



CONTRACTORS

★ ON THE BATTLEFIELD ★



UNIT LOADING INVENTORY AND CHECKLIST (WORKSHEET)

ORGANIZATION	DESCRIPTION	STATION	DATE	DIMENSIONS (W x H)	WEIGHT (LB)	CUBE (FEET)	SQUARE FEET

A SUPPORT FORCE TO MANAGE



Executive Summary

Civilian contractors have a larger presence on today's battlefields than ever before. Over a decade ago, as the U.S. military began downsizing, it began transferring many of its support functions to private sector contractors. From the provision of food, shelter and water to fuel and security, functions once performed by uniformed personnel have to a large degree been outsourced. As part of the Department of Defense transformation, contractors also became a part of complex weapons systems support on the battlefield. In essence, contractors are now a *de facto* third force — a support force — integral to the conduct of modern warfare. Managing this support force well is the new challenge.

Overall, contractors on the battlefield have more than met their mission to support the Nation and its military by supplying logistics, combat and combat services support — often under harrowing and lethal conditions. Indeed, in many instances, their achievements have been nothing short of miraculous. Contractors have been largely responsible for the construction and maintenance of the complex infrastructure that supports U.S. expeditionary forces. In this process, more than 600 civilian contract workers have been killed in Iraq alone.

However, the experiences in the Balkans, Iraq and Afghanistan have also revealed a number of deficiencies in the way this third force has been managed, directed and employed. Deficits range from the policies governing contractors in theater and the relationship between contractors and military personnel; management and labor practices, cost controls, accountability and oversight; observance of international conventions; to communication, security and force protection. The relationship between the Defense Department and the private sector needs revision in order to create the conditions that will enable this essential support force to perform more efficiently and safely and that will provide requisite transparency, cost effectiveness and accountability.

There are six key reforms that must be implemented. First, establish mutual, collaborative relationships between the Defense Department and contractors. This relationship must be based on a clear definition of both sides' responsibilities and improved government oversight. Second, recognize the reality of the third force in contingency planning and preparation processes, e.g. strategic planning sessions, war games, mission training plans and mission readiness exercises. Third, provide Combatant Commanders with contracts that are flexible to meet the changing logistics requirements of the theater. Fourth, provide proper training to DoD oversight personnel; deploy and keep experienced personnel in the field. Fifth, establish a doctrine for contractors regarding force protection, security, labor and human rights practices, and command and control in theater; train all uniformed military and contractors in this doctrine. Sixth, develop and implement a consistent communications doctrine between contractors and Combatant Commanders.

Finally, changes that are made to improve conditions for success for contractors as a permanent part of deployments must be forward looking. It is time to break with the tradition of "fighting the last war" in preparing for the next one. No one imagined the scope, scale, operating tempo and duration of the Iraq war — preparing to manage the support force in future contingencies must leave sufficient degrees of freedom for the unimaginable circumstances of modern, irregular warfare.

The draft of this report was written by Ms. Carrie Hunter and Dr. Daniel Goure. Members of the Logistics Working Group had an opportunity to review and modify the final report.

Introduction

While the U.S. military and its civilian contractors have long worked together in and near theaters of conflict, recent conflicts have brought home the dramatically changed nature of civilian services as a fundamental feature of the American way of war. There are many reasons for this increased partnership in war zones, including a downsized military yet an expanded number of military commitments; outsourced logistics and combat support functions; and the increased complexity of weapons systems. The greater presence of contractors deployed to the battlefield is, in part, a natural outcome of the Department of Defense's (DoD) increasing use of Performance-Based Logistics and Public-Private Partnerships to service the needs of the warfighter.

Today in Iraq, some estimates place the number of civilian contract workers at 100,000. They are engaged in mission-essential activities that range from the provision of food and fuel to local security, interpretation services and the maintenance and repair of weapons systems. Just a portion of these are employees of the Private Security Contractor (PSC) firms. Most contractors provide services and support to U.S. and Coalition forces or are engaged in reconstruction activities. A large number of the personnel covered by the term "contractor" are local citizens employed by foreign companies or by U.S. agencies with responsibility for reconstruction.



The work done by contractors in Iraq and Afghanistan is absolutely essential to the prosecution of those two efforts. For more than four years, tens of thousands of civilian contractors have performed extraordinarily well under the most trying conditions. Hundreds have been killed and wounded.

The greater reliance on contractors in and near theater brings enormous benefits. These include having a facilitated and flexible response to surge demand and to increased operating tempos; access to skill sets and core competencies that align with advanced weapons usage and life cycle support; and fulfillment of essential support needs that allow the warfighter to focus on the battlefield.

There are also risks. Among these are lack of transparency, accountability and cost controls; clouded chains of command and poor integration of military and civilian personnel; legal liability; force protection and security for contractors; battlefield risk to military forces; contractor reliability under fire; and operational security when using local vendors.

The bottom line is that there is no going back to the days of a fairly self-contained, vertically integrated military industrial base and support supply chain. There is no intention to increase the size of the armed forces sufficiently so as to obviate the need for contractors on the battlefield (COB). Contractors are now an integral and permanent part of battlefield logistics and support. In some instances, they also provide critical security services. The issue is how to manage this presence to the greatest benefit, with the greatest safety.

This paper focuses on the issues that need to be addressed to promote more effective coordination and management of the private sector presence in a war zone, given the scope and scale of contractor involvement in modern, irregular warfare.



Definitions and Provisions: Contractors on the Battlefield

The Department of Defense defines two types of civilian workforces on or near the battlefield: those who work directly for the U.S. military, and those who are “contract” employees. It also defines some contractor services as “essential” when DoD itself lacks the military or civilian employees needed to perform a vital service. The DoD further distinguishes contractors by the sort of support work they perform: systems, external theater and theater.¹

Systems contractors: "...support specific systems throughout their system's life cycle (including spare parts and maintenance) across the range of military operations. These systems include but are not limited to weapons systems, C2 infrastructure and communications systems."² Systems support contractors are closely linked to Performance-Based Logistics (PBL) and Public-Private Partnerships (P3) contracts, as vendors provide for tooth-to-tail performance of weapons systems.

External theater contractors: "...may either be U.S. or third country vendors. Their contracts are mostly arranged prior to a deployment and are "awarded under the command and procurement authority of supporting headquarters outside of the theater." " Examples include the Army's Logistics Civil Augmentation Program (LOGCAP) and similar programs for the Air Force (AFCAP) and Navy (CONCAP); Civil Reserve Air Fleet program (CRAF) contracts and war reserve materiel (WRM) contracts.

Theater contractors: "...are personnel employed under contracts awarded and administered by "contracting personnel with the deployed force" and the contractors work "pursuant to contracts arranged within the mission area, or prearranged through the [host nation] and/or regional businesses and vendors." "³ Theater support contractors provide goods, services and minor construction usually from the local vendor base and support operational commanders.⁴ This can include general transportation, port clearance, life support and general labor.


External theater support in Iraq has been supplied largely by Kellogg Brown & Root (KBR), which holds the largest civilian contract in Iraq through LOGCAP and provides a host of support services for the armed forces. To fulfill these functions, they have hired some 200 sub-contractors who have in turn hired others. Under the umbrella of LOGCAP, these layers of contractors have together brought tens of thousands of employees to Iraq to meet contract provisions and urgent surge demand. The immense scope, scale and timeframe for meeting the LOGCAP contract terms in Iraq have expanded the issues of safety, security, tracking, coordination, reporting, transparency and accountability for all of these contractors.

In addition, so-called Phase IV missions may be performed by contractors working for other U.S. government agencies and departments. In Iraq and Afghanistan, much of the reconstruction work and civil affairs projects were performed under contracts to the Department of State and the Agency for International Development.

Finally, private security contractors have become a factor in the types of conflicts the United States confronts in Iraq and Afghanistan. As the insurgency in Iraq grew, more security contractors were brought in to protect support force and reconstruction contractors. As much as 25-30 percent of the \$18.1 billion for U.S. reconstruction spending has been dedicated to such security.⁵ In many instances, problems of cost growth in contracts for work in Iraq and Afghanistan reflect the need for private companies to hire security forces to protect their workforces and installations.

There is no current, accurate count of contractors, as defined above, in and near theater, though rough numbers are as many as 100,000 support and 20,000-plus security contractors. The Public Broadcasting Service's Frontline series⁶ reported the following numbers in June 2005:



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- 50,000 support/logistics contractors. These are civilians hired by companies such as KBR, the Halliburton subsidiary, which holds the military's logistical support contract (LOGCAP). For example, these contractors work as weathermen, cooks, carpenters, and mechanics. Most are from the developing world; the majority are Filipino.
 - 20,000 non-Iraqi security contractors. Of these, 5,000-6,000 are British, American, South African, Russian or European; another 12,000 are from such developing countries as Fiji, Colombia, Sri Lanka and India.
 - 15,000 Iraqi security contractors. Most of these were hired, mainly by the British security firm Erinys, to guard Iraq's oil infrastructure.
 - 40,000-70,000 reconstruction contractors. Some are Iraqi, but most are from the U.S. and dozens of other countries, and are employed by companies such as General Electric, Bechtel, Parsons, KBR, Fluor and Perini.

Numbers, however, vary widely. The U.S. Department of State reported that there were over 150,000 Iraqis working as contractors on U.S. government administered reconstruction projects as of March 2005. The Government Accountability Office (GAO) was unable to verify this number.⁷

Regarding PSCs, Memorandum 17 of the Coalition Provisional Authority (CPA) required all PSCs to register by June 1, 2005.⁸ According to testimony at the June 13, 2006, hearings in Congress, there is still no accurate count of PSCs: 2006 estimated numbers range from 60 to 181 companies, with some 25,000-50,000 employees.⁹ It is clear that there are no consistent definitions of PSCs, hence making a current count difficult. It is also clear that standards for PSCs need to be established and followed.

Contractors as Part of the New Force Structure

At the end of the Cold War, the military began downsizing its active forces from 2.1 million to today's level of 1.4 million. With this, many of the functions once performed by uniformed military have been transferred to the private sector. The benefits that serve to validate the presence of these contractors on the battlefield are many, and are mission critical, force-multiplier in nature. Local contract support facilitates the rapid mobilization and deployment inherent to modern warfare; contractors provide Combat Service Support (CSS), allowing soldiers to focus on combat operations; and contractors provide "high tech, low density" skills that the military has outsourced, as well as providing other skills and services that the military does not have.¹⁰

The use of civilian contractors on the battlefield is not new. Beginning with the Vietnam War, contractors have had a larger role in supporting the military in and near theater. In the first Gulf War, for instance, researchers estimated that the military would have required some 70,000 additional soldiers to fulfill the functions served by contractors. In an era of military downsizing, this finding is significant. A GAO overview provides a snapshot view of the vital roles contractors have played in recent wars.¹¹



Table 1: Selected Services Provided by contractors in Deployed Locations

Service	Balkans	Southwest Asia	Central Asia
Weapons systems support	■	■	■
Intelligence analysis	■	■	■
Linguists	■	■	■
Base operations support	■	■	■
Logistics support	■	■	
Prepositioned equipment maintenance		■	
Non-tactical communications	■	■	
Generator maintenance	■	■	■
Biological/chemical detection systems		■	■
Management and control of government property	■	■	■
Command, control, communications, computers, and intelligence	■	■	■
Continuing education	■		
Fuel and material transport	■	■	■
Security guards	■	■	
Tactical and non-tactical vehicle maintenance	■	■	
Medical service		■	
Mail service	■		

Source: GAO

An example of the impact of revised weapons logistics support and contractors as part of force deployment is the Army’s Stryker Brigade Combat Team (SBCT). Developed as modular, medium-weight brigade units, the purpose of the SBCT is to provide “a lethal, rapidly deploying modular force tailored to operational requirements that can arrive anywhere in the world within 96 hours after liftoff.”¹² Integral to the mission concept is the need to mobilize and manage “115 to 150 SBCT contractors and Department of the Army civilians.” These personnel fall under “system support contractors” and work as part of the SBCT unit set fielding (USF) that deploys a system-of-systems to the theater. In theater, they are part of the “logistics support element – forward” or LSE-F, supporting the Army’s LSE as the single face to the warfighter.

Approximately 120 specialized contractors are an integral part of the SBCTs’ highly complex systems maintenance, sustainment, and technical support. The Army now must ensure that contractors are planned for and integrated into all SBCT operations and risk assessments. Considering the factors of mission, enemy, terrain, troops, time, and civilians, many contractors are actually operating in the forward areas of the SBCT. However, supporting the SBCT requires the convergence of standard Army and nonstandard contractor support. For example, 57 of the 79 C4ISR systems are supported by systems contractors exclusively. As Phillip Sibley, senior LAR at the Army Communications-Electronics Command (CECOM) at Fort Monmouth, New Jersey, accurately stated, “This isn’t your father’s Army anymore.”¹³

In 2003, the Army developed a forward-deployed logistics support team, or LST, which in Iraq has typically included five embedded contractors for the SBCT.¹⁴

Systems support contractors play a large role in Iraq, from unmanned aerial vehicles to helicopters and communications. Embedded in forward areas with the troops, they





face special challenges in theater, especially with regard to force protection, security and legal accountability. Advanced systems, such as Boeing’s ScanEagle unmanned aerial vehicle or their Apache helicopters, rely heavily on technical field support. Most other major equipment manufacturers, including Lockheed Martin, BAE Systems and Northrop Grumman, have deployed cadres of their employees into the war zone to support U.S. forces.

As noted above, a strikingly large percentage of the military’s C4ISR systems support for weapons like the Stryker is civilian. This raises issues for the operational area Combatant Commanders with added responsibilities regarding contractor planning, deployment and redeployment.¹⁵ An example of the implications of such support is the commander who had requested a fleet of Apache helicopters; the fleet arrived with its own contingent of contract support workers – an addition of 70 people who had to be sheltered, fed and kept secure.¹⁶

External theater support contractors are responsible for the necessities of daily living, from shelter to fuel, food and water. LOGCAP, developed in 1985, is the Army’s largest contract involving CSS through a contractor. Under the original concept, the contractor would develop a “worldwide management plan,” laying out how it would mobilize to support the military in as many as three concurrent contingencies. This plan included personnel and materials, as well as a database of vendors. The contract is performance-based, i.e. guided by outcomes. The contractor has multiple degrees of freedom in terms of how it will meet the outcomes, from choice of sub-contractors to workforce and supply chain. LOGCAP is indefinite delivery/indefinite quantity; as a cost-plus-award-fee contract, the contractor is reimbursed for direct, allowable costs and receives a one-percent base fee and up to a two-percent award fee. Base and award fees are derived from the negotiated, estimated costs, not on real cost.¹⁷

Table 2¹⁸: Summary of Services Provided by the LOGCAP III Contractor

Under the current Logistics Civil Augmentation Program (LOGCAP), contractors provide the following services to the U.S. Army in Southwest Asia:¹

- Air-terminal and airfield operations;
- Ammunition storage and supply;
- Camp operations:
 - construction and maintenance,
 - electric power generation,
 - food service and dining facilities,
 - hazardous-materials management,
 - laundry services,
 - operations and maintenance, and
 - water and ice distribution;
- Communications and information technology;
- Equipment maintenance;
- Firefighting services;
- Fuel distribution;
- Morale, welfare, and recreation;
- Procurement and property management and
- Transportation.

1. Kellogg, Brown & Root, “LOGCAP Current Operations Update Brief” (February 2004).

Halliburton’s KBR won LOGCAP III in 2001; the value for their work in Iraq is some \$15 billion to date. The scope and scale of this particular contingency are vast, and the operating tempo challenging. To meet contract provisions, KBR has employed some 200 sub-contractors and over 50,000 employees in total. With roughly



140,000 active troops in the region, this is an impressive ratio of contractor to soldier. KBR has managed constant change to over 100 Task Orders, with (as of January 2005) more than 560 modifications.¹⁹

Overall, private contractors, both support and external theater, have performed extremely well, providing the military what they want where and when it was required. Private corporations provide a range of unique services that are absolutely vital to the conduct of overseas military operations. For example, the Maersk corporation maintains and supports a large portion of the U.S. fleet of prepositioned ships. L-3 has provided thousands of interpreters for U.S. forces in Iraq and Afghanistan. Considering the overall Iraq theater command experience with LOGCAP, Major General Jerome Johnson, Commanding Officer of the Army Field Support Command, credits contractors:

Our LOGCAP operation has brought form and organization to what is the first sustained employment of contractors on the battlefield. By implementing the Army's move toward contracting CSS and some CS functions, we've helped make it possible for Soldiers to spend more time becoming better trained, more lethal warfighters.²⁰


The LOGCAP structure is being revised by the Army to incorporate lessons learned in Iraq. Under the existing Performance Work Statements, LOGCAP IV will split planning and support from provision of services and will select separate vendors for each portion. There will be one Support Contractor that will assist the LOGCAP Program Director with training support, performance work statements, operations tracking, and analysis of performing contractor supply chain management and exercise preparation and participation. This contractor will also provide liaison support to Combatant and Army Service Component Commands and will advise on "the capabilities and functions of the LOGCAP program and contractors."²¹ For the service portion of the contract, providing Combat Support and Combat Service Support, the Army will select up to three prime vendors to compete for task orders as they are issued. Under the Army's Performance Work Statements, it is clear that both the support and performing contractors are expected to participate in a range of exercises that will test how well they support their LOGCAP clients and duties. This would, in theory, address one of the recommendations of this paper.

The most likely outcome is multiple contractors serving different masters. The new LOGCAP system will likely provide awards to multiple contractor teams that will then bid on task orders. There have been suggestions that each Combatant Command have its own LOGCAP contractor.²² The Air Force and Navy will continue to maintain the AFCAP and CONCAP contractors. Eventually, LOGCAP may evolve into a joint support contract.

The Challenges of Managing the Support Force in Irregular War Zones

The difficulty in properly managing and directing the contractors has created many of the problems experienced in theater. There are two chains of command on the battlefield: one military, the other private sector; the only link between the two is through the contracting officer who has sole authority over the contractors. "Duties of contractors are established solely by the terms of their contract — they are not





subject to Army regulations or the Uniform Code of Military Justice (UCMJ) (except during a declared war).²³ Each of the services developed its own sets of rules and regulations to manage this support force on the battlefield, but the provisions for managing contractors are, at best, confusing. The situation is somewhat clearer for those civilians employed directly by DoD, under the Unified Combatant Commander/Component Commander. However, as experience has shown, the extensive use of civilian contractors in war zones is fraught with difficult management challenges. These range from the right of civilians to carry arms, the military's responsibility for the security of civilian personnel, and the rules governing off-hour behavior by contractors to the responsibilities of private firms for the welfare and safety of their employees in a war zone. The concerns for liability (for and by the contractor and for and by the U.S. government), Geneva Convention status and civilian security in an irregular theater of war are great.

To address this confusion, DoD developed new directives comprising a unified set of policies regarding contractors on the battlefield. In October 2005, DoD issued this comprehensive roadmap to policy and procedures concerning contractors that accompany U.S. armed forces to include:

...defense contractors and employees of defense contractors and their sub-contractors at all tiers under DoD contracts, including third country national (TCN) and host nation (HN) personnel, who are authorized to accompany the U.S. Armed Forces under such contracts. Collectively, these persons are hereafter referred to as contingency contractor personnel. One significant sub-category of contingency contractor personnel, called contractors deploying with the force (CDF), is subject to special deployment, redeployment, and accountability requirements and responsibilities.²⁴

The key areas addressed in this instruction are: contractor legal status; planning requirements; visibility; deployment, theater reception, and in-theater management processes; force protection and security; and medical care. This set of instructions also covers actions required during phases of contingency operations: pre-deployment planning; deployment; reception; management within the theater; and redeployment.²⁵

Contractors must adhere to other legal regulations to comply with international law. The 1949 Geneva Conventions on treatment of prisoners of war (GCW) established a legal framework for treatment of prisoners of war. In May 2006, DoD issued a revision of its Law of War program with updated policies to ensure compliance with the Geneva Conventions. The revised DoD Law of War stipulates that "contract work statements for contractors comply with the policies" and requires that contractors institute programs to prevent violations of the Law of War.²⁶


The presence of contractor personnel in a combat zone presents a serious and growing security challenge. Even with the DoD's comprehensive road map, there is still no solid assurance for the safety of contractor personnel; there is general lack of clarity under the provisions regarding self protection and the responsibility of military forces to provide security. Further, the rights and obligations of the private sector firms to protect employees are confusing. Finally, the legal status of individuals becomes complex if and when they must protect themselves or their charges. The U.S. Law of War status of contractor personnel states that U.S. and foreign contractors who accompany armed forces are "considered civilians accompanying the force

and are neither combatants nor noncombatants.” The GCW establishes that such civilians will be accorded prisoner of war status if captured. Civilian contractors who carry weapons may in theory invalidate this protection under GCW considerations. What is the status of an individual who fires a weapon in self-protection? What is the status of and legal responsibilities for civilians hired by the U.S. government or by its contractors to provide security? What are the rules and regulations that govern PSC status and legal authority? Who enforces these? These are the questions that must be addressed as part of military doctrine for its support force.



All in all, however, the lessons from Iraq about requisite conditions for success must be integrated into contractor management. These conditions begin with inclusion in high level planning prior to any contingency (in some cases, following existing guidance from DoD or service policies); increasing the number of trained personnel in the military who will manage the contracts, especially in the operational arena; and increasing the consistency and experience in those with oversight responsibilities and keeping them on task for longer than brief deployments. Combatant Commanders must be educated about contractor management and must understand the responsibilities they bear in theater for managing the contract and providing for contractor support and security. They also must have and be trained in clear guidelines for command and control of private sector personnel in the war zone.

What are some of the additional elements that need to be considered and revamped to create effective management strategies for contractors on the battlefield? It is already known that there are significant challenges in revamping military logistics to partner with the private sector here at home. From theater of war reports, it is clear that old traditions there also die hard. Stovepipes of authority, lack of communication and coordination, cost overruns and overcharges, and cases of materiel oversupply as well as undersupply indicate that there are significant steps that need to be taken to fully integrate contractors with military need. The lack of clear accounting and



transparency has led to allegations of profiteering; this perception alone must be amended for a civilian force to be successfully integrated with the military. Obviously, such charges are serious and the underlying circumstances must be investigated.

Risk Management

Among other considerations, contractors on the battlefield brings new risk assessment and management considerations. Considerable effort has been given to develop policies for managing the new risk profiles that such contractors introduce; though there are certain important disconnects between policies, even within the same service. The DoD has attempted to coordinate all rules and regulations under its newly issued Instruction. Even with this, risk management remains a challenge.

For instance, the Army developed Field Manuals and Regulations in 1999 and 2000 regarding managing contractors on the battlefield.²⁷ In 2003, the Army updated their doctrine for contractors on the battlefield.²⁸ Throughout these documents, there is a call for improved risk assessment, but according to a RAND study, no good guidelines exist for integrating individual assessments with broader force risk assessments, and the impact of contractors on both sets of risks.²⁹

Mitigation of risk begins with knowing when and how best to use contractors. It is important for the military to recognize when the use of contractors is a matter of choice and when it is a matter of necessity. A RAND study of contractors on the battlefield, based on data prior to Iraq, found that the policy decisions made by different departments within the Army could unintentionally drive the use of contractors on the battlefield despite a preference within the Army to use military resources.³⁰

Additional concerns include the tolerance for risk by private contractors on the battlefield: there is nothing that compels them to remain when things heat up. Can DoD rely on these vital mission essential service providers in the heat of battle, if they can simply walk off? This involves a significant element of trust, without which the military mission's success can be at risk. Thus far, there are no reports that this has happened in Iraq, but it remains a concern for the military.

Elements of managing contractors alongside uniformed military also include a substantial challenge of oversight throughout the “fog of war” and the fundamental structural divide between Command and Control (military) and Principal-Agent (contractor) relationships. How does one institutionalize an alignment of purpose and mission? And, how should field commanders best be prepared and trained as principals to utilize and oversee contractor agents?

Finally, there are the considerable concerns regarding security – who is best suited to provide these services? What rules and regulations govern their presence? What is the appropriate role of force protection? These issues of risk management and mitigation are critical for the safety and success of the military mission.

Command and Control (C2)

Among top concerns with the management of this new force on the battlefield is the issue of command and control or C2, especially in non-linear, asymmetric war zones. Ultimate responsibility for control of the battlefield and success of the mission lies with the Combatant Commanders. Yet establishing unified command and control over mission-related resources has been challenged by the presence of thousands of

contractors. This is because there are two chains of command: one military, one private sector. The link between the two is the Primary Contracting Officer and/or their field representative.³¹ With multiple contractors under different Primary Contracting Officers, representing a host of U.S. agencies including the State Department and U.S. Agency for International Development, the Combatant Commanders have a massive management responsibility and challenge.



The military is not well trained nor structured in theater to manage successfully a private sector presence in their operational arenas. Unless they are educated in contract management for this specific purpose, they will not succeed. There is no provision for coordination among Primary Contracting Officers. Contracts also need to be written in a way that provides the Combatant Commanders needed responsiveness and flexibility to respond to unanticipated immediate needs on the battlefield. Existing Federal Acquisition Regulations and Defense Federal Acquisition Regulations do not provide such flexibility. Finally, this addition of a third force in theater requires a huge cultural change from the top management – a change that integrates uniformed personnel with private sector contractors in ways that promote collaborative relationships in the field, and recognizes the role of contractors as the requisite support force.

Some contractors are excellent at communicating and coordinating with local military commands; others are not. This results in threats to mission safety and success. A clear set of standards must be established, combatants and non-combatants must be trained to these standards, and there must be a chain of command and communications that to which everyone adheres and is accountable.

Security

The threat to contractors has perhaps never been higher than in Iraq. In this irregular battlefield, the U.S. considers the entire country a combat zone. No camp, base, checkpoint or highway is safe from attack. Insurgents have become extremely creative in the use of improvised explosive devices, rocket propelled grenades and suicide vehicles, making a contractor's job especially lethal and hazardous.



According to a Knight-Ridder report in November 2005, the rate of civilian deaths and injuries has grown with this increase in Iraqi insurgency. It is exceptionally difficult to get accurate numbers in this regard, given the lack of reporting requirements for all but companies hired directly by the Pentagon. Most casualties are not Americans. The Labor Department listed 428 dead and 3,963 injured at the time of this report. Claims to the Labor Department for death benefits rose to 647 by September 30, 2006.³² Companies like L-3 and Halliburton report higher numbers than those counted by the Labor Department. Interpreters are especially at risk for collaborating with Americans.³³ For all contractors, the rate of kidnappings and murders has climbed with the insurgency and the risks are extreme.



For supply contractors to do what they need to do to support the troops, they especially need protected Major Supply Routes, or MSRs. A common complaint is the harrowing and often lethal nature of delivering goods with its high risks for attack. Virtually all the supply truck convoys are driven by private contractors, for food, fuel, water and sanitation.

KBR's two thousand truck drivers were the unsung heroes of the war in Iraq. They delivered everything the U.S. military needed to survive...KBR had seven hundred trucks on the road on any given day....Perhaps not surprisingly, more than half of all convoys in Iraq got hit—and in dangerous areas, nearly every KBR convoy was attacked in one way or another.³⁴

Though convoys have military protection, it is often not enough to keep them safe. Testimony to Congress by drivers who have survived attacks on their convoys also

calls into serious question the resources and training applied by the private sector to consistently and safely deploy convoys.³⁵ This underscores the absolute imperative of establishing a single system of management, control and security for uniformed and civilian support personnel alike.

As the U.S. has learned, force protection for contractors is critical to mission success. Issuing and adhering to consistent doctrine on force protection is key and should be integral to planning, training and execution of future contractor deployments. The issue of whether or not contractors can carry arms is one that is situation dependent. Combatant Commanders have the authority to allow contractors to carry arms, under strict provisions. The legal ramifications of such decisions, however, must be made clear to the contractor.

To date, the extent of legal authority governing the status and behavior of private contractors, whether working directly for the U.S. government or for third parties has been unclear. This is particularly the case in contingency operations or where no agreement with a host nation regarding status of forces and personnel exists. The military has tried to address this problem in some instances, notably the Balkans, by granting contractors unofficial military ranks. Such a move is designed to provide some protection for civilians in the event of capture; it does not extend legal jurisdiction of U.S. commanders over civilians. Although there are reports of contractors violating military law and domestic U.S. statutes, it is unclear what laws apply to them.


Until recently, the Uniform Code of Military Justice (UCMJ) did not apply to U.S. contractors. This situation was changed in the Fiscal Year 2007 defense authorization bill. Under the new law, civilian defense contractors – and possibly those working for other U.S. government agencies and even foreign governments – may be subject to military law. Moreover, the UCMJ presumes that military personnel have the necessary training, equipment and command and control to justify its provisions. In the absence of such conditions, is the application of the UCMJ sensible?

The issue of PSCs, overall, is one that also must be addressed in a more comprehensive manner, recognizing the critical role that they have and do play in protecting contractors and other civilians in the combat zone. From the larger perspective, there needs to be a standardization of the definition of PSC, the scope and functional legal limits of their activities, and guidance on how to select and utilize the PSC in an irregular war zone.

Transparency, Accountability and Cost Effectiveness

Complaints of lack of transparency and accountability are at the root of much of the dissatisfaction with determining cost effectiveness. By design, a contractor must hire multiple sub-contractors, which can create layers of confusion in addition to cost. In one audit, GAO found that Halliburton's KBR had antiquated accounting systems that contributed to the lack of visibility of how dollars were being spent. In a cost-plus environment, contracting officers must know comparables and provide the oversight necessary to avoid waste. This requires transparency and experienced, field based military personnel. KBR has had difficulty accounting for \$1.4 billion under audit and justifying the direct costs it was claiming. Again, some of these were due to high costs in the field, the difficulty in delivering to areas with high insurgency activity, etc. Other charges had to do with the customer providing insufficient notice for supplies or services, leading to higher costs of meeting immediate need.





There has been some fraud; a number of individuals have been indicted for possible kickbacks and impropriety in managing contracts in Iraq. The obvious conclusion is that rigorous enforcement and oversight are called for; the military — as per above — must do a better job in educating, training and deploying its oversight personnel. It must do the same for supply management personnel, training them in the sorts of supply contract choices and obligations they have in the field.

As DoD reviews the costs of the support force, it must make an effort to include all operational, administrative and hidden costs. There have been constant, costly modifications to task orders — many of which were avoidable had the military customer followed DoD or service guidelines to involve the contractor in planning ahead of time. It is important to ask if there is anything else that can be addressed from a systemic basis to minimize costs in the future; and this means having a clear picture of the total cost.

Published reports regarding contractor errors and mismanagement focus on a relatively small subset of the overall activities of the contractor support to the military. Moreover, most such reports fail to adequately delineate the complexities involved in a combat environment and the role of the government in the public-private relationship. A GAO review of Halliburton's initial performance on LOGCAP in Iraq concluded that Halliburton had managed the contract poorly, with inadequate cost controls, difficulties meeting schedules, inadequate control over purchases and over subcontractors.³⁶ But GAO also acknowledged many shortfalls on the military's part in triggering the involvement of contractors and in the management and oversight of the contract, once initiated. The idea behind advance logistics contracts is to save money and improve service by giving the contractor plenty of time to plan for the mission. GAO notes that planning for the use of LOGCAP in Iraq "did not begin until after the fall of Baghdad, was not comprehensive and did not include the contractor. Instead, a piecemeal approach to planning occurred and resulted in constant changes to the statement of work and forced the contractor to scramble to meet contract requirements, resulting in unmet expectations, lower quality services and unnecessary costs."³⁷

Another large part of the issue here is that the military officials in charge of their LOGCAP support contractor were not prepared prior to arriving in theater to manage this vital support function. GAO interviewed military officials and found that they "knew nothing about LOGCAP before they deployed and had received no training regarding their roles and responsibilities." Further, they interviewed members of the logistical support units who were the primary interface with Halliburton in the field and found that these individuals had only received a two-week training session before being deployed and had little experience beyond this. Their responsibilities included writing separate cost estimates for task orders and to review those of the contractor; but with little experience, how could they know the reasonableness of the contractor's costs? In sum: Military units across the services receiving contractor support have lacked a comprehensive understanding of their roles and responsibilities, which include establishing the work to be done by contractors and monitoring contractors' performance.

In response to the need to coordinate contractors and the military in the field, the U.S. Army established a Contractor Coordination Cell (3C) in Iraq in 2003. The tasks of the 3C unit were to identify contracting companies in the Area of Responsibility, identify local contractors and leads, work with local authorities to report contractor

status, provide contractor Situation Reports, act as liaison between local Contracting Officer's Representatives, contractor lead and the assigned Aerial Port of Debarkation; identify and report potential immigration challenges; and reconcile contractors with companies. By 2005, 3C had identified some 453 companies providing support services.³⁸ From contractor reports and Combatant Commander feedback, this cell alone is not enough to address the issues raised above.

Oversight and Coordination

The contracting officers have oversight responsibility for LOGCAP, AFCAP, CONCAP and other contract requirements. Because most of these officers are not located at deployed locations, they appoint monitors to represent them. Most have chosen the Defense Contract Management Agency (DCMA), an independent combat support agency at DoD with responsibility for contract management. GAO found that while DCMA provided "good overall contract oversight," many DCMA contract administrators also have "limited knowledge of field operations" and rely instead on customer representatives to provide technical oversight.



As GAO notes, it is important that oversight officers have knowledge over the wide range of activities for which they are providing oversight. For LOGCAP provisions, for instance, this would include having experience with the cost and provision of a wide range of deliverables including provision of supplies (e.g. construction materials, fuel, food and water) and services (e.g. food service, laundry, construction, transportation and maintenance). DCMA had intended to identify a technical representative with such expertise at each site; at the time of this GAO report, however, DCMA had not appointed such representatives at all "major sites" in Iraq.³⁹ DCMA, having undergone significant downsizing (55 percent) in prior years, stated the need for more qualified staff to meet these oversight obligations in Iraq.⁴⁰ Contractors have indeed complained that their uniformed contract managers and

overseers have had little training and little experience before arriving in the field; just as they get to a point where they have the knowledge to manage the contract, they are redeployed and the process, from the contractor's point of view, begins anew.

Perhaps the larger issue here is that these are not new revelations in DoD contract management challenges. But a combat environment magnifies the problems associated with DoD's contract management and oversight functions. Applications of the Federal Acquisition Regulations in an overseas theater can result in significant additional costs, delays in undertaking contract activities, and risks to contractor personnel. Contract monitors, operating from the United States, were often ill-equipped to understand and deal with issues raised by a combat environment. Put bluntly, it is ludicrous to require that contractors in a war zone adhere to requirements for set-asides, Buy America, rapid auditing, and fair pricing. The Federal Acquisition Regulations were not designed for the realities of wartime. With the increased reliance on contractors in the battlefield, there is renewed need for appropriate training and oversight within DoD and in developing the depth and breadth of qualified, experienced personnel to manage the support force for years to come.



As the GAO discovered, it was difficult to navigate the layers of contracts for purposes of transparency, accountability, and determining costs and cost effectiveness. Beyond this, there are troubling issues regarding human trafficking: sub-contractors working illegally with labor brokers brought in thousands of low-wage workers who were given substandard living and working conditions, many of whom were subjected to debt bondage. In April 2006, the Joint Contracting Command ordered that all contractors and their subcontractors return passports that had been withheld from employees, supply them with signed copies of their employment contracts and establish a minimum of 50 square feet of living space per person. The order further

clarified that contractors were prohibited from using unlicensed recruiters and that contractors failing to comply with the order would be subject to termination.⁴¹ Monitoring these labor contracts is another responsibility of the military oversight personnel and must be addressed under current and future logistics contracts.

Creating Conditions for Success

The bottom line on the presence of contractors on the battlefield is that there is no going back: they are now part of force deployment and, as such, must be included at all levels of pre-contingency planning and training. The civilian support force is here to stay; DoD must integrate the management of this force into contingency planning and preparedness, and mission success in ways that reflect and sustain this new reality.

Many of the issues that arise from Iraq stem from the unimagined circumstances following the taking of Baghdad having to do with the scale, scope, operating tempo and duration of the war. Neither the military nor the contractors were prepared for what has developed; all things considered, the support force has managed to meet unanticipated needs. Future contracts must allow multiple degrees of freedom to absorb other unimagined challenges in new contingencies.

There are six key reforms that must be implemented. First, mutual, collaborative relationships between uniformed service members and contractors need to be established. Second, the reality of the third force must be recognized in contingency planning and preparation processes, e.g. strategic planning sessions, war games, mission training plans and mission readiness exercises. Third, provide Combatant Commanders with contracts that are flexible to meet the changing logistics requirements of the theater. Fourth, provide proper training to DoD oversight personnel; deploy and keep experienced personnel in the field. Fifth, establish a doctrine for contractors regarding force protection and security and command and control in theater, and train all uniformed military and contractors in this doctrine. Sixth, develop and implement a consistent communications doctrine between contractors and Combatant Commanders.

Laying the framework for managing the support force must start with basic military planning. Contractors who are expected to support surge and theater demand in contingencies must be included as stakeholders in the strategic and contingency planning efforts at the highest levels in DoD. This includes integrating external theater support contractors and system support contractors in strategic planning and war gaming.

Next, current and future Combatant Commanders must be educated in management of contractors on the battlefield, both in terms of what the contractor must be doing to fulfill the contract and in cost containment, but also in terms of command and control of contractor personnel, and force protection and security. A clear doctrine for force protection and private security contractors must be established and included in training for uniform and non-uniform personnel. This includes coordination of communications and activities in theater, and rules and regulations for contractor behavior whether on or off-duty.



Combatant Commanders must receive additional contract management support from trained military personnel – whether for acquisition and maintenance or for shelter and food. They must be given tools for success, including contract provisions that are flexible enough to allow the commander to alter the contract to suit the changing nature of field realities.

A commander's freedom and ability to improvise quickly in using tactics, employing weapons, and deploying personnel have long been considered essential to victory in combat. A contract – a legal, binding document – even when written with the best of intentions, cannot cover every possible contingency in advance. To stop during wartime, no matter how briefly, to rewrite or renegotiate a contractor's obligations severely limits a commander's ability to accomplish the mission.⁴²



It is clear that contractor activities in a war zone cannot be successfully managed and audited by continental U.S.-based contracting officials who are unfamiliar with conditions in theater. If there is one lesson to emerge from Iraq it is the absolute requirement for unity of command. The program management function in theater cannot be separated from the contract management/oversight function.

Contractors must be trained too. Personnel headed to the operational areas must be trained in theater-based contract fulfillment, and in working with and under Combatant Commanders. They should join joint training exercises prior to contingency deployment.

There is a need for a clear, simple and manageable contracting process for wartime. This process must start with improved requirements definition. If DoD is unable to clearly define its requirements and the environment in which the contract will be executed, it is difficult to see how the contractors can be held accountable for performance problems and cost overruns. The requirements process must be connected to the contracting and oversight processes.

The regulations that guide advance logistics contracts, e.g. the Federal Acquisition Regulations and Defense Federal Acquisition Regulations, must be revised to allow greater flexibility to suit the differing circumstances of contingencies. The base logistics contracts must also reflect the realities of surge demand; and must make clear the metrics for the performance-based requirements to which contractors will be held accountable.

The welter of different contract types needs to be reduced to a small set for which new regulations can be established. The terms and conditions specified in contracts need to be scoped with an eye to the realities of operating in a hostile environment. In addition, firm fixed-price contracts have almost no place in a combat environment.

There is an additional moral and ethical issue involved in integrating civilians so deeply into the combat zone and combat operations. What are the obligations of the U.S. government to civilians put in harms way to support military operations? They are covered by a special insurance, but it seems this is applied inconsistently, depending on the nationality of the citizen injured or killed.⁴³ Adding in the layers of transparency to make certain that all employees receive the same benefits, regardless of which layer of sub-contractor they fall under, is important.

Going forward, the legal environment for contractors must be made clear, and coordinated between the services and the contractors. Consistent application in the field will also be important for reliability, trust and safety and the ultimate success of the mission. An alternative to the application of the UCMJ to contractors must be developed. It must take into account the different classes of contractors supporting the U.S. military in the field as well as the presence of contractors supporting host nations and third parties. This legal structure must address use of force and self-defense, liability, legal status for civilian contractors and the responsibilities of the U.S. government.

Finally, changes that are made to improve conditions for success for contractors as a permanent part of deployments must be forward looking. It is time to break with the tradition of “fighting the last war” in preparing for the next one. No one imagined the scope, scale, operating tempo and duration of this war – preparing to manage the support force in future contingencies must leave sufficient degrees of freedom for the unimaginable circumstances of modern, irregular warfare.



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