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Industry Report

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Private Support to Combat Operations Industry

The Industrial College of the Armed Forces
National Defense University
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PRIVATE SECTOR SUPPORT TO OPERATIONS 2012

ABSTRACT

The Department of Defense (DoD) relies heavily on the Private Sector Support to Operations (PSSO) industry as its primary means of providing support and services in DoD and interagency overseas contingency operations. While there have been notable efforts to standardize procedures and capture best practices, contracting for contingency operations has been done largely through ad hoc mechanisms, leading to inefficiencies; reduced operational effectiveness; higher than necessary costs; fraud, waste and abuse, and unnecessary political pressure. Given that contractors will remain a significant part of the total force in future contingency operations, this paper argues that operational contract support needs to be better institutionalized in order to provide better planning, execution and oversight of DoD and interagency contingency operations, and recommends a number of initiatives that should be addressed as a matter of priority.

Colonel Sean Farrell, U.S. Air Force
Commander Ethan Gibson, U.S. Navy
Colonel John Hall, U.S. Army
Lieutenant Colonel Jeffrey Holt, U.S. Marine Corps
Colonel Patrick Hynes, U.S. Army
Colonel Christian Karsner, U.S. Army
Ms. Susan Mason, U.S. Department of Energy
Mr. Rodney Mayo, Defense Contract Management Agency
Lieutenant Colonel John O'Connell, Air National Guard
Captain Eugene Paluso, U.S. Navy
Colonel Seth Sherwood, U.S. Army
Commander Kyle Taylor, U.S. Navy
Commander Raymond Tortorelli, U.S. Navy
Colonel Vincent Quarles, U.S. Army
Lieutenant Colonel Kristin Uchimura, U.S. Air Force
Colonel Harry Vanderbach, U.S. Air Force
Lieutenant Colonel Eric Zeeman, U.S. Army

Colonel Doug McCarthy, Canadian Forces, Faculty
Colonel William Fuller, U.S. Army, Faculty
Mr. John Gerlaugh, Office of the Secretary of Defense, Faculty

MEETINGS AND VISITS

Domestic

Congressman John Tierney, House Committee on Oversight and Government Reform
Mr. Tommy Marks, Director, LOGCAP, U.S. Army Sustainment Command
Mr. Daniel Gordon, Former Administrator, Office of Federal Procurement Policy
Mr. Stuart Bowen, Special Inspector General for Iraq Reconstruction
Ambassador Moorefield, DoD Deputy Inspector General
Mr. Charlie Williams, Director, DCMA
Mr. Doug Brooks, International Stability Operations Association
Lt Gen Bash, Director, Joint Staff J4
Mr. Gary Motsek, DASD for Program Support, OSD
AFCAP Program Office
US Central Command
Honeywell
SERCO
BAE Systems
Omega Air
FLUOR
URS
Dyncorp International
CH2M Hill
Readiness Management Support
KBR
ITT Excelis
Academi
ITI
Goldman Sachs
Sikorsky Helicopter
United Nations Commission on Mercenaries
Department of State, Office of Overseas Protective Services
Department of State Office of Acquisition Management
Department of State Bureau of Conflict and Stabilization Operations

International

Ministry of Defence, United Kingdom
Ministry of Defense, Republic of France
ADS Group Limited (Headquarters in the United Kingdom)
Aegis Defense Services (Headquarters in the United Kingdom)
NATO Maintenance and Supply Agency (NAMSA) (Headquarters in Luxembourg)
Sodexo Defence (Headquarters in France)

Now, and for the foreseeable future, the United States will be unable to engage in conflicts or reconstruction and stabilization operations of any significant size without private contractors. Changes in business practices, the provision of government services and the character of modern conflict, together with limits on the size of the American military, diplomatic and development corps, are driving the size and scope of expeditionary contracting to unprecedented proportions. Absent a significant reduction in America's international commitments and perceived global interests, the employment of private contractors in future American conflicts is here to stay.[1]

Richard Fontaine, Senior Fellow, Center for a New American Security

INTRODUCTION

The Department of Defense (DoD) relies heavily on the Private Sector Support to Operations (PSSO) industry as its primary means of providing support and services in DoD and interagency overseas contingency operations. While there have been notable efforts to standardize procedures and capture best practices, contracting for contingency operations has been done largely through ad hoc mechanisms, leading to inefficiencies; reduced operational effectiveness; higher than necessary costs; fraud, waste and abuse, and unnecessary political pressure. Given contractors will remain a significant part of the total force in future contingency operations, this paper argues operational contract support needs to be better institutionalized to provide more effective planning, execution and oversight of DoD and interagency contingency operations, and recommends a number of priority initiatives that should be addressed.

For this paper, Operational Contract Support (OCS) is defined as the ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel providing support to military and interagency operations within a designated operational area.[2] The PSSO industry is defined as the body of firms that provide OCS to DoD and other government agencies in contingency operations.

The charter of the PSSO Industry Study Group (hereinafter "the Study Group") was to examine the overall health of the industry, to identify current and future challenges related to OCS and the PSSO industrial base, and to make recommendations on how to improve processes, efficiency, oversight and effectiveness. In light of its charter, the group divided into six teams consistent with the industry's greatest challenges. Team 1 examined OCS planning and readiness; Team 2 assessed the capacity of the industry and government to meet future requirements; Team 3 looked at ways to improve interagency coordination and efficiency; Team 4 analyzed the relationships between operational effectiveness, cost, and political dynamics; Team 5 reviewed criminal justice jurisdiction over forward deployed contractors; and Team 6 analyzed the nature and overall economic health (economic analysis) of the PSSO industry. Input came from both domestic and international sources. Because it is foundational to understanding the findings of the other five teams, the industry economic analysis is presented in Part I of this paper. The remaining findings are presented in Part II "Challenges." Annex A is a more in depth discussion of the pros and cons associated with the Civilian Expeditionary Workforce as an alternative to contracted support. For those readers desiring a more in depth analysis of the issues presented in this paper, Annex B lists the detailed studies the Study Group performed, and information on how to obtain copies. For ease of reference, Annex C provides a consolidated list of all the recommendations indentified by the Study Group in the Part II "Challenges" section of the paper.

PART I - THE PSSO INDUSTRY

As the United States Government (USG) tightens the federal budget and reduces the end strength of service members, it continues to rely upon outsourcing as a means of providing support and services in contingency operations. Therefore, the ability of the Private Sector Support to Operations (PSSO) industry to support current and future USG contingency requirements is a matter of national security. To ensure the PSSO industry remains a means of resourcing national security requirements, USG policymakers must have an understanding of the overall economic health of the industry and the challenges facing the industrial base writ large.

Industry Definition

As noted above, the PSSO industry is defined as the body of firms that provide operational contract support to DoD and other government agencies in contingency operations. To more clearly define the market for analysis, the Study Group aggregated into the six essential service segments: logistical support; translators, interpreters and linguists; engineer services and construction; training; Intelligence, Surveillance and Reconnaissance (ISR) support; and Personal Security Contractors (PSCs). In each of these categories, the Study Group concluded that firms compete intensely for declining government business and that there is a high degree of substitutability between firms and the services they provide. In other words, the venue in which the government solicits and obtains OCS is consistent with the economic definition of a market.

Economic Health

The Study Group examined the overall economic health of the PSSO industry to determine if it is adequately poised to provide services in support of medium and long-term national security requirements. The group chose four leading firms as a representative sample of the overall industry: Fluor, KBR, URS, and L3 Communications (although it had meetings and discussions with a total of eighteen domestic and international firms in the industry).

The economic analysis was done from two perspectives. The first was economic value, which determines if resources within the industry are allocated optimally maximizing Gross Domestic Product (GDP) and evaluates the equitable division of market benefits between producers (firms) and consumers (U.S. taxpayers). The second was profitability, investigating whether firms in the industry are making adequate profit to support internal growth, research and development (R&D), innovation, and surge capability, and whether or not declining federal budgets will impact profits to a point where firms simply decide to leave the industry.

These two perspectives are often divergent since maximizing economic value is in the public's interest while creating greatest firm value is a company's goal.[3] The crossroad of these perspectives is where market failure may occur and require government intervention to ensure the PSSO industry is postured to meet national security requirements.

Economic Value and Competitive Market Structure

The competitive market structure shown in Figure 1 depicts the division of power and economic value between a perfectly competitive market and a monopoly. Any industry not at the far left of the spectrum has at least some degree of market failure and therefore a loss of economic value. Market failure may necessitate government intervention, which introduces risk of unintended consequences.

Based on analysis of the four sample firms' financial statements and discussions with other firms within the PSSO industry, the Study Group concluded Point A in Figure 1 best represents the level of competition within the industry. The top four firms form a competitive oligopoly, in that combined they hold greater than 40% of market share.[4] However the impact of the oligopoly is offset by the fact the USG is virtually the sole customer and the resulting monopsony pushes the industry back towards greater economic efficiency. [5] This combined competitive oligopoly and monopsony market structure moderates the loss of economic value to a point where it should not be a concern to USG policy makers. Most non-U.S. firms and agencies visited agreed a similar situation exists in Europe, in that relatively few firms bid on PSSO contracts. The U.K. Ministry of Defence (MOD) was an exception, believing there were sufficient small firms within Europe to push the industry base closer to perfect competition.

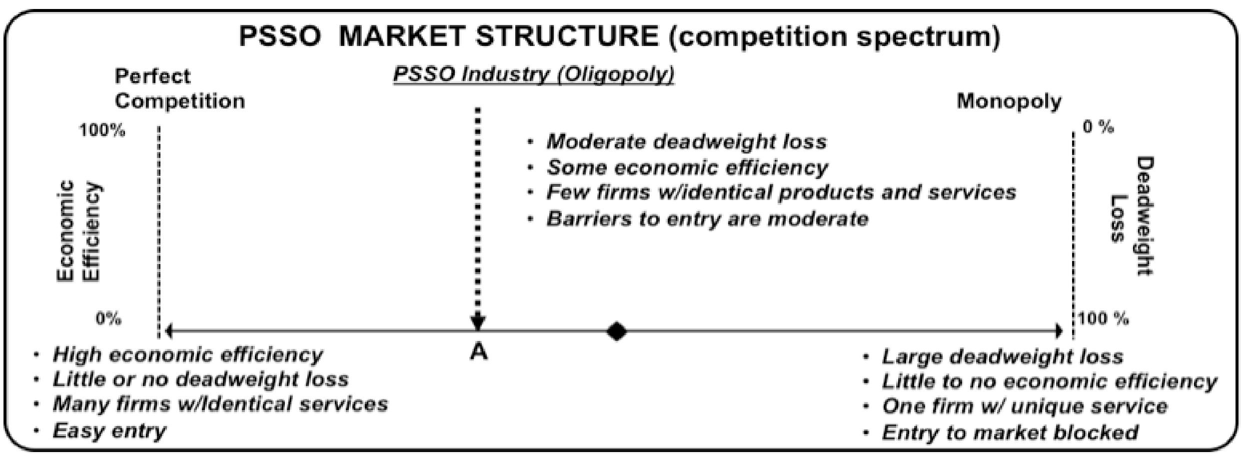


Figure 1.

The USG could implement measures to increase economic value even further. Although the USG is the sole buyer within the industry, the monopsony is imperfect. Differences in the way individual USG agencies manage acquisitions and contracts force them to contract with firms separately, in a sense artificially broadening the customer base to at least some extent. Improving interagency acquisition coordination and eliminating the fragmented and disparate USG contracting processes would provide the USG true monopsony power, resulting in lower prices and improved quality and timeliness of services. Theoretically a uniform contracting process would also allow firms to increase efficiencies within their business systems, reducing overhead costs without jeopardizing the economic value of the industry.

Firm Value

While analyzing the economic value of the industry is useful, analysis of firm values is necessary to form a complete assessment of the industry's economic health. PSSO firms must make enough profit and return on investment (ROI) to satisfy shareholders and to maintain a long-term commitment to compete within the industry. The Study Group investigated the PSSO industry to determine if it is creating sufficient firm value and to gain an understanding of the tangential effects of government policy. The group used a Structure-Conduct-Performance (SCP) framework to determine the potential for profit within the industry at large, assess firm strategies (conduct) on their ability to capture that profit, and evaluate economic performance to see if firms are succeeding in their strategies and creating business value.[6]

Structure. Michael Porter's *Five Competitive Forces That Shape Strategy* examines five forces and their influence over an industry's structure: Threat of New Entrants, Bargaining Power of Suppliers, Bargaining Power of Buyers, Threat of Substitute Products or Services, and Rivalry Among Existing Competitors.[7] These allow one to better understand the competition, and the industry's potential for profit.[8] Strategies can then be developed to leverage that knowledge and maximize profit potential. Of Porter's five forces, two show the most potential to affect firm profitability and highlight areas for USG policy considerations: Bargaining Power of Buyers and Rivalry Among Existing Competitors.

<u>Bargaining Power of Buyers:</u> As sole buyer, the USG's bargaining power is significant. Government exercises enough buying power over firms to control pricing and keep profits modest, disclosed by several firms as only 3-5% annually.[9] Focused primarily on cutting costs, recent pressure by the USG to offer primarily Lowest Price Technically Acceptable (LPTA) contracts for services also gives it additional buying power. Several firms stated the USG's use of LPTA service contracts means "margin erosion," that the industry is "chasing itself to the bottom," and "there is not a lot for firms to gain by remaining in the services sector".[10] Evidence indicates some firms responded to the increased number of LPTA contracts by either undercutting competitors' bids or implementing internal cost cuts that could adversely affect the quality and timeliness of services; a practice that should be a concern to policy makers.[11]

The strong buying power of the USG "traps" firms with low profit margins now and in the foreseeable future. While most firms agree that marginal profit levels are currently adequate to stay in the PSSO industry, the group concluded that low profits are putting firms on the threshold of market departure. Too much profit erosion could have the unintended consequence of decreasing competition, impeding innovation, hindering surge potential, and making firms unable to survive future defense cuts. Therefore to deter undercutting, policy makers should strictly enforce current regulatory requirements to ensure the pricing proposals presented in bids are realistic. The USG has the potential to increase its buying power even further by setting conditions for healthier profit levels, decreasing contractor payment timelines, and improving interagency acquisition coordination. The USG should also balance the use of LPTA and "best value" contracts to enable contractors to deliver the most effective and cost efficient performance.

Firms vying for major contracts are also under intense congressional pressure to cut costs, reduce profits, and demonstrate sound business models, adding to the USG's already significant buying power. However, the recent threat of a 10% hold on contracts until vendors demonstrate the validity of their models[12] could cause small firms to withdraw from competition. Likewise, several firms reported feeling villainized due to recent congressional reports, increased audits, and added oversight. Many firms responded by enhancing their relationships with USG officials and legislators. Some firms moved headquarters closer to Washington, D.C., some established liaisons in the national capital area and hired lobbyists in an effort to increase influence and reduce USG buying power. For this reason, Congress should reconsider the true value of the 10% hold, and policymakers must remain aware of the potential impact on firm profitability associated with excessive enforcement mechanisms born out of political pressure.

Rivalry Among Existing Competitors: The PSSO market is extremely competitive. Intense competition motivates firms to find efficiencies in operations and maintain competitive pricing.[13] Pricing rivalries have reduced profit potential but firms continue to stay in the industry due to the low infrastructure and capital requirements, stable cash flow, predictable profits, and low risk. Firms use the "traditional rules" of differentiation to address this strong rivalry.

Although firms suppose they are differentiating through attributes such as reputation, quality of services, cost, expertise, and personal relationships, in reality a firms' reliance on these same attributes provide no single firm a real competitive edge. Even though they attempt to differentiate themselves by using "traditional rules", many competitive bids are based on the sole factor of price. Lowest price bids are encouraged by the aforementioned reliance on LPTA service contracts as a means of cutting federal expenditures, and firms are willing to accept low profit margins in exchange for the potential opportunity to service a contract through the entirety of its lifecycle. Once low price contracts are awarded, PSSO firms rely upon innovative ways to increase efficiencies to improve profit margins.

Because of the intense rivalry and underbidding, many top firms are not interested in competing with multiple firms for service contracts.[14] It is not worth their time, money, and risk level based upon anticipated profits and potential for contract award protest. To reduce overhead costs, several firms told the Study Group that they will not compete for contracts if the bidding pool is larger than six companies. The USG should consider using multiple award task order contracts (MATOC) with 3-5 firms to prevent the trend of underbidding. MATOC keeps the firm pool small enough to provide profit predictability and risk certainty.

Conduct. The next component of determining firm value is to examine firm strategies and their conduct by using the Strategic Game Board.[15] After considering areas of where, how, and when firms compete, two areas warrant further discussion.

With impending cuts to the federal budget, top PSSO firms are rethinking strategies for where to compete within the industry and are diversifying to maintain growth. Firms are turning to adjacent markets such as the Department of State (DOS) that require similar contingency type services as DoD. Firms are also looking at expanding into commercial markets that require large camps and life support services such as oil companies. Finally, many firms are willing to increase their risk profile by engaging in international markets to expand their growth. The USG should encourage firm growth and diversification to maintain service expertise, experience, and innovation opportunities to meet our nation's future surge requirements.

Another emerging strategy is corporate consolidations, acquisitions, and joint ventures (JV). Consolidations historically occur during federal budget reductions as sellers combine to reduce risk. This approach positions buyers well in terms of growth potential, pricing power gains and increased cash flow. Consolidations also allow large firms to diversify their services and divest themselves of making DoD their core buyer. URS Corporation's acquisition of Washington Group International is just one of three major acquisitions for them since 2007, which has doubled business revenues and given them an advantage over other competitors within the US Air Force Contract Augmentation Program (AFCAP).[16,17] The USG should support joint venture efforts to increase efficiencies, improve quality of services, and reduce costs.

Performance. Table 1 depicts key economic ratios for the leading firms within the PSSO industry. These ratios determine if the top firms are creating value at an acceptable level of risk. Industry data allows a financial health comparison with the leading firms, while S&P 500 data enables a comparison with the nation's top companies.

Financial Ratio	***FLUOR***[18]	***KBR***[19]	***URS***[20]	***L3***[21]	***Industry***[22]	***S&P 500***[23]
Current Ratio[24]	**1.53**	**1.51**	**1.78**	**1.95**	**0.61**	**1.12**
LTDE Ratio[25]	**15.12**	**3.53**	**21.82**	**62.17**	**54.59**	**171.69**
Asset Turnover[26]	**2.94**	**1.67**	**1.34**	**0.98**	**0.36**	**0.64**
EBITDA Margin[27]	**5.08**	**7.11**	**-2.23**	**11.93**	**No Data**	**No Data**
EBITDA (5 yr avg.)	**5.00**	**4.96**	**3.98**	**12.13**	**19.80**	**20.07**
Return on Investment	**16.57**	**16.46**	**-6.35**	**7.64**	**2.52**	**8.43**
ROI (5 yr avg.)[28]	**18.13**	**12.79**	**5.34**	**7.54**	**6.75**	**7.63**
P/E Ratio[29]	**18.42**	**11.87**	**No Data**	**7.83**	**37.37**	**27.00**

Table 1.

The ROI, an indicator of how efficient firms are using the money they invest, is most indicative of firm value. The industry's low ROI indicates that it is not creating adequate value. While the leading firms are generally healthy, smaller firms comprising the majority of the industry are not, which may force some out of the industry. Leading firms healthy ROI's may be somewhat misleading since they are largely diversified into markets other than USG services and are heavily reliant upon the other sectors to offset low ROIs (3-5%) in the service sector. Industry stakeholders are more likely to remain with firms whose ROI is above the S&P 500, known as the minimum opportunity cost. Firms are willing to provide services for a low ROI since service support is not capital intensive and can operate with small profit margins. URS has an unusually low ROI due to a 2011 Goodwill Impairment Charge,[30] while their Five Year ROI Average is much closer to the S&P 500. Although the industry is currently not creating adequate value, it is economically healthy given the major firms are poised to create additional value by responding with the aforementioned strategy of consolidation, mergers, and Joint Ventures. All other financial ratios in Table 1 above support this.

The industry's financial performance show some firms may be at a tipping point. While current ROI's for services are acceptable for major firms to remain in the industry, the USG must stay sensitive to profit levels dropping further and an impending "race to the bottom."[31] Further ROI reductions, especially in today's political climate, would reduce firm value and predictably force firms out of the industry. While some underperforming firms may need purging, declining ROI's would ultimately affect the industries quality and timeliness of services.

Economic Outlook for the PSSO Industry

In light of the analysis described above, the Study Group concluded that overall the PSSO industry is healthy, and that the USG is leveraging its place on the competitive market spectrum to ensure it obtains the best value for services provided. The major firms within the PSSO industry are currently creating firm value demonstrated by positive returns on investment, but the smaller firms are struggling. Across the industry, firms are adjusting strategies in anticipation of future changes to USG requirements. Increased acquisitions, multi-firm partnerships, and joint ventures, combined with expansion into other service markets will enhance firm value for the industry as a whole and will provide PSSO firms a sufficient level of profit and cash flow to ensure the industry can support future national security requirements.

Although currently economically healthy, the Study Group concluded that the PSSO industry may lose its ability to meet long-term needs in future operations. With a market of increased scrutiny, strong USG buying power, LPTA as the standard, low profit margins, and tighter federal oversight, some firms are looking to reduce risk by divesting services or potentially leaving the industry. The USG should remain sensitive to any indicators of further reduced profits. Too many firms leaving the industry or divesting services in the future could be detrimental to USG operational service needs and national security.

PART- II CHALLENGES WITHIN THE INDUSTRY

Challenge 1- Planning and Readiness

The Study Group's Findings

Contractors are an essential component of military campaign planning but military planners have struggled to properly plan for OCS. While the Joint Staff's (JS) recent attempts to improve planning processes have been notable, it is important to maintain forward momentum while OCS attention is high and resources are still available. The Study Group concluded that OCS planners need better resourcing, as well as improved systems to account for contractors and contractor related costs to aid the OCS planning process.

The Nature of the Challenges

Every combatant command (COCOM) has OCS planners embedded in its headquarters, but the planners are not adequately resourced in terms of organizational structure, information technology, trained personnel and business rules to properly develop a common operating picture for contractor force planning.[32,33,34] In terms of organization, changes are required for OCS planning at the operational level to be effective.[35] To resource planners better with information technology, the JS established the Joint Lessons Learned Information System (JLLIS) web site to document contracting lessons learned for DoD. Despite this, some firms informed the Study Group their lessons are not being captured and corporate knowledge is being lost.

Regarding trained personnel, the JS training program is a step in the right direction, but the program lacks standardization and does not address contractor pre-deployment training.[36,37] The U.K. Ministry of Defence made similar observations, noting commanders on the ground need more training and education on OCS, how it works, and what tasks theater commanders can expect contractors to perform. Finally, the Defense Science Board Task Force recommended appropriate communications between government and firms should be maximized.[38] For example, deployed contractors often receive threat briefings, but many firms interviewed feel they need better insight into contingency planning processes and a more effective means of establishing a continuum of information sharing.

Existing DoD procedures do not enable deployed forces to accurately account for contractors in theater. There is no interface between the Synchronized Pre-deployment and Operational Tracker Use and Oversight (SPOT) database and either the Tactical Personnel System (TPS) or the Deployed Theater Accountability System (DTAS). Department of Defense Instruction 3020.41 requires that contractors enter contractor personnel data in SPOT prior to deployment but few contractors comply and those that do often provide inaccurate data.[39] This is compounded by the inability of the Joint Personnel Status Report (JPERSTAT), used by DoD human resource personnel, to interface with SPOT.[40] While the Joint Movement Management System (JAMMS) is capable of assisting human resource personnel in accounting for individual contractors, it is not located everywhere and requires data manipulation of SPOT and JPERSTAT by human resource managers. Moreover, contractors are reluctant to provide actual numbers, fearing that DoD or USG will limit the number of individuals they may have in theater. There is no single source document that effectively enforces accountability for individual contractors who unlike military personnel may enter a theater through several different nodes.

While operational effectiveness is the paramount factor, planning at the COCOM level frequently fails to adequately account for the financial costs associated with OCS. There are no "cost per man" planning factors that account for contractor provided meals, lodging and other services required to meet basic needs. Likewise, operational level planning often fails to use Support Bands[41] as a way of structuring the scope of support required; the level of force protection required for contracted logistical services and its availability; and estimates of the costs associated with OCS. [42]

Recommendations

To enhance contractor visibility and input into planning and readiness processes, resources must be devoted to organizing OCS for the next contingency, training OCS personnel, establishing OCS business and accountability rules and utilizing IT solutions. Specifically:

Organization. DoD should increase the level of integrated OCS planning at the service component level. The department should also standardize Forward Operating Base (FOB) design based on the Support Band concept.

Personnel. Continue efforts to move OCS and JLLIS portal training to end-users. Increase OCS training opportunities beyond Joint Professional Military Education (JPME) to include refresher training. Continue to provide contractor pre-deployment training similar to that provided to military forces.

Information Technology. Expand the JLLIS portal to include firms' "lessons learned" input. If this is not possible, research the possibility of a federally funded research institute or independent think tank to capture lessons.[43]

Policies and Procedures. Develop information sharing rules that enable appropriate contractors to have insight into Annex W (OCS Planning) of operational plans and orders to aid in firms' preparation and situational awareness while still preserving security. Improve the requirements generation processes in forward deployed commands by linking requirements for contracted support directly to the objectives in the theater campaign plan.

Accountability. Appoint the theater J1 as the lead for SPOT management and discontinue allowing contractors the authorization to solely enter data into SPOT. Require contractors to enter and exit theater through a single DoD node. Concerning SPOT, DoD should implement GAO's recommendations. Specifically, DoD should: develop a single source document that provides SPOT instruction and guidance; update SPOT software to interface with DoD and USG personnel tracking and accountability systems; develop and execute a plan for the continued implementation of SPOT; ensure all involved accurately input statutory requirements; establish uniform requirements on how contract numbers are entered into SPOT; and revise SPOT capabilities to ensure all statutory requirements are met.[44]

Challenge 2 - Future Capacity and Requirements

The Study Group's Findings

The Study Group found four major issues related to the ability of the industrial base to meet future OCS requirements. First, a shortage of acquisition professionals leaves the USG open to contract fraud, waste and abuse. Second, differing views on what work is "inherently governmental" drives inconsistency across agencies in terms of the types of work contracted out. Third, the Civilian Expeditionary Workforce (CEW) is less cost efficient than contractors, less responsive, and often less experienced. Fourth, the anticipated reduction in the number of firms providing OCS could limit USG capability and/or capacity in future contingencies.

The Nature of the Challenges

There is broad agreement that an under-manned and under-educated government contracting workforce led to insufficient capability and capacity to manage contracts and supervise contractors, which in turn created incalculable opportunities for fraud and waste. Service contracting was decidedly ad hoc, and in many cases commanders' desires for mission accomplishment took precedence over adequate supervision and contract management.

The Office of Management and Budget (OMB) attempted to settle the protracted battle over which tasks are inherently governmental through reformed policy and guidance issued in September 2011. Within certain guidelines, the OMB policy allows individual agencies to determine which tasks are "critical" and which are "closely associated" with inherently governmental functions but appropriate for contractors. However, in some cases the Office of Federal Procurement policy is too vague to allow government agencies to make useful decisions as to which functions lay exclusively in the domain of federal employees and which do not. This is particularly true for intelligence related tasks. By referring to the list in Federal Acquisition Rule 7.5, the policy fails to adequately identify which of those functions listed are exclusively appropriate for contractors. Thus OFPP only provides a framework for a commander or officials to manage an organization's mission and retain manpower to sustain critical functions.

The use of volunteers from within the federal civilian workforce to deploy as an alternative to private contract support was evaluated through the criterion of cost, schedule, and performance. This comparative analysis indicated the total cost to deploy a federal civilian is generally significantly more than deploying an experienced and qualified private contractor. With regard to schedule and performance, there is no incentive for a government supervisor to deploy the best personnel in a timely manner and every incentive to send forward poor performers and mediocre staff. In contrast, private firms are motivated by market incentives to send high quality, experienced employees because this benefits a firm's profit margin and brand strength, both potentially leading to new and larger contracts. Marginal contract employees are sent home due to performance or behavior problems. The issue with federal employees is one of intractability and inflexibility when faced with a poor performing federal civilian who is difficult to counsel or remove. (Reference Annex A for comprehensive review of the CEW)

Finally, as federal budgets decline and operations in Afghanistan draw down, the volume of available work and decreases in revenue may be significant enough to cause the PSSO industry to downsize. This contraction has the potential to introduce risk into the conduct of future USG contingency operations if there is not enough OCS capacity to meet demand. If contractor capacity is significantly reduced because of lack of demand in peacetime, DoD requirements alone may outstrip the contractors' ability to respond to an emerging contingency, especially if there is demand in more than one geographic theater at a time. This problem is further magnified by competing demands from other USG agencies that may be responding to the same contingencies as the DoD. Thus, the possibility exists that a large spike in OCS demand, following an extended period of peace, may exceed the contractors' ability to resource enough people quickly enough to meet USG requirements.

Recommendations

To institutionalize OCS, service contracting needs the same professional attention given to major acquisition projects. Correcting this failure includes maintaining a strong acquisition corps and ensuring that force reductions do not compromise DoD's capacity to support contracting in future operations.

Two countering arguments exist to address disparately applied policy regarding inherently governmental work. The first is to revisit current OMB policy and formulate clearly defined activities related to a specific function that should never be performed by a contractor in connection with that function. Although this might limit organizational flexibility in managing the workforce, this approach creates clarity on where the limits of contracted support lay.

The other approach is for organizations to follow current OMB guidelines. Within those organizations, a permissive list that describes those services that should or may be contracted appears to better serve the government's interest. Red-lines should be built into the organization's definition of critical functions and closely associated work. This should be done by an overarching agency like the Office of the Director of National Intelligence which would allow organizations to then focus on management of activities that are contracted out while retaining those that lay at the core of their mission. Moreover, where the nature of the work to be done is inherently governmental and it exceeds an organization's institutional capacity, the CEW should be used as the sole source solution to fill the capacity shortfall.

When it comes to cost, schedule and performance it appears there are substantial advantages to the utilization of contractors wherever allowable. However significant reforms are required for DoD to maximize the ability of the CEW to fill inherently governmental positions.

To help mitigate the industry's potential to shrink, DoD should work to aggregate its service contract requirements not only within itself, but across the USG interagency. This aggregation should enable the design of a service contracting program along the lines of LOGCAP that could still entice companies to stay in the market.

Finally, the USG should appoint a lead organization to ensure COCOMs and other USG agencies are not competing with each other for contract support resources and to track the overall contractor requirements the industrial base will need to support. This will ensure the needed resources are available for the next contingency and that shortfalls do not impact any US operational plans.

Challenge 3 - Interagency Coordination

The Study Group's Findings

Interagency coordination in contingency operations lacks a mature framework for integrated interaction at the strategic level. Independently, each agency has adopted processes to manage OCS. Over the past four years, DoD has made great strides as contractor numbers have dramatically increased to meet management and oversight requirements. However, despite significant senior civilian leadership and flag officer emphasis, a holistic OCS interagency solution continues to remain elusive.

The Nature of the Challenges

While great efficiencies in cost and operational effectiveness may result from policy that attempts to bridge the agencies that utilize OCS, senior leaders within these agencies have voiced concern over creating an unnecessary bureaucratic layer that without merging associate funding lines would not succeed in deriving the desired benefits. Though synchronized objectives and unity of effort will always be the desired approach, DoD's preponderance of forces, personnel, and contracting activities in most scenarios will dwarf its interagency partners. Current and future reliance on OCS demands that the USG seek the most efficient use of our outsourced capabilities to optimize strategic and operational impact. Currently responsibility for overseas Stabilization and Reconstruction Operations (SRO), a major subset of contingency operations, is divided among several agencies.

Stuart Bowen, Special Inspector General for Iraq Reconstruction, exposes the structural weakness of current USG SRO efforts by arguing that current and future operations will demand "levels of interagency coordination and integration"[45] not yet attained by the USG. Ideally, policy and direction emanating from his proposed NSC lead for SRO would clarify future division of responsibilities, unity of purpose, and streamline operational lines of effort – including contingency contracting support. The Study Group concluded that while Mr. Bowen's recommendations are sound, aligning respective chains of command will not achieve the intended effect without also aligning critical resources (funding, manpower, etc).

Two competing legislative proposals attempt to address gaps in interagency coordination. Each proposal approaches the nature of the interagency coordination challenge from opposing perspectives, and the recommendations below draw from both. In late 2011, Senator Claire McCaskill (D-MO) introduced the Comprehensive Contingency Contracting Reform Act of 2012 (S.2139)[4] which encapsulates the recommendations of the Commission on Wartime Contracting (CWC) empowering the Inspectors General of DoS, the United States Agency for International Development (USAID), and DoD to directly oversee wartime contingency contracting and regularly report to Congress. While the Senate bill does not address a single point of oversight or lead coordinator, it does attempt to institutionalize acquisition as a core function within Defense and State - a key finding of the CWC report. Furthermore, while it proposes acquisition frameworks for requirements programming, planning, and budgeting, it is notably silent on the issue of interagency primacy. One of the most attractive qualities of the Senate bill is that it does not require any new bureaucratic oversight mechanisms using instead agency assets that are already in place.

In early 2012, Rep. Russ Carnahan (D-MO) introduced the Contingency Operations Oversight and Interagency Enhancement Act of 2011 (H.R. 3660) which enacts recommendations by SIGIR. More significantly, this proposal would establish an independent and interagency U.S. Office of Contingency Operations (USOCO) to plan, execute, and administer the deployment of military and civilian personnel during overseas contingency operations (although additional layers of bureaucracy can certainly present a challenge). The proposal establishes an OCS interagency lead office, reporting to DoS and DoD, with the responsibility for planning and managing contingency contractors. Additionally, it proscribes the use of contingency Federal Acquisition Regulations (FARs) that would be tailored to OCS environments. Finally, the House bill funds USOCO by establishing a standing SRO emergency reserve fund - presumably fed from the existing stabilization and development appropriations within DoD and DoS.

Recommendations:

Develop a more mature and robust OCS framework with formalized and appropriate processes, instructions, and policies that codify lessons learned from OEF and OIF.

Span the current OCS interagency gap through the following: institutionalize OCS acquisition as a core function within DoD and DoS responsible for requirements development, planning, programming, budgeting and execution.

The National Security Staff (NSS) should designate which interagency department will be the Lead Executive Agency for contingency contracting for each phase of overseas operations. This enables respective agencies, with a preponderance of forces, sufficient control while facilitating a path to transition at critical junctures.

Challenge 4 - Operational Effectiveness versus. Cost and Political Dynamics

The Study Group examined how operational effectiveness, cost and politics typically interact with one another over the duration of contingency operations, how the prevailing factor changes over time, how operational effectiveness on the ground can be improved by fully integrating contracted support, and how to improve contractor performance while simultaneously reducing costs.

The Study Group's Findings

At the strategic level, DoD policy makers intuitively recognize that the longer an operation goes on, the greater the influence of political dynamics and the greater the pressure to compromise operational effectiveness in the name of reducing costs. However, in recent years policy makers had difficulty staying in front of the trend, and as a result, operational effectiveness of forward deployed military and civilian forces was compromised, not only within DoD, but within a broader interagency context as well.

In the U.K. and France, ministerial level planners are also struggling with how to balance required cost reductions against operational effectiveness. While they recognize that greater reliance on contractors is inevitable, they are far behind the U.S. in determining which functions and tasks are best turned over to contractors and how much capability and capacity should be retained within their military forces.

The Nature of the Challenges

At the strategic level, the use of private sector firms in support of overseas contingency operations is affected by three separate but inter-related factors: operational effectiveness and expediency (OE&E), cost to taxpayers, and political dynamics. To be truly effective over the long term, policy makers must fully understand the relationships amongst the three factors, anticipate what conditions will pull the factors out of equilibrium, and when necessary take aggressive, proactive steps to keep the factors in a favorable equilibrium. Likewise, commanders on the ground must have a firm understanding of the role of contractors on the battlefield and how to leverage contracted capabilities to achieve theater strategic objectives. They must also balance operational effectiveness against the requirement to be good stewards of taxpayer funds.

PSSO is influenced by the different factors over the duration of an extended operation. In the initial stages of a contingency operation, particularly in the kinetic phase, OE&E is the dominant consideration. The national focus is on ensuring the force has all it needs to accomplish the mission as quickly and effectively as possible, rather than on minimizing costs. In a sense, the executive branch rallies behind the military and civilian forces it has committed, and administrations strive to ensure the men and women they send forward have the best possible support and services. As the operation transitions from the conflict phase to the post-conflict phase, commanders in the field are still relatively unconstrained, and any reasonable request for support is likely to be approved. But as the duration of the operation grows, questions about the number of contractors on the ground, whether the roles and missions they are filling are truly necessary, and whether standards of quality and timeliness are too high begin to pull the PSSO focus away from operational effectiveness toward a desire to minimize costs. While OMB normally applies this pressure, other sources, to include the White House can contribute to this pressure. As the desire to reduce cost becomes more prevalent, commanders and civilian leaders in the field are forced to accept decreases in support and services, compromising their ability to accomplish their mission.

Initially the Hill tends to fully fund (or nearly fully fund) the administration's appropriations requests for contingency operations. Even when the overall Congressional appetite for an operation is tepid, individual members are initially hesitant to penalize forces in the field, so they reluctantly provide funding to cover PSSO requirements. However, as an operation becomes prolonged, political pressures begin to tug the PSSO ball around the triangle. Factions begin to develop: some favor continuing to support the forces as much as possible, some favor minimizing the cost to taxpayers regardless the operational impact. Questions about inherently military capabilities, the nature of the PSSO contracts, and the firms' profit levels begin to evolve the relationship between operational effectiveness and cost even further.

In combination these three factors lead to pressures that intentionally or unintentionally change OE&E from an independent to a dependent variable. The last two years of OIF serve as a good example of how the dominant factor changes over time. From 2003 until late 2009, OE&E remained the dominant of the three PSSO factors. In 2009, planning for the post-2011 presence in Iraq began. The DoD and DoS worked closely together to ensure as military forces withdrew from Iraq, the residual civilian footprint would have the required level of private sector support for its operations. The result of that effort was a robust civilian presence with the capacity required to continue the significant forward progress made toward U.S. national objectives for Iraq. The planned presence was altered however, when the NSS and OMB realized the PSSO related costs for the post-OIF civilian presence could be as high as $10 billion in fiscal year (FY) 2012 alone. Programs, personnel, facilities and infrastructure were trimmed from the baseline footprint until costs were down to what OMB thought was a more palatable $6.2 billion for FY 2012. To make matters worse, the political dynamics at work were even greater than OMB realized, and Congress cut an additional $550 million from the DoS Iraq request. The political unwillingness to cover PSSO costs directly led to cuts so deep that virtually none of the objectives outlined in President Obama's Camp Lejeune speech are now attainable on any sort of reasonable timeline. Thus a fairly well thought out whole-of-government operational concept that relied on the private sector for support was essentially torpedoed by political pressures and a requirement to minimize costs.[46]

Recommendations

The first way DoD can get in front of the trend away from OE&E is to set clear standards for support and services that are consistent across COCOMs. Once codified, DoD should ensure Congress and OMB accepted the standards as <u>the</u> minimum acceptable support baseline. Later, if OMB and Congress begin to question PSSO related costs of an operation, DoD can credibly argue reductions in the level of support violate the agreed upon baseline and if enacted, would have an adverse impact on the operational effectiveness of the civil-military force. In return for this agreed upon baseline, approval of theater level requests for support and services that exceed the baseline should be retained at the department level, and should be reviewed by OSD with a great deal of scrutiny. The department should conduct honest assessments of the theater commander's wants versus needs, and policy makers should not be afraid to tell commanders "No" when requests for standards above the baseline are not justifiable.

Second, the DoD should leverage the trend for strong congressional support in the early stages of operations by seeking multi-year appropriations and authorities when possible. In addition to providing considerable operational level flexibility, multi-year funding mitigates the risk that political dynamics in the months ahead will compromise operational effectiveness.

Third, DoD must build and sustain trust and mutual respect with OMB and Congress by viewing the two as partners rather than adversaries. This means frequent meetings with staff to ensure they understand the nature of PSSO requirements and the operational impact if they are underfunded. It also means making small compromises in effectiveness earlier in order to avoid significant operational impact later, and obtaining "buy-in" early in the budgeting process.

Challenge 5 - Criminal Jurisdiction over Forward Deployed Contractors

The Study Group's Findings

Although there are some mechanisms in place to exercise criminal jurisdiction over the large number of forward deployed contractors, the Study Group concluded that the existing framework is ineffective due to a reluctance to exercise Uniform Code of Military Justice (UCMJ) authority on the part of DoD, and a lack of responsiveness on the part of the Department of Justice (DoJ) to accept and prosecute alleged criminal activity under the Military Extraterritorial Jurisdiction Act of 2000 (MEJA).

The Nature of the Challenges

Currently, civilian personnel accompanying the military force can be held accountable by military commanders for criminal acts committed in the theater through the use of the UCMJ and the MEJA, but just how effective these tools are is arguable. Holding those contractors supporting the force accountable for criminal acts can be traced back to the Articles of War which, written contemporaneously with the Constitution, governed until the UCMJ became effective on May 31, 1951. Over the next 20 years, several U.S. Supreme Court decisions constricted UCMJ jurisdiction over civilians. The final blow to jurisdiction was dealt in 1970, when the U.S. Court of Military Appeals strictly interpreted the language of Article 2(a)(10) of the UCMJ to mean a formal declaration of war by Congress.[47] It was not until the 2007 National Defense Authorization Act (NDAA) that Congress removed this obstacle by striking the Article 2(a) language “in times of war” and replacing it with the “declared war or contingency operations.”[48] While this amended language greatly expands the applicability of UCMJ jurisdiction over civilians accompanying the force, it did little to answer the question of whether this congressional expansion of UCMJ jurisdiction over civilians will pass constitutional muster. While an extrapolation of precedents suggests the Court would likely strike down UCMJ jurisdiction over civilians, the Court has not opined directly on the constitutionality of Article 2(a)(10), nor did the Court rule on Congress’ power during time of war, which is essential to Article 2(a)(10).[49, 50]

MEJA has obvious advantages over UCMJ authority, as it is merely an extension of federal criminal jurisdiction and is prosecuted in federal criminal court, thus the constitutional concerns associated with UCMJ authority are absent. Defendants maintain all the Article III safeguards of civilian courts as noted in the Court’s *Toth* decision – indictment by grand jury, jury by one’s peers and trial by life-tenured judge.[51] MEJA applies to military dependents as well as contract employees accompanying the force. However, it does not apply to Host Country Nationals (HCN), Third Country Nationals (TCN), or U.S. civilian contract employees working for non-DoD federal agencies which make up a considerable amount of the civilian workforce overseas. Historically, DoJ has been reluctant, or as some observe, unresponsive to accepting jurisdiction and prosecuting alleged criminal acts under MEJA, and this lack of responsiveness on the part of DoJ to prosecute engenders a lack of faith in MEJA's effectiveness.[52] Lack of DoJ enthusiasm may be partly attributable to how resource intensive a MEJA case can be - the alleged crime will have taken place overseas, witnesses are apt to be overseas, and it will likely require overseas investigations. As a complement to MEJA, the Civilian Extraterritorial Jurisdiction Act (CEJA) was proposed in Congress to address those civilians working as contractor employees for non-DoD federal agencies. However, unless DoJ commits to applying resources to CEJA investigations and prosecutions, the same shortcomings of MEJA will likely apply to CEJA. Also, as with MEJA, CEJA does not extend jurisdiction to HCN's or TCN's.

Recommendations

With regard to the issue of UCMJ jurisdiction over civilian contract employees, the Court has held that Congress cannot subject civilians to courts-martial without violating their rights to constitutional safeguards inherent in civilian courts. One solution would be to have the individual accompanying the force sign a waiver of those rights and agree to be subject to UCMJ jurisdiction, thereby also waiving their right to trial in civilian court.[53]

On the issue of unresponsiveness or lack of resources on the part of DoJ to accept MEJA matters and follow them through to prosecution, there seems to be a ready-made solution. An agreement already exists between DoD and DoJ which allows judge advocates to be appointed as Special Assistant United States Attorneys (SAUSAs).[54] Allowing SAUSAs to prosecute MEJA cases would ameliorate the DoJ issues of resourcing and prioritization. Furthermore, judge advocates are much more familiar with operating in a contingency environment than their DoJ counterparts, which can only help facilitate a proper investigation and prosecution of the crime. Additionally, to facilitate MEJA prosecution, non-U.S. persons who are victims of or witnesses to the alleged crime should be afforded a T-visa to enter the U.S. for trial purposes.

The UCMJ should also be amended by Executive Order or congressional action to include the crime of trafficking in persons.[55] Currently, the UCMJ only criminalizes patronizing a prostitute. Additionally, as dictated by the House Armed Services Committee Report to the FY 2007 NDAA, military criminal investigators should be trained to indentify and properly investigate all human trafficking cases, not just those related to forced prostitution.[56]

It is critical that steps be taken to improve the effectiveness of criminal prosecution of contractor employees accompanying the force. Aside from the deterrent effect, it can create a morale problem leading to friction between military and contract personnel if contractor employees enjoy immunity from prosecution.

CONCLUSION

Based on a thorough analysis of the strengths and weakness of the PSSO industry and the major firms within it, the Study Group determined that the overall health of the industry is good and that the USG is leveraging its position within the competitive market spectrum to ensure best value for services provided. Firms are adjusting strategies in anticipation of future changes to USG requirements. Increased acquisitions, multi-firm partnerships, and joint ventures, plus the expansion into other service markets should be sufficient to ensure cash flow and profit margins remain adequate and business risks remain manageable. While there are some concerns about future capacity, the Study Group believes that given an appropriate amount of mobilization time the industrial base should be able to meet most future contingency support requirements.

Overall health of the industry notwithstanding, the Study Group found several shortcomings in existing systems, resources, organizations, and policies. Military planners continue to have difficulty integrating OCS into operational plans. The shortage of acquisition professionals leaves the USG open to contract fraud, waste and abuse. Interagency coordination in contingency operations lacks a mature framework for integrated interaction at the strategic level. And lastly, pressure to reduce costs has compromised the operational effectiveness of deployed military and civilian forces, and the existing legal mechanisms are inadequate to effectively exercise jurisdiction over forward deployed contractors.

The Study Group identified over thirty measures (See Annex C) that if enacted will better institutionalize OCS and lead to improved efficiency, reduced costs, lower incidents of fraud waste and abuse, and better mechanisms for dealing with contractor misconduct. The following three are critical if DoD hopes to minimize costs and avoid mistakes made in OIF and OEF:

To reduce excessive costs and experience shortfalls within the CEW, DoD must restructure the force and eliminate tasks not inherently governmental in nature. (See Annex A.)

To codify OIF and OEF lessons learned, improve OCS policies, and centralize accountability, the USG must implement a formal interagency contingency contracting framework: ideally, one based on existing acquisition program policy.

To resolve the inability to effectively exercise jurisdiction over contractor committed criminal offenses, DoD must develop a standard clause that states that contract employees agree to be bound by the UCMJ as a condition of employment, and mandates inclusion of the clause in all OCS related contracts. In the interim, DoD should leverage the existing DoD/DoJ memorandum of agreement to prosecute crimes under MEJA.

Failure of DoD to act on these three recommendations could seriously impact the Department's management and oversight of Operational Contracting Support and its ability to ensure those who commit crimes while participating in contingency operations are brought to justice. The remaining recommendations provide a variety of ways for DoD and other government agencies to improve practices, reduce risk, and leverage purchasing power.

ANNEX A - THE DOD CIVILIAN EXPEDITIONARY WORKFORCE AND PRIVATE CONTRACTORS

COL Chris Karsner, U.S. Army Special Forces

Over the past decade the US military has increased its reliance on civilians supporting overseas contingency operations using civilian federal employees and defense contractors. To better support the civilian uplift requested by General Stanley McChrystal, the Department of Defense (DoD) established a formalized Civilian Expeditionary Workforce (CEW) program in 2009 for DoD civilians to deploy. As DoD employed contractors in Iraq and Afghanistan in numbers exceeding those of troops deployed in those AORs,[57] the CEW deployments only approach a fraction of these numbers, currently estimated at less than 3000.[58] This paper evaluates the CEW against private contractor alternatives through criterion of price, quality and schedule.

Refined statistics and performance data regarding the CEW are not available from the US Government to conduct a thorough quantitative analysis. However, it is not this paper's intent to generate an actuarial audit of detailed numbers, but rather to review trends and conditions using available higher-level source input to strategically evaluate the program. Toward this objective, the data assembled is sufficiently accurate to underpin the salient points. Information used in this analysis was obtained from interviews; CEW memoranda and policy files; observations from personal experience in Afghanistan; and an analysis conducted using the current CEW vacancy database extracted from their March 2012 website. Additional relevant information was garnered from online publications and a deployed Army civilian focus group. To narrow the scope of this paper, the focus is on CEW activity in Afghanistan, which is apt given 92% of current vacancies posted to the CEW webpage in March-2012 were for Afghanistan.

The CEW Background

***The Program*.** The intent of the CEW is to use civilians "to relieve stress on the active duty force, reduce dependency on contractor support, and provide opportunities for DoD civilians to contribute talents".[59] A RAND Report prepared for the Office of the Secretary of Defense (OSD) on CEW expresses government intent to expand the program to 20,000 to 30,000 fills.[60] CEW aspires to be a civilian organization "organized, trained, cleared, equipped, and ready to deploy in support of operations by the military, including: contingencies, emergency operations, humanitarian missions, disaster relief, restoration of order, drug interdiction, and stability operations of the DoD in accordance with DODD 3000.05, as well as Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations" [61]

Application Process. The process begins with a joint manning document (JMD) personnel requisition from a requesting unit. Once the OSD CEW office identifies a candidate for a vacancy, the candidate's resume is sent to the gaining unit's chain of command for review and approval. Approved candidates are notified and release requests sent to the parent command.

This layered process causes "delays in posting of vacancies as well as receipt of available candidates."[62]

Sourcing. CEW hires civilians from DoD agencies, non-DoD federal agencies, and private sector in that order of precedence. To encourage qualified civilians to deploy, policies guarantee federal civilians return rights following deployment,[63] protection from retaliation[64] for volunteering to deploy, and the ability to compete for career development while deployed.[65] Private sector civilians may be employed through "Schedule A" hiring when federal candidates cannot satisfy a critical vacancy.[66] These (currently near 200) temporary GS-12 hires are offered 1-year (renewable up to 4 years) positions using overseas contingency operations (OCO) funds.[67]

Selection Criteria. Consistent with CEW's desire to ensure a large applicant pool, it accepts federal employees with annual performance ratings as low as NSPS level 3 (scaled 1–5) "satisfactory" or equivalent GS performance rating scale.[68]

Supervisor Denials. By policy, a supervisor cannot deny deployment of a CEW approved volunteer without submitting the case for adjudication to the Deputy Under-Secretary of Defense, Civilian Personnel Policy.[69] CEW reports approximately 10% of applicants are denied supervisor release; however, following adjudication OSD typically overrules 50% of those supervisory denials. OSD supports supervisor denials if the volunteer has already deployed under the CEW or if the employee is critical to the losing unit's organization.[70]

Mobilization Timeline. In the best case, DoD states it is possible to identify, approve, and mobilize a volunteer in 60 days; this assumes a rapid match of a qualified candidate, approval by theater, supervisory approval, CRC completion and deployment of a volunteer with a preexisting security clearance and no medical concerns. In reality, the federal employee process is slower. The actual DoD deployment *goal* for a CEW federal civilian is nearly 90 days, with the current average being over 200 days. "Schedule A" temporary civilians hired into CEW GS-12 jobs have a DoD deployment goal of 125 days but an actual average of nearly 250 days.[71] Within the mobilization timeline, standard pre-deployment training is a 2-week period for volunteers with no prior deployment experience while volunteers with prior experience can process through an abbreviated 1-week period for medical screening and equipment issue.[72]

Component Funding. The parent command is responsible for all comprehensive costs, and administrative and financial support associated with pre-deployment, deployment, and post-deployment of CEW civilians, though DoD provides OCO dollars to cover these costs. These overhead cost burdens include: "preparation of travel orders, pay, benefits and other entitlements for which employees will be eligible as well as provision of training, processing, equipping, and assessment necessary for pre- and post-deployment."[73] DoD also provides OCO funding to hire a new temporary backfill employee to cover the billet vacated by the deployed CEW civilian.[74]

Salary and Special Incentives. CEW civilians receive considerable financial incentives for deploying, including significant overtime and contingency operation uplift. For the same 12-hour shifts worked by the military, contractors and DoD civilians, CEW civilians in Afghanistan earn 44 hours of overtime (110% of base pay) each week (4 hours x 5 days / 12 hours x 2 days).[75] Additionally they receive 35% of base pay as post differential incentive pay and 35% of base pay as danger pay incentive (both based on a 40-hour workweek), as well as Sunday differential pay and night-differential pay when applicable. However, regardless of pay grade, pay caps for CEW employees prevent them from exceeding the Vice President's salary of $230,700 per year.[76] Many civilians reach the $230,700 annual ceiling due to the high volume of reported overtime and special incentive uplift. Consequently, the CEW program is considering a flat monthly contingency deployment pay plan that would reduce the timekeeping complexity and limit the excessive compensation earned by civilians.[77] While the compensation is higher than the military, it is worth noting that civilians do not receive the same medical coverage, VA benefits, housing allowances, or combat zone tax benefits that uniformed military receive.[78]

Observed Program & Policy Problems. A CEW review conducted in Afghanistan reported that "there are some persistent concerns operationally that hamper the program" including "issues with obtaining quality candidates timely, effective pre-deployment, and civilian accountability".[79] This annex discusses observed problems regarding timekeeping and command & control / performance reviews.

Timekeeping. Department of the Army (DA) civilians participating in the Huntsville Deployed Civilians Focus Group note that the "Pay system is woeful."[80] One problem leading to significant timekeeping errors is that, while the parent command must handle deployed employee's timekeeping, parent unit timekeepers are untrained in deployment timekeeping. The government then incurs additional financial burdens due to the cost of necessary audits, timesheet reviews, corrections, and measures to maintain pay system integrity. Additionally, deployed unit commanders often have no idea what rules are in place covering CEW employee timekeeping. Many unit commanders, or delegated subordinate supervisors, are unaware that by policy they are to review employee timesheets sent to the parent command.

Command & Control / Performance Review. While in theater, civilians are supposed to be subject to the unit "chain of command" and all relevant general orders, policies, and procedures. Civilians are only subject to the Uniform Code of Military Justice (UCMJ) if serving in a declared war or contingency operation.[81] Civilians are also entitled to grievance/appeal rights regarding administrative disciplinary matters,[82] and given the significant paperwork burden and time investment a unit commander must assume to engage this civilian process, it is no wonder that "less than 1% sent back for disciplinary reasons."[83]

The author notes from personal experience that only the very worst CEW employees are returned to their parent unit and there is very real reason to challenge any assumption that the 1% metric is a meaningful measure of civilian quality or an indicator of behavioral problems. Rather, the author posits that unit commanders are unwilling to waste the significant time and resources required to address problematic civilians at the expense of more pressing matters, and therefore resort to isolating the CEW employee to prevent any further problems until the CEW employee redeploys.

Further problems arise from the lack of input a unit commander has in the evaluation of the civilian's performance on their annual rating. Language of the CEW policy is vague and provides a loophole that does not require the military supervisor to be a part of the rating chain.[84] Civilians are encouraged to request that unit commanders submit feedback to their parent unit supervisor for use in the civilian rating, however, this is neither required nor enforced, and so deployed civilians are rated by their parent unit supervisor. CEW explains that this is intended to relieve a forward commander from the burden of engaging with the many varied civilian rating schemes/database systems.[85]

Current Status. Currently there are approximately 77,000 resumes in the CEW database, though only approximately 70 percent of the resumes (about 54,000) are of a caliber that CEW considers "suitable" for consideration.[86] Approximately 2750 civilians have deployed for the CEW program from inception through 2011. Broken down by year, roughly 275 deployed in 2008, 375 in 2009, 750 in 2010, and 1350 were deployed in 2011.[87]

Cost Analysis – Federal Employees versus Private Contractors (see Appendix 1)

Cost estimates illustrate the difference between and provide comparisons of government costs for a federal civilian employee versus government costs for a private contractor. To maintain clear boundaries for comparison, estimates intentionally look exclusively at salaries and benefits. Other direct costs such as pre-deployment training, theater housing/life support, movement to theater, equipment, telecommunications services and R&R expenses are not factored because contractors also often benefit from many of these amenities and conveniences. Indirect costs such as private sector return on investment (ROI) and overhead cost (25%-50%), are not factored in because DoD administrative overhead costs to the taxpayer (15%-60%) are not recognized.

Federal Civilian Cost Analysis. This analysis reviewed the current CEW civilian post trends based on the March 2012 CEW website. Separate from the cost trends suggested by the current vacancies on the CEW webpage, most vacancies are in the high end of the pay scale: 76% of current vacancies are in grades GS-12 through GS-15. In fact GS-14 is the average pay grade of a deployed DoD CEW civilian[88] and the average deployed non-DoD civilian (DoS, USAID).[89]

Basic Pay Estimates. Of the few vacancies listing pay grade ranges, the average was used for ranges of three grades and the high-end was selected for ranges of two grades. When estimating the annual salary, the average (step 5) of each grade was selected using the FY12 federal pay table.

Government Paid Benefits. The government contribution to a DoD federal employee's benefits was estimated from a current GS-14 federal LES to be 30% of base pay (this is consistent with independent SIGAR estimates for DoS employees valued at 28% of base pay).[90]

Uplift and Incentive Pay. When estimating deployment salaries, the calculations assumed a salary for a 12 month tour with 70% uplift (post differential and danger pay) and 44 hours per week of OT salary. The DoS estimates the Sunday differential earned by each GS-14 is 5% of base pay,[91] so this paper estimates Sunday and night differential to each be 5% of base pay.

Backfill. For each deployed civilian, the government authorizes the hiring of a temporary backfill civilian to assume the empty CONUS billet. The cost of a backfill was estimated to be the base salary of the vacancy with health insurance, SSI and Medicare (an aggregate 13%) as the only government benefits, since the backfill was a temporary hire rather than a term or detail backfill.

Federal Civilian Total Costs. Considering the estimated salary and benefits, the typical GS-14 deployed for a year costs the government $230,700 (salary would be $278,368 if not capped $230,700)[92]. These estimates are consistent with estimates made by the DoS which also estimate the cost of a GS-14 deployed civilian to approximate $266,300 - $310,216 (salary and benefits only).[93] One factor that does not appear calculated in the DoS tables is the cost of a CONUS backfill, though the analysis presented in this paper includes that DoD burden.

Contractor Cost Analysis. Contractor costs were estimated for private sector personnel at various skill levels based on confidential salary discussions with several competitive DoD service contract company management employees. While daily rates vary between companies, the figures used are considered very reasonable. The "independent contractor" (IC) model was used in this analysis. In this model, a company (the prime contractor) compensates an IC (directly or through a sub-contractor) sufficiently high enough to contractually obviate any need to fund employee benefits (health care or retirement). The independent contractor assumes the cost of those benefits, as well as leave, individual equipment, and other job related expenses.

The Cost of Doing Business (Fees & Overhead). Some costs beyond the direct costs to deploy a contractor or a federal civilian are appropriate to ignore in the contractor versus government cost analysis. These are company or agency born costs including fees and indirect costs required to fund the architectural overhead supporting deployed personnel such as; general support, supervision, staff overhead, administrative or financial (pay & benefits) and other indirect costs such as travel, training, and agency facility costs.[94] Though the nature of such fees varies, they are considered the cost of doing business with an entity. These cost factors are not specifically addressed due to ambiguity and lack of visibility surrounding DoD administrative overhead and apparent offsetting values when compared to private firm overhead and ROI.

Government Fees. Considering an example from a reimbursable command of the US Army Corps of Engineers, the aggregate costs of overhead and other fees can range from 15% - 60% but includes no requirement for a ROI.[95] While these percentages can vary, they are considered reasonable estimates of DoD overhead costs.

Contractor Fees. While contract firms, especially those in contingency environments, are often criticized for their high contract fees, business survival instincts drive private companies to strike a balance between aggressive business practices leading to profitability versus the requirement not to undermine marketplace competiveness. With the government inefficiencies noted above, market induced incentives may create the necessary accountability required to posture contractors as more efficient than government. Furthermore, discussions with contractors regarding service contracts suggest a private sector administrative overhead in the range of 25% - 50% but the ROI can be as low as 2%.

Synthesis. Considering the case of the GS-14 average pay grade of CEW positions currently filled by federal civilians, the total cost for a 12-month tour in salary with typical overtime and uplift pay is $230,700, with added benefits this cost becomes $259,497. The associated cost of a backfill adds an additional $108,468 to the cost of deploying the average federal employee, bringing the grand total to $367,965. While not quantified, the parent command also assumes an administrative burden for a deployed civilian, as well as training and performance deficits from new, inexperienced temporary backfills assuming the deployed employee's roles. This same GS-

14 level billet filled by a private contractor costs $264,000, or nearly 72% of what it costs for the federal civilian. Of note, unlike the CEW model, with contractors there is no vacancy to be backfilled (at government expense), nor does the parent organization incur a performance deficit due to the deployment of a specialist. The government cost to deploy all open vacancies for one year would be $115,975,551. Broadly extrapolating without regard for billet function, if all 420 CEW vacancies posted in the March 2012 CEW website were filled by contractors, the government would save nearly $27,865,551 over the next 12 months. (The estimated cost savings would be much greater if based on the total number of deployed CEW personnel.) Results reveal that contractors are actually less expensive than federal employees and the total cost to deploy a federal civilian is more than it would be to deploy an experienced and qualified contractor.

Quality Analysis

Incentive to Send the Best. There is no incentive for a federal office to provide the best as quickly as possible, but there is very high incentive for them to retain their best and send forward their poor performers and mediocre staff. DA civilians echoed this sentiment at the DoD during the Huntsville Deployed Civilians Focus Group: "Deploying good employees hurts the mission back home." [96] The reality of a force structure bloated with marginal or middle performers in many federal agencies is outlined in an Office of Personnel Management (OPM) investigation which relates that the federal government does a poor job of removing poor performers and instead allows them to linger on federal roles while others perform for the agency.[97]

The parent command is motivated by an incentive to protect their best personnel as their loss is a threat to force structure and potentially risks a force reduction or a poor organization review due to performance deficits. Furthermore, under the best circumstances, there is an initial performance deficit with the temporary backfill while learning the job and the parent unit assumes all additional administrative and support responsibilities for deployed CEW employees.

By contrast, a good contract firm is motivated by the market incentives to send the best employees forward because the best staff benefits a firm by strengthening a company, building profit margin and promoting brand strength - all leading to new and larger contracts. Marginal employees are sent home due to poor performance or behavior problems. The better contract firms recognize what is necessary to satisfy the customer – provide a highly qualified professional service, quickly, flexibly, and within cost-competitive boundaries.

Deployment Continuity and Learning Curve. There is a deployment learning curve associated with mastering the nature of the deployed job and the deployment environment. Most federal employees have no prior contingency experience, are entirely inexperienced upon arrival in theater, and serve a single 1-year tour. Some DoD civilians are unfamiliar with technical aspects of their deployed job and require significant training. The steep learning curve and constant cycling of first-time, inexperienced CEW personnel places a serious drain on forward units to continuously invest time and resources to train inexperienced CEW personnel.

DA civilians participating in the Huntsville Deployed Civilians Focus Group spoke passionately on this point: "I deployed for two years, but it was five separate deployments. That's why contractors are providing continuity." [98] Another focus group member admitted, "Contractors are providing continuity as opposed to DA civilians." [99] Contractors can stay for extended periods of time or rotate between paired experts to ensure continuity of knowledge.

Federal Civilian Quality Problems Widely Acknowledged: In a program review memorandum regarding the CEW program in Afghanistan, it was noted the CEW program was not sufficiently able to "recruit qualified civilians to meet the demands in theater."[100] The Huntsville Deployed Civilians Focus Group echoed this sentiment: "Deployed employees [are] totally unqualified, creating chaos in theater," and "Poor performers continue to be a problem even in forward deployed areas."[101]

While DoD claims that "CEW has relieved the stress on the active duty force, reduced dependency on contractor support and provided opportunities for DoD civilians to contribute talents," this review notes "there are some persistent concerns operationally that hamper the program" including "issues with obtaining quality [DoD civilian] candidates timely...and civilian accountability" in theater.[102]

An Armed Forces Journal article on federal civilians deployed to Afghanistan commented, "Disturbingly, many of the civilians…are too fat, frail and/or flaky to undertake their responsibilities. Some are physically incapable of doing their job…and others are not taken seriously or do not know how to represent the agency they speak for and thus are quickly marginalized by the military."[103]

Personal Experience. Assessing broadly over general experience and personal observations, the author notes that contractors were typically more experienced, more professional, and often more skilled. Poor contractors were quickly and easily returned to their firm and replaced with better staff. The revenue and reputations of contract firms depend on delivering the best and rapidly removing any problems. By contrast, it was cumbersome to deal with problematic federal civilians and only the very worst federal employees are removed after significant effort has been expended. Counseling them or attempting to remove them for behavior or performance issues is met with requirements to engage their parent unit supervisors through the complex and inflexible civilian processes; many are also union members which further confounds the complexity of the problem. Commanders do not invest their limited time in order to remove marginally poor performers who provide at least some benefit when faced with the likelihood of an unfilled billet. Many units elect to simply let problem DoD civilians linger quietly in a post until they redeploy. These comments are not intended to imply that there are not examples of exceptional value-added DoD civilians deploying for the US Government, and as noted, contractors can also perform poorly or display behavioral problems. The issue is one of intractability and inflexibility when faced with a DoD civilian who is nearly impossible to counsel or remove. When taken in aggregate, a contract company is motivated by market forces to solve the problem quickly and satisfy the customer, the DoD CEW program lacks this market motivation.

Synthesis. Anecdotally through conversations with numerous people having experience in theater, it is clear that quality deficiencies of deployed civilians pose a notable problem with the CEW. Too many inexperienced and unqualified people have been accepted and deployed. While this assertion cannot be quantified, experience and observations mean more than "metrics" kept on spreadsheets. Thus screening and hiring policies fell victim to pressure in Washington to meet year-end targets. [104]

Schedule Analysis (Responsiveness / Flexibility of CEW versus Private Contractors)

As previously stated, September 2011 data indicates that the average DoD deployment time for a federal civilian was over 200 days and the "Schedule A" temporary civilians hired into CEW GS positions have an average DoD deployment time of nearly 250 days.[105] Contract firms are generally required to fill billets within 45 days and often in as little as 30 days. A contract company generates revenue by providing competent people in a timely manner, as empty billets do not generate earnings. When returning a CEW civilian, there is no guarantee that another CEW DoD civilian will backfill that requisition in a timely manner or at all.

Synthesis: Based on current policies in place and the general problems associated with DoD civilians, private contractors are consistently more responsive and more flexible to deploy than DoD civilians.

Conclusion and Recommendation

Contractors are more cost effective and the quality, schedule, and flexibility differences discussed in this paper highlight the merit of preferring a contractor solution over a federal civilian model in all but inherently governmental positions. To be clear, this annex does not recommend that DoD eliminate the CEW program. Rather, it strongly urges that DoD institute significant changes in scope and construct to improve the program.

Reduce CEW Personnel to Inherently Governmental Positions. Some positions perform clearly governmental functions and require a federal government employee who is authorized to speak on behalf of the US Government, distribute government funds, perform contract management tasks, supervise government staff or contracts, sign for property, and perform sensitive intelligence or detainee related tasks. These jobs should only be performed by federal civilians. Positions that are not inherently governmental should generally be filled with a contractor.

Implement a Directed Civilian DoD Deployment Policy. Except for Emergency Essential billets, the DoD cannot force a civilian to deploy. However, for those inherently governmental functions, DoD must look beyond volunteers and instead "cherry pick" the right person from the best in the DoD civilian ranks for directed deployment.

Change the CEW Pay Structure. Change CEW pay to resemble the military compensation system and reduce the cost bulge; a contingency deployment pay rate that assumes 12 hrs/day each day and combat zone tax exemptions similar to the military system.

Unit Commanders Rate. Local accountability is essential; inserting the commander in the rating process in a way that provides almost no added work firms the command relationship and reinforces the authority of the commander. The commander is considered an interim rater and their input is submitted in the form of a rating letter to the CEW employee and the employee's chain of command once the civilian's tour is over. This letter is used as the basis for rating the employee and is on record with CEW officially in case there is dispute. This would not require the deployed unit to engage with rating systems and software, as this would remain the responsibility of the parent command.

Appendix 1. Estimated CEW versus Contractor Cost Comparison per Pay-Grade

CEW		Federal Employee Cost Factors							Independent Contractor (IC)		
Vacancies				Backfill Salary/Benefits		Deployed Salary/Benefits		TOTAL	Cost Factors		
(a)Pay Grade	#	(b)Base Salary	GOV Paid Benefits	Backfill (individual)	(c)Backfill (weighted)	(d)Salary (individual)	Salary (weighted)	(f)Cost / pay-grade	Daily Deployed Rate	Individual Annual Cost	Aggregate Pay-grade Cost
GS-07	8	$38,511	$11,553	$43,517	$348,139	$123,235	$985,882	$1,334,021	$450	$148,500	$1,188,000
GS-09	21	$47,103	$14,131	$53,226	$1,117,754	$150,730	$3,165,322	$4,283,076	$550	$181,500	$3,811,500
GS-10	37	$51,875	$15,563	$58,619	$2,168,894	$166,000	$6,142,000	$8,310,894	$600	$198,000	$7,326,000
GS-11	24	$56,991	$17,097	$64,400	$1,545,596	$182,371	$4,376,909	$5,922,505	$650	$214,500	$5,148,000
GS-12	97	$68,310	$20,493	$77,190	$7,487,459	$218,592	$21,203,424	$28,690,883	$700	$231,000	$22,407,000
GS-13	89	$81,230	$24,369	$91,790	$8,169,301	$255,069	$22,701,141	$30,870,442	$750	$247,500	$22,027,500
GS-14	61	$95,989	$28,797	$108,468	$6,616,522	$259,497	$15,829,299	$22,445,820	$800	$264,000	$16,104,000
GS-15	36	$112,912	$33,874	$127,591	$4,593,260	$264,574	$9,524,650	$14,117,910	$850	$280,500	$10,098,000
	373							$115,975,551			$88,110,000

(a) CEW Pay Grades: range of 3 grades - average selected; range of 2 grades - high end selected

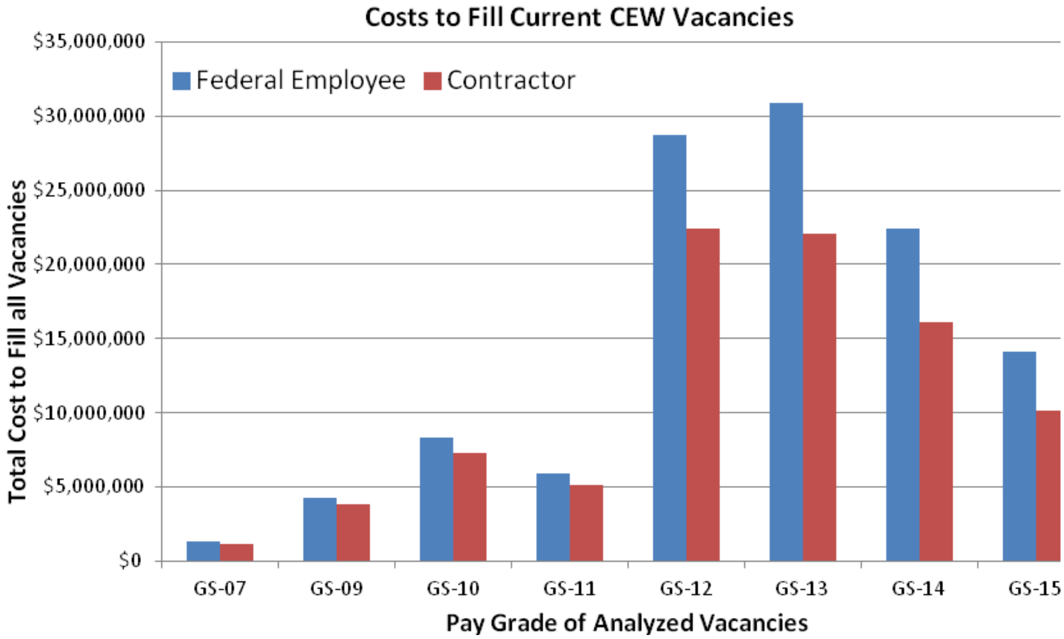
(b) Base Salaries: FY 2012 salaries (step 5), http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html

(c) Backfill (weighted) : (mean annual salary x number of billets) + (benefits paid by GOV x number billets)

(d) Deployed Salary (individual): assumes 12 month tour, 70% uplift + 44 hrs straight OT + 5% base pay for each Sunday differential & night differential

(e) GS-13, GS-14, GS-15 salaries exceeded the annual premium cap so are limited to $230,700

(f) Aggregate Pay-grade Cost: (deployed salary x number of billets) + (backfill salary x number billets) + (benefits paid by GOV x number billets x 1) + (benefits paid by GOV x number billets x 0.13, this assumes temp employee backfills)


Costs to Fill Current CEW Vacancies
Federal Employee
Contractor
Total Cost to Fill all Vacancies
$35,000,000
$30,000,000
$25,000,000
$20,000,000
$15,000,000
$10,000,000
$5,000,000
$0
GS-07
GS-09
GS-10
GS-11
GS-12
GS-13
GS-14
GS-15
Pay Grade of Analyzed Vacancies

ANNEX B - FOR ADDITIONAL INFORMATION

The Study Group research teams analyzed a number of specific issues related to the PSSO industry. Readers desiring more in depth analysis may obtain copies of the individual studies below by submitting a request to the National Defense University.

Operational Contract Support Planning and Readiness (Team 1)

- Accounting For and Tracking Contractors During Contingency Operations
- Resourcing Contract Support Planners
- Planning for OCS

Meeting Future Requirements (Team 2)

- Inherently Governmental Argument Essentially Over
- Implications of Outsourcing: Inherently Governmental Activities and the Intelligence Community
- A Comparative Analysis and Recommendation on the Use of the DoD Civilian Expeditionary Workforce and Private Contractors in Expeditionary Operations
- Contractor Service Support Capacity: Avoiding a Wobbly Leg in the DoD Total Force

Improving Interagency Coordination and Efficiency (Team 3)

- Interagency Contracting Challenges
- Institutionalizing PSSO/OCS Oversight in a Strategic Joint DoD Environment
- Operational Contract Support: An Analysis of Improved Practices in Service and Interagency Re-Alignment

Balancing Operational Effectiveness, Cost and Political Dynamics (Team 4)

- Private Sector Support to Operations: Balancing Cost, Effectiveness and Politics
- Institutionalize Operational Contract Support: Contractors' Operational Effectiveness and Economic Efficiencies

Criminal Jurisdiction over Contractors (Team 5)

- UCMJ or MEJA: The Challenges of Holding Contractors Accountable for Criminal Acts Committed During Overseas Contingency Operations

- Stories of Human Trafficking in Private Sector Support to Operations

Economic Health of the PSSO Industry (Team 6)

- Private Sector Support to Operations Overseas Contingency Operations Market Economic Health and Value Review

- PSSO Industry Firm Value Analysis

ANNEX C – CONSOLIDATED LIST OF RECOMMENDATIONS

Challenge 1- Planning and Readiness Recommendations

To enhance contractor visibility and input into planning and readiness processes, resources must be devoted to organizing OCS for the next contingency, training OCS personnel, establishing OCS business and accountability rules and utilizing IT solutions. Specifically:

Organization. DoD should increase the level of integrated OCS planning at the service component level. The department should also standardize Forward Operating Base (FOB) design based on the Support Band concept.

Personnel. Continue efforts to move OCS and JLLIS portal training to end-users. Increase OCS training opportunities beyond Joint Professional Military Education (JPME) to include refresher training. Continue to provide contractor pre-deployment training similar to that provided to military forces.

Information Technology. Expand the JLLIS portal to include firms' "lessons learned" input. If this is not possible, research the possibility of a federally funded research institute or independent think tank to capture lessons.[106]

Policies and Procedures. Develop information sharing rules that enable appropriate contractors to have insight into Annex W (OCS Planning) of operational plans and orders to aid in firms' preparation and situational awareness while still preserving security. Improve the requirements generation processes in forward deployed commands by linking requirements for contracted support directly to the objectives in the theater campaign plan.

Accountability. Appoint the theater J1 as the lead for SPOT management. Discontinue allowing contractors the authorization to solely enter data into SPOT. Require contractors to enter and exit theater through a single DoD node. Concerning SPOT, DoD should implement GAO's recommendations. Specifically, DoD should: develop a single source document that provides SPOT instruction and guidance; update SPOT software to interface with DoD and USG personnel tracking and accountability systems; develop and execute a plan for the continued implementation of SPOT; ensure all involved accurately input statutory requirements; establish uniform requirements on how contract numbers are entered into SPOT; and revise SPOT capabilities to ensure all statutory requirements are met.[107]

Challenge 2 - Future Capacity and Requirements Recommendations

To institutionalize OCS, service contracting needs the same professional attention given to major acquisition projects. Correcting this failure certainly includes maintaining a strong acquisition corps and ensuring that force reductions do not compromise DoD's capacity to support contracting in future operations.

Two countering arguments exist to address disparately applied policy regarding inherently governmental work. The first is to revisit current OMB policy and formulate clearly defined activities related to a specific function that should never be performed by a contractor in connection with that function. Although this might limit organizational flexibility in managing the workforce, this approach creates clarity on where the limits of contracted support lay.

The other approach is for organizations to follow current OMB guidelines. Within those organizations, a permissive list that describes those services that should or may be contracted appears to better serve the government's interest. Red-lines should be built into the organization's definition of critical functions and closely associated work. This should be done by an overarching agency like the Office of the Director of National Intelligence which would allow organizations to then focus on management of activities that are contracted out while retaining those that lay at the core of their mission. Moreover, where the nature of the work to be done is inherently governmental and it exceeds an organization's institutional capacity, the CEW should be used as the sole source solution to fill the capacity shortfall.

When it comes to cost, schedule and performance it appears there are substantial advantages to the utilization of contractors wherever allowable. However significant reforms are required for DoD to maximize the ability of the CEW to fill inherently governmental positions.

To help mitigate the industry's potential to shrink, DoD should work to aggregate its service contract requirements not only within itself, but across the USG interagency. This aggregation should enable the design of a service contracting program along the lines of LOGCAP that could still entice companies to stay in the market.

Finally, the USG should appoint a lead organization to ensure COCOMs and other USG agencies are not competing with each other for contract support resources and to track the overall contractor requirements the industrial base will need to support. This will ensure the needed resources are available for the next contingency and that shortfalls do not impact any US operational plans.

Challenge 3 - Interagency Coordination Recommendations

Develop a more mature and robust OCS framework with formalized and appropriate processes, instructions, and policies that codify lessons learned from OEF and OIF.

Span the current OCS interagency gap through the following: institutionalize OCS acquisition as a core function within DoD and DoS responsible for requirements development, planning, programming, budgeting and execution.

The National Security Staff (NSS) should designate which interagency department will be the Lead Executive Agency for contingency contracting for each phase of overseas operations. This enables respective agencies, with a preponderance of forces, sufficient control while facilitating a path to transition at critical junctures.

Challenge 4 - Operational Effectiveness vs. Cost and Political Dynamics Recommendations

The first way DoD can get in front of the trend away from OE&E is to set clear standards for support and services that are consistent across COCOMs. Once codified, DoD should ensure Congress and OMB accepted the standards as the minimum acceptable support baseline. Later, if OMB and Congress begin to question PSSO related costs of an operation, DoD can credibly argue reductions in the level of support violate the agreed upon baseline and if enacted, would have an adverse impact on the operational effectiveness of the civil-military force. In return for this agreed upon baseline, approval of theater level requests for support and services that exceed the baseline should be retained at the department level, and should be reviewed by OSD with a great deal of scrutiny. The department should conduct honest assessments of the theater commander's wants versus needs, and policy makers should not be afraid to tell commanders “No” when requests for standards above the baseline are not justifiable.

Second, the DoD should leverage the trend for strong congressional support in the early stages of operations by seeking multi-year appropriations and authorities when possible. In addition to providing considerable operational level flexibility, multi-year funding mitigates the risk that political dynamics in the months ahead will compromise operational effectiveness.

Third, DoD must build and sustain trust and mutual respect with OMB and Congress by viewing the two as partners rather than adversaries. This means frequent meetings with staff to ensure they understand the nature of PSSO requirements and the operational impact if they are underfunded. It also means making small compromises in effectiveness earlier in order to avoid significant operational impact later, and obtaining "buy-in" early in the budgeting process.

Challenge 5 - Criminal Jurisdiction over Forward Deployed Contractor Recommendations

With regard to the issue of UCMJ jurisdiction over civilian contract employees, the Court held that Congress cannot subject civilians to courts-martial without violating their rights to constitutional safeguards inherent in civilian courts. One solution would be to have the individual accompanying the force sign a waiver of those rights and agree to be subject to UCMJ jurisdiction, thereby also waiving their right to trial in civilian court.[108]

On the issue of unresponsiveness or lack of resources on the part of DoJ to accept MEJA matters and follow them through to prosecution, there seems to be a ready-made solution. An agreement already exists between DoD and DoJ which allows judge advocates to be appointed as Special Assistant United States Attorneys (SAUSAs).[109] Allowing SAUSAs to prosecute MEJA cases would ameliorate the DoJ issues of resourcing and prioritization. Furthermore, judge advocates are much more familiar with operating in a contingency environment than their DoJ counterparts, which can only help facilitate a proper investigation and prosecution of the crime. Additionally, to facilitate MEJA prosecution, non-U.S. persons who are victims of or witnesses to the alleged crime should be afforded a T-visa to enter the U.S. for trial purposes.

The UCMJ should also be amended by Executive Order or congressional action to include the crime of trafficking in persons.[110] Currently, the UCMJ only criminalizes patronizing a prostitute. Additionally, as dictated by the House Armed Services Committee Report to the FY 2007 NDAA, military criminal investigators should be trained to indentify and properly investigate all human trafficking cases, not just those related to forced prostitution.[111]

It is critical that steps be taken to improve the effectiveness of criminal prosecution of contractor employees accompanying the force. Aside from the deterrent effect, it also can create a morale problem leading to friction between military personnel and contract personnel if contractor employees enjoy immunity from prosecution.

Endnotes

[1] Richard Fontaine, "Are Private Security Companies Performing Inherently Governmental Work; Testimony before the Commission on Wartime Contracting," *Center for a New American Security*, June 18, 2010, http://www.cnas.org/node/4689 , accessed March 2, 2012.

[2] DoD Instruction 3020.41, 20 December 2011.

[3] COL Doug McCarthy, "PSSO Industry Strategy Lesson 1: Industry Context of Firm Strategy," Industrial College of the Armed Forces, 26 January 2012, slide 17.

[4] Competitive Oligopoly. This market is a competitive oligopoly due to the top four firms holding 40% of market share and the firms within the market being highly competitive with each other to obtain market share from the single buyer, the United States Government (USG).

[5] Glenn R Hubbard and Anthony P. O'Brien, Anthony Patrick, *Economics 3rd Edition*, (Boston: Prentice Hall), 368.

[6] Gerald Berg, "Markets, Competition, and Industry Analysis: Modern Views in a New Economy," *Industry Studies Handbook*, Industrial College of the Armed Forces (August 2002), 36.

[7] Michael E. Porter, "The Five Competitive Forces that Shape Strategy," *Harvard Business Review*, (2008), 80.

[8] COL Doug McCarthy, "PSSO Industry Strategy Lesson 7: Industry Context of Firm Strategy," Industrial College of the Armed Forces, 26 January 2012, slide 17.

[9] Comments made to the Private Sector Support to Operations Industry Study on 24 February, 1 March, and 5 March 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[10] Comments made to the Private Sector Support to Operations Industry Study on 10 February and 1 March 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[11] Comments made to the Private Sector Support to Operations Industry Study on 27 February 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[12] Firms are required to have specific earned value management systems in cost contracts only. This does not apply to any FFP contracts. Additionally, the terms and conditions of the contract require the contractor to meet certain cost accounting standards.

[13] Comments made to the Private Sector Support to Operations Industry Study on 27 February 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[14] Comments made to the Private Sector Support to Operations Industry Study on 5 March 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[15] Mark Foulon, "Elements of Firm Strategy: The Strategic Gameboard," Industry Analytics Lesson 8 - The Essentials of Firm Strategy, Industrial College of the Armed Forces, 7 February 2012.

[16] Air Force Civil Engineer Support Agency, *Fact Sheets: Air Force Contract Augmentation Program (AFCAP)*, http://www.afcesa.af.mil/shared/media/document/AFD-111202-015.pdf, accessed 20 March 2012.

[17] URS Corporation, *Annual report 2010*, http://investors.urscorp.com/phoenix.zhtml?c=89381&p=irol-reports, accessed 20 March 2012.

[18] Fluor Corporation (NYSE: FLR.N), Financials at Reuters.com, http://www.reuters.com/finance/stocks/financialHighlights?symbol=FLR.N, accessed 19 March 2012.

[19] KBR Inc (NYSE: KBR.N), Financials from Reuters.com, http://www.reuters.com/finance/stocks/financialHighlights?symbol=KBR.N., accessed 19 March 2012.

[20] URS Corp. (NYSE: URS), Financials, from Reuters.com, http://www.reuters.com/finance/stocks/financialHighlights?symbol=URS, accessed 19 March 2012.

[21] L3 Communications Holdings Inc. (LLL.N), Financials, from Reuters.com, http://www.reuters.com/finance/stocks/financialHighlights?symbol=LLL.N, assessed 19 March 2012.

[22] Ibid.

[23] Ibid.

[24] Current Ratio divides current assets (cash, inventory, receivables) by current liabilities (debt and payables) to determine the current ratio. Current ratio, therefore, indicates a firm’s ability to pay short-term obligations. The higher the number the better; any figure below 1.0 would be a red flag as liabilities would outnumber assets, making it difficult to meet obligations, http://www.investopedia.com/terms/c/currentratio.asp, accessed 19 March 2012. The Current Ratio of the PSSO firms, an indicator of liquidity, is well above 1.0 and indicates that they are able to meet short-term liabilities ahead of the industry.

[25] LTDE is calculated by dividing Long-term Debt by Long-term Debt + Preferred Stock + Common Stock. LTDE Ratio indicates how a firm finances growth. A high debt/equity ratio indicates a company uses outside aid to finance operations. This could be detrimental unless the firm generates more earnings than it would otherwise & thus benefiting shareholders. This also

"depends on the industry in which the company operates. For example, capital-intensive industries such as auto manufacturing tend to have a debt/equity ratio above 2, while personal computer companies have a debt/equity of under 0.5." LTDE Ratio measured against the firm's market is the best indication of how well Long-Term Debt is used to provide sustained growth, http://www.investopedia.com/terms/d/debtequityratio.asp., accessed 19 March 2012. Although L3 has a higher LTDE ratio and a greater reliance on debt to finance operations than the industry average, it is well below the S&P 500 average, and the other three PSSO firms are minimally leveraged.

[26] Asset Turnover Ratio is calculated by dividing Revenues by Assets. The higher the number the better as this shows a firm is effective at using assets to generate revenue, http://www.investopedia.com/terms/a/assetturnover.asp, accessed 19 March 2012. The Asset Turnover Ratios for the top firms outperform both the industry and the S&P 500, showing their efficiency at using their assets to generate revenue.

[27] EBITDA is essentially net income with interest, taxes, depreciation, and amortization added back to it, and can be used to analyze and compare profitability between companies and industries because it eliminates the effects of financing and accounting decisions, http://www.investopedia.com/terms/e/ebitda.asp#axzz1pie3d02G, accessed 19 March 2012. Most firms record healthy current and five-year EBITDA ratios but are under the industry averages. URS actually has a negative EBITDA implying that their operating expenses are currently eating away at their profits. This is likely due to a Goodwill Impairment Charge recorded by URS in 2011 to adjust for adverse stock market conditions and their recent acquisitions.

[28] Return on Investment is a performance measure used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. To calculate ROI, the benefit (return) of an investment is divided by the cost of the investment; the result is expressed as a percentage or a ratio, http://www.investopedia.com/terms/r/returnoninvestment.asp#axzz1pie3d02G, accessed 19 March 2012.

[29] P/E Ratio divides Market Value per Share by Earnings per Share (EPS) for comparative value. An issue with P/E Ratio is that EPS can be manipulated but overall P/E Ratio indicates how investors view the firm's ability to generate revenue, thus indicating the overall health of a firm. To quantifiably determine the health of a firm is to compare the P/E Ratio to that of other firms within the industry, http://www.investopedia.com/terms/p/price-earningsratio.asp, accessed 19 March 2012. L3 has the lowest Price to Earnings (P/E) Ratio of the PSSO firms making it the most attractive firm to investors despite its greater reliance on debt.

[30] Goodwill Impairment Charge is a specific reduction on a company's balance sheet that adjusts the value of a company's goodwill. Due to accounting rules, a company must monitor and test the value of its goodwill, to determine if it is overvalued. If it is, the company must issue an impairment charge on its balance sheet, to take into account the reduced value of the goodwill, http://www.investorwords.com/6840/impairment_charge.html, accessed 19 March 2012.

[31] Comments made to the Private Sector Support to Operations Industry Study on February 10 and March 01, 2012. In accordance with National Defense University Policy, all material was presented with the understanding that it would not be attributed to any individual.

[32]Task Force III, *Dependence on Contractor Support in Contingency Operations Task Force, Phase III: Improved Planning for contractors in Contingency Operations,* (Washington DC, Chairman of the Joint Chiefs of Staff July 2010), 6.

[33] Alan Estevez, "Senate Armed Services Committee Hearing," (Jul 19, 2011):Federal Information & News Dispatch, Inc. Lanham, http://ezproxy6.ndu.edu/login?url=http://search.proquest.com/docview/878484619?accountid=12686 (accessed 5 February 2012).

[34] Task Force III, *Dependence on Contractor Support in Contingency Operations Task Force, Phase III: Improved Planning for contractors in Contingency Operations*, 11.

[34] BGEN Mark Faulkner, USMC "Operational Contractor Support - Strategic Update", 8.

[36] Task Force III, *Dependence on Contractor Support in Contingency Operations Task Force, Phase III: Improved Planning for contractors in Contingency Operations,* G1.

[37] Task Force III, *Dependence on Contractor Support in Contingency Operations Task Force, Phase III: Improved Planning for contractors in Contingency Operations*, 13.

[38] Defense Science Board Task Force, *Improvements to Services Contracting*, 15.

[39] U.S. Department of Defense, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces,* Department of Defense Instruction 3020.41(Washington, DC: Under Secretary of Defense for Acquisition, Technology and Logistics, 3 October 2005), 11. (Accessed through the work of Lieutenant Colonel Thomas G. Quinn, Jr., *Contractor Personnel Accountability on the Battlefield*, (US Army War College, 122 Forbes Avenue, Carlisle, PA 17013, 17 March 2010): 5)

[40] U.S. Joint Chiefs of Staff, *Personnel Support to Joint Operations,* Joint Publication 1-0 (Washington, DC: U.S. Joint Chiefs of Staff, 16 October 2006), P-3. (Accessed through the work of Lieutenant Colonel Thomas G. Quinn, Jr., *Contractor Personnel Accountability on the Battlefield*, (US Army War College, 122 Forbes Avenue, Carlisle, PA 17013, 17 March 2010): 7)

[41] Support Bands: Band 1 provides life support for 20,000 soldiers, Band 2 provides life support for 12,000 soldiers. Band 3 provides life support for 4,500 soldiers. Band 4 provides life support for 1,000 soldiers. Band 5 provides life support for 300 soldiers.

[42] Anderson, Donald, "Supported Band Populations" (Army Sustainment Command), sent email to author 21 March 2012.

[43] Commission on Wartime Contracting in Iraq and Afghanistan, Transforming Wartime Contracting, Controlling Costs, Reducing risks- Final report to Congress, Findings and Recommendations for Legislative and Policy Changes, 170.

[44] United States Government Accountability Office (GAO) Report to Congressional Committees – 10-01 CONTINGENCY CONTRACTING DoD, State, and USAID Continue to Face Challenges in Tracking Contractor Personnel and Contracts in Iraq and Afghanistan, October, 2009.

[45] Special Inspector General for Iraq Reconstruction. "Applying Iraq's Hard Lessons to Strengthen the U.S. Approach to Stabilization and Reconstruction Operations." (2010): 2, www.sigr.mil.

[46] One of the Team 4 members previously served as the Joint Staff's lead for post-2011 Iraq inter-agency planning efforts. In that capacity he not only took part in the State Department's planning processes, he accompanied senior representatives from the State Department on hearings before their appropriations and authorizations committees as they attempted to obtain funding for the residual civilian effort in Iraq.

[47] *United States v. Averette*, 19 C.M.A. 363, 365 (1970).

[48] John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 552, 120 Stat. 2217 (2006).

[49] Steven Paul Cullen, *Out of Reach: Improving the System to Deter and Address Criminal Acts Committed by Contractor Employees Accompanying Armed Forces Overseas*, Public Contract Law Journal, Spring 2009 (38 Pub. Cont. L.J. 509), 525.

[50] Perhaps if the Court were to examine the frame of mind of the authors of the Constitution on this subject, they might look to the contemporaneous Articles of War for intent – and clearly, in times of war or hostilities, the intent was to apply court-martial jurisdiction to civilians accompanying the armed forces.

[51] United States ex rel. Toth v. Quarles, 350 US 11, 15 (1955).

[52] Cullen, 536.

[53] A waiver of this right would be similar in concept to an individual waiving his/her Miranda Rights which are a Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel.

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