of debate on both our side and the other side of the aisle about how we are going to handle this—so I guess my first question for the three of you, starting with you, Mr. Walker, is your time here in government—now you are headed to the private sector—if you could realistically, knowing the constraints that we have to deal with it, how would you recommend that we change the earmarking process, knowing that, for example, I have a district with Fort Huachuca in it.

I have got Davis-Monthan in it as well. I have got some real needs for military installations. I also represent a district that is on the border in terms of national defense.

So how would you recommend that we go through this process in a way that would be equitable, be fair, but also be fiscally more prudent?

Mr. WALKER. We recently issued a report, meaning the GAO, that hopefully all of you have received—and if not, I would be happy to send you another one, if you let me know—on congressional directives, a.k.a. earmarks. And it came out in January, because it sought to try to help separate the wheat from the chaff and the fact from fiction on what they are and what they aren't.

As you know, congressional directives or earmarks by themselves don't increase federal spending. Rather, what they do is they tell people how you have to spend the money that the Congress has appropriated. All earmarks aren't created equal.

Some earmarks are a result of a considered process, where members, such as yourself or others, may consult with state and local officials and try to understand what are the most critically important transportation projects, for example, that might exist within the state and are trying to make an attempt to make sure that the Department of Transportation or some other entity in government allocates resources based upon what the states and localities think are most important, rather than up here.

Others, on the other hand, represent circumstances in which, frankly, people want federal money for things that frankly may not have any federal purpose whatsoever.

My view is more transparency and the possibility of not a line item veto, which would be unconstitutional, as the Supreme Court has said—a line item rescission, an expedited line item rescission

where the President, whomever he or she might be, could say, "I am concerned about this. Send it back to the Congress." And then the Congress could override it with a simple majority vote—not a two-thirds vote, but a majority. I think that would be constitutional.

I think we have to realize that we have got a problem much greater than earmarks—much greater. We are in the hole \$53 trillion. And let me give you one last example.

If you look at our budget of the United States Government, the 38 percent that is in discretionary spending that you decide on every year includes every express and enumerated responsibility envisioned by the Founding Fathers for the Federal Government—every one: national defense, homeland security, judicial system, treasury, foreign policy, Congress of the United States, executive office of the President, postal—every one, every major function.

So we have got 62 percent of the budget on autopilot. We promised a lot more than we are going to be able to deliver. And that 38 percent, which is core in government, is getting squeezed. And so, yes, I think we need earmark reform. I just gave you some thoughts on it. But I think we have much more fundamental problems than earmarks.

Ms. GIFFORDS. Mr. Assad.

Mr. ASSAD. I fundamentally agree with Comptroller General Walker. My view—again, this is going to sound like a broken record to you—is enable us. If in fact Congress decides that it is appropriate to earmark funding for a particular purpose, what we need to have is the flexibility to conduct that in the best way we can to ensure that we get the taxpayers the best deal we can get.

And again, in my world that means competing. So I get very nervous when I see an earmark that, while it may not have a company's name on it, it makes it very difficult for us to award a contract to anybody but a specific company, because it has been so directed in the sense of how we should go about it.

So my view of life is that when these decisions are made by Congress, and appropriately so, what we need to have is the flexibility to ensure that we can execute it on your behalf and in the best interests of the taxpayer.

Secretary BELL. Following up on both of those comments, my view is that if earmarks were individually approved by the full Congress, they should have the full weight in the legislation, the appropriation.

I think the problem we are talking about here indirectly is the problem where individual Members have the ability to insert earmarks that suit their particular interest and their particular congressional districts or their states, which generally don't get the studied consideration of the entire Congress, but it is a process that has been allowed to continue.

There are areas where earmarks might be appropriate, if they were congressionally approved individually, such as if the Congress in its wisdom decided that there were an element, let us say, of equipment reset for the materiel readiness of our armed forces, which normally would come into an operations and maintenance (O&M) fund, which could get reprogrammed.

If Congress as a whole thought it was important to make sure that all of that money got spent on reset, and that were directed, then that might be a useful expression of congressional intent.

I think the concern we all have that we haven't really articulated is about the individual earmarks and whether those really serve the interest of the Federal Government.

Ms. GIFFORDS. Mr. Chairman, members of the panel, my concern is going through this process, and I am a new member just like Congressman Boyda here. We are brand new. We obviously work very hard to represent our constituency.

And I sit back, and you look at the big picture in terms of national defense, and you wonder if this is the best strategy for us, with every member looking out for his or her own area, working very hard to represent their constituency.

But in terms of directing money away from, perhaps, a larger national strategy, I just have some real concerns about it. Hopefully, transparency, I think, is helpful. At least it brings the information out into the open. I, for one, have publicly made available every request so people—not just with funding, but the request as well.

But I am just concerned, in terms of a national strategy, when our military is being stretched extraordinarily thin, we have national security interests as well, dealing with immigration, people coming in and out of the border, and I just wonder if this is really the best road to be going down.

Mr. WALKER. If I can, real quickly, Mr. Chairman, I share your concern. If everybody is focusing on what they can do to maximize the benefit to their district or their state or employers therein or individuals therein, and we are not looking out for what is in the collective best interest of this Nation and its citizens as a whole, based upon a more forward looking, cross-cutting, strategic and integrated approach, we are going to be in trouble. We are going to be in trouble.

And to me the worst of all worlds is when the crunch comes—notice I said when, not if, the crunch comes—when the crunch comes, arguably the worst of all worlds is reduced resources and increased earmarking that reduces the ability of people to allocate every world-limited resources based upon value and risk, based upon some strategic approach.

The Congress realistically can't be expected to do that strategic and integrated plan. That is inherently an executive branch function, all right? You should demand that they do it and hold them accountable for it.

But my comment also assumed that the type of directions that would be followed would be ones that would be in statutes, because arguably you don't have to follow anything that is not in statute. Now, obviously, the appropriators have ways they can encourage people to do things, whether they are in statute or not, as we all know.

Ms. GIFFORDS. Thank you, Mr. Chairman.

Mr. ORTIZ. Thank you so much. When I first came here, we had a big Army—thousands of people in the Army and all services. I have seen that dwindle down.

But, Mr. Assad, how do you plan to meet the challenges of recruiting and retaining adequate numbers of government con-

tracting staff to meet acquisition workload demands? When I visit depots throughout the continental United States, I see an aging workforce—down, down, down. And I see more contractors coming in.

And I was just wondering if last year's language for acquisition workforce fund—if that helped. Did that help any?

Mr. ASSAD. Definitely. It definitely will help us. One of the reasons why we are going through—I mentioned—this competency modeling assessment for you is so that we can get a picture of the entire workforce.

This will enable us to look at every specific command, and then across the Army, Navy, Air Force, the other defense agencies, and then collectively as the Department, as to what is the capability that we have versus what is the capability that is needed to serve our warfighters.

And the issue here, from my perspective—and there is a bell tolling—the fact is that well over half of our contracting workforce in the next five years is eligible to retire. That doesn't mean they are all going to walk out the door, and in fact individuals like myself—I am looking to ensure that the senior professional folks within the contracting workforce remain, when it makes sense.

Now, there is going to be a period of time when it is time to go be with your grandchildren and go fishing, and I understand that. But the fact is we do need to retain more of our senior workforce, as we fill that bathtub.

I mentioned to you that we have got about 5,000 of our 22,000 folks in the experience level of 0 to 5 years. But between 5 and 15 years, we have got a paucity of experience. And then after 15 years we have got this incredibly capable workforce.

And so while we fill that bathtub—and we are doing okay recruiting people and bringing them in, because this profession is tremendously exciting—there is a lot of opportunity in Federal Government for folks who want to do contracting.

It is a very challenging and rewarding professional career. One of the differences between industry and government is in this particular profession we give our younger folks a lot more responsibility—and we hold them accountable—than they would ever see in industry.

The Defense Acquisition University, and now the Federal Acquisition Institute, is coming forward. And we provide a level and degree of training like no industry has. No company can come forward and bring the kind of training that we bring to the federal and Department of Defense workforce.

Having said that, it is very inviting for industry to look at that well-trained, young workforce that we are growing and pick them off. So what we do—my job, and one of the things that I have been doing—is going out in town hall meetings, meeting with all 22,000 folks that do contracting in a town hall setting, to talk to them about what we are trying to do and where we are going as a Department and the opportunity that they have within government to succeed.

The fundamental underpinning that we have, as you know, is that sense of service. And really have to play to that sense of service and the degree of added responsibility. As Mr. Walker referred

to, there isn't necessarily this wide gap in compensation across the entire spectrum of folks that do contracting. But there are some, and they need to be addressed.

And so I think that as we go forward, we have got a great set of training programs. We need more. I mentioned to you beforehand that basically what the world of acquisition reform set up was an environment where a seasoned, well-trained professional contracting administrator could function. But the fact is that we don't have that kind of a workforce right now.

So we are looking at changing some things in terms of how we are doing business, putting some lines on that playing field, setting up some goalposts so people understand the game and how to play it, but also taking advantage of looking at where are the skill sets—for example, contract pricing.

We are very concerned that our ability to price contracts, to understand what should we be paying on behalf of the taxpayer—that skill set has deteriorated. So we already know that not only do we need increased training, but we need to take a look at what is the collective capability that we have and how we are going to transform that capability so that others can take advantage of it.

Mr. ORTIZ. What I have seen, too, and this is sometimes we place limitations on the civilian workforce. At ages 55, 56, you are going to have to get out. Like somebody stated, they walk out the door, and they come back with a contract.

And you remember we had a bunch of buy-outs. Do you remember that? We gave you \$25,000–\$30,000 and just leave the civilian workforce. So it is an accumulation of events that have happened throughout the years, where now we are looking to see if we have made the non-civilian workforce, who have the expertise, the knowledge, to keep an eye on the contractors, if you have got 150,000-some-odd troops and 198,000 contractors.

And I was just wondering should the definition of inherently governmental be given a different definition? Should it be changed for the better?

Mr. ASSAD. When I look at the Federal Acquisition Regulations, I see a lot of, frankly, flexibility in interpreting what is inherently governmental. And it concerns me. I do think the time has come when we need to step back and take another look—a hard look—at how we are defining inherently governmental.

I would just like to say one other thing. I have been talking about workforce and the fact that we need a more seasoned or more experienced workforce. I do want to assure you, however, that the contracting workforce that you have is executing contracting in the largest and most complex contracting organization in the world. And they are doing a very fine job at it. But the issue is we need to do a lot better for our warfighters and for our taxpayers.

Mr. WALKER. Mr. Chairman, I would say that, as you probably recall, the Commercial Activities Panel, which I had the privilege to care several years ago, was not asked—in fact, it was beyond the scope of our authority—to look at the issue of the inherently governmental question.

I do, however, agree with Mr. Assad that the time has come to do so. There is a lot of flexibility in how one might define that term, and I think in many cases what is happening is that people

are going to contracting as a first resort, rather than through a considered process.

I would also come back to something you said before, Mr. Chairman, and that is you talked about the fact that somebody might end up leaving—retiring, I think you said—and then going to a contractor. Well, if we can end up having for critical skills and knowledge—not as right, not as an entitlement, but for critical skills and knowledge, including areas that are on GAO's high-risk list, for example—if we could allow re-employed annuitants on a broader basis, I think you would find a lot of people would rather be a civil servant, would rather be a re-employed annuitant, than to go out and be a contractor.

So there are a lot of things that we can do that we haven't done, and I think we need to pursue those.

Mr. ORTIZ. Thank you so much.

Randy.

Mr. FORBES. I just have two quick comments, and then one question for Mr. Walker.

First of all, one of the things that we are grappling with today is the word "balance"—trying to get a balance in all this. When the gentlelady from Arizona was raising the earmark questions, we all agree with that. There is abuse to that process. But at the same time, we don't want to deceive ourselves and think that just because we don't get over to the executive branch, that there is not going to be any self-interest there.

We have all heard discussions at times about making one state better than another state for electoral purposes and everything else, and sometimes we serve ourselves better by having that debate here, where it is open, transparent, as you talked about, and knowing what it is before we vote on it. So that is at least something we have to get in the mix, when we are talking about earmark reform.

The other thing is when we are talking about these private contractors, it is true we have got to get to balance. And we have to recognize our goal in using them sometimes is saving money, and the saving money is not just so we put it in a can somewhere, but it is because we have got a lot of balanced issues, and we have to worry about how we afford aircraft carriers that we need, how do we afford planes, how do we do personnel. The importance of saving that money is so we can get the right mix to be able to buy these other items.

And those contractors have a goal of making money. We sometimes look like it is a horrible situation, but if they don't make money, they don't stay in business, and they are not there to do those jobs for us down the road.

And sometimes I think we may be focused wrong when we ask how much do the contractors make on this, how successful they are versus how successful they have been for us. And that ought to really be our touchstone. Are they doing the jobs that we want them to do, and are they doing those jobs well?

But we have this tendency in America if somebody is doing a good job and they are doing it well, we just point at them and say, "Oh, look how much money they are making," as if there is somehow an evil or a sin involved in that. And it is not always.

And, Mr. Walker, the question I would like to ask for you is a little bit off subject, but I just don't want to lose the opportunity we have with you here, since this is your last hearing.

You talked about the crunch that is coming—not if it is coming, but when it is coming. What are the suggestions that you would offer to us as a Congress—Mr. Chairman, if I could just bump a little bit off of our hearing topic today—that we should be doing to either survive that crunch or minimize that crunch? What should we be looking at as a Congress in terms of dealing with that?

Mr. WALKER. Well, first, let me touch on your comment on congressional directions, or earmarks. I would respectfully suggest that we don't necessarily have an open, transparent process right now. Yes, right. Most of them are not. It is in the law, all right? You may be able to vote on the ones that are in the law, but you may not have the law and enough time to actually even read it before you are voting on it.

And again, while line item veto has been ruled as unconstitutional for understandable reasons, because the Constitution is clear that the Congress has the power of the purse, and that is a fundamental change in the separation of powers and the balance of power, expedited line item rescission would not be. And it would provide more transparency and accountability and checks and balances in the process.

With regard to the overall challenge, I think the time has come for there to be a fundamental review and reassessment of what the proper role of the Federal Government is, getting back to basics as to what the Founding Fathers intended.

I think it is very important that we also look at a number of the transformation challenges the different departments and agencies have, including the Defense Department, the many recommendations we have made.

But with regard to the larger issue, I think the time has come for something like the Cooper-Wolf bill to be enacted into law. The Cooper-Wolf bill is coming out of this body, which would create a capable, credible and bipartisan commission that would make recommendations to the next Congress and the next President for an up or down vote—like Base Realignment and Closure (BRAC)—on a number of different reforms—for example, budgetary reform; comprehensive Social Security reform, where you are not preprogrammed to have to come back; round one of tax reform, including which ones of the Bush tax cuts should be extended in whole or in part, which ones shouldn't be, what are we going to do about alternative minimum tax; and round one of health care reform, and a number of elements to that.

I think it is critical. Regular order is broken. The clock is ticking. Time is working against us. We need to use alternative approaches and strategies.

Mr. ORTIZ. Like I stated earlier, somebody wants to go home. We have another motion to adjourn, so it is going to be like this for the rest of the day. If anybody has any other questions—I will tell you what.

This has been a very interesting hearing today, but it is so broad that it is not something that we can grasp real quickly and try to fix it. But your testimony today and by responding to some of our



questions, I think that we have a better idea, working with you, as to how we can work this out. We need to do that.

We only are looking at contracting out, but there are a lot of other things that are involved. We have no idea—at least this member has no idea—how do they hire their contractors? What criteria? And maybe I just don't have the knowledge. How are they hired? What is the pay scale? Do you pay by experience? Prior service?

There are a lot of other things that should be for another hearing, but this is why I say that this is so broad that we are going to need your expertise so that we can work together, because all of us are in the same boat. And this is our country, and we need to do better to bring our government workers and agencies together to do a better job.

Randy, do you have any other questions?

Thank you so much.

Mr. Walker, again, thank you so much for the great service that you have given our country. You are dedicated in your loyalty to the great people of America, and we are going to miss you.

To all the other witnesses, thank you so much for the great work. And now this hearing stands adjourned. Thank you.

[Whereupon, at 4:04 p.m., the subcommittee was adjourned.]



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**A P P E N D I X**

MARCH 11, 2008

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

MARCH 11, 2008

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**Readiness Subcommittee Hearing on  
“Inherently Governmental – What is the Proper Role of the Government”  
Opening Statement by Chairman Solomon Ortiz  
March 11, 2008**

Good afternoon and welcome. This afternoon our Subcommittee will try to answer a couple of questions that concern me.

What is the proper role of the Government? And the companion question – what is the proper role for the private sector?

Dating back to the founding of our country, we have understood that we need BOTH government employees and private sector contractors to fulfill agency missions, making sure our citizens get the services they expect and require from their government.

But the question for today is – have we gone too far in recent years by perhaps relying too much on contractors? I hope our witnesses can shed some light on that today.

In the 1990s, we were all eager to reap the benefits of the “peace dividend.” We had won the Cold War.

We moved forward with significant reforms in the way the Government bought goods and services, and to take greater advantage of the commercial market. As part of the reforms – and to get the savings from the peace dividend – we decided we could do more with less. The Department of Defense workforce, from headquarters staff to those in field offices, was drastically cut, and a lot of experience was lost.

But the 25% reduction in workforce did not mean a comparable reduction in workload. Just the opposite. As technology has become more complicated, so has the work of government.

At the same time, there has been a tremendous growth in service contracting – from advanced IT systems to major base operations contracts. Much of this work is “commercial,” so we have tapped into the expertise found in the private sector.

There are good reasons for turning to the private sector. As GAO has noted, one advantage of using private contractors is the flexibility to take care of immediate needs.

Using contractors allows the government to acquire hard-to-find skills, to have the private sector do work that is not inherently governmental, to augment capacity on an emergency basis, and to save money and reduce the size of government.

The downside, as GAO has consistently reported, is that we may not be saving as much money as expected.

We also need to be aware of any potential conflicts of interest when using contractor employees.

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Another downside is that agencies may be turning to contractors to fulfill even their core missions. One example is the use of “lead systems integrators.” This is where a contractor is actually in charge of putting the entire team together and handling overall contract management. We have seen that with the Future Combat Systems.

We have laws and policy letters defining “inherently governmental” functions. The Office of Federal Procurement Policy issued guidance in 1992 in its Policy Letter 92-1.

The intent was to ensure that agency employees avoided an “unacceptable transfer of official responsibility to government contractors.”

The Federal Acquisition Regulations have outlined the processes for making the determination of what is “inherently governmental.” And Congress codified these actions with the passage of the Federal Activities Inventory Reform Act of 1998.

We also have statutes decreeing that DOD retain certain core logistics capabilities as a matter of national policy. Commercial items are not considered core, and the private sector does play a big role now in defense maintenance in many areas.

The Department also has turned to the private sector in its efforts to improve base housing, lodging and even utilities. On Thursday, we will hear more about DOD energy policies – which is another area where we are tapping into private sector expertise.

But have we gone too far?

I have heard from many base commanders that perhaps private companies are doing too much of the work. The commanders have no arguments about the contractors on their particular bases. Their concern is one that relates to overall national policy. Are the bases losing their ability to do any of the work themselves? Just because work is called “commercial” does that mean only the private sector can or should do it?

The flip side to that concern is this. If the needs of the warfighter are being taken care of, should we really care who is performing the work?

The Acquisition Advisory Panel, in its 2007 report, highlighted the increasing reliance on buying commercial services and using more contractors to fulfill agency missions. As a result, the panel stated that federal agencies need to maintain sufficient in-house expertise and experience to manage contractor performance and the risk that is involved with any customer-contractor relationship. But, as the panel further stated, agencies are finding it hard to recruit and retain the types of skilled professionals needed to do the complex work that is now part of their mission.

I have highlighted some of the challenges we face in balancing the role of the government with the proper use of private contractors.

I look forward to hearing the testimony of our witnesses.

I hope you can tell us what statutory or regulatory barriers might be in your way to grow the workforce. And, what new assistance might you need.



Do we need a new definition for inherently governmental? Or do we simply need to focus our efforts on getting results and giving the work to whomever is the best to get the job done?

What steps need to be taken to ensure proper government oversight when we do use contractors?

How do we answer the fundamental question of what is the proper role of government? And the role of the private sector?

Before turning to my colleague for his opening statement, I would like first to say a few words about one of our witnesses.

Today is a little bittersweet since it is the last day that David Walker will appear before this committee – at least in the role of GAO Comptroller General. After tomorrow, he will be off to new challenges and new adventures. David has had a tremendous government career – and has had an influence on us all. He was responsible for putting “accountability” back into government oversight. I think we all owe David a debt of gratitude for his forthright leadership at the helm of GAO.

David, I know my colleagues will agree when I say that you will be missed.

Now, I would like to turn to my good friend from the Commonwealth of Virginia, Randy Forbes, for any remarks he might have.

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This afternoon we have a distinguished panel of experts.  
Mr. Jackson Bell, Deputy Under Secretary of Defense for Logistics and Materiel  
Readiness

Mr. Shay Assad, Director of DOD’s Office of Defense Procurement and Acquisition  
Policy

And

The Honorable David Walker, Comptroller General of the Government Accountability  
Office

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Mr. Bell, please proceed.

**Forbes Opening Statement for Hearing on “Inherently Governmental: What Is the Proper Role of Government”**

**Washington D.C.** – U.S. Rep. J. Randy Forbes (R-VA), the Ranking Republican on the Readiness Subcommittee, today released the following statement for the subcommittee’s hearing on “Inherently Governmental: What Is the Proper Role of the Government”:

“Good afternoon. It’s a pleasure to have you here today so we can have what I hope will be a substantive dialogue about how the Department of Defense determines which jobs to ‘insource’ and which jobs to outsource. I say dialogue, because this hearing topic is slightly different than most we have at this time of year. The subject of inherently governmental functions is not linked directly to the fiscal year 2009 budget submission. Rather, it is an omnipresent question that gets to core of our military readiness. I hope that through a discussion with our panel of experts, the members can learn more about the existing authorities governing outsourcing, the long-term constraints facing the Department of Defense (DoD), and the balance of the force today.

“Private contractors have been paid to accompany and support U.S. military forces since the Revolutionary War. The use of such contractors in a peace and war-time environment is not new. However, over time, the size of the contracted workforce has grown significantly. Since the end of the Cold War, successive administrations and Congress itself have made calculated decisions to reduce the size of the military and civilian workforce. We have encouraged the practice of outsourcing, where possible, to save money, to gain expertise, and to more easily surge the workforce when needed, as we have done over the last five years. By now, we are all quite familiar with the use of private security contractors and contracted logistics support in Iraq and Afghanistan. But what has garnered slightly less media attention is the prevalent use of contractors back here in the United States for functions such as guarding military bases, repairing equipment, designing and contracting for weapons system development and providing other acquisition support services.

“In and of itself, the use of contracted labor to supplement the DoD civilian and military workforce is not problematic. Indeed, the men and women who serve as DoD contractors are dedicated, patriotic citizens doing an honorable job for the taxpayers. They are the backbone of the U.S. military and a significant part of what make our armed forces so capable. So the question is not whether these individuals are improperly motivated to do some of the jobs we have asked them to do. Instead, the question is whether or not it is fair to ask them to do some of the jobs we have asked them to do. Are we making the best personnel decisions for the long term health of our military—rather than for short term benefit? We should want private U.S. companies to make a profit on honest labor. Therefore, we should think carefully before putting contractors in a position where they must choose between best value for the taxpayer and maximizing shareholder value. The reason we have government is to make those decisions for the collective good. It is in the strategic interests of this country not to delegate that responsibility.

“I think we can all agree with these sentiments. Therefore, the issue really comes down to identifying which functions are inherently governmental and ensuring that the Department has all the resources it needs to staff accordingly. I am aware that the term ‘inherently governmental’ is defined by the Office of Federal Procurement Policy Letter 92-1, and has subsequently been codified and incorporated in the Federal Acquisition Regulations. The question, then, is one of interpretation. For example, I note that in recent testimony to the Senate Homeland Security and Governmental Affairs Committee, Mr. Bell, you stated that security guards defending bases are not involved in offensive operations and thus are not performing inherently governmental functions. Yet, the regulatory definition does not specifically address offensive versus defensive operations. It does state that an inherently governmental function does involve ‘determin[ing], protect[ing], and advance[ing] [the United States’] economic, political ... or other interests by military or diplomatic action ... contract management or otherwise.’ One could argue that private security personnel are protecting or advancing US political interests. This is simply one example of the dilemma we face in deciding what is or is not inherently governmental. We also face these decisions on the acquisition front. Over the last several years, this committee has sought to curb the use of lead systems integrators for the procurement of military hardware. We now struggle with the use of such prime contractors on services contracts – what is the right way to obtain the expertise and efficiency DoD needs without compromising competition and fairness?”

“These are difficult choices in the best of times. I recognize that there are budgetary pressures facing the Department and I also recognize how long it takes to recruit and train civilian and military personnel. Retention is equally as challenging. I look forward to understand more of the facets of these problems by the end of today’s hearing. I’d like to conclude by thanking our witnesses for their service to our nation and for being here with us today. In particular, I’d like to thank Mr. Walker. I understand that this is your last hearing as the Comptroller General. You have served this nation admirably and I wish you the very best in your future endeavors.”

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HOUSE ARMED SERVICES COMMITTEE  
READINESS SUBCOMMITTEE**

**TESTIMONY OF**

**MR. JACK BELL**

**DEPUTY UNDER SECRETARY OF DEFENSE**

**(LOGISTICS AND MATERIEL READINESS)**

**OFFICE OF THE UNDER SECRETARY OF DEFENSE**

**(ACQUISITION, TECHNOLOGY & LOGISTICS)**

**BEFORE THE UNITED STATES HOUSE**

**SUBCOMMITTEE ON READINESS,**

**COMMITTEE ON ARMED SERVICES**

**March 11, 2008**

**FOR OFFICIAL USE ONLY**

Chairman Ortiz, Ranking Member Forbes, and Members of the Committee: thank you for the opportunity to appear before you today to discuss the question of inherently governmental functions and the role of the government in providing services and fulfilling agency core missions. My testimony today will review the policies that shape the Department of Defense's (DoD) judgment of what constitutes inherently governmental functions. I will also address the expanded use of contractors to augment a shrinking force structure, review the DoD's management of Private Security Contractors (PSCs), and discuss interagency efforts to ensure the effective management and oversight of PSCs in Iraq and Afghanistan.

The DoD's use of contractors, including private security contractors, is entirely consistent with existing U.S. Government policy on inherently governmental functions. We are guided by three main documents when determining whether an activity or function is inherently governmental: the Federal Acquisition Regulations (FAR); the Performance of Commercial Activities and the Federal Activities Inventory Reform Act, or FAIR Act, of 1998; and, Office of Management and Budget (OMB) Policy Letter 92-1, issued in 1992.

Both OMB Policy Letter 92-1 and the FAR Part 2.1 define an inherently governmental function as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. According to FAR Part 2.1 "this definition is a policy determination, not a legal determination." Both documents further state that an inherently governmental function includes activities that require the making of value judgments in making of decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, *i.e.*, the discretionary exercise of Government authority; or (2) monetary transactions and entitlements. The OMB Policy Letter 92-1 specifically identifies those functions considered to be inherently governmental (Appendix A); and those functions NOT considered to be inherently governmental (Appendix B). Security functions are specifically excluded in Appendix B as NOT being inherently governmental.

The FAR also describes, in SUBPART 7, several examples of functions generally not considered to be inherently governmental. One of the specific examples that is cited

is contractors providing special non-law enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

In October 1998, President Clinton signed into law the "Federal Activities Inventory Reform Act of 1998" (Public Law 105-270). This law requires all executive agencies to submit to the Office of Management and Budget (OMB) an annual listing, or inventory, of activities that are not inherently governmental, and to make this inventory available to the public. The FAIR Act defines an activity as inherently governmental when it is so intimately related to the public interest as to mandate performance by Federal employees. All other activities performed by Federal employees are considered commercial in nature and are included in the FAIR Act report.

Among other exceptions, this inventory does not include the large number of activities already being performed by contractors, including private security functions, in support of the DoD, nor does it include depot level maintenance and repair Full Time Equivalents, which are considered "exceptions" under the FAIR Act.

OMB Circular A-76, Performance of Commercial Activities dated May 29, 2003, describes an "inherently governmental activity" as an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements.

The shift to an all volunteer force and an effort to capture a "peace dividend" following the collapse of the Soviet Union led to the significant reduction of United States Government military and civilian forces over the last 25 years. In addition, the increasing technical complexity of DoD weapons systems and equipment requires a level of specialized technical expertise, but of limited scope, that the DoD does not believe can be cost-effectively serviced and supported by a military force capability.

Consistent with applicable laws and regulations defining inherently governmental functions, the structure of our military forces has been adapted to this environment. DOD identified opportunities where competitive sourcing of contractor support for our deployed forces would allow DoD to concentrate its manpower to distinctly military activities in support of our National Military Strategy.

The current Global War on Terrorism (GWOT) deployments of DoD military forces are the first major contingency operations to reflect the full impact of the shift to reliance on DoD contractor personnel for critical support functions. The scale and duration of these GWOT operations have required a substantial increase in the commitment of contractors for DoD support, including a significant deployment of contractor personnel in forward areas. As of the first quarter fiscal year (FY) 2008, ending December 31, 2007, the U.S. Central Command (USCENTCOM) reported about 223,221 DoD contractor personnel working in the CENTCOM Area of Responsibility (AOR). This included 163,591 DoD contractor personnel in Iraq and 36,520 DoD contractor personnel in Afghanistan.

**DoD Contractor Personnel in the USCENTCOM AOR  
as of 31 December, 2007**

	<b>Total Contractors</b>	<b>U.S. Citizens</b>	<b>Third Country Nationals</b>	<b>Local/Host Country Nationals</b>
Iraq Only	163,591	31,325	56,368	75,898
Afghanistan Only	36,520	5,153	3,815	27,552
Other CENTCOM AORs	23,110	5,759	13,935	3,416
<b>TOTAL USCENTCOM AOR</b>	<b>223,221</b>	<b>42,237</b>	<b>74,118</b>	<b>106,866</b>

Data does not include other U.S. Government Agencies/Departments

These contractor personnel provide a broad range of capabilities including construction, base support, transportation, communication, translator / interpreter support, and security. Of particular note, the continuous operations in Iraq and Afghanistan have required DoD, State, and other USG agencies to contract with private security companies to conduct a variety of important security functions in the Theater of

Operations. These functions include the protection of fixed facilities, assets, and personnel, and use of mobile convoy security to protect personnel and materiel movements, in the insecure areas outside U.S. bases.

There is also significant historical precedent for the DoD's use of Private Security Contractors ("PSCs") during and after an international armed conflict, including their use in the Balkans. By providing security for reconstruction and stabilization efforts, private security contractors contribute an essential service to the United States and the international community.

The DoD, the Government Accountability Office (GAO), the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), and the Congressional Research Service (CRS) have continuously reviewed the expanded use of PSCs, the potential for their performance of inherently governmental functions, and the appropriateness and manner in which they are employed.

The CBO conducted a study in 2005 on the relative cost of contractors versus military personnel, from both short-term and long-term perspectives. Their conclusion was that when all relevant costs are considered, in the short-term, costs are comparable, but in the long-term the use of military personnel is about 90% more expensive.<sup>1</sup> Also, using the analytical framework of this same 2005 CBO study, *Logistics Support for Deployed Forces*, it would take 9 new brigades to match the current number of PSCs in use. This would represent a significant challenge for DoD to resource such a requirement.

As of the end of the 1<sup>st</sup> quarter, FY 2008 (December 31, 2007), CENTCOM reported that there were approximately 6,467 DoD-funded armed PSCs in Iraq and approximately 2,745 DoD-funded armed PSCs in Afghanistan. The table below illustrates the distribution by nationality and delineates armed versus unarmed PSCs in Iraq and Afghanistan.

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<sup>1</sup> According to CBO's estimates, obtaining logistics support from a LOGCAP contractor would cost about \$41 billion (in 2005 dollars) over the 20-year period assumed for this study. Obtaining the same services using Army units would cost about \$78 billion—roughly 90 percent more (*Logistics Support for Deployed Forces*, October 2005, pages 36-37).



**DoD Private Security Contractors in Iraq and Afghanistan  
as of 31 December, 2007**

	<b>Total</b>	<b>US Citizens</b>	<b>Third Country National</b>	<b>Local/Host Country National</b>
Total DoD PSCs in Iraq	9,952	830	7,590	1,532
Armed PSCs in Iraq	6,467	429	5,318	720
Total DoD PSCs in Afghanistan	2,998	19	30	2,949
Armed PSCs in Afghanistan	2,745	16	30	2,699

These PSCs are employed in accordance paragraph 6.3.5 of DoD Instruction 3020.41, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, October 3, 2005. This paragraph provides that contracts shall be used cautiously where major combat operations are ongoing or imminent. In accordance with this paragraph, the Combatant Commander weighs the following factors when considering specific security contracts: where the contract security personnel will operate; the anticipated threat; what property or personnel is to be protected; the manner in which the contractor will be operating in areas of increased risk, including command and control, the sharing of threat information, and communication with forces; and the training and qualifications of the contract security personnel.

In January, 2006, the DoD Office of the General Counsel (DoD OGC) provided an opinion on the appropriateness of contracting PSCs to protect U.S. personnel (military, civilian, and contractor personnel) and property in Iraq and Afghanistan. In a memorandum responding to a request from the USCENTCOM Staff Judge Advocate, the DoD OGC concluded that there is no U.S. law, law of war, or DoD policy prohibiting the use of PSCs to protect a military facility, personnel, or personal property during the "stability" phase of these conflicts supporting newly created governments.

With the appropriateness and manner of the employment of PSCs having been evaluated and confirmed, OSD has been focusing efforts on interagency coordination to improve the management and oversight of PSCs in theater. Both DoD and the State

Department ("State") have recognized the need to achieve more effective coordination of PSC operations in Iraq. On December 5, 2007, DoD and State signed a Memorandum of Agreement (MOA) defining a framework for improving accountability and strengthening operations of U.S. Government (USG) PSCs in Iraq. This MOA covers a broad range of management policies and operational procedures to achieve more effective management coordination of PSC operations in Iraq that will:

- Establish core standards for vetting, training and certification of all USG PSC contractor personnel;
- Require full compliance with contractor licensing and other rules and regulations of the Government of Iraq (GOI), Embassy Baghdad, and/or the Multi-National Force – Iraq (MNF-I);
- Require that all USG PSCs use only authorized weapons and ammunition;
- Adopt common standards for Rules on the Use of Force (RUF) and escalation procedures;
- Improve the effectiveness of incident management, response, and follow-up investigations;
- Assure transparent, timely reporting and investigations of incidents between U.S. Embassy Baghdad and MNF-I, with timely reporting of same to the GOI;
- Enforce compliance with Coalition checkpoint operations and requirements;
- Establish policies for timely, consistently, and appropriate condolence payments to be made for casualties or property damage among innocent persons; and
- Synchronize PSC operations outside secure bases to establish real-time battle space commander and Regional Security Officer (RSO) oversight, visibility, and coordination of PSC convoy movements in the battlespace. When the battlespace commander determines there is a need for the State PSCs or other convoy operations to alter routes or abort missions, State PSCs will comply with the recommendations of the battlespace commander. Final authority for U.S. Embassy moves rests with the Chief of Mission, but he will generally honor the battle space commander's recommendation. The purposes are to: (1) avoid situations with a high risk of incidents occurring; and (2) integrate incident management follow-ups with the Ministry of Interior and TOC and with any persons affected by the incident.

Many aspects of the MOA have already been implemented. Interim procedures have been adopted where permanent solutions require additional work. Others are in stages of standardization and final design. At the Office of the Secretary of Defense (OSD), we are closely monitoring the implementation status of the major elements of the MOA identified above.

In the field, MNF-I has already executed Fragmentary Order 07-428, which establishes authorities, responsibilities, and coordination requirements for the Multi National Corps-Iraq (MNC-I) to establish oversight of all DoD contractors and DoD civilians. State is developing a counterpart document to reflect U.S. Embassy Baghdad's PSC policies for U.S. Government agencies working under Chief of Mission authority.

Here in Washington, DoD is working on additional measures to improve interagency coordination and meet Congressional mandates to improve oversight and management of contractors in contingency environments. DoD and State are jointly developing a Memorandum of Understanding (MOU) and planning implementation of policies and operational requirements covering matters relating to DoD, State, and U.S. Agency for International Development (USAID) contracting and contractor management in Iraq and Afghanistan as required by Section 861 of the 2008 NDAA. This MOU will cover all DoD, State, and USAID contractors and contractor personnel, not just PSCs. A draft MOU addressing these requirements is already in development. Once signed, the MOU will be implemented through DoD, State, and USAID policies and regulations. Every effort will be made to implement the provisions of the MOU within the 120 days following the MOU signing, as required in the FY 2008 NDAA.

DoD and State are also moving ahead with efforts to comply with the provisions of section 862 of the FY 2008 NDAA, regarding management of PSC operations in Iraq and Afghanistan. This will broaden the scope of coverage of the current MOA to cover USAID and PSC operations in Afghanistan as well.

The DoD – State effort builds on a DoD strategic framework for managing contractors deployed with our military forces. This framework was developed some

months ago and is about to be issued in final form. The DoD framework defines the roles, responsibilities, and processes for the management and integration of all DoD contractors operating under a covered contract in an area of combat operations. The draft of the framework was submitted to Congress in October 2007, and the final report will be submitted by April 2008. In accordance with the provisions of Section 854 of the 2007 NDAA, DoD has established a joint board to oversee and synchronize the efforts. A DoD Directive and companion DoD Instruction include implementation of the requirements of Sections 861 and 862 of the 2008 NDAA.

Recognizing the special sensitivity of PSC operations in Iraq and Afghanistan, Deputy Secretary of Defense England and Deputy Secretary of State Negroponte co-hosted a meeting of PSC company executives on January 30<sup>th</sup> to discuss new initiatives, issues, and improvements needed in contractor management of their personnel. In the meeting, DoD and State officials covered key provisions of the MOA and other initiatives, including emphasis on contractor responsibilities for the elimination of sexual harassment, ethnic discrimination, and employee misconduct. Also covered was the implementation of the Uniform Code of Military Justice (UCMJ) for DoD contractor personnel deployed with our military forces in contingency operations. We also discussed the efforts of State and DoD concerning legislation to strengthen the extraterritorial reach of U.S. criminal laws and their relationship to non-DoD U.S. Government contractors overseas. A group of PSC executives who attended the meeting is also assessing the benefits of establishing a private security association to establish credentialing and certification standards to ensure full compliance with State and DoD requirements.

As we continue to evaluate the use of contractors, we are proceeding to strengthen our deployable contract management forces. We have instituted a requirement that all contracting officers executing in an expeditionary environment complete the expeditionary contracting competency assessment. Together with the Joint staff and the Military Departments, OSD is developing career and leadership development plans and programs for all expeditionary contracting personnel. In addition, we are broadening training for operational military leaders, both officer and enlisted, across all grades on management of contractors deploying with forces. This

training will be included in professional military education programs such as the War College, service staff colleges, and basic non commissioned officer courses.

We have made significant improvements in the management of contractors supporting contingency operations over the past year, and we continue to focus on strengthening our capability to leverage, synchronize, and administer robust contract support for any contingency. DoD appreciates the interest and support Congress continues to provide to this effort.

I will be happy to answer any questions after the conclusion of prepared testimonies.

HOLD UNTIL RELEASED  
BY THE COMMITTEE

**STATEMENT OF**

**MR. SHAY ASSAD**  
**DIRECTOR**  
**DEFENSE PROCUREMENT AND ACQUISITION POLICY**

**BEFORE THE**  
**SUBCOMMITTEE ON READINESS**  
**OF THE**  
**HOUSE ARMED SERVICES COMMITTEE**

**March 11, 2008**

Chairman Ortiz, Representative Forbes, distinguished members of the House Armed Services Subcommittee on Readiness, thank you for the opportunity to discuss the question of “inherently governmental” functions and the proper role of the government in providing services and fulfilling the Department of Defense core missions.

My name is Shay Assad and I serve as the Director, Defense Procurement, Acquisition Policy and Strategic Sourcing within the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. Before assuming this position in April 2006, I was the Assistant Deputy Commandant, Installations and Logistics (Contracts) for the Marine Corps and, as such, served as the senior civilian contracting official within the Marine Corps.

Prior to Government service, I spent 25 years in industry serving in a number of operational and senior contract management capacities, primarily with Raytheon Company. My experience includes serving as a Senior Vice President of Contracts, a President and Chief Operating Officer of one of Raytheon’s major subsidiaries and lastly, as an Executive Vice President at Raytheon and the Chairman and Chief Executive Officer of one of its major subsidiaries. I am a graduate of the United States Naval Academy. I then began my career as an officer in the United States Navy serving two tours on U.S. Navy destroyers and lastly as a Navy Procurement Officer at the Naval Sea Systems Command.

Thank you for the opportunity to appear before you to participate in today’s discussion. Today’s discussion goes to the heart of two questions; (1) what is the core

capability that the government must maintain if it is to continue to provide our warfighters the equipment and support services they require while ensuring that our taxpayers' money is spent wisely; and (2) what is the proper role of contractors that are supporting the Department of Defense in that effort. We must ensure that government personnel perform the inherently governmental functions associated with the acquisition and procurement of defense goods and services. The fact that contractors may be performing or appear to be performing some of these inherently governmental functions is a matter of concern.

I would like to focus initially on the role of industry versus government employees and military personnel, in the contracting and procurement mission within the Department of Defense. The Federal Acquisition Regulation, Subpart 7.503 identifies functions which are considered "inherently governmental." While it is an extensive list, it also notes that the list is not all inclusive.

My perspective centers around the Government's business decision making process. Specifically, the personnel and processes we use to contract for over \$300 billion dollars of goods and services.

My view is that the role of industry must be carefully and particularly scrutinized when contractors are involved in the pre-award phases of Government procurement and acquisition. Among the areas which should be carefully scrutinized are: the determination of an acquisition approach and business strategy, the selection of who will perform the work, and the negotiation of cost/price and contract terms. Except in those



cases where the technical expertise does not reside within the Department, what we do during the pre-award decision making process should not be performed by contractors. The role of contractors in procurement and contracting activities should be confined to administrative support areas whenever possible. Even in those areas, we need to ensure that anything that provides access to the decision-making process in the aforementioned areas must be carefully examined.

At the present time, approximately 5% of the total procurement/contracting workforce consist of contractors. In a number of instances, these contractors are providing appropriate administrative support. However, while not pervasive within the department, there are occasions when contractor personnel are performing contracting roles similar to those I have described previously.

I can assure you that I am working to change those instances where I believe contractors are performing functions which could be inherently governmental. It is essential that we in the government fully recognize that contracting personnel are entrusted with important responsibilities and must be accountable to the taxpayer. We should not outsource that responsibility.

A small number of contracting organizations have resorted to utilizing contractors. Among those reasons they do so are: 1) increased workload; 2) lack of billets; 3) lack of experienced personnel and 4) inability to recruit personnel effectively. In spite of the aforementioned, I believe that we must find a way to enable these organizations to staff

their operations with Government employees not contractors. Examples of solutions are: 1) increased billets where justified; 2) use of retired annuitants; and 3) use of interagency contracting resources. We cannot overlook the potential for conflicts of interest when contractors are working in a contracting environment. This is a concern that has been raised by the Government Accountability Office (GAO) and others and we are working to address those concerns.

Let me discuss some initiatives we have undertaken in the Department to address issues of integrity and the training and improvement of the contracting workforce.

**Panel on Contracting Integrity:** As you are aware, the Under Secretary of Defense (Acquisition, Technology & Logistics) (USD(AT&L)) established the Panel on Contracting Integrity in accordance with the requirements of section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007. Although the statute provides a sunset date of 2009 for the Panel, the Department intends to continue the Panel as a matter of policy. The Deputy Under Secretary of Defense (Acquisition Technology) (DUSD(A&T)) is the Panel Chairman, and I am the Executive Director for the Panel. As required by section 813, the Panel is conducting a review of the progress made by the DoD to eliminate areas of vulnerability that allow fraud, waste, and abuse to occur.

Our initial report to Congress noted that the Panel has established ten DOD-wide subcommittees focusing largely on areas of vulnerability identified by GAO. Each of these DoD-wide subcommittees is chaired by a senior procurement executive of one of

the military departments or a defense agency, including the Army, Navy, Air Force, Defense Logistics Agency, Defense Contract Audit Agency, or a senior leader from the Defense Acquisition University, the Defense Contract Management Agency, the DoD Inspector General and the Office of the General Counsel.

The focus areas of the subcommittees are: Current Structure of Contracting Integrity; Sustained Senior Leadership; Capable Contracting Workforce; Adequate Pricing; Appropriate Contracting Approaches and Techniques; Sufficient Contract Surveillance; Contracting Integrity in a Combat/Contingent Environment; Procurement Fraud Indicators; Contractor Employee Conflict of Interest; and Recommendations for Change. The Panel identified 21 initial actions for implementation in 2008, to include the following four focus areas:

- Reinforce functional independence of contracting personnel and promptly fill contracting leadership positions with qualified leaders of integrity to expect and enforce ethical behavior;
- Make recommendations to the Department Senior leadership regarding the appropriate size of the contracting workforce and ensure that it has the appropriate skills to effectively and efficiently price, award and manage more than \$300 billion in annual contracts;
- Develop a DoD-wide consistent contract policy execution review plan, strengthen contracting approaches, and re-invigorate contract surveillance techniques; and

- Improve planning and training for contracting in combat/contingency environments.

Two of the subcommittees, Procurement Fraud Indicators and Contractor Employee Conflicts of Interest, were recently formed in response to issues associated with contracting in a contingency/combat environment and the Department's increased reliance on contractor support. These subcommittees will be developing recommendations to reduce vulnerabilities in those areas. The Panel will meet six times this year. A rolling assessment and tasking process will facilitate efficient and effective implementation of the subcommittee recommendations and ensure currency and relevance of subsequent actions.

I would like to emphasize that the Department views procurement integrity as the fundamental underpinning of our acquisition system. We are taking a number of actions to ensure that we deal appropriately with any vulnerability in the contracting system to waste, fraud and abuse. We fully understand that integrity is the foundation of our ability to assure our taxpayers that we are being good stewards of their money when we acquire the supplies and services necessary to meet the needs of our warfighters.

**Senior Contracting Leadership Offsites:** On May 10, 2007 and again on December 12, 2007, we conducted 3 day conferences for senior contracting leaders of the defense contracting community. The purpose of these offsite meetings was to highlight and discuss current issues in contracting, contract management and the competency assessment for the contracting workforce and to ensure that the leadership of the DoD

Contracting Community is fully engaged in the activities of the Panel on Contracting Integrity. We have scheduled another offsite meeting for May to be held in conjunction with the DoD Procurement Conference. My intent is to hold these senior leadership meetings twice a year to ensure current contracting issues are being addressed.

**Contracting Competency Model:** As I have testified previously, improving the capability of our acquisition workforce is a matter of critical importance to the Department of Defense today. A key component of that improvement process is to understand the baseline capability of the workforce. I am working in conjunction with the Director, AT&L Human Capital Initiatives, and the Department's Senior Procurement Executives to conduct a workforce-wide assessment of the 22,000+ civilian and military contracting and procurement of professionals in the Department of Defense. The assessment results will be used to:

1. Define and validate the competencies required for the Contracting Community to deliver mission critical capabilities across six domains: a) Major Systems Acquisition; b) Logistics and Sustainment; c) Base Operations; d) Engineering and Construction; e) Research and Development; and f) Contracting in an Expeditionary and/or Combat Environment. The competency inventory for the Contracting Workforce will include analyses associated with mission area, career level, and job function.
2. Assess proficiency levels of competencies and capabilities resident in the Contracting Community and identify proficiency gaps.

3. Align/adjust personnel strategies to address competency gaps and provide opportunities for training and development.
4. Conduct an integrated assessment of competencies, workload and workforce demographics.

Several organizations, including the Defense Logistics Agency, the Army Corps of Engineers, a number of Air Force Commands, the Army's Life Cycle Management Center (LCMC) at Communications and Electronics Command (CECOM), and Army and US Marine Corps contracting workforce members working in a combat environment, have now completed competency assessments utilizing this model. To date – well over 4100 professionals have conducted the assessment. Participation is well over 90 percent.

Between now and June 2008, we will use the Contracting Competency Model to conduct an assessment of the remainder of the military and civilian members of the contracting workforce. A report addressing the results of the DoD-wide Contracting Competency Assessment will be published in October 2008. Our challenge does not end here. We must work with the contracting community to establish a continuous process to define and maintain the competencies required to deliver mission critical capabilities and to integrate competency assessment results and workforce analysis into ongoing component force structure and workforce planning efforts.

I would also like to take this opportunity to highlight for you what we are doing in overseeing and managing service contracts. In fiscal years 2006 and 2007, DoD obligated over \$300 billion on contracts for goods and services to become the largest

purchasing organization in the world. Over half of those procurements were for services. Given the magnitude of the dollar amounts involved, it is essential that these DoD acquisitions be handled efficiently, effectively, and with integrity.

We are in the second year of implementing section 812 of the National Defense Authorization Act for 2006, which established a review structure and process for the acquisition of services in the Department. Under this structure, senior leaders review the acquisition approach and business strategy on planned acquisitions of services as well as the oversight mechanisms for monitoring the contractor's performance in providing the required services. At USD(AT&L)'s direction, I personally review all proposed acquisitions of services over \$1 billion to ensure that the requirements are clear and well defined, the acquisition approach and business strategy are appropriate and that there are mechanisms in place to provide proper oversight of contractor performance.

I am also working with the senior contracting leadership in the Department to develop the guidance and detailed implementation instructions for periodic independent management reviews of contracts for services required by section 808 of the National Defense Authorization Act for Fiscal Year 2008. I fully support this type of review and believe the lessons learned from these independent reviews, which I refer to as "peer reviews", will contribute greatly to the development of best practices and lessons learned in contracting for services.

Finally, I believe the Department's approach to contracting for services will benefit from the work products of several of the subcommittees under the Panel on Contracting Integrity. For example, some of the recommendations and initiatives being developed under the Adequate Pricing; Appropriate Contracting Approaches and Techniques; Sufficient Contract Surveillance; Procurement Fraud Indicators and Contractor Employee Conflict of Interest Subcommittees will result in overall improvement in the processes and oversight procedures associated with contracting for and monitoring service contracts.

The Department's goal is to continuously strive for improvement in all that we do. We will not lose sight of the tenet that while we endeavor to provide our warfighters the very best, we must also ensure that we do so while being good stewards of taxpayer funds. Our warfighters deserve nothing less and our taxpayers, rightfully, should insist on nothing less.

Mr. Chairman, I thank you and the members of the committee for your interest in our efforts, and would be happy to address any questions that you may have for me. Thank you.



United States Government Accountability Office

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**GAO**

Testimony  
Before the Subcommittee on Readiness,  
Committee on Armed Services, House of  
Representatives

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For Release on Delivery  
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Tuesday, March 11, 2008

## DEFENSE MANAGEMENT

### DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight

Statement of David M. Walker  
Comptroller General of the United States



March 11, 2008

## DEFENSE MANAGEMENT

**DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight**

Highlights of GAO-08-572T, a testimony before the Subcommittee on Readiness, Committee on Armed Services, House of Representatives

**Why GAO Did This Study**

The federal government, including the Department of Defense (DOD), is increasingly relying on contractors to carry out its missions. Governmentwide spending on contractor services has more than doubled in the last 10 years. DOD has used contractors extensively to support troops deployed abroad. The department recently estimated the number of contractors in Iraq and Afghanistan to be about 196,000. DOD also relies heavily on contractors for various aspects of weapon system logistics support.

While contractors, when properly used, can play an important role in helping agencies accomplish their missions, GAO has identified long-standing problems regarding the appropriate role and management of contractors, particularly at DOD. This testimony highlights the challenges federal agencies face related to the increased reliance on contractors and the specific challenges DOD has had in managing its increased reliance on contractors who support deployed troops and who provide logistics support for weapons systems.

This testimony also highlights some of the recommendations GAO has made over the past several years to improve DOD's management and oversight of contractors, as well as DOD's actions in response to those recommendations.

To view the full product, including the scope and methodology, click on GAO-08-572T. For more information, contact William M. Soles at (202) 512-8365 or [wsoles@gao.gov](mailto:wsoles@gao.gov).

**What GAO Found**

While there are benefits to using contractors to perform services for the government—such as increased flexibility in fulfilling immediate needs—GAO and others have raised concerns about the increasing reliance on contractors to perform agency missions. GAO's body of work shows that agencies face challenges with increased reliance on contractors to perform core agency missions, and these challenges are accentuated in contingency operations such as Iraq, in emergency situations such as Hurricane Katrina, or in cases where sufficient government personnel are not available. In making the decision to use contractors, agencies have experienced challenges such as: determining which functions and activities should be contracted out and which should not to ensure institutional capacity; developing a total workforce strategy to address the extent of contractor use and the appropriate mix of contractor and government personnel; identifying and distinguishing the roles and responsibilities of contractors and civilian and military personnel; and ensuring appropriate oversight, including addressing risks, ethics concerns, and surveillance needs.

DOD's increased reliance on contractors to support forces deployed for military operations and to perform maintenance and other logistic support for weapon systems has highlighted challenges that DOD faces in managing this component of its total force. With regard to contractor support for deployed forces, DOD's primary challenges have been to provide effective management and oversight, including failure to follow planning guidance, an inadequate number of contract oversight personnel, failure to systematically capture and distribute lessons learned, and a lack of comprehensive training for military commanders and contract oversight personnel. These challenges have led to negative operational and monetary impacts at deployed locations. For example, several military commanders GAO met with in 2006 said their pre-deployment training did not provide them with sufficient information on the extent of contractor support that they would be relying on in Iraq and were therefore surprised by the substantial number of personnel they had to allocate to provide on-base escorts, convoy security, and other force protection support to contractors. Although DOD has taken some steps to address these issues, many of these issues remain a concern and additional actions are needed. With respect to weapon system support, the challenges have been to resolve questions about how much depot maintenance and other logistics work needs to be performed in-house and to what extent outsourcing for DOD logistics has been cost-effective. While DOD has a process for defining core maintenance capability, GAO has identified shortcomings with this process and found that core maintenance capability has not always been developed. Finally, although increased contractor reliance for maintenance and other logistics activities was justified by DOD based on the assumption that there would be significant cost savings, it is uncertain to what extent cost savings have occurred or will occur.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the increased reliance on contractors to conduct more and more of the business of the federal government. In fiscal year 2007, the federal government spent about \$254 billion on contractor services, an amount that has more than doubled over the past decade. The Department of Defense's (DOD) obligations on service contracts, expressed in constant fiscal year 2006 dollars, rose from \$85.1 billion in fiscal year 1996 to more than \$151 billion in fiscal year 2006, a 78 percent increase. With this growth in spending, DOD has become increasingly reliant on contractors both overseas and in the United States. For example, the department has relied extensively on contractors for services that include communication services, interpreters who accompany military patrols, base operations support (e.g., food and housing), weapon systems maintenance, and intelligence analysis to support military operations in Southwest Asia. The U.S. military has long used contractors to provide supplies and services to deployed forces, but the scale of contractor support DOD relies on in deployed locations today has increased considerably. DOD has recently estimated the number of contractors in Iraq and Afghanistan to be about 196,000. Further, DOD currently has the equivalent of three brigades of contractors providing security services in Iraq, as well as another brigade equivalent supporting these contractors—a total of about 12,000 personnel. Put another way, there are more private security contractors in Iraq today than the total number of contractors (about 9,200) that were deployed to support military operations in the 1991 Gulf War. In addition to the support contractors provide for military forces deployed overseas, DOD has also increasingly relied on contractors for other services. For example, we have reported in recent years on DOD's increasing reliance on the private sector for various aspects of weapon system logistics support, including depot-level maintenance.

While contractors, along with military personnel and civilians, are part of DOD's total force and fulfill many vital functions that enable DOD to accomplish its missions, the increased reliance on contractors has raised a number of issues and concerns that warrant continued attention. Our previous work has highlighted long-standing problems regarding the appropriate role and management and oversight of contractors in the federal workforce—particularly at DOD—and I have identified 15 systemic acquisition challenges facing DOD (see app. D). These challenges range from separating agency wants from needs to creating a capable workforce and holding it accountable. Since 1992, we have designated DOD contract management as a high-risk area, in part due to concerns over the adequacy

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of the department's acquisition workforce, including contract oversight personnel. Congress has expressed increasing concerns about DOD's management and oversight of contractors as well. For example, the National Defense Authorization Act for Fiscal Year 2008 called for the creation of a Commission on Wartime Contracting to make assessments of the government's reliance on contractors in Iraq and Afghanistan and certain contract performance and management issues related to those contracts. The act also created a contingency contractor training requirement for military personnel outside the acquisition workforce. Congress also has taken steps to improve oversight by increasing the budgets for the Defense Contract Audit Agency, Defense Contract Management Agency, and the Defense Department's Inspector General in the fiscal year 2008 DOD appropriations. As I have noted previously, given DOD's heavy and increasing reliance on contractors in Iraq and elsewhere, and the risks this reliance entails, it may be appropriate to ask if DOD has become too reliant on contractors to provide essential services.<sup>1</sup> To help frame this issue today, I will highlight governmentwide challenges we have identified related to the increased reliance on contractors. Next, I will focus more specifically on challenges DOD has had in managing the increased reliance on contractors who support deployed troops and who provide logistics support for weapons systems. I will conclude with some broad observations that Congress and DOD may wish to consider in addressing these important issues.

My statement today is based primarily on our prior work and the work of others at agencies across the federal government. Our work includes reviews at the Departments of Defense, Homeland Security, and Energy, the Environmental Protection Agency, and the National Aeronautics and Space Administration. The work of others includes the congressionally mandated Acquisition Advisory Panel and the Defense Acquisition University. A list of related GAO products is provided at the end of this statement. As part of ongoing work, we obtained updated information on DOD's actions to address issues we have previously raised. We developed this statement from February to March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a

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<sup>1</sup>GAO, *Stabilizing and Rebuilding Iraq: Conditions in Iraq Are Conducive to Fraud, Waste, and Abuse*, GAO-07-525T (Washington, D.C.: Apr. 23, 2007).

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reasonable basis for our findings and conclusions based on our audit objectives.

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## Summary

While there are benefits to using contractors to perform services for the government—such as increased flexibility in fulfilling immediate needs—GAO and others have raised concerns about the increasing reliance on contractors to perform agency missions. Our body of work shows that agencies face challenges with increased reliance on contractors to perform core agency missions, and these challenges are accentuated in contingency operations such as Iraq, in emergency situations such as Hurricane Katrina, or in cases where sufficient government personnel are not available. In making the decision to use contractors, agencies have experienced challenges such as: determining which functions and activities should be contracted out and which should not to ensure institutional capacity; developing a total workforce strategy to address the extent of contractor use and the appropriate mix of contractor and government personnel; identifying and distinguishing the roles and responsibilities of contractors and civilian and military personnel; and ensuring appropriate oversight, including addressing risks, ethics concerns, and surveillance needs.

DOD's increased reliance on contractors to support forces deployed for military operations and to perform maintenance and other logistic support for weapon systems has highlighted challenges that DOD faces in managing this component of its total force. With regard to contractor support for deployed forces, DOD's primary challenges have been to provide effective management and oversight. These challenges include failure to follow planning guidance, an inadequate number of contract oversight personnel, failure to systematically capture and distribute lessons learned, and a lack of comprehensive training for military commanders and contract oversight personnel. These challenges have led to negative operational and monetary impacts at deployed locations. For example, several military commanders we met with in 2006 said their pre-deployment training did not provide them with sufficient information on the extent of contractor support that they would be relying on in Iraq and were therefore surprised by the substantial number of personnel they had to allocate to provide on-base escorts, convoy security, and other force protection support to contractors. Although DOD has taken some steps to address these issues, many of these issues remain a concern and additional actions are needed. For example, in response to our 2003 recommendation that DOD develop comprehensive guidance to help the services manage contractors supporting deployed forces, the department

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issued the first comprehensive guidance dealing with contractors who support deployed forces in October 2005. However, as we recently testified, DOD's leadership needs to ensure implementation of and compliance with this guidance and other guidance.<sup>2</sup> With respect to weapon system support, the challenges have been to resolve questions about how much depot maintenance and other logistics work needs to be performed in-house and to what extent outsourcing for DOD logistics has been cost-effective. While DOD has a process for defining core maintenance capability, we have identified shortcomings with this process and found that core maintenance capability has not always been developed. Further, DOD does not have a process for defining core capability requirements for other logistics functions and activities, such as supply chain management and engineering. Finally, although increased contractor reliance for maintenance and other logistics activities was justified by DOD based on the assumption that there would be significant cost savings, it is uncertain to what extent cost savings have occurred or will occur.

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## Background

Acquisition of products and services from contractors consumes about a quarter of discretionary spending governmentwide, with services making up roughly 60 percent. These services range from basic functions, such as landscaping and janitorial, to those that are more complex, like intelligence analysis, acquisition support, security services, and program office support. The acquisition of services differs from that of products in several key respects and can be particularly challenging in terms of defining requirements and assessing contractor performance. DOD is by far the largest federal purchaser of service contracts—ranging from housing to intelligence to security.

Contractors can play an important part in helping agencies accomplish their missions. For example, agencies use service contracts to acquire special knowledge and skills not available in the government, obtain cost-effective services, or obtain temporary or intermittent services. The congressionally mandated Acquisition Advisory Panel<sup>3</sup> has cited a number

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<sup>2</sup>GAO, *Military Operations: Implementation of Existing Guidance and Other Actions Needed to Improve DOD's Oversight and Management of Contractors in Future Operations*, GAO-08-436T (Washington, D.C.: Jan. 24, 2008).

<sup>3</sup>The Panel was established by section 1423 of the Services Acquisition Reform Act of 2003, Pub. L. No 108-136, Title XIV. The Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress was dated January 2007.

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of developments that have led federal agencies to increase the use of contractors as service providers: limitations on the number of authorized full-time equivalent positions; unavailability of certain capabilities and expertise among federal employees; desire for operational flexibility; and the need for "surge" capacity. According to DOD and service officials, several factors have contributed to the department's increased use of contractors for support services: (1) the increased requirements associated with the Global War on Terrorism and other contingencies; (2) policy to rely on the private sector for needed commercial services that are not inherently governmental in nature; and (3) DOD initiatives, such as competitive sourcing and utility privatization programs.

The Office of Management and Budget (OMB), procurement law, and the Federal Acquisition Regulation (FAR) provide guidance on contracting for services. OMB Circular A-76 details a process for federal agencies to obtain commercially available services currently performed by government employees from the private sector when it is cost-effective to do so.<sup>4</sup> The Circular reinforces that government personnel shall perform inherently governmental activities. This process does not apply to private sector performance of a new requirement, expanded activity, or continued performance of a commercial activity. As such, this process effectively applies to a small percentage of the government's contracting activity. Most of the growth in service contracting has occurred outside of the A-76 process. The Federal Activities Inventory Reform (FAIR) Act of 1998 further requires agencies annually to determine and list which government-provided agency activities are not inherently governmental functions.<sup>5</sup> Federal procurement regulation states that functions that are so intimately related to the public interest are considered inherently governmental and should only be performed by government personnel. These functions include those activities which require either the exercise of discretion in applying government authority or the use of value judgment in making decisions for the government, and should not be performed by contractors.<sup>6</sup> The FAR and OMB also require agencies to provide greater scrutiny and management oversight when contracting for services that closely support the performance of inherently governmental

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<sup>4</sup>Office of Management and Budget Circular A-76 (Revised) (May 29, 2003).

<sup>5</sup>Pub. L. No. 105-270, §2(a) (1998). In 1999, OMB incorporated the FAIR Act requirements into the A-76 process.

<sup>6</sup>FAR §2.101.

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functions.<sup>7</sup> The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work. This may result in decisions that are not in the best interest of the government, and may increase vulnerability to waste, fraud, and abuse.

Before I go into more detail on the issues surrounding the federal government's and DOD's reliance on contractors, I would like to touch on another subject of interest to the Subcommittee—DOD's application of enhanced use leases. DOD's longstanding leasing authority is codified at 10 U.S.C. 2667. The law provides general authority for the Secretary of a military department to enter into a lease upon such terms he considers will promote the national defense or be in the public interest. The Secretary of a military department is authorized to lease real property up to five years unless the Secretary determines that a lease for a longer period will promote the nation defense or be in the public interest. Over time, Congress has expanded DOD's leasing authority several times to provide a lessee the first right to buy the property and provide for payment in cash or in kind by the lessee of consideration in an amount not less than the fair market value. Most recently, the National Defense Authorization Act for Fiscal Year 2008 amended 10 U.S.C. 2667 in several ways; for example, the authority to accept facilities operation support as in-kind consideration was eliminated, and a requirement that leases meeting certain criteria be competitively awarded was added.<sup>8</sup> The services have leased real property on their bases for years as a means to reduce infrastructure and base operating costs. For example, the military services have leased space for banks, credit unions, ATMs, storage, schools, and agricultural grazing. As you know, Mr. Chairman, we are conducting a review of DOD's land use planning activities, and will have more to say on this issue later.

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<sup>7</sup>FAR §37.114; OFPP Policy Letter 93-1: Management Oversight of Services Contracting, Office of Federal Procurement Policy, May 18, 1994.

<sup>8</sup>National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 2823 (2008).



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**Federal Agencies  
Have Faced  
Challenges with  
Increased Reliance on  
Contractors to  
Perform Agency  
Missions**

While there are benefits to using contractors to perform services for the government—such as increased flexibility in fulfilling immediate needs—GAO and others have raised concerns about the increasing reliance on contractors to perform agency missions. Our work shows that agencies face challenges with increased reliance on contractors to perform core agency missions, especially in contingency or emergency situations or in cases where sufficient government personnel are not available. As I have previously stated, prior to making the decisions to use contractors, agency officials should focus greater attention on which functions and activities should be contracted out and which should not. To guide this approach, agencies need to consider developing a total workforce strategy to meet current and future human capital needs, and address the extent of contractor use and the appropriate mix of contractor and civilian and military personnel. I have also noted that identifying and distinguishing the responsibilities of contractors and civilian and military personnel are critical to ensure contractor roles are appropriate. Finally, once contractors are in place, agencies must ensure appropriate oversight of contractors, including addressing risks, ethics concerns, and surveillance needs.

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**Institutional Capacity:  
Agencies Face Challenges  
in Determining What  
Functions and Activities  
Can be Contracted Out and  
What Should be Provided  
by Government Personnel**

In order to determine what functions and activities can be contracted out, the FAIR Act requires agencies annually to identify government-performed agency activities that are not inherently governmental functions. At GAO's 2006 forum on federal acquisition challenges and opportunities, some participants noted that it might be more appropriate for agencies to develop guiding principles or values to determine which positions could be contracted out and which should be performed in-house. Forum participants further noted that many corporate organizations carefully deliberate up-front and at the highest management levels about what core functions they need to retain and what non-core functions they should buy, and the skill sets needed to procure non-core functions.<sup>9</sup>

DOD's Panel on Contracting Integrity, in its 2007 report to Congress, noted that the practice of using contractors to support the government acquisition function merits further study because it gives rise to questions regarding the appropriate designation of government versus

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<sup>9</sup>GAO, *Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century*, GAO-07-45SP (Washington, D.C.: Oct. 6, 2006).

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nongovernment functions.<sup>10</sup> A November 2005 report by the Defense Acquisition University warned that the government must be careful when contracting for the acquisition support function to ensure that the government retains thorough control of policy and management decisions and that contracting for the acquisition support function does not inappropriately restrict agency management in its ability to develop and consider options.<sup>11</sup> Additionally, our prior work has found that when federal agencies, including DOD, believe they do not have the in-house capability to design, develop, and manage complex acquisitions, they sometimes turn to a systems integrator to carry out these functions, creating an inherent risk of relying too much on contractors to make program decisions. For example, the Army's Future Combat System program is managed by a lead systems integrator that assumes the responsibilities of developing requirements; selecting major system and subsystem contractors; and making trade-off decisions among costs, schedules, and capabilities. While this management approach has some advantages for DOD, we found that the extent of contractor responsibility makes DOD vulnerable to decisions being made by the contractor that are not in the government's best interests.<sup>12</sup>

In September 2007, we reported that an increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities. I recently noted that this may be a concern in the intelligence community.<sup>13</sup> Specifically, while direction and control of intelligence and counter-intelligence operations are listed as inherently governmental functions, the Director of National Intelligence reported in 2006 that the intelligence community finds itself in competition with its contractors for employees and is left with no choice but to use contractors for work that

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<sup>10</sup>The Panel was established by section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364 (2006). Its 2007 Report to Congress was the first of three annual reports mandated by the act.

<sup>11</sup>Defense Acquisition University, *Contracting Out Procurement Functions: An Analysis*, DAU Research Report 06-001 (Fort Belvoir, VA: November 2005).

<sup>12</sup>GAO, *Defense Acquisitions: Role of Lead Systems Integrator on Future Combat Systems Program Poses Oversight Challenges*, GAO-07-380 (Washington, D.C.: June 6, 2007).

<sup>13</sup>GAO, *Intelligence Reform: GAO Can Assist the Congress and the Intelligence Community on Management Reform Initiatives*, GAO-08-413T (Washington, D.C.: Feb. 29, 2008).

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may be "borderline inherently governmental."<sup>14</sup> We have also found problems with contractors having too much control at other federal agencies.<sup>15</sup> Unless the federal government pays the needed attention to the types of functions and activities performed by contractors, agencies run the risk of losing accountability and control over mission-related decisions.

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**Workforce Planning:  
Agencies Face Challenges  
in Developing an  
Appropriate Mix of  
Contractor and  
Government Personnel to  
Meet Current and Future  
Needs**

Along with determining the functions and activities to be contracted out, agencies face challenges in developing a total workforce strategy to address the extent of contractor use and the appropriate mix of contractor and civilian and military personnel. We have found that agencies need appropriate workforce planning strategies that include contractor as well as federal personnel and are linked to current and future human capital needs. These strategies should be linked to the knowledge, skills, and abilities needed by agencies and how the workforce will be deployed across the organization. Deployment includes the flexible use of the workforce, such as putting the right employees in the right roles according to their skills, and relying on staff drawn from various organizational components and functions using "just-in-time" or "virtual" teams to focus the right talent on specific tasks.<sup>16</sup>

As agencies develop their workforce strategies, they also need to consider the extent to which contractors should be used and the appropriate mix of contractor and federal personnel. Over the past several years, there has been increasing concern about the ability of agencies to ensure sufficient numbers of staff to perform some inherently governmental functions. The Department of Homeland Security's human capital strategic plan notes the department has identified core mission-critical occupations and plans to reduce skill gaps in core and key competencies. However, it is unclear how this will be achieved and whether it will inform the department's use of contractors for services that closely support inherently governmental

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<sup>14</sup>The U.S. Intelligence Community's Five Year Strategic Human Capital Plan.

<sup>15</sup>See for example, GAO, *Civil Servants and Contractor Employees: Who Should Do What for the Federal Government?* FPCD-81-43 (Washington, D.C.: June 19, 1981); GAO, *Energy Management: Using DOE Employees Can Reduce Costs for Some Support Services*, GAO/RCED 91-186 (Washington, D.C.: Aug. 16, 1991); GAO, *Government Contractors: Are Service Contractors Performing Inherently Governmental Functions?* GAO/GGD-92-11 (Washington, D.C.: Nov. 18, 1991).

<sup>16</sup>GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, GAO/GGD-99-179 (Washington, D.C.: Sept. 1, 1999).

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functions. The Department of Homeland Security has agreed with the need to establish strategic-level guidance for determining the appropriate mix of government and contractor employees to meet mission needs.<sup>17</sup>

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**Roles and Responsibilities:  
Agencies Face Challenges  
in Defining the  
Relationship between  
Contractors and  
Government Employees**

Agencies are challenged to define the roles and responsibilities of contractors vis-à-vis government employees. Defining the relationship between contractors and government employees is particularly important when contracting for professional and management support services since contractors often work closely with government employees to provide these services. This definition begins during the acquisition planning process when contract requirements are determined. We have recommended that agencies define contract requirements to clearly describe roles, responsibilities, and limitations of selected contractor services. Well-defined contract requirements can also help minimize the risk of contractors performing inherently governmental functions. Yet contracts, especially service contracts, often do not have definitive or realistic requirements at the outset. Because the nature of contracted services can vary widely, from building maintenance to intelligence, a tailored approach should be used in defining requirements to help ensure that risks associated with a requirement are fully considered before entering into a contract arrangement.<sup>18</sup> In our recent review of the Department of Homeland Security's service contracts, we found that some contracts included requirements that were broadly defined and lacked detail about activities that closely support inherently governmental functions. We found instances in which contractors provided services that were integral to the department's mission or comparable to work performed by government employees, such as a contractor directly supporting the department's efforts to hire federal employees, including signing offer letters.<sup>19</sup>

Our work on contractors in acquisition support functions has found that it is now commonplace for agencies to use contractors to perform activities historically performed by federal government contract specialists.

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<sup>17</sup>GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007).

<sup>18</sup>GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, D.C.: Nov. 9, 2006).

<sup>19</sup>GAO-07-990.

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Although these contractors are not authorized to obligate government funds, they provide acquisition support to contracting officers, the federal decision makers who have the authority to bind the government contractually. Contract specialists perform tasks that closely support inherently governmental functions, such as assisting in preparing statements of work; developing and managing acquisition plans; and preparing the documents the contracting officer signs, such as contracts, solicitations, and contract modifications. Therefore, it is important to clearly define the roles contractors play in supporting government personnel to ensure they do not perform inherently governmental functions.

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**Management and Oversight: Agencies Face Challenges in Assessing Risks, Minimizing Potential Ethics Concerns, and Ensuring Quality Surveillance**

Our work has also identified a number of practices that are important to effectively managing and overseeing contractors once contractors are in place. These include assessing risks, minimizing potential ethics concerns, and ensuring quality through adequate surveillance. However, agencies face challenges in all these areas.

Risk is innate when contractors closely support inherently governmental functions. Federal procurement policy requires enhanced oversight of services that closely support the performance of inherently governmental functions to ensure that government decisions reflect the independent judgment of agency officials and that agency officials retain control over and remain accountable for policy decisions that may be based on contractor work products. However, our work has shown that agency officials do not always assess these risks to government decision making. For example, in 2007 we reported that while Department of Homeland Security program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, they did not assess the risk that government decisions may be influenced by rather than independent from contractor judgments. Further, most of the program officials and contracting officers we spoke with were not aware of the requirement to provide enhanced oversight, and did not believe that their professional and management support services needed enhanced oversight.

Contractors are generally not subject to the same ethics rules as government employees even when they are co-located and work side-by-side with federal employees and perform similar functions. Federal ethics rules and standards have been put in place to help safeguard the integrity of the procurement process by mitigating the risk that employees

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entrusted to act in the best interest of the government will use their positions to influence the outcomes of contract awards for future gain. In addition, as we reported in 2005, contractors we met with indicated that DOD did not monitor their recruiting, hiring, and placement practices for current and former government employees. Consequently, DOD could not be assured that potential conflicts of interest would be identified. A lack of awareness among government employees of procurement integrity rules and conflict-of-interest considerations creates additional risk. For example, in 2005 we reported that DOD did not know the content or frequency of ethics training and counseling or which employees received information on conflict-of-interest and procurement integrity. DOD also lacked knowledge on reported allegations of potential misconduct.<sup>20</sup> In 2007, the Acquisition Advisory Panel recommended training for contractors and government employees, and the development of standard conflicts of interest clauses to include in solicitations and contracts.

Quality assurance, especially regular surveillance and documentation of its results, is essential to determine whether goods or services provided by the contractor satisfy the contract requirements and to minimize risks that the government will pay the contractor more than the value of the goods and services. However, DOD officials have expressed concerns about the current state of the acquisition workforce to support surveillance and mentioned that surveillance remains an "other duty as assigned" and, consequently, is a low-priority task. We have also reported wide discrepancies in the rigor with which officials responsible for surveillance perform their duties, particularly in unstable environments. For example, in the aftermath of Hurricanes Katrina and Rita, the number of government personnel monitoring contracts was not always sufficient or adequately deployed to provide effective oversight.<sup>21</sup> Unfortunately, attention to oversight has not always been evident in a number of instances, including during the Iraq reconstruction effort. We have reported that, particularly in the early phases of the Iraq reconstruction effort, several agencies including the Army lacked an adequate acquisition workforce in Iraq to oversee billions of dollars for which they were responsible. Further, Army personnel who were responsible for overseeing contractor performance of interrogation and other services were not adequately trained to properly

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<sup>20</sup>GAO, *Defense Ethics Program: Opportunities Exist to Strengthen Safeguards for Procurement Integrity*, GAO-05-341 (Washington, D.C.: Apr. 29, 2005).

<sup>21</sup>GAO, *Agency Management of Contractors Responding to Hurricane Katrina and Rita*, GAO-06-461R (Washington, D.C.: Mar. 16, 2006).

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exercise their responsibilities. Contractor employees were stationed in various locations around Iraq, with no assigned representative on site to monitor their work. An Army investigative report concluded that the number and training of officials assigned to monitor contractor performance at Abu Ghraib prison was not sufficient and put the Army at risk of being unaware of possible misconduct by contractor personnel.<sup>22</sup>

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**DOD Faces Challenges in Managing the Increased Role of Contractors Performing Support Functions for Military Operations and Weapons Systems**

DOD's increasing use of contractors to perform mission-support functions, including contractors who support forces deployed for military operations and contractors who perform maintenance and other logistic support for weapon systems, has highlighted several challenges that DOD faces in managing the increased role of this component of its total force. With regard to contractor support to deployed forces, DOD's primary challenges have been to provide effective management and oversight. With respect to weapon system support, the challenges have been to resolve questions about how much depot maintenance and other logistic work needs to be performed in-house and about to what extent outsourcing for DOD logistics has been cost-effective.

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**DOD has Experienced Long-Standing Problems with its Management and Oversight of Contractors Supporting Deployed Forces, But Has Taken Some Actions to Address these Problems**

Since 1997, we have reported on DOD's management and oversight challenges related to its use of contractor support to deployed forces. In December 2006, we issued a comprehensive review of DOD's management and oversight of contractor support to deployed forces.<sup>23</sup> We reported that despite making progress in some areas, DOD continued to face long-standing problems that hindered its management and oversight of contractors at deployed locations. Those problems included issues regarding visibility of contractors, numbers of contract oversight personnel, lessons learned, and training of military commanders and contract oversight personnel. More recently, we testified that DOD's leadership needs to ensure implementation of and compliance with guidance on the use of contractors to support deployed forces.

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<sup>22</sup>GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, GAO-05-201 (Washington, D.C.: Apr. 25, 2005).

<sup>23</sup>GAO, *Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*, GAO-07-145 (Washington, D.C.: Dec. 18, 2006).

While DOD has long relied on contractors to support forces deployed for military operations, the large influx of contractors in support of operations in Iraq has exacerbated problems that DOD has had in managing and overseeing their activities. Significantly, the individual services and a wide array of DOD and non-DOD agencies can award contracts to support deployed forces. For example, although DOD estimated that as of the first quarter of fiscal year 2008, 163,590 contractors were supporting deployed forces in Iraq, no one person or organization made a decision to send 163,590 contractors to Iraq. Rather, decisions to send contractors to support forces in Iraq were made by numerous DOD activities both within and outside of Iraq. This decentralized process, combined with the scope and scale of contract support to deployed forces, contributes to the complexity of the problems we have identified in our past work on this topic.

DOD has taken a number of actions to implement recommendations that we have made to improve its management of contractors. For example, in response to our 2003 recommendation that DOD develop comprehensive guidance to help the services manage contractors supporting deployed forces, the department issued the first comprehensive guidance dealing with contractors who support deployed forces in October 2005. Additionally, in October 2006, DOD established the office of the Assistant Deputy Under Secretary of Defense for Program Support to serve as the office with primary responsibility for contractor support issues. This office has led the effort to develop and implement a database which, when fully implemented, will allow by-name accountability of contractors who deploy with the force. This database implements recommendations we made in 2003 and 2006 to enhance the department's visibility over contractors in locations such as Iraq and Afghanistan. Although DOD has taken these and other steps to address these issues, we recently testified that many of these issues remain a concern and additional actions are needed.<sup>24</sup>

DOD Has Not Followed Long-Standing Planning Guidance Regarding the Use of Contractors to Support Deployed Forces

As we have noted in previous reports and testimonies, DOD has not followed long-standing planning guidance, particularly by not adequately factoring the use and role of contractors into its planning. For example, we noted in 2003 that the operations plan for the war in Iraq contained only limited information on contractor support.<sup>25</sup> However, Joint

<sup>24</sup>GAO-08-436T.

<sup>25</sup>GAO, *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*, GAO-03-695 (Washington, D.C.: June 24, 2003).



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Publication 4-0,<sup>26</sup> which provides doctrine and guidance for combatant commanders and their components regarding the planning and execution of logistic support of joint operations, stresses the importance of fully integrating into logistics plans and orders the logistics functions performed by contractors along with those performed by military personnel and government civilians.

Additionally, we reported in 2004 that the Army did not follow its planning guidance when deciding to use the Army's Logistics Civil Augmentation Program (LOGCAP) in Iraq.<sup>27</sup> This guidance stresses the need to clearly identify requirements and develop a comprehensive statement of work early in the contingency planning process. Because this Army guidance was not followed, the plan to support the troops in Iraq was not comprehensive and was revised seven times in less than 1 year.

Our 2003 report also concluded that essential contractor services had not been identified and backup planning was not being done.<sup>28</sup> DOD policy requires DOD and its components to determine which contractor-provided services will be essential during crisis situations, develop and implement plans and procedures to provide a reasonable assurance of the continuation of essential services during crisis situations, and prepare a contingency plan for obtaining the essential service from an alternate source should the contractor be unable to provide it. Without such plans, there is no assurance that the personnel needed to provide the essential services would be available when needed.

Moreover, as we reported in 2003 and 2006,<sup>29</sup> senior leaders and military commanders need information about the contractor services they are relying on in order to incorporate contractor support into their planning. For example, senior military commanders in Iraq told us that when they began to develop a base consolidation plan for Iraq, they had no source to draw upon to determine how many contractors were on each installation. Limited visibility can also hinder the ability of commanders to make

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<sup>26</sup>The Joint Chiefs of Staff, *Doctrine for Logistic Support of Joint Operations*, Joint Publication 4-0 (Washington, D.C.: April 2000).

<sup>27</sup>GAO, *Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, GAO-04-854 (Washington, D.C.: July 19, 2004).

<sup>28</sup>GAO-03-695.

<sup>29</sup>GAO-03-695 and GAO-07-145.

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informed decisions about base operations support (e.g., food and housing) and force protection for all personnel on an installation.

DOD has taken some action to address this problem. DOD is developing a database of contractors who deploy with U.S. forces. According to senior DOD officials familiar with this database, as of February 2008, the database had about 80,000 records. DOD is working with the State Department to include additional contractors, including private security contractors, in the database. In addition, Joint Contracting Command Iraq/Afghanistan has created the Theater Business Clearance process that reviews and approves all contracts for work in Iraq or Afghanistan. Joint Contracting Command Iraq/Afghanistan officials stated that this has helped military commanders know ahead of time when contractors are coming to work on their bases and ensure sufficient facilities are available for them. According to senior DOD officials, the department is also developing a cadre of contracting planners to ensure that contractor support is included in combatant commanders' operational and contingency planning.

**DOD Lacks an Adequate  
Number of Trained Contract  
Oversight Personnel**

As we noted in several of our previous reports, having the right people with the right skills to oversee contractor performance is crucial to ensuring that DOD receives the best value for the billions of dollars spent each year on contractor-provided services supporting forces deployed to Iraq and elsewhere. However, since 1992, we have designated DOD contract management as a high-risk area, in part due to concerns over the adequacy of the department's acquisition workforce, including contract oversight personnel. While this is a DOD-wide problem, having too few contract oversight personnel presents unique difficulties at deployed locations given the more demanding contracting environment as compared to the United States.

Having an inadequate number of contract oversight personnel has hindered DOD's ability to effectively manage and oversee contractors supporting deployed forces and has had monetary impacts as well. For example, in 2004 we reported that DOD did not always have enough contract oversight personnel in place to manage and oversee its logistics support contracts such as LOGCAP and the Air Force Contract Augmentation Program (AFCAP).<sup>30</sup> As a result, the Defense Contract Management Agency was unable to account for \$2 million worth of tools

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<sup>30</sup>GAO-04-854.

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that had been purchased using the AFCAP contract. During our 2006 review, several contract oversight personnel we met with told us DOD does not have adequate personnel at deployed locations.<sup>31</sup> For example, a contracting officer's representative for a linguistic support contract told us that although he had a battalion's worth of people with a battalion's worth of problems, he lacked the equivalent of a battalion's staff to deal with those problems. Similarly, an official with the LOGCAP Program Office told us that, had adequate staffing been in place early, the Army could have realized substantial savings through more effective reviews of the increasing volume of LOGCAP requirements.

More recently, we reported that the Army did not have adequate staff to oversee an equipment maintenance contract in Kuwait.<sup>32</sup> According to Army officials, vacant and reduced inspector and analyst positions meant that surveillance was not being performed sufficiently in some areas and the Army was less able to perform data analyses, identify trends in contractor performance, and improve quality processes. In addition, the 2007 report of the Commission on Army Acquisition and Program Management in Expeditionary Operations stated that the Army lacks the leadership and military and civilian personnel to provide sufficient contracting support to either expeditionary or peacetime missions.<sup>33</sup> As a result, the commission found that the vital task of post-award contract management is rarely being done. As we noted in our 2006 report,<sup>34</sup> without adequate contract oversight personnel in place to monitor its many contracts in deployed locations such as Iraq, DOD may not be able to obtain reasonable assurance that contractors are meeting their contract requirements efficiently and effectively.

DOD has taken some actions to address this problem. In February 2007, the Deputy Assistant Secretary of the Army (Policy and Procurement) issued guidance that required, among other things, contracting officers to appoint certified contracting officer's representatives in writing before

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<sup>31</sup>GAO-07-145.

<sup>32</sup>GAO, *Defense Logistics: The Army Needs to Implement an Effective Management and Oversight Plan for the Equipment Maintenance Contract in Kuwait*, GAO-08-316R (Washington, D.C.: Jan. 22, 2008).

<sup>33</sup>Commission on Army Acquisition and Program Management in Expeditionary Operations, *Urgent Reform Required: Army Expeditionary Contracting* (Oct. 31, 2007).

<sup>34</sup>GAO-07-145.

DOD Is Not Systematically  
Collecting and Distributing  
Lessons Learned

contract performance begins, identify properly trained contracting officer's representatives for active service contracts, and ensure that a government quality assurance surveillance plan is prepared and implemented for service contracts exceeding \$2,500. Joint Contracting Command Iraq/Afghanistan officials stated they are in the process of adding 39 personnel to provide additional contractor oversight. Similarly, the Defense Contract Management Agency has deployed an additional 100 people and plans to deploy approximately 150 more people to provide contract oversight and management to both ongoing and future contracts in Iraq. The agency is providing oversight for DOD's private security contracts as well as other theaterwide contracts. Additionally, senior DOD officials stated that the department has created a task force to address the recommendations of the October 2007 report by the Commission on Army Acquisition and Program Management in Expeditionary Operations.

Although DOD and its components have used contractors to support deployed forces in several prior military operations, DOD does not systematically ensure that institutional knowledge on the use of contractors to support deployed forces, including lessons learned and best practices, is shared with military personnel at deployed locations. We previously reported that DOD could benefit from systematically collecting and sharing its institutional knowledge to help ensure that it is factored into planning, work processes, and other activities.<sup>35</sup> Although DOD has policy requiring the collection and distribution of lessons learned to the maximum extent possible, we found in our previous work that no procedures were in place to ensure that lessons learned are collected and shared.

Moreover, although the Army regulation which establishes policies, responsibilities, and procedures for the implementation of the LOGCAP program makes customers that receive services under the LOGCAP contract responsible for collecting lessons learned, we have repeatedly found that DOD is not systematically collecting and sharing lessons learned on the use of contractors to support to deployed forces. Despite years of experience using contractors to support forces deployed to the Balkans, Southwest Asia, Iraq, and Afghanistan, DOD has made few efforts

<sup>35</sup>GAO, *Information Technology: DOD Needs to Leverage Lessons Learned from Its Outsourcing Projects*, GAO-03-371 (Washington, D.C.: Apr. 25, 2003); and *Military Training: Potential to Use Lessons Learned to Avoid Past Mistakes Is Largely Untapped*, GAO/NSIAD-95-152 (Washington, D.C.: Aug. 9, 1995).

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to leverage this institutional knowledge. As a result, many of the problems we identified in earlier operations have recurred in current operations.

During the course of our 2006 work, we found no organization within DOD or its components responsible for developing procedures to capture lessons learned on the use of contractor support at deployed locations.<sup>36</sup> We noted that when lessons learned are not collected and shared, DOD and its components run the risk of repeating past mistakes and being unable to build on the efficiencies and effectiveness others have developed during past operations that involved contractor support. We also found a failure to share best practices and lessons learned between units as one redeploys and the other deploys to replace it. As a result, new units essentially start at ground zero, having to resolve a number of difficulties until they understand contractor roles and responsibilities.

**DOD Does Not  
Comprehensively Train Military  
Commanders and Contract  
Oversight Personnel**

DOD does not routinely incorporate information about contractor support for deployed forces in its pre-deployment training of military personnel, despite the long-standing recognition of the need to provide such information. We have discussed the need for better pre-deployment training of military commanders and contract oversight personnel since the mid-1990s and have made several recommendations aimed at improving such training. Moreover, according to DOD policy, personnel should receive timely and effective training to ensure they have the knowledge and other tools necessary to accomplish their missions. Nevertheless, we continue to find little evidence that improvements have been made in terms of how DOD and its components train military commanders and contract oversight personnel on the use of contractors to support deployed forces prior to their deployment. Without properly trained personnel, DOD will continue to face risks of fraud, waste, and abuse.

Limited or no pre-deployment training on the use of contractor support can cause a variety of problems for military commanders in a deployed location. As we reported in 2006, with limited or no pre-deployment training on the extent of contractor support to deployed forces, military commanders may not be able to adequately plan for the use of those contractors.<sup>37</sup> Similarly, in its 2007 report, the Commission on Army Acquisition and Program Management in Expeditionary Operations

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<sup>36</sup>GAO-07-145.

<sup>37</sup>GAO-07-145.

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concluded that the Army needs to educate and train commanders on the important operational role of contracting. Several military commanders we met with in 2006 said their pre-deployment training did not provide them with sufficient information on the extent of contractor support that they would be relying on in Iraq and were therefore surprised by the substantial number of personnel they had to allocate to provide on-base escorts, convoy security, and other force protection support to contractors. In addition, limited or no pre-deployment training for military commanders can result in confusion over their roles and responsibilities in managing and overseeing contractors. For example, we found some instances where a lack of training raised concerns over the potential for military commanders to direct contractors to perform work outside the scope of the contract, something commanders lack the authority to do. This can cause the government to incur additional charges because modifications would need to be made to the contract.

We also found that contract oversight personnel such as contracting officer's representatives received little or no pre-deployment training on their roles and responsibilities in monitoring contractor performance. Many of the contracting officer's representatives we spoke with in 2003 and 2006 said that training before they assumed these positions would have better prepared them to effectively oversee contractor performance. In most cases, deploying individuals were not informed that they would be performing contracting officer's representative duties until after they had deployed, which hindered the ability of those individuals to effectively manage and oversee contractors. For example, officials from a corps support group in Iraq told us that until they were able to get a properly trained contracting officer's representative in place, they experienced numerous problems regarding the quality of food service provided by LOGCAP. In addition, the 2007 report of the Commission on Army Acquisition and Program Management in Expeditionary Operations discussed the need to train contracting officer's representatives and warned that the lack of training could lead to fraud, waste, and abuse.

DOD has taken some steps to address this problem. In DOD's response to our 2006 report, the Director of Defense Procurement and Acquisition Policy stated that the Army is making changes to its logistics training programs that would incorporate contracting officer's representatives training into its basic and advanced training for its ordnance, transportation, and quartermaster corps.<sup>88</sup> In addition, the Defense

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<sup>88</sup>GAO-07-145.

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Acquisition University has updated its contingency contracting course to include a lesson on contractors accompanying the force. Further, the Defense Contract Management Agency is adding personnel to assist in the training and managing of contracting officer's representatives.

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**Increased Reliance on Contractors for Weapon System Support Raises Questions about Core Functions and Cost Effectiveness**

DOD has moved over the years toward greater use of the private sector to perform maintenance and other logistics support for weapon systems. Factors influencing this increased reliance on contractors include changes in DOD's guidance and plans that emphasized the privatization of logistics functions, a lack of technical data and modernized facilities needed to perform maintenance on new systems, and reductions in maintenance workers at government-owned depots. The move toward greater reliance on contractors has raised questions regarding how much depot maintenance and other logistics work needs to be performed in-house and about the cost-effectiveness of outsourcing DOD logistics.

**DOD Has Increasingly Relied on Contractors for Maintenance and Other Logistic Support of Weapon Systems**

DOD has increasingly relied on contractors for maintenance and other logistic support of weapon systems. For example, funding for private sector contractors to perform depot maintenance<sup>30</sup> increased in then-year dollars from about \$4.0 billion in fiscal year 1987 to about \$13.8 billion in fiscal year 2007, or 246 percent. In contrast, during this same time period, the amount of funding for depot maintenance performed at government (public) depots increased from about \$8.7 billion to about \$16.1 billion, or 85 percent. This trend toward greater reliance on the private sector for depot maintenance was most evident during the period from fiscal years 1987 to 2000, when the amount of funding for public depot maintenance largely stayed flat and private sector funding increased by 89 percent. Since 2001, military operations in support of the Global War on Terrorism have resulted in large funding increases for maintenance performed by both public and private sector activities.

One potential future limitation to continued contracting out of depot maintenance activities is the statutory limit on the amount of funding for depot maintenance work that can be performed by private sector contractors. Under 10 U.S.C. 2466(a), not more than 50 percent of funds made available in a fiscal year to a military department or defense agency

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<sup>30</sup>Depot maintenance is the highest level of maintenance within DOD and generally refers to major maintenance and repairs, such as overhauling, upgrading, or rebuilding parts, assemblies, or subassemblies. Depot maintenance has long been provided by a mix of government-owned depots and private contractors.

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for depot-level maintenance and repair may be used to contract for the performance by non-government personnel of such workload for the military departments and defense agencies. As the contractors' share has increased over time, managing within this limitation has become more challenging—particularly for the Air Force and, to a lesser extent, the Army. Another potential limitation to contracting out is a requirement that DOD maintain a core logistics capability within government facilities.<sup>40</sup> However, as I will discuss, our work has revealed problems in DOD's implementation of this requirement.

DOD also has experienced significant growth in the overall use of contractors for long-term logistics support of weapon systems.<sup>41</sup> While the department does not collect and aggregate cost data specifically on these support arrangements, available data illustrate this growth. For example, Air Force data show an increase in funding for these support arrangements from \$910 million in fiscal year 1996 to a projected \$4.1 billion in fiscal year 2013. Many DOD acquisition program offices have been adopting long-term support strategies for sustaining new and modified systems that rely on contractors. Our ongoing review of core logistics capability indicates that performance-based logistics or some other type of partnership is a frequently used weapon system sustainment approach.

**Multiple Factors Have Influenced DOD's Increased Reliance on Contracting**

The move toward increased use of contractors to perform maintenance and other logistics support for weapon systems has been influenced by multiple factors. A significant factor has been the shift in DOD's guidance and plans that placed greater emphasis on privatizing logistics functions. In 1996, for example, DOD issued a report, *Plan for Increasing Depot Maintenance Privatization and Outsourcing*, which provided a framework for substantially increasing reliance on the private sector for depot maintenance. In addition, both the 1995 report by the Commission

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<sup>40</sup>Section 2464 of Title 10 of the U.S. Code provides that it is essential for the national defense that DOD maintain a core logistics capability that is government-owned and government-operated to ensure the existence of a ready and controlled source of technical competence and resources necessary to ensure a timely and effective military response to mobilizations, national defense emergencies, and contingencies.

<sup>41</sup>Contractor logistics support arrangements may involve the contractor performing maintenance, assuming responsibility for life-cycle management of the system, and performing sustainment activities, including parts management. These arrangements may take various forms, including performance-based logistics.



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on Roles and Missions<sup>42</sup> and a 1996 report by a Defense Science Board<sup>43</sup> task force recommended that DOD outsource almost all depot maintenance and other logistics activities. Both study teams assumed large cost savings would result from increased privatization. Today, DOD guidance provides that performance-based logistics is now DOD's preferred approach for providing long-term total system support for weapon systems. DOD describes performance-based logistics as the process of (1) identifying a level of performance required by the warfighter and (2) negotiating a performance-based arrangement to provide long-term total system support for a weapon system at a fixed level of annual funding.

Another factor in the move toward greater reliance on contractors has been the lack of technical data and other elements of support, such as modernized facilities, required to establish a maintenance capability for new systems. Technical data for weapon systems include drawings, specifications, standards, and other details necessary to ensure the adequacy of item performance, as well as manuals that contain instructions for installation, operation, maintenance, and other actions needed to support weapon systems. As a result of not having acquired technical data rights from the equipment manufacturers, the military services in some instances have had difficulty establishing a maintenance capability at government depots. For example, the Air Force identified a need to develop a core capability to perform maintenance on the C-17 aircraft at government depots, but lacked the requisite technical data rights. Consequently, the Air Force has sought to form partnerships with C-17 subvendors to develop a depot maintenance capability, but these efforts have had mixed results. Based on our ongoing review of DOD core capability, we found that the Air Force continues to have challenges establishing core capability for C-17 commodities because of technical data issues.

A third factor influencing DOD's increasing reliance on contractor support has been reductions in government depot maintenance personnel available

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<sup>42</sup>Commission on Roles and Missions, *Directions for Defense* (May 24, 1995).

<sup>43</sup>Defense Science Board, *Report of the Defense Science Board Task Force on Outsourcing and Privatization* (August 1996). Also see Defense Science Board, *Report on the Defense Science Board 1996 Summer Study on Achieving an Innovative Support Structure for 21st Century Military Superiority: Higher Performance at Lower Costs* (November 1996).

to perform the work. Personnel downsizing has greatly reduced the number of depot maintenance workers and has limited the amount of work that could be performed in the depots. Since 1987 the number of depot-level maintenance personnel was reduced by 56 percent from a high of 163,000 in 1987 to about 72,000 in 2002, after which the depots began to see some personnel increases to support the Global War on Terrorism. In comparison, in the 13 years between 1989 and 2002, DOD's total civilian workforce had a 38 percent reduction. While some downsizing was essential, given reductions in depot maintenance workloads over the same period, mandated reductions in the number of personnel were taken even though the depots may have had funded workload to support an increased number of personnel. For example, in a review of Army depot personnel reductions in 1998, we found that efforts to implement the reductions at the Corpus Christi Army Depot were poorly managed and more direct labor employees were reduced than intended—adversely affecting the depot's productivity. We found that while Army regulations on manpower management provide that staffing levels are to be based on the workloads performed, the Army's reduced staffing plan was developed in response to affordability concerns and a desire to lower the depot's rates and did not support the depot's funded workload requirement.<sup>44</sup>

**Uncertainties Exist About  
Maintaining Core Capability for  
Depot Maintenance and Other  
Logistics Work**

Because DOD has not clearly and comprehensively identified what depot maintenance and other logistics activities the department should be performing itself, it is unclear how much of the work that has been contracted out may be work that should be done in-house by government personnel. Additionally, DOD has not identified core logistics capability requirements for other logistics functions, such as supply chain management and engineering.

With regard to depot maintenance, we previously reported that DOD lacks assurance that core logistics capabilities were being maintained as needed to ensure timely and effective response to national defense emergencies and contingencies, as required by 10 U.S.C. 2464, noting that several factors precluded this assurance.<sup>45</sup> First, DOD's existing policy, which establishes a process for identifying core maintenance capability, was not comprehensive in that it did not provide for a forward look at new weapon

<sup>44</sup>GAO, *Army Industrial Facilities: Workforce Requirements and Related Issues Affecting Depots and Arsenalns*, GAO/NSIAD-99-31 (Washington, D.C.: Nov. 30, 1998).

<sup>45</sup>GAO, *Defense Logistics: Actions Needed to Overcome Capability Gaps in the Public Depot System*, GAO-02-105 (Washington, D.C.: Oct. 12, 2001).

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systems and associated future maintenance capability requirements. Second, the various procedures and practices being used by the services to implement the existing policy were also affecting the establishment of core capability. For example, the Air Force reduced its core requirement as a result of its consideration of maintenance work performed in the private sector, even though core work is supposed to be performed in military facilities and by government personnel. In addition, we have noted that DOD has had other limitations, including a lack of technical data rights and a lack of sufficient investment in facilities, equipment, and human capital to ensure the long-term viability of the military depots.

To improve its process for identifying core maintenance capability requirements, in January 2007 DOD issued an instruction on how to identify required core capabilities for depot maintenance, which generally mirrored previous guidance.<sup>46</sup> Also, in March 2007 DOD issued its depot maintenance strategy, which delineated the actions DOD is undertaking to identify and sustain core maintenance capability. We have an ongoing engagement to assess the effectiveness of the current policy and procedures as well as the services' implementation.

To address issues inhibiting the establishment of core capability, Congress has taken recent actions to address problems with technical data and depot facilities. We previously recommended that DOD improve its acquisition policies for assessing technical data needs to support weapon systems.<sup>47</sup> The John Warner National Defense Authorization Act for Fiscal Year 2007 (2007 Defense Authorization Act) mandated that DOD require program managers for major weapon systems to assess long-term technical data needs for weapon systems and to establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems over their life cycle.<sup>48</sup> DOD subsequently issued a

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<sup>46</sup>DOD Instruction 4151.20 (Jan. 5, 2007) states that pursuant to DOD policy, DOD components must apply the core capability requirements determination process to identify required core capabilities and the workloads necessary to sustain effectively the core capabilities.

<sup>47</sup>GAO, *Weapons Acquisition: DOD Should Strengthen Policies for Assessing Technical Data Needs to Support Weapon Systems*, GAO-06-839 (Washington, D.C.: July 14, 2006).

<sup>48</sup>Pub. L. No. 109-364, § 802 (2006).

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new policy in July 2007 to implement this requirement.<sup>49</sup> Potential benefits from this action are long term because of the time frames required for developing and acquiring weapon systems, and it is uncertain what actions may have been taken by program offices as a result of this policy change or the extent in which any actions taken could improve the availability of required data in the future. To address inadequacies in the military's investments in its maintenance depots, the 2007 Defense Authorization Act required military departments to invest each fiscal year in the capital budgets of certain depots a total amount equal to at least 6 percent of the average total combined workload funded at all of the depots over the preceding 3 fiscal years.<sup>50</sup> As a part of an ongoing engagement, we are reviewing the military departments' implementation of this mandate.

We have also reported that DOD has not established policies or processes for determining core requirements for non-maintenance logistics capabilities for activities such as supply support, engineering, and transportation.<sup>51</sup> Without identifying those core logistics activities that need to be retained in-house, the services may not be retaining critical capabilities as they proceed with contracting initiatives. For example, if DOD implements performance-based logistics—its preferred weapon system support arrangement—at the platform level, this can result in contracting out the program integration function, a core process which the private sector firms we interviewed during a 2004 review considered integral to their successful business operations. Another potential adverse effect of awarding a performance-based contract at the platform level is the loss of management control and expertise over the system that private sector companies told us were essential to retain in-house. In an earlier engagement, Army, Navy, and Air Force operational command officials told us that among their concerns with various types of long-term contractor logistics support arrangements were (1) retaining the ability to maintain and develop critical technical skills and knowledge, (2) limiting operational authority, and (3) reducing the program office's ability to

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<sup>49</sup>A July 19, 2007 memorandum from the Under Secretary of Defense (Acquisition, Technology, and Logistics) for the service acquisition executives required that program managers assess the long-term technical data needs of their systems and reflect that assessment in a data management strategy which must be integrated with other life-cycle sustainment planning, assess certain data requirements, and address the merits of a priced contract option for the future delivery of technical data.

<sup>50</sup>Pub. L. No. 109-364, § 332 (2006).

<sup>51</sup>GAO-02-105.

Uncertainties Exist About  
Projected Cost Effectiveness of  
Outsourcing Initiatives for DOD  
Logistics

perform essential management functions. Thus, without well-defined policy and procedures for identifying core requirements for critical logistics areas, the department may not be in a position to ensure that it will have the needed capabilities for the logistics system to support essential military weapons and equipment in an emergency.

Although DOD justified its logistics outsourcing initiatives based on the assumption that there would be significant cost savings, it is uncertain to what extent cost savings have occurred or will occur. Overall funding for depot maintenance costs and other logistics support costs are increasing significantly, both for work that is performed in military depots and by contractors. However, sufficient data are not available to determine whether increased contracting has caused DOD's costs to be higher than they would have been had the contracted activities been performed by DOD civilians. As noted earlier, assumptions about savings were a key part of DOD's shift in policy toward the performance of defense logistics by the private sector.

While the 1995 Commission on Roles and Missions projected savings of 20 percent from outsourcing, we questioned this group's savings assumptions, noting that its data did not support its depot privatization savings assumptions.<sup>22</sup> These assumptions were based on reported savings from public-private competitions for commercial activities under Office of Management and Budget Circular A-76. The commercial activities were generally dissimilar to depot maintenance activities because they involved relatively simple, routine, and repetitive tasks that did not generally require large capital investments or highly skilled and trained personnel. Public activities were allowed to compete for these workloads and won about half the competitions. Additionally, many private sector firms generally made offers for this work due to the highly competitive nature of the private sector market, and estimated savings were generally greater in situations where there were larger numbers of private sector offerors. In contrast, most depot maintenance work is awarded without competition to the original equipment manufacturer. We noted that in the absence of a highly competitive market, privatizing unique, highly diverse, and complex depot maintenance workloads that require large capital investments, extensive technical data, and highly skilled and trained personnel would not likely achieve expected savings and could increase the costs of depot

<sup>22</sup>GAO, *Defense Depot Maintenance: Commission on Roles and Mission's Privatization Assumptions Are Questionable*, NSIAD-96-161 (Washington, D.C.: July 15, 1996).

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maintenance operations. We also questioned the Defense Science Board's projections of \$30 billion in annual savings from privatizing almost all logistics support activities.

We have also reported that whereas DOD expected to achieve large savings from its contracting out of more of its depot-level maintenance work, depot maintenance contracting represented a challenge to relying on commercial market forces. Whereas DOD was attempting to rely on competitive market forces, about 91 percent of the depot maintenance contracts we reviewed were awarded noncompetitively. We also noted that difficulties in precisely defining requirements also affected DOD's efforts to rely on competitive market forces. Further, we cautioned that DOD would need to increase the use of competitively awarded depot maintenance contracts and to address how best to assure product quality and reasonable prices when competitive market forces were not present.

We have also raised questions about cost savings from DOD's increased use of performance-based logistics. Although DOD guidance recommends that program offices perform a business case analysis before adopting a performance based logistics approach to support weapon system, our reviews of the implementation of this approach show these analyses are not often done and DOD program offices could not demonstrate that they had achieved cost savings.<sup>83</sup> Of the 15 programs we reviewed, 11 program offices had developed a business case analysis—prior to entering into a performance-based logistics arrangement—which projected achieving significant cost savings. Only one of these programs offices had updated its business case analysis with actual cost data as recommended by DOD guidance. The one program office that did update its business case analysis determined that the contract did not result in the expected cost savings and subsequently restructured the program. Program office officials acknowledged limitations in their own information systems in providing reliable data to closely monitor contractor costs. While existing systems are capable of collecting some cost information, they are not capturing sufficiently detailed cost information for monitoring the performance-based logistics contracts.

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<sup>83</sup>GAO, *Defense Management: DOD Needs to Demonstrate That Performance-Based Logistics Contracts Are Achieving Expected Benefits*, GAO-05-966 (Washington, D.C.: Sept. 9, 2005).

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Our 2005 report on DOD's implementation of performance-based logistics included a recommendation on the validation of business case decisions to demonstrate whether they are resulting in reduced costs and increased performance. Also, given the stated limitations in cost information, we recommended that program offices be required to improve their monitoring of performance-based logistics arrangements by verifying the reliability of contractor cost and performance data. Although DOD concurred with our recommendations, we are currently evaluating the corrective actions taken. In addition, DOD currently does not require detailed reporting of contractor logistics support costs, including for performance based arrangements.

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## Concluding Observations

In closing, I believe that we must engage in a fundamental reexamination of when and under what circumstances we should use contractors versus civil servants or military personnel. This is a major and growing concern that needs immediate attention. In general, I believe there is a need to focus greater attention on what type of functions and activities should be contracted out and which ones should not. Inherently governmental functions are required to be performed by government personnel, not private contractors. Government officials, in making decisions about whether to use contractors for services closely supporting inherently governmental functions, should assess risk and consider the need for enhanced management and oversight controls. Once the decision to contract has been made, we must address challenges we have observed in ensuring proper oversight of these arrangements—especially considering the evolving and enlarging role of contractors in federal acquisitions. These concerns, identified in our work at several federal agencies including DOD, are more complex to address and may take on greater significance in contingency or military operations. As we have witnessed with contractors in Iraq, a specific decision made by a contractor can impact U.S. strategic and operational objectives in ways that were not considered in making the initial contracting decision.

To address these concerns with regard to contractor support to deployed forces, we believe that in the immediate future, DOD's leadership needs to ensure implementation of and compliance with relevant existing guidance. In the longer term, we believe a broader examination of the use and role of contractors to support deployed forces is in order. As I stated in April 2007, it may be appropriate to ask if DOD has become too reliant on

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contractors to provide essential services.<sup>54</sup> What is needed is a comprehensive, forward-looking, and integrated review of contractor support to deployed forces that provides the proper balance between contractor support and the core capabilities of military forces over the next several years. In a November 2007 briefing on DOD transformation, I called on DOD to employ a total force management approach to planning and execution (e.g. military, civilian, and contractors).<sup>55</sup> Many of the problems we have identified regarding the management and oversight of contractor support to deployed forces stem from DOD's reluctance to plan for contractors as an integral part of the total force. One way DOD could begin to address this issue is by incorporating the use and role of contractors into its readiness reporting. DOD regularly reports on the readiness status, capabilities assessments, and other reviews of the status and capabilities of its forces. Given the reality that DOD is dependent on contractors for much of its support in deployed locations, the department should include information on the specific missions contractors will be asked to perform, the operational impacts associated with the use of contractors, and the personnel necessary to effectively oversee and manage those contractors.

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Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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<sup>54</sup>GAO-07-525T.

<sup>55</sup>GAO, *Defense Transformation: Challenges and Opportunities*, GAO-08-323CG (Washington, D.C.: Nov. 29, 2007).



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Acknowledgments**

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## Appendix I: Systemic Acquisition Challenges at the Department of Defense

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1. Service budgets are allocated largely according to top line historical percentages rather than Defense-wide strategic assessments and current and likely resource limitations.
2. Capabilities and requirements are based primarily on individual service wants versus collective Defense needs (i.e., based on current and expected future threats) that are both affordable and sustainable over time.
3. Defense consistently overpromises and underdelivers in connection with major weapons, information, and other systems (i.e., capabilities, costs, quantities, and schedule).
4. Defense often employs a "plug and pray approach" when costs escalate (i.e., divide total funding dollars by cost per copy, plug in the number that can be purchased, then pray that Congress will provide more funding to buy more quantities).
5. Congress sometimes forces the department to buy items (e.g., weapon systems) and provide services (e.g., additional health care for non-active beneficiaries, such as active duty members' dependents and military retirees and their dependents) that the department does not want and we cannot afford.
6. DOD tries to develop high-risk technologies after programs start instead of setting up funding, organizations, and processes to conduct high-risk technology development activities in low-cost environments (i.e., technology development is not separated from product development). Program decisions to move into design and production are made without adequate standards or knowledge.
7. Program requirements are often set at unrealistic levels, then changed frequently as recognition sets in that they cannot be achieved. As a result, too much time passes, threats may change, or members of the user and acquisition communities may simply change their mind. The resulting program instability causes cost escalation, schedule delays, smaller quantities and reduced contractor accountability.
8. Contracts, especially service contracts, often do not have definitive or realistic requirements at the outset in order to control costs and facilitate accountability.
9. Contracts typically do not accurately reflect the complexity of projects or appropriately allocate risk between the contractors and the taxpayers (e.g., cost plus, cancellation charges).

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10. Key program staff rotate too frequently, thus promoting myopia and reducing accountability (i.e., tours based on time versus key milestones). Additionally, the revolving door between industry and the department presents potential conflicts of interest.
  11. The acquisition workforce faces serious challenges (e.g., size, skills, knowledge, and succession planning).
  12. Incentive and award fees are often paid based on contractor attitudes and efforts versus positive results (i.e., cost, quality, and schedule).
  13. Inadequate oversight is being conducted by both the department and Congress, which results in little to no accountability for recurring and systemic problems.
  14. Some individual program and funding decisions made within the department and by Congress serve to undercut sound policies.
  15. Lack of a professional, term-based Chief Management Officer at the department serves to slow progress on defense transformation and reduce the chance of success in the acquisitions/contracting and other key business areas.

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## Related GAO Products

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Acquisition Management	<p><i>Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees.</i> GAO-08-169. Washington, D.C.: March 7, 2008.</p> <p><i>Intelligence Reform: GAO Can Assist the Congress and the Intelligence Community on Management Reform Initiatives.</i> GAO-08-413T. Washington, D.C.: February 29, 2008.</p> <p><i>Federal Acquisition: Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendations.</i> GAO-08-160. December 20, 2007.</p> <p><i>Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services.</i> GAO-07-990. Washington, D.C.: September 17, 2007.</p> <p><i>Federal Acquisitions and Contracting: Systemic Challenges Need Attention.</i> GAO-07-1098T. Washington, D.C.: July 17, 2007.</p> <p><i>Defense Acquisitions: Role of Lead Systems Integrator on Future Combat Systems Program Poses Oversight Challenges.</i> GAO-07-380. Washington, D.C.: June 6, 2007.</p> <p><i>Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century.</i> GAO-07-45SP. Washington, D.C.: Oct. 6, 2006.</p> <p><i>Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse.</i> GAO-06-838R. Washington, D.C.: July 7, 2006.</p> <p><i>Agency Management of Contractors Responding to Hurricane Katrina and Rita.</i> GAO-06-461R. Washington, D.C.: March 16, 2006.</p> <p><i>Defense Ethics Program: Opportunities Exist to Strengthen Safeguards for Procurement Integrity.</i> GAO-05-341. Washington, D.C.: April 29, 2005.</p> <p><i>Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations.</i> GAO-05-201. Washington, D.C.: April 25, 2005.</p> <p><i>Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges.</i> GAO-04-605. Washington, D.C.: June 1, 2004.</p>
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*Energy Management: Using DOE Employees Can Reduce Costs for Some Support Services.* GAO/RCED 91-186. Washington, D.C.: August 16, 1991.

*Civil Servants and Contractor Employees: Who Should Do What for the Federal Government?* FPCD-81-43. Washington, D.C.: June 19, 1981.

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**Reliance on Contractors to Support Deployed Forces**

*Military Operations: Implementation of Existing Guidance and Other Actions Needed to Improve DOD's Oversight and Management of Contractors in Future Operations.* GAO-08-436T. Washington, D.C.: January 24, 2008.

*Defense Logistics: The Army Needs to Implement an Effective Management and Oversight Plan for the Equipment Maintenance Contract in Kuwait.* GAO-08-316R. Washington, D.C.: January 23, 2008.

*Defense Acquisitions: Improved Management and Oversight Needed to Better Control DOD's Acquisition of Services.* GAO-07-832T. Washington, D.C.: May 10, 2007.

*Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces.* GAO-07-145. Washington, D.C.: December 18, 2006.

*Rebuilding Iraq: Continued Progress Requires Overcoming Contract Management Challenges.* GAO-06-1130T. Washington, D.C.: September 28, 2006.

*Military Operations: Background Screenings of Contractor Employees Supporting Deployed Forces May Lack Critical Information, but U.S. Forces Take Steps to Mitigate the Risks Contractors May Pose.* GAO-06-999R. Washington, D.C.: September 22, 2006.

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*Rebuilding Iraq: Actions Still Needed to Improve the Use of Private Security Providers.* GAO-06-865T. Washington, D.C.: June 13, 2006.

*Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers.* GAO-05-737. Washington, D.C.: July 28, 2005.

*Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations.* GAO-05-201. Washington, D.C.: April 29, 2005.

*Defense Logistics: High-Level DOD Coordination Is Needed to Further Improve the Management of the Army's LOGCAP Contract.* GAO-05-328. Washington, D.C.: March 21, 2005.

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

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**Reliance on Contractors  
for Weapon System  
Logistic Support**

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**WITNESS RESPONSES TO QUESTIONS ASKED DURING  
THE HEARING**

MARCH 11, 2008

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## RESPONSES TO QUESTIONS SUBMITTED BY MR. FORBES

Secretary BELL. DOD is developing a comprehensive plan for repositioning its personnel and material from Iraq, as well as contractor personnel. Over the coming months, planners will analyze the allocation of resources available to execute the logistics repositioning processes, identify potential shortfalls, and address synchronization issues between various operational and strategic entities. The role of contractors and their equipment in this planning process is to support both the repositioning of military forces and to be supported by security forces as needed during the repositioning activities. [See page 15.]

Mr. WALKER. During the hearing, Representative Forbes asked Mr. Bell how the Department would deal with the 196,000 contractors in Iraq in the event of an immediate withdrawal of U.S. military forces from Iraq. Mr. Bell stated that he believed that the Department had specific plans related to the withdrawal of contractor personnel from Iraq, but agreed to provide additional information on this issue for the record. On its own initiative, at the request of the Chairmen of the House and Senate Armed Services Committees, GAO is looking at many issues related to the drawdown of military forces from Iraq including the planning for drawing down contractors. Our work is well under way and we plan to issue a report in the upcoming months. [See page 16.]

Mr. WALKER. Prior GAO work reported that for the period from 1980–1994 the civilian workforce in DOD's acquisition organization had declined without a commensurate decline in civilian payroll costs. Additionally, even with the declines in the civilian workforce, the number of acquisition organizations remained relatively constant, and the occupational fields were not unique to an acquisition organization's mission. As a result, GAO reported that there might be opportunities to improve efficiencies in some areas. Subsequent legislation further reduced the size of DOD's acquisition workforce. More recently, we have identified challenges related to creating a capable acquisition workforce and holding it accountable, noting that the acquisition workforce's workload and complexity of responsibilities have been increasing without adequate attention to the workforce's size, skills, and knowledge, and succession planning. At the same time that the federal acquisition workforce has decreased in numbers and the size of its investments in goods and services has increased significantly, the nature of the role of the acquisition workforce has been changing and, as a result, so have the skills and knowledge needed to manage complex contracting approaches. One way agencies have dealt with these circumstances is to rely more heavily on contractor support. We have noted that DOD's acquisition workforce must have the right skills and capabilities if it is to effectively implement best practices and properly manage its acquisitions. In DOD's contracting environment, the acquisition workforce must be able to rapidly adapt to increasing workloads while continuing to improve its knowledge of market conditions, industry trends, and the technical details of the goods and services it procures. GAO has ongoing work reviewing the DOD acquisition workforce and plans to report on related issues in March, 2009. [See page 16.]



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**QUESTIONS SUBMITTED BY MEMBERS POST HEARING**

MARCH 11, 2008

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## QUESTIONS SUBMITTED BY MR. ORTIZ

Mr. ORTIZ. Have you been able to determine if the Department of Defense has saved money by the extensive use of contractors? For example, if it costs \$1 billion to build an active-duty brigade, and the Army would need three brigades of military police to replace the contractor-provided personal protective security now used in Iraq and Afghanistan, couldn't we afford more MPs instead of using contractors?

Secretary BELL and Mr. ASSAD. The Congressional Budget Office (CBO) conducted a study, Logistics Support for Deployed Forces, in 2005 on the relative cost of contractors versus military personnel, from both short-term and long-term perspectives. Its conclusion was that when all relevant costs are considered, in the short-term, costs are comparable, but in the long-term the use of military personnel is about 90% more expensive. According to CBO's estimates, obtaining logistics support from a Logistics Civil Augmentation Program (LOGCAP) contractor would cost about \$41 billion (in 2005 dollars) over the 20-year period assumed for this study. Obtaining the same services using Army units would cost about \$78 billion. Also, using the analytical framework of this same 2005 CBO study, it would take nine new brigades to match the current number of private security contractors (PSCs) in use. This would represent a significant challenge for DOD to resource such a requirement.

According to the first quarter fiscal year 2008 U.S. Central Command census, there were approximately 6,467 armed DOD private security contractors in Iraq, of which only 429 were U.S. citizens. In Afghanistan there were approximately 2,745 armed PSCs, of which only 16 were U.S. citizens. All DOD PSCs in Iraq and Afghanistan are operating under restrictive and defensive rules on the use of force (RUF) and not the more expansive and offense related rules of engagement (ROE).

Mr. ORTIZ. Please provide examples of functions that you would consider inherently governmental that today are being performed by contract employees.

Secretary BELL and Mr. ASSAD. The Federal Acquisition Regulation sets forth at Subpart 7.503(d) the functions generally not considered to be inherently governmental functions. That subpart cautions, however, that certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. I can only address this from a contracting/procurement perspective. As I have stated, while not pervasive within the Department, there are occasions when contractor personnel are performing contracting support roles that are closely associated with inherently governmental functions in the pre-award phases of Government procurement and acquisition.

I believe that when the Department performs the inventory of services required by section 2330a of title 10 of the United States Code, as amended by section 807 of the National Defense Authorization Act for Fiscal Year 2008, we will be in a better position to determine what services that are inherently governmental, or approach being inherently governmental, are currently being performed by contractors.

Mr. ORTIZ. Please give us a picture of the decision-making environment in which the Department makes choices for the use of contractor services. What criteria are used? What is the proper balance of military, civilian and contractor, and how does the Department achieve that balance? What trade-offs are involved in the decision?

Secretary BELL. Through an extensive planning process, the Department of Defense builds a force structure appropriate to support the National Security Strategy. The department begins with the guidelines established in DOD Instruction 1100.22, *Guidance for Determining Workforce Mix*, when making choices for determining the proper balance of military, civilian and contractor personnel. DODI 1100.22 provides criteria and guidance for risk assessments to be used when identifying and justifying activities that are inherently governmental, commercial but exempt from private sector performance, and commercial and subject to private sector performance. Criteria used to make the determination include: mission, risk, force availability, required flexibility, and cost.

The DOD has put in place Joint Contract Support Planners in the Combatant Commands (COCOMs) to assist in ensuring that contingency plans include specific information on the use and roles of contractor support. Additionally, the department

has developed and exercised a concept for an organization to ensure planning for the use of contractors in future contingencies is consistent throughout the COCOMs. The effect of these initiatives will be to gain visibility of contractor requirements and synchronize them across COCOMs and enable the department to have a clearer picture of our total force mix.

Consistent with applicable laws and regulations defining inherently governmental functions, the DOD identifies opportunities where competitive sourcing of contractor support allows DOD to concentrate its manpower on distinctly military activities. The department recognizes the extent to which our use of contractors has grown. By increasing its reliance on contractor support during contingency operations, the department increases its reliance on the ability of the private sector to provide essential support and services at critical times. We must also grow the contract administration and oversight structure commensurate with the increased use of contractors. The department gains the cost savings of not having to support a large standing military. We continually conduct risk assessments and adjust the balance of the force structure to ensure mission readiness.

Mr. ORTIZ. What do you see are some of the unintended consequences that have resulted from previously enacted legislation aimed at streamlining or reforming the acquisition workforce? How are statutes preventing you from achieving your goals for robust contract management and oversight?

Secretary BELL. After the end of the Cold War, DOD reduced the size of the DOD workforce, including the acquisition workforce. Downsizing of the acquisition workforce occurred as the entire DOD downsized. There are, however, no statutes currently preventing us from achieving our goals for robust contract management and oversight.

Mr. ORTIZ. What essential (or core) capabilities has the Department of Defense lost because it has contracted out these functions? How expensive would it be to recover these capabilities? What level of risk has the Department created by losing these capabilities?

Secretary BELL. A core military capability can be defined as a desired capability to keep "in house" to meet our national security needs. These capabilities are not contracted out, but also are not necessarily inherently governmental. Examples of non-inherently governmental functions that we contract for, but also retain as part of our core military capability are: medical, legal, transportation, ammunition, food services, maintenance, communication, intelligence analysis, and security.

Consistent with applicable laws and regulations defining inherently governmental functions, the structure of our military forces was adapted. The DOD identified opportunities where competitive sourcing of contractor support would allow DOD to concentrate its manpower to distinctly military activities in support of our National Security Strategy. The Department of Defense has retained the core capabilities it considers essential in order to successfully meet the mission as outlined in the National Military Strategy and to remain within the constraints of the DOD's authorized Force structure. The numbers of personnel trained and available in many of these core functions was reduced over time due to authorized force structure limitations. As the authorized force structure shrinks, we rely on contractors to provide a portion of what previously was considered a core capability.

The department continually conducts risk assessments and adjusts the balance of the force structure to ensure mission readiness. By properly planning for and synchronizing our plans for the use of contracted services and support during contingency operations, we believe we are mitigating any risk associated with our reliance on them.

Mr. ORTIZ. Because of the growing use and dependence on contractors in military operations, is it necessary to begin thinking about developing within the service's readiness reporting systems the extent contractors are required to meet mission requirements? If not, how would you know if you can or cannot meet mission requirements with or without contractors?

Secretary BELL. The Department of Defense does not believe that a readiness reporting system for contractors is necessary. Requirements for contractor performance, including readiness, flexibility and deployability, are detailed in the terms of a contract and agreed to by the contracted company. Contractors currently make up over 50% of the DOD effort in the Central Command Area of Responsibility and have consistently met or exceeded stated mission requirements.

The department recognizes the extent to which our dependence on contractors has grown. Because of that, the DOD has placed Joint Contract Support Planners in each of the Combatant Commands to assist the Combatant Commander with the integration of the required contractor support into the plans. The ultimate goal is to ensure that the majority of contract support requirements for any given operation are orchestrated, synchronized and integrated prior to a deployment. This is the

first step in ensuring that we will receive the support we need from our contractor partners.

Additionally, the planners are facilitating the incorporation of contractor and contract support-related scenarios into joint exercises and mission rehearsal exercises. Wherever it makes sense and is possible, contractors are being invited to participate in such exercises. These exercises can help to evaluate contractor readiness prior to an actual deployment.

The department also is establishing a Joint Contingency Acquisition Support Command to synchronize requirements with subordinate commands, the Military Departments, defense agencies, other U.S. Government Agencies, and coalition partners.

By properly planning for and synchronizing our plans for the use of contracted services and support during contingency operations, we are mitigating the risk associated with our reliance on them.

Mr. ORTIZ. Have the Army and Marine Corps assessed the scope and nature of any needed contractor support as they develop plans to grow the force? If so, what are they? If not, why hasn't this assessment been done?

Secretary BELL. *Marine Corps Answer:* Yes, as part of the initial plan to grow the Marine Corps to 202,000 Marines in the Active Component, each Marine Corps Base and Station did their own independent analyses to determine the quantities of civilians and contractors they required in support of the additional Marines. Those contractors and civilians are presently being hired at the individual bases and stations, and tables of organization were updated as necessary.

*Army Answer:* To support the Grow the Army (GTA) initiative, which increases the Army end strength across the Active, Guard, and Reserve components by 74,200 Soldiers, additional service contract support may be necessary. Army Commands have estimated that additional contractor manpower equivalents (CMEs) may be needed. The requirements for both contractors and civilians will be further analyzed and refined in the Total Army Analysis process.

The proper source for all requirements also must be analyzed in light of the National Defense Authorization Act for Fiscal Year 2008, section 324, "Guidelines on Insourcing New and Contracted Out Functions," which requires that consideration be given to using DOD civilian employees to perform new functions and functions that are performed by DOD contractors and could be performed by DOD civilian employees.

Mr. ORTIZ. Please provide your views on the privatization and enhanced use lease efforts of the Department and the military services. For utility privatization, in retrospect should this program been initially authorized? In privatizing lodging and pushing enhanced used leases, the Department is competing for services that the local community could otherwise provide. Why was this decision made?

Secretary BELL. Utilities privatization is an important tool for managing the Department's \$72 billion utility infrastructure, as it allows the Department to leverage private sector expertise and financial resources to improve and sustain utility systems supporting military operations. As of December 2007, the Department had privatized 150 utility systems under the current Utilities Privatization Authority. The current schedule projects utilities privatization program completion by 2015.

Lodging privatization is authorized under the Military Housing Privatization Initiative (MHPI) of the National Defense Authorization Act for FY 1996, codified at 10 U.S.C. §2871, et seq. The Privatization of Army Lodging (PAL) will improve the quality of life of traveling Soldiers and their families by utilizing private sector resources to update and replace on-post transient housing (lodging). PAL will provide Service Members with secure, affordable on-post lodging while allowing the Army to exit a non-core function by transferring this function to the private sector and enable senior leadership and commanders to focus on war-fighting missions.

The Army has worked with its contractor, Actus Lend Lease, to finalize a Lodging Development Management Plan (LDMP) for the Privatization of Army Lodging, Group A, which includes 13 installations. Actus has partnered with Intercontinental Hotel Group (IHG) for property management. Army notified Congress of its intent to execute a lease with Actus for privatization of its Group A lodges on May 23, 2008. Army expects to execute a transition agreement with Actus in late June 2008, followed by project closing and transfer in late October 2008. In most locations there will be little or no increase in the on-post lodging inventory as a result of privatization. No negative comments have been received from local communities or businesses. In addition, Actus and IHG have been actively engaged with the communities in an effort to educate them about the program and coordinating for over-flow accommodations in off-post hotels when the privatized on-post rooms are full.

Enhanced use leasing is authorized under Section 2667 of title 10, U.S.C., which allows the Military Departments to out-lease available non-excess land and facilities

to private or public entities in exchange for the lessee paying no less than the fair market value for the property. Leases may be entered into if the Secretary of the Military Department considers it advantageous to the United States, and upon such terms as he considers will promote the national defense or be in the public interest. In addition, the lessee's intended use of the property must be compatible with the installation mission. The lessee may develop or redevelop the leased property to provide goods or services to the market, and local businesses can compete to provide the services included in the leasehold.

Mr. ORTIZ. DOD initially reported that it would complete the utility privatization effort by 2000. After spending \$248 million on the program and privatizing 94 of the 1,499 systems, DOD intends to complete additional evaluation of the remaining projects by 2010. What additional tools does DOD need to support completing a first round of utility privatization evaluations? In retrospect, should this program have been initially authorized? Is DOD confident that the first round of privatization projects will be completed by 2010?

Secretary BELL and Mr. ASSAD. As of December 2007, the Department of Defense (DOD) has privatized a total of 519 utility systems, 150 of which have been under the Utilities Privatization Authority. Utilities Privatization is an important tool for managing the Department's \$72 billion utility infrastructure. DOD is committed to utilizing private sector innovations, efficiencies, and financing, when economical, to improve utility systems supporting military operations, to improve the quality of life, and to sustain aging utility infrastructure and keep pace with future requirements. Various legal and budgetary challenges have led to extending the program beyond 2010. The current schedule projects completion of the program by 2015.

Mr. ORTIZ. DOD is on track to privatize 87% of the family housing units, including 188,000 units by 2010. Considering that 36% of the awarded privatization projects have occupancy rates below expectations, will the private partners be able to continue the long-term investment to continue this program? What are the challenges that need to be corrected? Compared with the larger outlays required in our personnel accounts to support Family Housing Privatization, is the overall Family Housing program saving money or has it just moved money from a discretionary account to a mandatory funding account? Does privatization mask the overall cost afforded to General/Flag Officer quarters?

Secretary BELL and Mr. ASSAD. The Department of Defense (DOD) is currently projecting to privatize over 194,000 units by FY 2010, not 188,000.

I could not identify from what information the 36 percent number was calculated. Of the 87 awarded projects, the average occupancy rate is about 90 percent. While there are some exceptions, due to construction related issues and general market conditions, only the projects owned by American Eagle are in financial jeopardy. Comparing occupancy numbers to pro forma provides insufficient information as to a projects' financial health, particularly while projects are in the initial development period (80 percent of projects). Also, to ease concerns about private partners, DOD recently conducted a financial analysis of the private housing partners and found them all to continue to be financially healthy and solvent. We have every reason to believe that the private partners will be able to continue the long-term investment needed to maintain the financial solvency of this program.

We see no major structural challenges in the Military Housing Privatization Initiative (MHPI) program that need to be corrected by governmental action. While we have recently identified with the Government Accountability Office (GAO), eight MHPI projects (five Air Force, one Army, two Navy) that are behind schedule or have encountered difficulties (construction/renovation schedules not met due to financial problems, or environmental/construction issues), the other 79 awarded military housing privatization projects are significantly further ahead in terms of revitalized housing than where they would be under a government military construction approach. We need to allow the private sector to work through challenges with their projects and not intervene.

Life cycle cost analyses performed on all 87 projects show the cost of privatization (including the projected Basic Allowance for Housing payments) are typically lower than government ownership, usually in the 10–15 percent range. The GAO reviewed DOD's cost analysis methodology exhaustively in 2001 and agreed privatization was less costly over the life of the projects, based on "should costs" for government ownership vice actual budgeted costs.

Privatization does not mask the overall cost afforded to General/Flag Officer quarters (GFOQs). In fact, spending on GFOQs is likely more constrained since such spending directly reduces funds available for housing lower ranking military members.

Mr. ORTIZ. The Army has awarded an initial project to privatize official travel Army lodging. How will priority to service members be assured when there is com-

petition with the private sector? To what extent will the private partners attempt to attract non-DOD members to these lodging facilities? Does the private sector support privatized Army lodging competition in the local market? Morale Welfare Recreation (MWR) activities typically receive support from this program. Will MWR activities suffer as a result of the privatization? What is the long-term termination liability associated with this program?

Secretary BELL and Mr. ASSAD. The Army has worked with its contractor, Actus Lend Lease, to finalize a Lodging Development Management Plan (LDMP) for the Privatization of Army Lodging (PAL), Group A, which includes 13 installations. On May 23, 2008, Army notified Congress of its intent to execute a lease with Actus for privatization of PAL Group A lodges. Actus has partnered with Intercontinental Hotel Group (IHG) for property management. PAL Group A transition agreement execution is scheduled for late June 2008, followed by project closing and transfer in late October 2008.

The property lease will encourage the private partner to maximize occupancy, but per the legislative requirements of section 2878 of title 10 of the United States Code, the lease will include a condition specifying that occupancy preference be given to service members and their dependents. Further, under the lease terms, the displacement of official government travelers in favor of unofficial travelers will result in a forfeiture of a portion of the lessee's management fee.

In most locations, PAL will result in little or no increase in the on-post lodging inventory. In addition, Actus and IHG have actively engaged with local communities in an effort to educate them about the program and to coordinate over-flow accommodations in off-post hotels when the privatized on-post rooms are full. Because of this outreach effort, no negative comments have been brought forth by the private sector or local communities.

Official travel lodging is a component of the military housing program and is not a Morale, Welfare and Recreation (MWR) activity. Funds used to operate official travel lodging are strictly segregated from MWR funds. Therefore, privatization of official travel lodging under the PAL will have no impact on MWR activities.

Unlike a government contract, the Army cannot terminate the private developer for convenience because the legal instrument binding the Army and the PAL entity is a lease. Instead, the Army would condemn the lessee interest in the leasehold estate and the improvements. In addition to the lessee's interest, the Army also would need to consider the mortgagee's interests because the lessee will further encumber its interest with a mortgage. Thus, the long-term liability would be: 1) the value of the leasehold estate and improvements at the time of condemnation; and 2) the cost to terminate the private loan. These values would depend on the loan documents and condition of the project at the time of the default action. It should be noted, however, that a default by the lessee would not automatically terminate the lease for cause. In the event of such, the lenders would step in to replace the lessee.

Mr. ORTIZ. The Department has broad authority to obtain a range of financial and in-kind considerations for leasing opportunities. The inclusion of private investment to support facilities that the community may otherwise provide has led to state and local challenges at installations. In cases where the Services have entered into leases that exceed 50 years, should the real estate be considered as excess by the Services and developed under the structure of the local zoning authority? Why has the Department elected to compete for services that the local community could otherwise provide?

Secretary BELL and Mr. ASSAD. The only real or personal property that may be made available for leasing is that which is considered "non-excess." The determination of whether a parcel should be considered excess or non-excess is based on a variety of considerations, to include whether the property: a) is essential to long-term mission flexibility including operational changes or mobilization for a national security emergency; b) is affected by security or safety restrictions; or c) is required as a controlled buffer zone for local community or private interests. Leases may be entered into if the Secretary of the Military Department considers it advantageous to the United States and upon such terms as he considers will promote the national defense or be in the public interest. In addition, the lessee's intended use of the property must be compatible with the installation mission.

Section 2667 of title 10, United States Code, authorizes the Military Departments to out-lease available non-excess land and facilities to private or public entities in exchange for the lessee paying no less than the fair market value for the property. The lessee may develop or redevelop the leased property to provide goods and/or services to the market. Local businesses can compete to provide the services included in the leasehold.

Mr. ORTIZ. Have you been able to determine if the Department of Defense has saved money by the extensive use of contractors? For example, if it costs \$1 billion to build an active-duty brigade, and the Army would need three brigades of military police to replace the contractor-provided personal protective security now used in Iraq and Afghanistan, couldn't we afford more MPs instead of using contractors?

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According to the first quarter fiscal year 2008 U.S. Central Command census, there were approximately 6,467 armed DOD private security contractors in Iraq, of which only 429 were U.S. citizens. In Afghanistan there were approximately 2,745 armed PSCs, of which only 16 were U.S. citizens. All DOD PSCs in Iraq and Afghanistan are operating under restrictive and defensive rules on the use of force (RUF) and not the more expansive and offense related rules of engagement (ROE).

Mr. ORTIZ. Please provide examples of functions that you would consider inherently governmental that today are being performed by contract employees.

Secretary BELL and Mr. ASSAD. The Federal Acquisition Regulation sets forth at Subpart 7.503(d) the functions generally not considered to be inherently governmental functions. That subpart cautions, however, that certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. I can only address this from a contracting/procurement perspective. As I have stated, while not pervasive within the Department, there are occasions when contractor personnel are performing contracting support roles that are closely associated with inherently governmental functions in the pre-award phases of Government procurement and acquisition.

I believe that when the Department performs the inventory of services required by section 2330a of title 10 of the United States Code, as amended by section 807 of the National Defense Authorization Act for Fiscal Year 2008, we will be in a better position to determine what services that are inherently governmental, or approach being inherently governmental, are currently being performed by contractors.

Mr. ORTIZ. How does DOD determine an appropriate balance between federal and contractor employees in performing missions from an overall management perspective or when awarding individual service contracts?

Mr. ASSAD. It is difficult to strike the right balance. Many factors play in the use of contractors performing mission related functions for the Department. A number of organizations have resorted to utilizing contractors due to: 1) increased workload; 2) lack of billets; 3) lack of experienced personnel; and 4) inability to recruit personnel effectively. The Department's challenge is to ensure that it is not relying on contractor employees to perform either inherently or closely associated with inherently governmental functions when it contracts for services.

It is a major challenge and I can only address this challenge from a contracting/procurement perspective. In most instances, these contractors are providing appropriate administrative support to the contracting workforce. However, as I have stated, while not pervasive within the department, there are occasions when contractor personnel are performing contracting support roles that are closely associated with inherently governmental functions in the pre-award phases of Government procurement and acquisition. Except in those cases where the technical expertise does not reside within the Department, I believe that generally what we do during the pre-award decision making process should not be performed by contractors. I believe that we must find a way to enable these organizations to staff their operations adequately with Government employees so that we can ensure that government employees are making the procurement and contracting decisions. The role of contractors in procurement and contracting activities should be confined to administrative support areas.

I can assure you that I am working to change those instances where I believe contractors are performing functions which could be closely associated with inherently governmental functions and I want to put measures in place designed to ensure that

contractors do not perform inherently governmental procurement and acquisition related functions. As I have testified previously, it is essential that we in the government fully recognize that contracting personnel hold positions of trust and have a fiduciary responsibility to the taxpayer. We should not outsource that responsibility.

Mr. ORTIZ. What are the challenges that DOD faces with program office staffing and expertise, how have those challenges contributed to problems DOD faces with major acquisition outcomes, and how do you plan to address them?

Mr. ASSAD. Program Management Office (PMO) challenges include: changing mission and enterprise needs; funding constraints; and meeting workforce hiring, training and retention goals. We may have reduced the number of organic personnel in the acquisition professional core too much as we downsized the Department. PMO staffing is further aggravated by limited workforce staffing models to project accurate staffing solutions. Future challenges regarding the projected loss of experience and knowledge expected from retirements of "Baby Boomers" also need our attention today.

While we believe these challenges influence the success of our major acquisition outcomes, it is difficult to measure direct correlations because of multiple intervening variables. The myriad of factors that impact program offices' success include: evolving mission needs, varying levels of technology maturity, willingness to accept risk, funding stability, workforce hiring and retention capabilities, as well as organic-contractor Total Force mix.

The Department continues to address these challenges with policy implementation, oversight, and Component-integrated Defense Acquisition Workforce planning. The Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) is addressing these concerns, in part, via a change to department acquisition policy that will require Program Managers to include in their acquisition strategies, a discussion of the organization and staffing of their program offices and to specify the roles of government and non-government personnel. The strategy content, and consequently, staffing, will be reviewed by the Milestone Decision Authority when the program is initiated. To meet adequate staffing, AT&L functional leaders must fully program and account for acquisition workforce requirements in the Future Years Defense Program (FYDP), reflected in the President's Budget.

The USD(AT&L) has issued a strategic objective to ensure a comprehensive workforce data and analysis capability is available and used for all acquisition functional communities. Acquisition Career Field Functional Leaders are integrating the results of competency assessments, follow-on workload analysis, and force planning to inform decision-makers.

DOD Components are working collaboratively with the Director of Human Capital Initiatives on developing a Defense Acquisition Workforce Section for inclusion in the DOD Human Capital Plan in accordance with section 851 of Public Law 110-181.

The Department is also working numerous initiatives pursuant to section 852, "Defense Acquisition Workforce Development Fund," of Public Law 110-181, which provides funding for recruiting, training, and retention of the acquisition workforce. A report to Congress on the use of the Defense Acquisition Workforce Development Fund is due in November 2008.

Mr. ORTIZ. DOD has data on military and civilian FTEs across its program offices, agencies, and commands. Why doesn't DOD maintain similar data on the contractors in the DOD workforce, and do you plan to develop such data? How does DOD manage the risk of contractors performing functions that closely support inherently governmental functions without having visibility over the number and role of contractor employees working side-by-side with DOD's military and civilian employees?

Mr. ASSAD. We are actively engaged in the implementation of section 807 of the National Defense Authorization Act for Fiscal Year 2008, "Inventories and Reviews of Contracts for Services," that amended section 2330a of title 10 of the United States Code. This represents a major effort for the Department. As a result, we are implementing the amended section 2330a in a phased approach and are keeping your professional staff informed. The initial phase develops a prototype inventory list, to include contractor full-time employees (FTEs), using the Army's Contractor Manpower Reporting System. On May 16, 2008, we issued direction to the Secretaries of the Military Departments and Directors of the Defense Agencies to support the phased implementation and meet the planned execution dates. My office is leading this effort.

The Department manages the risk during pre-award and post-award activities. Prior to the award, the Defense Federal Acquisition Regulation Supplement (DFARS) 207.503 requires the contracting officer to make three determinations intended to lead to proper performance of a contract closely associated with inherently governmental functions. These determinations are written in accordance with DOD

Instruction 1100.22, Guidance for Determining Workforce Mix. Post award, the administration of a contract can have multiple layers of oversight, such as oversight by the contracting officer, the Defense Contract Management Agency (DCMA), or a Contracting Officer's Representative (COR). This oversight team is intended to ensure that work complies with the contract terms and conditions. This teaming approach increases visibility over contractor employees working side-by-side with DOD's military and civilian employees and would highlight potential concerns about contractors performing functions closely associated with inherently governmental functions.

Mr. ORTIZ. Given DOD's extensive reliance on contractors, what do you believe is the appropriate role for contractors in supporting major acquisitions, and how do you plan to ensure they are used properly in these roles?

Mr. ASSAD. As I indicated in my testimony, I believe the role of contractors, with specific reference to major acquisition procurement and contracting activities in general, should be confined to support roles. The role of contractors in other areas, such as requirements determination and the design of the acquisition strategy, should be carefully scrutinized and limited to support and advisory functions vice any activity that might commit the government to one course or another. The Defense Department continues to give this issue attention during leadership off-sites and acquisition oversight reviews.

Mr. ORTIZ. GAO recently completed a review of personal conflicts of interest and recommended that DOD establish additional safeguards for certain contractor employees (i.e., the type of advisory & assistance support contractors working in many of DOD's facilities performing substantially the same tasks as federal employees). DOD partially concurred with GAO's recommendations and seems to put off making a decision until the recommendations are further studied by the Contracting Integrity Panel. Why do you believe further study is needed?

Mr. ASSAD. The Contracting Integrity Panel is required to recommend changes in law, regulations and policy as determined necessary. Subcommittee 9 of the Contracting Integrity Panel was established to respond to concerns and recommendations voiced in the Government Accountability Office (GAO) exit conference prior to issuance of the final report. The Department agrees with the intent of the recommendations but wants to ensure that each recommendation is fully addressed and implemented in the most effective manner. We believe that the additional review and focus of the Subcommittee will help to determine the way forward as well as to identify other potential areas of vulnerability in this regard.

The Subcommittee has begun the review and provided several recommendations to the Panel to include: (1) Issue policy letter stating advice from contractor's employees should be free from personal conflicts of interest and require each contractor employee sign a certification to that effect; (2) Contractors should be required to have a written code of business ethics addressing personal conflicts of interest for their employees working on certain DOD advisory and assistance type services; (3) Contractors should be required to have internal controls to identify and prevent personal conflicts of interest for their employees working on certain DOD service contracts; and (4) Assess need for additional training of Government employees to increase their awareness of the risks and mitigation opportunities associated with contractors' employees personal conflicts of interest. Recommendations (2) and (3) will result in development of changes to the DOD Instruction and/or the Defense Federal Acquisition Regulation Supplement (DFARS). Each recommendation will be carefully reviewed by the Panel on Contracting Integrity.

The Office of General Counsel-Ethics has offered its expertise in developing policy in response to recommendations regarding the scope of personal conflicts of interest and related ethics requirements that would be appropriate for contractor employees in comparison to federal employees.

Mr. ORTIZ. DOD initially reported that it would complete the utility privatization effort by 2000. After spending \$248 million on the program and privatizing 94 of the 1,499 systems, DOD intends to complete additional evaluation of the remaining projects by 2010. What additional tools does DOD need to support completing a first round of utility privatization evaluations? In retrospect, should this program have been initially authorized? Is DOD confident that the first round of privatization projects will be completed by 2010?

Secretary BELL and Mr. ASSAD. As of December 2007, the Department of Defense (DOD) has privatized a total of 519 utility systems, 150 of which have been under the Utilities Privatization Authority. Utilities Privatization is an important tool for managing the Department's \$72 billion utility infrastructure. DOD is committed to utilizing private sector innovations, efficiencies, and financing, when economical, to improve utility systems supporting military operations, to improve the quality of life, and to sustain aging utility infrastructure and keep pace with future require-



ments. Various legal and budgetary challenges have led to extending the program beyond 2010. The current schedule projects completion of the program by 2015.

Mr. ORTIZ. DOD is on track to privatize 87% of the family housing units, including 188,000 units by 2010. Considering that 36% of the awarded privatization projects have occupancy rates below expectations, will the private partners be able to continue the long-term investment to continue this program? What are the challenges that need to be corrected? Compared with the larger outlays required in our personnel accounts to support Family Housing Privatization, is the overall Family Housing program saving money or has it just moved money from a discretionary account to a mandatory funding account? Does privatization mask the overall cost afforded to General/Flag Officer quarters?

Secretary BELL and Mr. ASSAD. The Department of Defense (DOD) is currently projecting to privatize over 194,000 units by FY 2010, not 188,000.

I could not identify from what information the 36 percent number was calculated. Of the 87 awarded projects, the average occupancy rate is about 90 percent. While there are some exceptions, due to construction related issues and general market conditions, only the projects owned by American Eagle are in financial jeopardy. Comparing occupancy numbers to pro forma provides insufficient information as to a projects' financial health, particularly while projects are in the initial development period (80 percent of projects). Also, to ease concerns about private partners, DOD recently conducted a financial analysis of the private housing partners and found them all to continue to be financially healthy and solvent. We have every reason to believe that the private partners will be able to continue the long-term investment needed to maintain the financial solvency of this program.

We see no major structural challenges in the Military Housing Privatization Initiative (MHPI) program that need to be corrected by governmental action. While we have recently identified with the Government Accountability Office (GAO), eight MHPI projects (five Air Force, one Army, two Navy) that are behind schedule or have encountered difficulties (construction/renovation schedules not met due to financial problems, or environmental/construction issues), the other 79 awarded military housing privatization projects are significantly further ahead in terms of revitalized housing than where they would be under a government military construction approach. We need to allow the private sector to work through challenges with their projects and not intervene.

Life cycle cost analyses performed on all 87 projects show the cost of privatization (including the projected Basic Allowance for Housing payments) are typically lower than government ownership, usually in the 10–15 percent range. The GAO reviewed DOD's cost analysis methodology exhaustively in 2001 and agreed privatization was less costly over the life of the projects, based on "should costs" for government ownership vice actual budgeted costs.

Privatization does not mask the overall cost afforded to General/Flag Officer quarters (GFOQs). In fact, spending on GFOQs is likely more constrained since such spending directly reduces funds available for housing lower ranking military members.

Mr. ORTIZ. The Army has awarded an initial project to privatize official travel Army lodging. How will priority to service members be assured when there is competition with the private sector? To what extent will the private partners attempt to attract non-DOD members to these lodging facilities? Does the private sector support privatized Army lodging competition in the local market? Morale Welfare Recreation (MWR) activities typically receive support from this program. Will MWR activities suffer as a result of the privatization? What is the long-term termination liability associated with this program?

Secretary BELL and Mr. ASSAD. The Army has worked with its contractor, Actus Lend Lease, to finalize a Lodging Development Management Plan (LDMP) for the Privatization of Army Lodging (PAL), Group A, which includes 13 installations. On May 23, 2008, Army notified Congress of its intent to execute a lease with Actus for privatization of PAL Group A lodges. Actus has partnered with Intercontinental Hotel Group (IHG) for property management. PAL Group A transition agreement execution is scheduled for late June 2008, followed by project closing and transfer in late October 2008.

The property lease will encourage the private partner to maximize occupancy, but per the legislative requirements of section 2878 of title 10 of the United States Code, the lease will include a condition specifying that occupancy preference be given to service members and their dependents. Further, under the lease terms, the displacement of official government travelers in favor of unofficial travelers will result in a forfeiture of a portion of the lessee's management fee.

In most locations, PAL will result in little or no increase in the on-post lodging inventory. In addition, Actus and IHG have actively engaged with local communities

in an effort to educate them about the program and to coordinate over-flow accommodations in off-post hotels when the privatized on-post rooms are full. Because of this outreach effort, no negative comments have been brought forth by the private sector or local communities.

Official travel lodging is a component of the military housing program and is not a Morale, Welfare and Recreation (MWR) activity. Funds used to operate official travel lodging are strictly segregated from MWR funds. Therefore, privatization of official travel lodging under the PAL will have no impact on MWR activities.

Unlike a government contract, the Army cannot terminate the private developer for convenience because the legal instrument binding the Army and the PAL entity is a lease. Instead, the Army would condemn the lessee interest in the leasehold estate and the improvements. In addition to the lessee's interest, the Army also would need to consider the mortgagee's interests because the lessee will further encumber its interest with a mortgage. Thus, the long-term liability would be: 1) the value of the leasehold estate and improvements at the time of condemnation; and 2) the cost to terminate the private loan. These values would depend on the loan documents and condition of the project at the time of the default action. It should be noted, however, that a default by the lessee would not automatically terminate the lease for cause. In the event of such, the lenders would step in to replace the lessee.

Mr. ORTIZ. The Department has broad authority to obtain a range of financial and in-kind considerations for leasing opportunities. The inclusion of private investment to support facilities that the community may otherwise provide has led to state and local challenges at installations. In cases where the Services have entered into leases that exceed 50 years, should the real estate be considered as excess by the Services and developed under the structure of the local zoning authority? Why has the Department elected to compete for services that the local community could otherwise provide?

Secretary BELL and Mr. ASSAD. The only real or personal property that may be made available for leasing is that which is considered "non-excess." The determination of whether a parcel should be considered excess or non-excess is based on a variety of considerations, to include whether the property: a) is essential to long-term mission flexibility including operational changes or mobilization for a national security emergency; b) is affected by security or safety restrictions; or c) is required as a controlled buffer zone for local community or private interests. Leases may be entered into if the Secretary of the Military Department considers it advantageous to the United States and upon such terms as he considers will promote the national defense or be in the public interest. In addition, the lessee's intended use of the property must be compatible with the installation mission.

Section 2667 of title 10, United States Code, authorizes the Military Departments to out-lease available non-excess land and facilities to private or public entities in exchange for the lessee paying no less than the fair market value for the property. The lessee may develop or redevelop the leased property to provide goods and/or services to the market. Local businesses can compete to provide the services included in the leasehold.

Mr. ORTIZ. Have you been able to determine if the Department of Defense has saved money by the extensive use of contractors?

Mr. WALKER. GAO has not determined if the Department of Defense has saved money by the extensive use of contractors. Existing OMB policy generally does not require a public/private competition for contractor performance of a new or expanded commercial requirement and in-house cost estimates have not been prepared for most of the contracts used to support operations in Iraq and Afghanistan. DOD does maintain data from its competitive sourcing, or A-76, program. GAO's analysis of the military services' reported information on 538 A-76 decisions during fiscal years 1995 through 2005 to contract out work formerly performed by uniformed and DOD civilian personnel showed that the decisions generally resulted in reducing the government's costs for the work. However, the number of A-76 public/private competition contracts is relatively small and the results from this program may not be representative of the results from all services contracts for new or expanded O&M work.

With regard to contract specialists, recent GAO work found that the Army's Contracting Center for Excellence (CCE) was paying up to almost 27 percent more for contractor-provided contract specialists than for similarly graded government employees. This comparison took into account government salary, benefits, and overhead and the loaded hourly labor rates paid to contractors. CCE has relied on contractor contract specialists since it began hiring them in 2003. In August 2007, these contractors—who work side by side and perform the same functions as their government counterparts—comprised 42 percent of CCE's contract specialists.

Mr. ORTIZ. Please provide examples of functions that you would consider inherently governmental that today are being performed by contractor employees.

Mr. WALKER. Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government, and as such, they should be performed by government employees, not private contractors. The Federal Acquisition Regulation (FAR) provides 20 examples of functions considered to be, or to be treated as, inherently governmental, such as determining agency policy and priorities for budget requests; directing and controlling intelligence operations; approving contractual requirements; and selecting individuals for government employment. Our prior work has identified areas where contractors are performing work that may approach being inherently governmental, including: formulating budgets, analyzing intelligence, defining contractual requirements, and signing official offer letters for government employment. The Comptroller General testified in February, 2008, about concerns related to contractors potentially performing inherently governmental functions in the intelligence community. Specifically, while direction and control of intelligence and counter-intelligence operations are listed as inherently governmental functions, the Director of National Intelligence reported in 2006 that the intelligence community finds itself in competition with its contractors for employees and is left with no choice but to use contractors for work that may be "borderline inherently governmental." In addition, the closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based in part on contractor work. This may result in decisions that are not in the best interest of the government, and may increase vulnerability to waste, fraud, and abuse.

Mr. ORTIZ. What factors should federal agencies consider to determine an appropriate balance between federal and contractor employees when making a decision to use contractors to meet mission needs and what tradeoffs are involved in that decision? Are there any special considerations for DOD in making this decision?

Mr. WALKER. There are several considerations for federal agencies in determining an appropriate balance and making the decision to use contractors to meet mission needs. GAO's prior work has focused on a few key areas.

(1) **Agencies need to consider developing and maintaining institutional capacity to perform critical functions in-house.** To maintain capacity, agencies need to determine what core functions they need to retain and what non-core functions they should buy, and the skill sets needed to procure and manage contractors in non-core functions. Agencies also need to individually determine what functions are appropriate to contract for given their specific mission. For example, DOD's Panel on Contracting Integrity, in its 2007 report to Congress, noted that the practice of using contractors to support the government acquisition function merits further study because it gives rise to questions regarding the appropriate designation of government versus nongovernment functions. The Defense Acquisition University has also warned that the government must be careful when contracting for the acquisition support function to ensure that the government retains thorough control of policy and management decisions and that contracting for the acquisition support function does not inappropriately restrict agency management in its ability to develop and consider options.

(2) **Agencies need to consider planning for the total workforce including government personnel and contractors.** Along with determining the functions and activities to be contracted out, agencies face challenges in developing a total workforce strategy to address the extent of contractor use and the appropriate mix of contractor and civilian and military personnel. GAO has found that agencies need appropriate workforce planning strategies that include contractor as well as federal personnel and are linked to current and future human capital needs. These strategies should be linked to the knowledge, skills, and abilities needed by agencies and how the workforce will be deployed across the organization. Deployment includes the flexible use of the workforce, such as putting the right employees in the right roles according to their skills, and relying on staff drawn from various organizational components and functions using "just-in-time" or "virtual" teams to focus the right talent on specific tasks. As agencies develop their workforce strategies, they also need to consider the extent to which contractors should be used and the appropriate mix of contractor and federal personnel. Over the past several years, there has been increasing concern about the ability of agencies to ensure sufficient numbers of staff to perform some inherently governmental functions.

(3) **Agencies need to consider the roles and responsibilities of all types of personnel.** Agencies have been challenged to define the roles and responsibilities of contractors vis-à-vis government employees. For example, defining the relationship between contractors and government employees is particularly important when

contracting for professional and management support services since contractors often work closely with government employees to provide these services. This definition begins during the acquisition planning process when contract requirements are determined. We have recommended that agencies define contract requirements to clearly describe roles, responsibilities, and limitations of selected contractor services. Well-defined contract requirements can also help minimize the risk of contractors performing inherently governmental functions.

Our work on contractors in acquisition support functions at DOD has found that it is now commonplace for agencies to use contractors to perform activities historically performed by federal government contract specialists. Although these contractors are not authorized to obligate government funds, they provide acquisition support to contracting officers, the federal decision makers who have the authority to bind the government contractually. Contract specialists perform tasks that closely support inherently governmental functions, such as conducting market research; assisting in preparing statements of work; developing and managing acquisition plans; and preparing the documents the contracting officer signs, such as contracts, solicitations, and contract modifications. Therefore, it is important to clearly define the roles contractors play in supporting government personnel to ensure they do not perform inherently governmental functions.

**(4) Agencies need to manage and oversee contractors to minimize risks.** Once contractors are in place, agencies must ensure appropriate management and oversight of contractors, including addressing risks, ethics concerns, and surveillance needs. However, agencies face challenges in all these areas. Contractors in roles closely supporting inherently governmental functions create additional risks. Federal procurement policy requires enhanced oversight of services that closely support the performance of inherently governmental functions to ensure that government decisions reflect the independent judgments of agency officials and that agency officials retain control over and remain accountable for policy decisions that may be based on contractor work products. However, our work has shown that agency officials do not always assess these risks to government decision making. Additionally, contractor employees are not subject to the same ethics rules as government employees even when they are co-located and work side-by-side with federal employees and perform similar functions. Federal ethics rules and standards have been put in place to help safeguard the integrity of the procurement process by mitigating the risk that employees entrusted to act in the best interest of the government will use their positions to influence the outcomes of contract awards for future personal gain. Despite these rules and standards, we have found potential conflicts of interest when hiring contractors. Moreover, quality assurance, such as regular surveillance and documentation of its results, is essential to determine whether goods or services provided by the contractor satisfy the contract requirements and to minimize risks that the government will pay the contractor more than the value of the goods and services. However, we have reported wide discrepancies in the rigor with which officials responsible for surveillance perform their duties, particularly in unstable environments, and attention to oversight has not always been evident in a number of instances, including during the Iraq reconstruction effort.

With specific regard to DOD, the Department's guidance recognizes that using contractors in a contingency operation increases the risk to the mission and directs commanders to do a risk assessment before relying on contractors for support. According to the guidance, commanders should consider whether or not contractor employees will work in a contingency or hostile area. The guidance notes that, in the absence of a declared war, contractor employees cannot be required to work and are free to quit their jobs.<sup>1</sup> In addition, commanders are to consider the size of the contractor footprint and whether the number of contractors could limit the commander's flexibility. Also, the guidance reminds commanders of the increased threat to U.S. personnel that comes from the use of local national contractor employees. Finally, the guidance states that support services that require substantial discretion or prudent judgment are inherently governmental and may not be legally contracted.

Mr. ORTIZ. When you call for a fundamental reexamination of the use of contractors to support agency missions, how do you think the Congress can support such a reexamination?

Mr. WALKER. Congress can support the reexamination of federal agencies' use of contractors by considering whether the current fiscal, legal, regulatory framework supports the mission and the demands placed on federal agencies while also protecting the government's interest. For example, Congress could consider whether increased use of contractors to perform functions also performed by government per-

<sup>1</sup>Congress has not voted to declare war since 1941.

sonnel is a cost effective way to achieve intended outcomes. In deciding to use contractors, the federal government has not always evaluated the costs of hiring additional contractors as compared with the cost of additional full-time government positions. Congress could also consider whether existing laws and regulations adequately address current concerns regarding reliance on contractors. GAO has previously suggested that new models and processes may be needed to continuously examine what work should be conducted by contractors and what work should be retained within the federal government. There may also be special considerations for contractors supporting contingency operations or emergency situations or in cases where sufficient government personnel are not available. Congress could also encourage agencies to determine the appropriate mix of government and contractor employees for particular mission functions and address how to manage and oversee contractor provided services. These considerations should help to address some of the key concerns with increased reliance on contractors.

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#### QUESTIONS SUBMITTED BY MRS. BOYDA

Mrs. BOYDA. A.) The Tire Privatization Initiative was instituted by the Defense Logistics Agency to comply with BRAC. However, DLA misinterpreted this by giving control of the management of tires to Michelin, one of the main suppliers of tires to the military. Obviously, this is like putting the fox in charge of guarding the hen house. This is a perfect example of how the line of what is considered “inherently governmental” was crossed, but no one really thought twice about it until it was brought to our attention. B.) The committee in last year’s NDAA was crystal clear that the Department needed to take a break from awarding contracts for management or logistics functions (such as Tire Privatization or Future Combat System) to companies that are also suppliers. C.) Does it make sense for the federal government to give up control on logistics functions such as supply, storage and distribution to a private contractor? D.) Does it make sense to do this when the logistics functions contract is given to a private contractor who is also a supplier of the commodity being managed? E.) How do we move forward to ensure that a conflict of interest doesn’t arise in the future for something similar?

Secretary BELL and Mr. ASSAD. A.) In developing its acquisition strategy for Tire Privatization, the Defense Logistics Agency executed the Base Realignment and Closure (BRAC) privatization mandate while complying with the Competition in Contracting Act (CICA) and at the same time constructing a business arrangement in the best interests of DOD and the taxpayer. The resultant contract, awarded as the result of a full and open competition, protects the industrial base and provides fixed prices for its duration, subject to escalation only on the basis of factors outside the manufacturers’ control. At the same time, the contract contains provisions that provide transparency for both the Government and the tire producers. The oversight provisions provide assurance that the Government will receive the full benefits intended and that the integrity of the procurement process will be preserved.

B.) The Defense Logistics Agency (DLA) awarded its Tire Privatization Contracts in December 2006 and January 2007, which preceded the fall 2007 report language. DLA is closely monitoring the contract to ensure contractual “competition” requirements are met and has commissioned an independent study of the tire industrial base. Further, DLA is going beyond the contract transparency requirements to improve visibility for all tire manufacturers. Finally, DLA is evaluating other models for future acquisitions.

C.) The DLA prime vendor programs contracts have outsourced supply, storage and distribution of commercial products since 1993, and have been favorably reviewed and endorsed by the Government Accountability Office. Additionally, the BRAC 2005 language specifically directed DLA to “rely on private industry for the performance of supply, storage, and distribution” for its tire privatization initiative.

D.) In developing its acquisition strategy for Tire Privatization, the Defense Logistics Agency executed the BRAC privatization mandate while complying with CICA and at the same time constructing a business arrangement in the best interests of DOD and the taxpayer. The resultant contract, awarded as the result of a full and open competition, protects the industrial base and provides fixed prices for its duration, subject to escalation only on the basis of factors outside the manufacturers’ control. At the same time, the contract contains provisions that provide transparency for both the Government and the tire producers. The oversight provisions provide assurance that the Government will receive the full benefits intended and that the integrity of the procurement process will be preserved.

E.) The tire privatization contract was awarded based on a full and open competition fully complying with CICA. If manufacturers are to be excluded from consideration for the award of privatization contracts, a mechanism for doing so beyond the exclusions currently available under CICA would be required.

