

# Background

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## Contracting in Combat: Advice for the Commission on Wartime Contracting

*James Jay Carafano, Ph.D.*

In the wake of controversy over private military contracting, the National Defense Authorization Act of 2008 established the Commission on Wartime Contracting to investigate the issue. The commission is expected to issue an interim report in 2009 and a final report in 2010. The commission should promote recommendations to improve the government's capacity to make and oversee contracts in an "expeditionary" wartime environment, advocate a more robust and capable contracting force, and propose better doctrine and management processes for deciding when hiring contractors to support military operations is most useful.

### **A New Kind of War**

Contractors have become ubiquitous on the battlefield in Iraq and Afghanistan. Contract employees washed dishes, drove trucks, built facilities, and even guarded Jerry Bremer, the appointed head of the Iraq Coalition Provisional Authority who led the first year of the occupation. By 2007, there were more than 100,000 civilians working under U.S. government contracts in Iraq and Afghanistan—and about 160,000 U.S. combat troops. According to some estimates, contractors account for roughly 40 percent of the costs of running operations.<sup>1</sup>

The scope of today's wartime contracting dwarfs that of past military conflicts. The reason for the rapid increase in contracting can be traced to a number of factors, including the downsizing of the military in the 1990s (particularly the reduction in service-support

### **Talking Points**

- By 2007, there were more than 100,000 civilians working under U.S. government contracts in Iraq and Afghanistan. By some estimates, contractors account for 40 percent of operational costs.
- The Commission on Wartime Contracting is due to issue an interim report in 2009, which should focus on specific priorities in order to provide a blueprint for building an optimum system for contract employees in combat conditions.
- The government must improve its capacity to make and oversee contracts, particularly by fixing the lack of competent contracting officers.
- A new process should be implemented for determining the most effective times and missions for employing contractors.
- The U.S. military should revive its operations research and maintain a robust corps of operational research analysts for evaluating and determining the needs of the military that can be met by the private sector for future operations.

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units that provide everything from fresh bread to fuel); the unanticipated length and complexity of post-conflict operations in Iraq and Afghanistan; and the increased capacity of the private sector to provide goods and services on the battlefield.

Wartime contracting became controversial almost instantly. In October 2003, six months after the official war ended, the Center for Public Integrity published a list of companies doing business in Iraq and Afghanistan with a record of their political donations. Its report, “Windfalls of War,” matched \$49 million from 70 companies doing about \$8 billion in government business to political contributions that went almost two to one to Republicans over Democrats, President George W. Bush pulling in the most of all. The 14 largest contractors doing work in Iraq and Afghanistan alone kicked in \$23 million. As the fighting in Iraq continued and the controversy surrounding the conflict grew, using contractors in combat arenas became a highly contentious issue.

### At the Center of the Storm

The Commission on Wartime Contracting will have to build on a foundation of investigations with decidedly mixed records on fairness and accuracy. Efforts to examine the efficacy of hiring civilians to work under combat conditions ranged from highly partisan and inflammatory accusations to serious efforts that produced real results. The June 2006 report “Dollars, not Sense,” issued by the Democratic minority staff members of the House Committee on Government Reform, served as a conduit for criticism of the Bush Administration’s military

contracting in Iraq and Afghanistan, concluding that above all, the system was rife with fraud, waste, and abuse.<sup>2</sup> The report stated that its findings draw on over 500 reports, audits, and investigations. What the report failed to acknowledge was that its findings were presented in the most inflammatory manner possible, such as focusing on the much-publicized conviction of Custer Battles, an international risk-management and security company, on fraud allegations without even noting that the judgment was under appeal (it would later be overturned).<sup>3</sup> Most telling, the report was released just before the mid-term elections.

In contrast to the congressional staff report, the work of the Special Inspector General for Iraq Reconstruction (SIGIR) is generally highly regarded. According to its October 2007 quarterly report to the Departments of Defense and State, SIGIR oversaw over \$100 billion in U.S. and international funds spent in the combat theater. The report lays out exactly which programs and initiatives are funded and rates their effectiveness. The SIGIR report was the product of 200 audits and investigations conducted by the Inspector General. Unlike the staff report, however, SIGIR did not cherry-pick its findings to produce the most inflammatory conclusions possible.

As a starting point, the commission should draw on the plethora of work completed by SIGIR, the Inspectors General, the Army Audit Agency, the Defense Contract Audit Agency, and the Government Accountability Office. They provide much of the data that needs to be examined.

1. Portions of this analysis are adopted from James Jay Carafano, *Private Sector, Public Wars: Contractors in Combat—Afghanistan, Iraq, and Future Conflicts* (Westport, Conn.: Praeger Security International, 2008).
2. “Dollars not Sense: Government Contracting Under the Bush Administration,” United States House of Representatives Committee on Government Reform, June 2006, at <http://oversight.house.gov/Documents/20060711103910-86046.pdf> (January 6, 2009).
3. In October 2004, a court in the United States unsealed a lawsuit by Robert Isakson and William Baldwin, two Custer Battles associates, alleging massive over-billing on two separate contracts. Another case was brought against the company for its management of the airport-security contract. In March 2006, a jury found Custer Battles guilty on 30 claims with fines over \$10 million. The verdict was then overturned in Federal District Court. In February 2007, the court also dismissed the airport-security contract case, ruling there was no evidence of fraud. Custer Battles filed countersuits against Isakson and Baldwin. Custer Battles claimed the two were “disgruntled employees” playing “litigation roulette” for personal profit. The civil trial was settled out of court. See Dana Hedgpeth, “Judge Clears Contractor of Fraud in Iraq,” *The Washington Post*, February 9, 2007, p. D1, at <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020801871.html> (January 6, 2009).

## Focus on Effectiveness

The commission should use the investigatory work that has already been completed to identify how to improve wartime contracting. There are several areas that should serve as the focus of its deliberations and analysis.

**Determining When to Outsource.** Like everything else in life, there is no one-size-fits-all solution. Contractors may be the best choice for some missions, but they are not the best fit for every mission.<sup>4</sup> The current process has proven both controversial and imperfect for determining contractor-appropriate missions. The Pentagon can and must do better. The answer lies in a risk-based approach. This particular approach helps avoid unnecessary risks while incorporating financial and intangible benefits and drawbacks into the calculations. This approach is not new to the defense world. The U.S. Army field manual contains a standardized approach for assessing and managing risk, which can be applied to all activities.<sup>5</sup> It would not be difficult to extend this successful model into the realm of employing contractors:

- Identify hazards.
- Assess hazards to determine their risk in terms of probability, severity, and risk level.
- Develop plans to mitigate the risk and make decisions.
- Implement the mitigation processes.
- Supervise and evaluate.

According to the Army field manual, hazards are “a condition or activity with potential to cause damage, loss or mission degradation, and any actual or potential condition that can cause injury, illness, or death of personnel; damage to or loss of equipment

and property; or mission degradation.”<sup>6</sup> Risk is considered the “probability and severity of loss linked to hazards.”<sup>7</sup> The scope of these definitions showcases the wide range of threats and issues which must be addressed in the immediate future. These concepts from the Army field manual offer a reasonable starting point for building the right decision-making framework.

Following this approach of risk mitigation allows policymakers to raise all the right questions and judgments: the degree to which contractor shortfalls could hinder mission success; the safety implications for contract employees and equipment, and for the U.S. military; resource tradeoffs or the effect that money spent on contractors offsets or consumes limited resources needed to pursue other goals; the impact that using contractors may have on the military’s ability to comply with laws, regulations, and high-level policy guidance and to collect information. Asking the right questions now will help prevent catastrophe later on. The greater the potential of hazards and risks raised in these questions, the greater the scrutiny and attention needed.

A recent Rand report outlines distinct organizational venues about where and when these risk-based assessments should occur.<sup>8</sup>

- **Outside the military.** Decisions on employing private contractors in security operations are often influenced by congressional and executive determinations of the appropriate size and operational tempo of military forces.
- **Acquisition venues.** Policies that “the Army uses to choose contractors, design contracts and quality assurance plans, and oversee and support contractors in heavy theater heavily affect the residual risk associated with their use.”<sup>9</sup>

4. “This section of the report is adapted from James Jay Carafano and Alane Kochems, “Engaging Military Contractors in Counterterrorism Operations,” in James J.F. Forrest, ed., *Countering Terrorism and Insurgency in the 21st Century: International Perspectives*, Vol. 1 (Westport, Conn.: Praeger Security International, 2007), Chap 10.

5. *Ibid.*

6. U.S. Department of the Army, *Risk Management—Multiservice Tactics, Techniques, and Procedures: Navy, Air Force, Marines*, Field Manual 3-100.12, February 15, 2001, Glossary-4–Glossary-6.

7. *Ibid.*

8. Frank Camm and Victoria A. Greenfield, *How Should the Army Use Contractors on the Battlefield? Assessing Cooperative Risk in Sourcing Decisions* (Santa Monica, Cal.: RAND Corporation, 2005), pp. xx–xxii, at [http://www.rand.org/pubs/monographs/2005/RAND\\_MG296.pdf](http://www.rand.org/pubs/monographs/2005/RAND_MG296.pdf) (January 6, 2009).

- **Force design and management.** For instance, when a reserve component capability is small, contractors may be used more heavily to avoid continually mobilizing the same group of soldiers and depleting their energy and resources.
- **System requirement plans.** Program planners and leadership may encourage dependence on long-term contractor support depending on the vision and the need for highly skilled support personnel. “More generally, officials use spiral development to field systems early and collect operational data on them from the battlefield to redefine their designs over time. This encourages the presence of contractors on the battlefield.”<sup>10</sup>
- **Specific contingencies.** Where the military requires a quickly assembled force, it may also require greater contractor support.

Some types of contracting will inherently be more politically divisive than others. Initiating assessments, particularly in these fields, will limit the potential for controversy.

**Operations Research.** By demonstrating that requirements are driven by military necessity, even the most divisive political decisions can be depoliticized. This idea was in practice in recent times, but like many other useful tools, it was eliminated in the great downsizing after the Cold War. During World War II, the U.S. military discovered a great way of improving the efficiency of some military operations that had long been in use in the private sector: employing an emergent field of math to determine new ways of achieving efficiency by analyzing complex systems, discovering critical paths that determine productivity, and adjusting the allocation of resources to boost production. During World War II, the Pentagon applied “operations research” to all kinds of difficult problems from determining how to organize transatlantic convoys to maximizing bombing runs over the Third Reich.

This newfound operation gradually assimilated into American military culture and was applied to many of the Pentagon’s problems. In fact, a Military Operations Research Society has been in existence for over 40 years and was employed effectively during the Vietnam War, which has been altogether forgotten. For example, military operations research was used to design new equipment for jungle fighting and reduce combat stress.<sup>11</sup> The experience of these operations were so positive that during the Reagan military build-up throughout the 1980s, every command and military installation had its own team of military operations professionals, including university-trained uniformed officers.

During the military downsizing of the 1990s, the Army’s corps of military operations professionals was one of the first on the chopping block. Evidence that the military lost an important capability was demonstrated in the Iraq war when military operations research had to be reinvented from scratch. With improvised explosive devices, such as mines and booby traps, perplexing our armed forces, something had to change the status quo. The Pentagon began to establish a joint interagency task force to study the problem, focusing on developing a number of strategies, practices, and innovations to help deal with this new and imminent challenge. Many of the adopted techniques were in fact derived from classical operational research analysis.

With a robust corps of operational research analysts, the ideal setting for evaluating and determining the private-sector needs of the military in future operations would exist. Developing and maintaining this corps of professionals ought to be a Pentagon priority.

**Capacity Building.** Without doubt, the single greatest shortfall in contracting practices in Iraq and Afghanistan was that Washington lacked the capacity to oversee the unexpected massive volume of contracts it offered. The SIGIR “found that shortage of personnel (and the widespread lack of required

9. Special Inspector General for Iraq Reconstruction, *Iraq Reconstruction: Lessons in Human Capital Management*, January 2006, p. 25, at [http://www.sigir.mil/reports/pdf/Lessons\\_Learned\\_Feb16.pdf](http://www.sigir.mil/reports/pdf/Lessons_Learned_Feb16.pdf) (January 6, 2009).

10. *Ibid.*, pp. xx–xxii.

11. See for example, Julian J. Ewell and Ira A. Hunt, Jr., *Sharpening the Combat Edge: The Use of Analysis to Reinforce Military Judgment* (Washington, D.C.: Department of the Army, 1974).



skill and experience among those available) affected all facets of reconstruction assistance.”<sup>12</sup> The sheer demand placed on military contracting because of operations in Iraq dwarfed contracting during World War II.

With the benefit of hindsight, it is clear that addressing the lack of competent contracting officers would have resolved the majority of serious difficulties encountered in managing contracts. Even the most derisive critics would have had difficulty finding an area of complaint. If the military were simply a better customer, all this controversy might have been avoided. It was not. And it will not be in any future Administration, Republican or Democratic, unless it learns how to do contracting in combat better.

In order to address these practical problems, the Army in particular should start by reading its own report: In October 2007, a commission assembled by the Secretary of the Army issued its findings in a study titled “Urgent Reform Required: Army Expeditionary Contracting.” Chaired by former Undersecretary of Defense Jacques S. Gansler, the commission found that almost every component of the institutional Army, from financial management to personnel and contracting systems to training, education, and doctrine and regulations, needed to be expanded to handle the volume of work placed on military in Afghanistan and Iraq.

The Gansler commission found that only 3 percent of the Army’s contracting personnel were on active duty and that the Army did not have a single career general officer position for contractors. Even more shocking, the commission found that only half of the contracting officials were certified by the Army to perform their jobs. Since 9/11, the Army has experienced a sevenfold increase in work loads.<sup>13</sup> Clearly, these imbalances cannot continue if we hope to have a competent system for military contracting. The solution to these shortfalls is simple: The military must increase the size and quality of its contracting force—and it has to have the

capacity to expand—and oversee—that force to meet large-scale contingencies.

A more robust contracting force must include a corps of contracting officers who are specifically trained in “expeditionary” contracting. In other words, unlike writing a contract for lawn-mowing services at Fort Sill or providing new headgear, the military’s contingency contracting corps must be prepared and ready to be deployed to operations like Iraq and Afghanistan and be ready to start issuing contracts as soon as they hit the ground. There must be a clear chain of command for contracting and support for deployed services that runs from the foxhole back to an office in the Pentagon. That will not only make contractors more responsive to their customers, it will ensure that contracting officers can meet their responsibilities for conducting the people’s business.

A bigger contracting force will require institutional support to ensure it is effective. That means restructuring organizations so that personnel receive the training, education, practical experience, and support tools they need (such as up-to-date information systems) as well as clear lines of responsibility.

The recommendations of the Gansler commission mirror many similar recommendations made by the SIGIR and the Government Accountability Office. They all conclude that lacking the people, resources, and institutions to perform the job correctly, no one should be surprised when the available people, resources, and institutions fail to do the job well. This remains the heart of the problem.

### What the Future Could Look Like

If the Commission on Wartime Contracting focuses on recommendations in these areas, it will perform an invaluable service by helping Washington move beyond the difficulties that have plagued contracting in combat. More important, it would provide a blueprint for building an optimum system for contracting in combat. It would include:

12. Special Inspector General for Iraq Reconstruction, *Iraq Reconstruction*, p. 25.

13. Commission on Army Acquisition and Program Management in Expeditionary Operations, “Urgent Reform Required: Army Expeditionary Contracting,” October 31, 2007, p. 2, at [http://www.army.mil/docs/Gansler-Commission\\_Report\\_Final\\_071031.pdf](http://www.army.mil/docs/Gansler-Commission_Report_Final_071031.pdf) (January 6, 2009).

- An experienced and capable contracting officer at all deployed locations.
- Contracting officers armed with all the support tools and authorities they need to do their job.
- A government workforce with sufficient authority to do a job well and that will be held accountable for its areas of responsibility. Contracting officers will work closely with all military forces and other interagency representatives in their areas of responsibility. They will supervise contracts under a contingency contracting process capable of matching the needs of the force with contractors qualified and equipped to do the job.
- The contracting officer and the contractors themselves will be overseen by an integrated, qualified team of auditors and inspectors who provide real oversight and accountability, but

who do not interfere with the ability of the contractors to do their jobs. All their work will be part of a system that provides visibility and transparency so that everyone who needs to understand the process and why will have access to the relevant information.

This is an achievable vision. A necessary first step, however, is a commission report that focuses on building up the government's contracting force, improving the tools and resources needed to support them, and a doctrine that guides their actions.

—James Jay Carafano, Ph.D., is Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.