

Cost Consciousness in Contingency Contracting

Report to the Relevant Committees of Congress

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Congressional Report Requirement

This report is submitted in response to a request on page 149 of Senate Report 112-26, accompanying S. 1253, the National Defense Authorization Act for Fiscal Year 2012 (FY 2012 NDAA), entitled “Cost Consciousness in Contingency Contracting.”

Congressional Commission

Congress established the Commission on Wartime Contracting in Iraq and Afghanistan (CWC) via section 841 of the FY 2008 NDAA. During its 3-year life, this independent body issued three main reports: two interim reports (June 2009 and February 2011) and a final report (August 31, 2011).

Within the context of the need for senior leaders to drive a cultural change that elevates the importance of contingency contracting and targets elimination of waste, the CWC Second Interim Report (February 2011) recommended that the Department of Defense (DoD) and other federal agencies: (1) designate senior officials with responsibility for cost consciousness on major contracts (Second Interim Report Recommendation 4) and (2) measure senior officials based on their performance in the area of contractor management, oversight and acquisition cost control (Second Interim Report Recommendation 5).

Congressional Report Requirement

The conferees (of the Committees on Armed Services) requested the Secretary of Defense submit a report no later than 90 days after enactment of the FY 2012 NDAA on the steps (if any) that the Department plans to take to implement these recommendations.

Introduction

This report highlights steps the Department is taking to meet the intent of the CWC recommendations regarding increased acquisition management oversight, accountability, and cost-consciousness in contingency contracting. On April 12, 2012, the Department submitted an interim response, notifying the relevant Committees that submission of the report would be delayed to allow sufficient time to gather relevant information from the Defense Agencies and staff the final report among the agencies.

Commitment to Establishing Contingency Contracting as a Core Function and Designation of Senior Officials Responsible for Cost Consciousness in Major Contracts

The February 2011 Second Interim Report of the Commission on Wartime Contracting in Iraq and Afghanistan (CWC)¹ found that Federal agencies do not treat contingency contracting as a core function. Sections II of the CWC Second Interim Report focused on the need for Government culture to value and promote contingency contracting as a core function. It states: “Changing agencies’ cultures to enhance the value of contracting requires policies that are clearly announced, visibly consistent in practice, and sustained over time...if cultural change is to be long-lasting, then top-down pressure must provide incentives to adjust day-to-day behavior.”²

An earlier independent Commission similarly emphasized the need for cultural change to increase the importance of contracting. The 2007 final report of the Commission on Army Acquisition and Program Management in Expeditionary Operations,³ also known as the Gansler Commission, recommended that Congress authorize additional general officers for contracting positions in order to drive the necessary cultural change. The Gansler Commission stated: “In a military environment (especially in an expeditionary environment), the number and level of the generals

¹ Available at http://www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf

² Commission on Wartime Contracting. *At What Risk? Correcting Over-reliance on Contractors in Contingency Operations*. Second Interim Report to Congress. (February 24, 2011), page 21

³ Available at

http://www.acq.osd.mil/dpap/contingency/reports/docs/gansler_commission_report_final_report_20071031.pdf

associated with a discipline reflects its importance. A General is held accountable for his or her leadership.”⁴ The Gansler Commission cited associated improvements that these military leaders would provide, including “the increased attractiveness of the contracting corps as a career profession to quality officers that aspire to flag officer rank” and improved ability to support military expeditionary operations by having officers “at the table planning and supporting the operation.”

Congress granted these military officer positions in section 503 of the FY 2009 NDAA. Since then, the Department has been increasing the pool of contracting general officers, who are helping drive the importance of contingency contracting as a core value. For example, Army contracting has five new general officers: at the Army Materiel Command’s Army Contracting Command, Expeditionary Contracting Command, Mission and Installation Contracting Command, U.S. Army Corps of Engineers National Contracting Organization, and the office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology, Deputy Assistant Secretary of the Army (Procurement). Further, for Joint billets, the Defense Contract Management Agency (DCMA) has a one-star officer⁵ filling its DCMA International Commander billet, as does the Joint Contingency Acquisition Support Office. Similarly, in the U.S. Central Command (USCENTCOM) - Joint Theater Support Contracting Command (C-JTSCC), a one-star officer is the Senior Contracting Official - Afghanistan. The Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), Defense Procurement and Acquisition Policy (DPAP), currently has a flag officer supporting as the Deputy Director for Contingency Contracting. The flag officer currently filling this role recently served as the C-JTSCC Commander, allowing for the immediate translation of the operational environment lessons learned into OSD level policy.

With congressional help in establishing military officer positions for the acquisition career field, the Department has been building the military leadership to drive sustained improvements and achieve a cultural change.

⁴ Ibid, p. 4

⁵ DCMA previously had several General/Flag Officer billets, all of which were eliminated in May 1992. The NDAA for FY 2009 provided additional Joint billets, thereby enabling DCMA to have General/Flag Officer leadership for the first time in almost a decade.

Commitment to Improving Contingency Contracting

The Department is determined to identify, correct, and prevent contracting efforts that are wasteful of U.S. tax dollars in consonant with U.S. objectives in Iraq and Afghanistan. The Department fully supported the Commission's independent study by providing them with personnel, data, interviews, and insights throughout their tenure (2008 to 2011). The Department analyzed each CWC publication and maintains a scorecard to manage DoD progress against all applicable recommendations. We currently are working with the Government Accountability Office (GAO), which is engaged under job number 121042 in evaluating the DoD progress against the Commission's recommendations. We have provided GAO with a copy of the DoD scorecard.

While the Department supports the Commission's overall effort and the majority of their findings, we differ on the specific approach to solving some of the associated challenges identified by the Commission. In such cases, the Department is monitoring execution of ongoing or planned initiatives underway that meet the CWC's intent.

Commitment to Increasing Cost Consciousness in Contingency Contracting

Cost consciousness in contingency contracting is an inherent part of "Commander's Business." Proper planning, execution, and oversight of the funds appropriated for Commander's programs are essential for good stewardship of these resources. Through oversight, the Department ensures Commanders systematically consider financial risks, in addition to their traditional focus on operational and political risks. For example, the Afghanistan Resources Oversight Council (AROC) oversees funds appropriated to the Afghanistan Security Forces Fund (ASFF), Afghanistan Infrastructure Fund (AIF), and the Commander's Emergency Response Program (CERP). The Department chartered the AROC in August 2011, charging it with responsibility for ensuring proper planning, execution, and oversight of the funds appropriated for various projects associated with the current overseas contingency operations. The Department established AROC in accordance with the language in Senate Report 111-295, to accompany S. 3800, the DoD Appropriations Bill 2011, to create a council to oversee

funds appropriated to the ASFF. The AROC is jointly chaired by the USD(AT&L) and USD(Comptroller). The Department continues to expand the AROC's focus to ensure the successful execution of funds. Most recently, the AROC has been charged with approving requirement and acquisition plans (within certain thresholds) for ASFF, CERP, and AIF.

Commitment to Eliminating Waste in Contingency Contracting

The CWC Second Interim Report Recommendations 4 (Senior Officials Responsible for Cost Consciousness on Major Contracts) and 5 (Performance Measurement of Senior Officials) were issued in the context of needing to eliminate waste.⁶ While Second Interim Report Recommendations 4 and 5 did not carry forward into the August 2011 CWC final report, the need to eliminate waste does appear in the CWC final report as a high-level recommendation. Final Report Recommendation 5 commends the Government to “take actions to mitigate the threat of additional waste from unsustainability.”

Any waste or fraud is unacceptable. Fiscal stewardship of taxpayer dollars is the responsibility of all DoD leaders. Numerous initiatives, programs, processes, and reporting requirements are already in place and under development to ensure that contracting requirements are properly validated and that resources are applied effectively and efficiently during contingency operations. The overall intent is to provide flexibility while maintaining adequate controls to guard against fraud, waste, and abuse. Examples of some of the key initiatives and steps being taken to address cost consciousness in contingency contracting are summarized in the following sections.

Section A – Better Buying Power Initiative

Beginning in May 2010, the Secretary of Defense launched a multi-pronged efficiency initiative to ensure the Department is managing the budget in a manner that is, as he put it, “respectful of the taxpayer at a time of economic and fiscal distress.” As one

⁶The Second Interim Report, Section II, page 23, includes illustrative examples of practices that the Commission viewed as wasteful: Iraq LOGCAP III task order, Iraq equipment transfer, Iraq minor construction, and Kabul power plant.

of those prongs, the Secretary tasked the USD(AT&L), as the Defense Acquisition Executive, to devise a plan for the \$400 billion (out of the approximately \$700 billion) base-plus-wartime budget that is contracted out.

On September 14, 2010, the USD(AT&L) established the “Better Buying Power” initiative to deliver better value to the taxpayer and Warfighter by improving the way the Department does business. The initiative contains 23 principal actions to improve efficiency in five major areas:

- Target Affordability and Control Cost Growth
- Incentivize Productivity and Innovation in Industry
- Promote Real Competition
- Improve Tradecraft in Services Acquisition
- Reduce Non-Productive Processes and Bureaucracy

The 23 actions were devised with input from the DoD acquisition workforce and from our partners in industry. They cover ways the Government can improve its own performance and better incentivize industry performance, and DoD is implementing each and every one of them. The DoD Affordability/Efficiency Initiatives Senior Integration Group (SIG) is tracking progress. Its most recent implementation review occurred on April 26, 2012.

Evaluation of Senior Officials Based on Performance in Contract Management

The Better Buying Power initiative is another example of how the most senior DoD leadership is changing the enterprise-wide culture in ways that deliver concrete results and improve cost consciousness. In addition, as part of its efforts to target affordability, control cost growth, and incentivize productivity and innovation while ensuring the best support to the Warfighter, the SIG is evaluating ways to instill a culture of cost consciousness through sound business acumen, establishing clear expectations, and recognizing/rewarding the right behavior. The USD(AT&L) initiated this DoD Cost Consciousness Project in April 2012. We believe effective implementation of this initiative fulfills the intent of the Commission’s recommendation to evaluate senior officials based on their performance in contract management, oversight, and cost control.

Section B – Acquisition Review Boards (ARB)

In order to balance efficiency with proper oversight, the Department utilizes a combination of expenditure thresholds and Acquisition Review Boards (ARB) to minimize risk and ensure taxpayer funds are being expended on mission-critical needs at the best value.

All requirements must fill legitimate mission needs and are reviewed and validated based on established dollar threshold levels by appointed review authorities. The first level of review is always the requiring activity submitting the request and may be reviewed and approved within the unit's chain of command, if the requirement is within a specified dollar threshold and is not designated as an item of special interest. Requirements exceeding the unit level dollar threshold are subjected to an ARB-level review. All requirements at this level must include a legal review by the requesting unit.

Some of the most common ARBs used to support contingency operations are the Joint Acquisition Review Board (JARB), Joint Facility Utilization Board (JFUB), and the Coalition Acquisition Review Board (CARB). The JARB, JFUB, and CARB validate requirements for certain projects, services, purchases, and leases, depending on the area of operations, level of interest, and anticipated cost. The ARBs, comprised of the directors of key staff sections in the relevant command, ensure that unnecessary and inappropriate purchases are not approved. They review the requirement and supporting documentation and jointly make an approval/disapproval recommendation to the senior approval authority in the appropriate command. Depending on the area of operations, level of interest, and anticipated costs, a requirement may necessitate validation by more than one ARB.

The JARB's main role is to make specific approval and prioritization recommendations for all Geographic Combatant Command directed, subordinate Joint Force Command controlled high dollar value (\$200,000 and higher) and/or high visibility requirements, to include recommendations on the proper source of support for these requirements. The combined effort of validating requirements and exercising prudent

acquisition discipline is resulting in greater efficiency, effectiveness, and cost avoidance in contingency contracting. During FY 2011 the U.S. Forces – Afghanistan (USFOR-A) JARB approved 1,499 out of 1,748 contingency contracting requirements valued at \$7.6 billion, resulting in a cost avoidance of \$3.3 billion. In the 1st Quarter of FY 2012, the Board approved 270 out of 296 contract requirements valued at \$1.1 billion and achieved a cost avoidance of \$275 million.

The U.S. Army Central Command (USARCENT) CARB reviews and validates all requirements in the USARCENT Area of Responsibility (AOR) (other than Afghanistan) valued at \$200,000 and above. The USARCENT’s “Super CARB” reviews and validates requirements generated by USCENTCOM’s AOR valued at \$10,000,000 and above. During FY 2011, the USARCENT CARB approved 378 out of 413 contingency contracting requirements valued at \$10.4 billion, with a cost avoidance of \$408.7 million. In the 1st Quarter of FY 2012, the CARB approved 100 out of 106 requirement packages valued at \$1.6 billion and achieved a cost avoidance of \$138 million.

Section C – Theater Requirements, Contracting, and Execution Reconciliation (TRCER)

The USARCENT’s financial management staff, also known as G8, acts as the single point of entry for financial management operations in theater. During FY 2011, the USARCENT G8 executed approximately \$26.4 billion of Overseas Contingency Funding. The Logistics Civil Augmentation Program (LOGCAP) and service contracts accounted for \$14.9 billion, or 58 percent. The FY 2012 funding program reflects a similar proportionality.

In November 2011, the USARCENT G8 partnered with the Deputy Chief Management Office (DCMO), Expeditionary Business Operations, to develop a desktop tool to help senior leaders better understand and manage the funding and contingency contracts under the purview of USARCENT. The Department’s ultimate goal is to provide Commanders a comprehensive oversight process and an associated information

management tool that enables them to make timelier, resource-informed operational decisions. This partnership resulted in development of a new desktop functionality known as the Theater Requirements, Contracting, and Execution Reconciliation (TRCER) program. The overarching governing principle of this initiative is simple: empower leaders with a comprehensive database and a process by which to review key management information in that database on a recurring basis. This is a proven program that results in identifying efficiencies, cost savings, and cost avoidance that ultimately enhances the effectiveness of an organization's operations while optimizing its purchasing power.

The TRCER program provides total contract visibility throughout the continuum of requirements generation/validation; contract solicitation; award; post-award management and execution. This automated tool interfaces with other Army systems to provide a one-stop shopping, user-friendly database that a leader can access, manipulate to generate key reports, view program generated contract management review templates, and use to organize and schedule TRCER activities like a CARB packet submission, contracting office actions and post award reviews.

The review process culminates with the organization's Quarterly Contract Review Board (QCRB) chaired by a senior leader (a Colonel or General Officer) who reviews an established portfolio of contracts with the requirements owner, contracting and resource management staff, legal staff, and Contracting Officer's Representative, present during the review. Leveraging this comprehensive body of expertise, who are all present in a single forum, empowers the decisions about the organization's contracted capabilities in a timely manner. During April and May 2012, USARCENT is executing the initial QCRBs with its headquarters and subordinate commands and has already realized notable results. These include contract re-scoping, identifying merger candidates and making resourcing decisions that have already netted significant cost avoidances and savings. The Command tailors the program's content, templates, and formats to the requirements of the using entity. The bottom line is simple: TRCER affords leaders access to tools and processes that are:

- Enduring
- Incorporated into a leader's business process
- Comprehensive, current and accurate
- Proactively and routinely used by leaders to make resource-informed decisions

The Department is exploring the feasibility of expanding the TRCER program for broader DoD service contract management that will provide enterprise-wide cost avoidance/savings and maximize DoD fiscal stewardship.

Section D – Task Force 2010

Task Force 2010 was formed in July 2010 to assist commanders in gaining a better understanding with whom they are doing business and to ensure that contracting actions do not undermine the U.S. Government's efforts in Afghanistan. In June 2011, Dr. Ashton Carter, then-USD(AT&L), directed Task Force 2010 to lead the establishment of the Acquisition Accountability Office for Afghanistan. Task Force 2010's mission is to provide commanders and acquisition teams with situational awareness regarding the flow of contract funds, and recommend actions to deny criminal actors, networks, and insurgents the opportunity to benefit from the illicit revenue or stolen property. Task Force 2010 provides a business intelligence capability to the theater by leveraging intelligence, law enforcement, and forensic financial investigative techniques in order to gain visibility of the flow of contracting funds, to determine accountability issues and concerns, and to identify actions to mitigate fiscal and force protection risk.

The Task Force focuses contract assessments on four high-risk sectors: transportation, fuel distribution, private security, and construction. In January 2011, Task Force 2010's mission expanded to include working with the law enforcement community, the U.S. Transportation Command, USCENTCOM, and the International Security Assistance Force (ISAF)/USFOR-A in the interdiction and recovery of U.S. property lost as a result of pilfered or stolen containers moving along intra-theater supply routes. Task Force 2010's targeting priorities are focused on preventing the criminal theft rings from preying on the movement of equipment, fuel, and cargo on the transportation routes;

working through appropriate channels to pursue suspension and debarment administrative actions against contractors associated with criminal networks and the insurgents; and partnering with the Department of Justice for civil forfeiture and asset seizure actions against individuals who benefitted from U.S. stolen property or illicit contract revenue. The Task Force has also identified and proposed legislative changes in order to enhance contracting capabilities in a contingency environment. Two legislative proposals of significant interest were included in section 841 of the FY 2012 NDAA (P.L. 112-81), “Rescind/Void Contracts with the Enemy” provides authority to rescind/void USCENTCOM-specific contracts when credible intelligence reveals vendor association with the enemy, and section 842 “Access to Records” provides authority to examine all subcontractor records under contracts awarded to support contingency operations when the vendor is suspected of supporting the enemy.

Since October 1, 2010, the Task Force reviewed more than 20,000 bank transactions and financial accounts and 2,050 contracts, contract modifications, and cooperative agreements involving more than 3,500 U.S., international and Afghan companies and individuals, valued cumulatively at \$38 billion. Of the contract vehicles reviewed, approximately 12 percent were suspected of having connections to or were influenced by power-brokers, criminal networks, or the insurgents. Based on assessments of the high-risk contracts, the Task Force provided recommendations to commanders and contracting activities that resulted in a cost avoidance of more than \$1.2 billion. The preventive measures minimized the potential for loss of contracting funds to criminal actors and unscrupulous vendors, prevented contract or project failure, and ensured proper accounting procedures were followed to limit over-payment or requirement for replacement costs. Since January 2011, more than 290,000 military items and supplies were recovered through targeting actions against criminal theft rings or through re-establishment of container accountability. The total value of recovered items is \$184 million. Property includes items recovered during law enforcement undercover sting operations, targeted raids by combined ISAF Special Operations Forces and Afghan National Security Forces, Afghan National Directorate of Security operations, and container recovery missions by Joint Sustainment Command - Afghanistan units to retrieve frustrated, abandoned, and found on installation containers. A “frustrated

container” represents any shipment of supplies and/or equipment which while en route to a specified destination is stopped prior to receipt and further disposition instructions are required to complete the delivery process.

Another initiative is a vendor vetting cell that was established by ISAF Joint Command J2/Future Operations to vet contractors prior to contract award. Task Force 2010 is a member of the vendor validation panel and serves as the theater lead in pursuing proposed suspension and debarment actions against the high-risk companies. The vendor vetting cell has vetted 1,041 companies since mid-August 2010 with 70 rejected for high force protection or performance risk. Based on force protection concerns, criminal actions, or connection to insurgents, 201 individuals and companies are currently pending proposed debarment actions before the Procurement Fraud Branch and U.S. Army Suspension and Debarment Official. Affecting Afghanistan, a total of 98 U.S., international, and Afghan individuals and companies are currently debarred from doing business with the United States and another 52 suspended. In addition, Task Force 2010 assisted the Joint Support Theater Contracting Command in establishing a new transportation contract that replaced the previous Host Nation Trucking contract, resulting in a cost avoidance of \$38.5 million.

On behalf of USFOR-A, Task Force 2010 hosted a Contract Oversight and Management Shura at the New Kabul Compound in Afghanistan from January 19-20, 2012. More than 100 attendees from all facets of the contracting community, regional commands, Office of the Secretary of Defense, and oversight and management agencies participated in the event. It generated open dialog that resulted in new ideas to mitigate risk related to operational support contracting and the reduction of military forces in Afghanistan. The Shura focused on the principal question, “Based on anticipated operations and strategic decision affecting Afghanistan, what changes should be implemented by process owners to ensure requirements, and performance, management and contract oversight are achieved?” The group addressed four areas: enhancing requirements definition and performance standards; providing sufficient resources for oversight, management, and quality assurance; determining consistency in the enforcement of standards; policies and procedures and responsibility for actions; and the

accountability for contractors regarding restitution for fraud, waste, and abuse. The participants identified and agreed to pursue 26 actions to improve contract oversight and management.

Task Force 2010 continues to be a driving force in the theater to ensure USFOR-A remains a good steward of contract funds. The Task Force will assume new responsibilities to support responsible economic transition as U.S. forces retrograde from the theater. This mission will allow the Task Force to become more directly involved in theater investment management strategies and integrate closely with the U.S. Embassy and the U.S. Agency for International Development (USAID) to ensure our mission will leave a lasting impact on the Afghanistan economy.

Conclusion

Actions are well under way to address the Commission's concerns in this area. The information presented in this report describes ongoing DoD initiatives that continue to drive a cultural change that elevates the importance of contingency contracting, targets elimination of waste, and focuses on cost consciousness.

Way Ahead

Following the Commission's stand down in 2011, the Department continues to work with Congress to candidly self-report on success stories as well as areas for improvement in contingency contracting, now and in the future. Most recently, the Department testified to Congress on the proposed Comprehensive Contingency Contracting Reform Act of 2012 (S. 2139).⁷ Senators McCaskill and Webb introduced S.2139 on February 29, 2012, to "enhance security, increase accountability, and improve the contracting of the Federal Government for overseas contingency operations, and for other purposes." The Commission's August 2011 Final Report recommendations are the genesis for some of the legislative provisions in the proposed Act. The bill contains 23 provisions, 19 of which apply to the Department (the others apply only to State and/or

⁷ Director, Defense Procurement and Acquisition Policy. Testimony before the U.S. Senate Homeland Security and Government Affairs Committee, Subcommittee on Oversight: "The Comprehensive Contingency Contracting Reform Act of 2012" (April 17, 2012).

USAID). The 19 DoD provisions are far-reaching. They fall under the purview of different DoD stakeholders, including the USD(AT&L), who serves as the DoD technical lead on the legislation. The Department will continue to work with Congress and other stakeholders to ensure we eliminate fraud, waste, and abuse. Together, we ensure the most effective undertaking of needed improvements to contingency contracting.