

**THE DEPARTMENT OF DEFENSE'S MANAGEMENT
OF COSTS UNDER THE LOGISTICS CIVIL AUG-
MENTATION PROGRAM (LOGCAP) CONTRACT
IN IRAQ**

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 19, 2007

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THE DEPARTMENT OF DEFENSE'S MANAGEMENT OF COSTS UNDER THE LOGISTICS CIVIL AUGMENTATION PROGRAM (LOGCAP) CONTRACT IN IRAQ

THURSDAY, APRIL 19, 2007

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room SD-106, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Akaka, Bill Nelson, Clinton, Webb, McCaskill, Warner, Inhofe, Thune, and Martinez.

Other Senators present: Senator Dorgan.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Peter K. Levine, general counsel; and Michael J. McCord, professional staff member.

Minority staff members present: Michael V. Kostiw, Republican staff director; Derek J. Maurer, minority counsel; David M. Morriss, minority counsel; Lucian L. Niemeyer, professional staff member; and Bryan D. Parker, minority investigative counsel.

Staff assistants present: David G. Collins, Fletcher L. Cork, and Jessica L. Kingston.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; David E. Bonine, assistant to Senator Byrd; Frederick M. Downey, assistant to Senator Lieberman; Elizabeth King, assistant to Senator Reed; Darcie Tokioka, assistant to Senator Akaka; Christopher Caple, assistant to Senator Bill Nelson; Jon Davey, assistant to Senator Bayh; Andrew Shapiro, assistant to Senator Clinton; Gordon I. Peterson, assistant to Senator Webb; Stephen C. Hedger, assistant to Senator McCaskill; Sandra Luff, assistant to Senator Warner; Vince Piperni, Mark Powers, and Jeremy Shull, assistants to Senator Inhofe; Mark J. Winter, assistant to Senator Collins; and Brian W. Walsh, assistant to Senator Martinez.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody.

The Senate Armed Services Committee meets today to hear testimony about the Department of Defense's (DOD) management of the Logistics Civil Augmentation Program (LOGCAP) contract

under which Kellogg, Brown, & Root, Inc., (KBR), at least until recently a subsidiary of Halliburton, provided services to U.S. troops.

There is a history of highly favorable treatment of this contractor throughout the contract. For example, the company was given work that appears to have far exceeded the scope of the contract. All of this added work was provided to the contractor without competition. The contractor resisted providing us with information that we needed to monitor and control costs. There were almost \$2 billion of overcharges on the contract. The contractor received highly favorable settlements on these overcharges. There was strong evidence that a failure of oversight on this contract by the DOD paved the way for excessive payments that cost the taxpayers hundreds of millions of dollars.

Under the LOGCAP contract, the contractor is responsible for providing a full spectrum of services to U.S. troops in the field, including dining facilities, living quarters, base camp operations and maintenance, facilities management, transportation, and distribution of supplies, water and ice, laundry and bath, airfield operations, detainee camp construction, and firefighting.

Over the last 5 years, the DOD has obligated more than \$20 billion under this contract, making it one of the largest, if not the largest, service contracts ever awarded to a single contractor. Almost from the outset of the Iraq war, there have been serious allegations that the contractor inflated cost estimates and incurred excessive and unnecessary costs. To date, DOD auditors have identified almost \$2 billion in overpricing on this contract.

For instance, in 2003 and 2004 KBR billed the Government for millions of meals that were never prepared. These overcharges occurred because KBR allowed its subcontractors to charge for a fixed number of meals, regardless of how many meals were prepared.

Another example in the same period, KBR ordered thousands of trailers from vendors who charged anywhere from 200 percent to as much as 600 percent of the prices charged by the low bidders. When asked by the committee staff whether the problem with the trailers was symptomatic of a broader problem with KBR's purchasing systems, the Defense Contract Audit Agency (DCAA) director replied, "Yes."

Under Federal Acquisition Regulations (FAR), the DOD is supposed to pay only reasonable costs incurred under a cost-plus contract like the LOGCAP contract, yet DOD reimbursed the contractor for almost the entire amount that it paid for the meals that were never served or prepared and the greatly overpriced trailers.

Audit reports and contractor performance evaluations from 2005 and 2006 reveal that similar cost problems continue to the present day. For example, the July 2005 report of the DOD Award Fee Evaluation Board criticized KBR decisions that added, in their words, "additional costs to the task order with no visible benefit to the customer." The "customer" is us.

A 2005 DCAA audit report found that KBR's proposed labor costs were overstated by \$30 million, or 51 percent, compared to historic averages.

A November 2005 Army Audit Agency (AAA) audit report found that KBR had wasted between \$40 million and \$113 million by

purchasing more vehicles than necessary, in their words, for the contract.

A separate November 2005 AAA report found that KBR's, "material handling equipment exceeded requirements," and that, "staffing levels at the numerous distribution centers were excessive, adding \$36 million to the cost of the contract."

The November 2005 report of the DOD Performance Evaluation Board criticized, "six layers of management in a 1-to-3 management/labor ratio, which duplicated decisionmaking and underutilized personnel."

A separate November 2005 evaluation report stated that, "Initial estimates are often inflated so that when projects are underbudget all the time, it is deceptive." It is deceptive.

A March 2006 DCAA audit report found that a KBR proposal was overpriced by \$75 million because KBR's proposed labor costs were overstated by 22 percent, subcontract costs were overstated by 21 percent, material costs were overstated by 59 percent, equipment costs were overstated by 21 percent, and other direct costs were overstated by 20 percent, compared to the performance of the same work under a previous task order.

The March 2006 Evaluation Board report criticized the "overstated costs in proposals and the overengineering of customer requirements."

An April 2006 Army audit report found that the contractor refused to move excess personnel or equipment from the job to which they were assigned in which they weren't needed—they were excess—to another job in order to accomplish needed work. According to the report, "When we brought this situation to the attention of top contractor operational personnel, they informed us that this was company policy."

A May 2006 DCAA report found that a KBR proposal overstated costs by almost \$70 million, with labor costs overstated by 33 percent, material costs overstated by 47 percent, compared to actual incurred costs for the same effort under a previous task order.

A May 2006 Evaluation Board stated that, "Unskilled labor appeared to be underutilized, seen in makework projects that contribute little."

An August 2006 DCAA audit found that KBR's proposed subcontract costs for one task order were overstated by roughly \$100 million. Proposed costs for two subcontracts exceeded 200 percent of the amount charged by other subcontractors to perform similar work, while KBR proposed to substantially increase staffing levels without justification on numerous other subcontracts.

The September 2006 Evaluation Board report criticized, "unsupported costs of \$2.5 million, an overrun of \$33 million, questioned costs, and an inaccurate burn rate, and an overestimated \$74 million of proposed costs."

An October 2006 Evaluation Board criticized excessive costs on subcontracts.

Now, that is a litany of excess, of overstatements, of representations made by the contractor, and that is only part of the reports that we have reviewed. It is a pretty sorry record.

But what was the response? The DOD problems managing the costs under this LOGCAP contract, first of all, were exacerbated by

the contractor's lack of cooperation with the DOD information requests. For instance, a September 2005 DCAA audit report said the following: "We encountered significant problems in obtaining supporting cost or price data. In some cases the procurement files were not provided for review, and in other cases key information was not included in the procurement files. Failure to disclose cost or pricing data to the Government significantly impairs the reliability of the proposal as an acceptable basis for negotiation of fair and reasonable price."

A November 2006 DCAA audit report said the following: "The results of this audit are qualified due to the inadequacy of the documentation provided and the lengthy response time in obtaining documentation from the contractor. We implore KBR management and its Government compliance group to address the cited deficiencies and to work with the DCAA to improve its systems and related internal controls."

Can you imagine, we have to implore a contractor—implore a contractor, receiving billions of dollars of taxpayers' money, to do what the law requires them to do, which is to give us documents and data?

In a December 2006 meeting, Army auditor, Patrick Fitzgerald, told the committee staff that the Army continues to pay too much for services under the LOGCAP contract. According to Mr. Fitzgerald, there is, "no doubt we're paying a premium for KBR services and that the premium had been exacerbated by the absence of effective cost controls on the part of the DOD."

LOGCAP management officials, the very people who are supposed to ensure that taxpayer funds are spent wisely, appeared to have ignored the extensive findings by their own auditors, as well as the cost concerns expressed in program documents, when they made award fee determinations for the LOGCAP contract. Rather than giving KBR low ratings to penalize the company for its poor cost performance—and that's what we're talking about here, is cost performance—program management officials consistently gave the company high ratings and paid the company high fees.

Now, the absence of significant complaints about the contractor's work product is not an excuse. We're not talking about the work products. We're talking about overpayment for a satisfactory work product. That's the issue that's before us. This is not an allegation that the work product was deficient or inadequate. What we're looking at are overpayments for that work product, because, while it is satisfactory, it is inexcusable to overpay for a satisfactory work product. There was overpayment after overpayment after overpayment after overpayment on this contract. There is a history here which is totally unacceptable, a history of highly favorable treatment of this contractor throughout this contract. I've set forth some examples of that history at the beginning of this opening statement, and we're going to explore that during this hearing.

Senator Warner.

STATEMENT OF SENATOR JOHN WARNER

Senator WARNER. Mr. Chairman, on behalf of the distinguished ranking member, Senator McCain, I'd like to place his entire statement into the record.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT BY SENATOR JOHN MCCAIN

Mr. Chairman, I join you in welcoming our witnesses. Over the last few years, much has been written and said about the current Logistics Civil Augmentation Program (LOGCAP) contract—about the Government's management of it, and the contractor's performance under it. In some instances, the observations have been accurate; in others, they have not. I hope that today's witnesses will bring clarity and understanding to the issues. I am particularly interested in the Army's plan for improving the LOGCAP.

The LOGCAP is not a new invention. Established in 1985, the program was designed to leverage corporate resources to support military operations, thus freeing military personnel to do what they do best: fight America's enemies. It has been used in Somalia, the Balkans, and other places to support our troops.

Although the current contract—LOGCAP III—was competitively awarded in 2001, it essentially operates as a sole-source contract. There is no competition for the individual multi-million and -billion dollar task orders issued under it, a practice that runs counter to the corporate best practices we exhort the Department of Defense (DOD) to employ. As we all know, robust competition on Government contracts ensures that the Government receives the best value at the lowest cost to the taxpayer.

I am encouraged that the Army intends to inject more competition into the program by awarding contracts to three companies, which will then compete for work under individual task orders. But, the American people deserve to know why it took so long to do this. After all, reportedly in 2004, an internal Army memorandum recommended the Army immediately find ways to open up the contract to greater competition.

There is no dispute that the LOGCAP contractor has provided the critical combat support services our troops need. According to numerous people, the contractor has been exceedingly responsive to commanders' requirements to enhance the quality of life of our troops in theater.

Nevertheless, various Government auditors have been critical of the Government's and the contractor's cost control efforts. According to one report, the Government had problems preparing independent Government cost estimates, reviewing the contractor's rough orders of magnitude, and definitizing task orders. Consequently, the Government's risk increased because of the limited visibility and control over contractor costs.

Even worse, as I understand it, the Government cannot say with certainty the amount of money allegedly lost through ineffective cost controls. That is unacceptable. We must have a full and accurate accounting of how the taxpayer's dollar was spent and the reasons for any resources squandered.

I also question whether the Government properly planned to use the LOGCAP contract. The original scope of work called on the contractor to support up to 50,000 troops for 180 days. Disturbingly, the Government Accountability Office concluded that the Government had not planned how best to use the LOGCAP contract until after the fall of Baghdad.

So we may fulfill our oversight responsibility, the Army must advise this committee in detail on the contemplated nature of the new LOGCAP contracts it will award, their fee structures, performance criteria, and potential for conflict of interests. I am keenly interested in the separate planning and support contract that the Army recently awarded. Under this contract, it appears that the Government is delegating functions that it ought to be performing itself. Such a role parallels that of lead systems integrators in major defense acquisition programs, about which I have previously voiced much reservation.

I have been long concerned about the problems we have in our acquisition of major weapons systems: cost overruns, delivery delays, and broken systems. For years, I have called for the need to examine the whole procurement process as it works today in the DOD. We must strike a course in acquisition that brings into line affordability imperatives with the warfighter's mission requirements.

My concerns apply equally to the acquisition of services. In fiscal year 2005, the DOD spent \$141 billion on service contracts, a 72 percent increase in a decade, and an amount exceeding that obligated on supplies and equipment, including major weapons systems. The explosion in the number and value of services contracts deserves careful consideration.

In my judgment, we need to provide General Petraeus and our troops every tool they need to successfully prosecute the current strategy in Iraq. Every dollar we save by improving the LOGCAP is another dollar for Mine Resistant Ambush Pro-

tected vehicles, another dollar for body armor, another dollar for ammunition, another dollar for medical supplies. Our brave men and women in Iraq and Afghanistan deserve no less.

Senator WARNER. Before addressing one or two paragraphs of that statement, I listened very carefully to your rendition of, presumably, documents and other various adjudications on this very complicated contract. But I do think, as we pursue our inquiry here on the committee, we have to give recognition to the fact that this contract, both in Afghanistan and in Iraq, was performed under very erratic, unanticipated, and, indeed, high-risk conditions to those employees in-country performing these contracts. The military efforts in both of these areas of responsibility (AORs) have been courageous and highly dependent upon the services flowing from this contract.

All of that has to be taken into consideration as we look at the various aspects. Unquestionably, there are some grounds for justifiable criticism, but, on the other hand, I would hope some of our witnesses would bring to light the difficulty of performing this contract. This war, in many respects, in both areas, certainly in Iraq, grew at unanticipated rates, large infusion of added troops on very short notice, accompanied by many civilians and contractors, who, likewise, were, in some measure, dependent upon the contract and its performance.

So, Mr. Chairman, I'd like to refer to Senator McCain's last three paragraphs here. I know, working as former chairman of this committee with Senator McCain, he had a tremendous interest in this subject. He states, in his statement, "I've been long concerned about the problems we have in our acquisition of major weapons systems, cost overruns, delivery delays, and broken systems. For years, I have called for the need to examine the whole procurement process as it works today in DOD. We must strike a course in acquisition that brings into line affordability imperatives with the warfighter's mission requirements. My concerns apply equally to the acquisition of services. In fiscal year 2005, the DOD spent \$141 billion in service contracts, a 72 percent increase in a decade, and an amount exceeding that obligated on supplies and equipment, including major weapons systems. The explosion in the number and value of services contracts deserves careful consideration."

He concludes, "In my judgment, we need to provide General Petraeus and our troops every tool they need to successfully prosecute the current strategy in Iraq. Every dollar we save by improving the LOGCAP is another dollar for mine-resistant, ambush-protected vehicles, another dollar for body armor, and another dollar for ammunition. Our brave men and women in Iraq and Afghanistan deserve no less."

I join you, Mr. Chairman, in welcoming our distinguished colleague, Senator Dorgan. He undoubtedly has spent a great deal of his own personal time in the commitment on this subject, Senator, and I look forward to hearing your statement.

Chairman LEVIN. What we will now do is call upon our first witness, Senator Dorgan, who has spent an extraordinary amount of time and shown just an amazing amount of commitment to the issue of going after waste and abuse in government contracting. As head of the Democratic Policy Committee, he has held hearings to

fill in where there's been a shortage of oversight in this matter, and we commend him for that. We are delighted that he's here today to share some of his knowledge and experience with us.

Senator Dorgan.

**STATEMENT OF SENATOR BYRON L. DORGAN, U.S. SENATOR
FROM THE STATE OF NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, members of the committee, thank you very much for hearing me this morning. I did chair 10 hearings, not because I found joy in doing so, but because we had many whistleblowers come to me and to others to say, "Something is seriously wrong, and the people need to know it."

I want to talk a little about the LOGCAP project today, but I want to also encourage you to take a look at the Restore Iraqi Oil (RIO) contract; and I want to do that, only because there's been a substantial amount of information about the RIO contract. The top civilian contract official in our Federal Government at the Corps of Engineers, the top civilian official, said this about RIO: "It was the worst contract abuse I witnessed during my entire professional career, which spans over 20 years," concerns contracts awarded to Halliburton subsidiary KBR. For that, she has been demoted. She took on the old-boys network and was demoted for being a whistleblower.

But here's what I received in the mail 17 months ago from the Inspector General (IG). I referred what Ms. Bunnatine Greenhouse, the top civilian contracting official at the Corps of Engineers, had alleged about these contracts, the RIO contracts, to the IG. Here's what she wrote to me: "The Defense Criminal Investigative Service, the IG, has examined the allegations made by Ms. Bunnatine Greenhouse, principal assistant responsible for contracting for the Army Corps of Engineers, and has shared its findings with the Department of Justice (DOJ). The DOJ is in the process of considering whether to pursue the matter. As this is an ongoing criminal investigation, the requested information will be provided when the investigation is concluded." That was about 17 months ago.

The point is this, serious allegations were raised by the top contracting official in our Government about the RIO contract. It apparently is being investigated. It was referred to the DOJ by the IG. I really do encourage you to take a look at that, as well.

I don't doubt, as Senator Warner indicated, that services were provided under the LOGCAP contract under some very difficult circumstances. I don't doubt that a bit. In a war zone, it's hard to provide services, and there are undoubtedly extraordinary employees on the part of KBR and others who did heroic work. I don't doubt that.

But let me tell you what bothers me about these issues. I want to just go through a list of things that I have learned from people who have come forward who were desperate and wanted to say, "Here's what has happened."

Under the LOGCAP contract—sole-source, no bid—here's what I found from people who came forward and testified openly. Let me start with the small issues.

A man named Henry Bunting, he was in Kuwait, so he wasn't in a war zone in a tough delivery circumstance. He was a pur-

chaser for KBR in Kuwait, and he was told that you need to buy hand towels for the soldiers, so he ordered the hand towels. That was part of what he did. But then, his supervisor said, "No, no, no, you can't order those hand towels. You have to order these hand towels." Triple the cost. Why? Because the company logo has to be on the hand towel. KBR has to be embroidered on the hand towel. Triple the cost. Henry said, "But that's going to increase the cost of the hand towels." "Doesn't matter," he was told, "it's a cost-plus contract."

Now, this is a tiny little issue. But whether it's this, \$617,000 worth of soda, or \$7,400 a month for leasing a sport utility vehicle, or deciding to build an ice factory in the desert, and then taking the bid that's 800 percent higher than another qualified bidder to build the ice factory in the desert, these are issues that are very important to the taxpayer and to the soldiers. I believe that what I'm going to tell you about this LOGCAP contract is a disservice to the American taxpayer and a disservice to our soldiers.

You're going to hear from the DCAA. In June 2005 they said Halliburton had billed taxpayers \$1.4 billion in questionable and undocumented charges. Of those, \$813 million were from the LOGCAP contract. Some of them got resolved, some didn't. We don't know how they were resolved.

Under the LOGCAP contract, the troops in Iraq, at, I believe, all of our bases in Iraq, were allowed to shower, bathe, and sometimes brush their teeth with water that tested positive for E. coli and chloroform bacteria, and was more contaminated than raw water from the highly polluted Euphrates River. Now, how do I know this? I know this, because this is from an internal Halliburton report written by Will Granger, who was in charge of all water quality in the military installations in Iraq. Here's what his internal report says: "The alleged discovery of unidentified larvae at the Al Ramadi Base in late March revealed no disinfection to nonpotable water was occurring for water designated for showering purposes. This caused an unknown population to be exposed to potentially harmful water for an indeterminate amount of time," and he says, "this event should be considered a near miss, as the consequences of these actions could have been very severe, resulting in mass sickness or death."

Now, I have the internal report, written by the man who was in charge of all water quality. The company denied this existed. They actually created another report that was never approved by the man that still works for them, who was in charge of making this report.

By the way, after I held a hearing on this, a young woman, who is a doctor serving in the Army in Iraq, sent me an e-mail, and she said, "You know, I read about what was said. I found exactly the same thing at my military base, and I had my lieutenant follow the water line right on back." It's true, what was being sent in as nonpotable water was more contaminated than the raw water you'd get from the Euphrates River, and that's what soldiers were washing their faces in and showering in, contaminated water.

Now, the company says, "Didn't happen." In fact, the Army originally said it didn't happen. But it did happen, of course, and the

IG is also investigating that. I will provide this letter for your perusal.

I would encourage you to talk to a man named Rory Mayberry. Rory Mayberry was a supervisor at a food service enterprise, KBR Food Service, in Iraq. Rory said that he questioned the company's decision, when he learned about it, to charge for meals that had never been served, and he was told by managers, "this needs to be done, because KBR lost money in prior months when the Government suspended some dining hall payments. Got to charge for meals that aren't served."

He said he was told, by the way, by his company, "If you talk to Government auditors when they come here, one of two things will happen: you'll be fired or you'll be sent to an active combat zone. Don't you dare talk to a Government auditor." He said that they routinely served food that had the date stamp expired on it—routinely—and were told by their supervisors, "Doesn't matter. Feed it to the troops."

Perhaps, that Halliburton sent some truck drivers into a known combat zone—there's substantial evidence about that—and without warning them of the danger that existed. These were truck drivers that were their employees. A number of truck drivers died, a couple of soldiers died. Halliburton, then, by the way, sent letters to some of the other truck drivers who had been part of that, offering to nominate the surviving truck drivers for a DOD medal, provided they would sign a medical records release that doubled also as a waiver of any rights to seek legal recourse against the company for that particular issue. It was unbelievable to read what they tried to do with respect to those truck drivers.

I will give you the names of people to call who will tell you that they watched brand-new trucks being burned on the side of the road, not in a combat zone, because they had a flat tire and didn't have the right wrench to fix it, and trucks being abandoned because they had a fuel pump that was plugged—brand-new trucks—because they could be replaced on a cost-plus basis.

The list is pretty substantial, and I'm going to provide all of the information that I have learned about LOGCAP.

My point is not to tarnish anybody or anything. My point is that I think that when you have a circumstance like this, and you give billions of dollars in sole-source, no-bid contracts that are cost-plus, and then you have the contractor say to employees, "Don't you dare talk to Government auditors," and you have rampant evidence of waste, fraud, and abuse, I think all of us ought to be concerned. I think that's a disservice to the taxpayer, and I think it's a disservice to American soldiers.

I think profiteering during wartime is unbelievable, and it's inexcusable. I'm glad you're looking into the LOGCAP project.

If I might make one additional comment, I hope that what all of this will do is persuade us to move with respect to some legislative actions that will begin to deal with contracting abuse. I believe that awarding big umbrella contracts of over \$100 million on a sole-source basis, and then say, "Go do it, and we'll add to the contracts," and, "We know it's difficult. Do the best you can," and then you see substantial evidence of these kinds of things I've described, it almost makes you ill.

I really believe that we have a very serious problem. I think this is probably some of the most significant waste, fraud, and abuse that we've seen in this country's history. I hope all of us have exactly the same reaction to it.

If it happened—and I believe it did—let's stop it. Let's find out how it happened, why it happened, who was responsible for it, and let's put an end to it.

So, Mr. Chairman, that concludes my testimony. I am going to provide you a substantial amount of information that I have gathered.

Again, it's by people who wanted to come forward to say that the water contract, some people came to me and said, "Do you understand what's happening here, that we have soldiers at bases that are getting potable and nonpotable water, and the nonpotable water they're using for showering and washing their face and various things is more contaminated than the water they'd get if they just put a hose in the Euphrates River, and they don't know it? The company says it didn't happen, and here's the report. By the way, here's the e-mail from the guy in Iraq in charge of it all." Frankly, we all ought to be angered about that sort of thing.

So, thanks for holding these hearings. I'm pleased that you're doing it. I think that the truth is a very important commodity here in trying to find out what happened and how to fix it and make sure it never happens again to our taxpayers, and especially, most especially, to our soldiers.

Chairman LEVIN. Thank you, Senator Dorgan, for all your effort, your energy, your passion. The hearing today is exactly designed to address the issues which you talk about on the LOGCAP contract. We're going to find out, not just what some of these abuses were—and you've outlined a number of them, as well—but there's just been such a long list of audit reports which show the same problem: overcharges and failures on the part of the Army to properly audit the LOGCAP contract where these failures existed. So, that is what this hearing is all about, and we are going to see if we can get explanations for these failures, for this history of favorable treatment of this contractor. We're going to use your materials, make them part of the record; we've already made good use of those materials, and we are very appreciative of your testimony here today.

Senator WARNER. Mr. Chairman, if I might add, we thank our colleague. Do you have corroborative evidence, written evidence, documentary evidence, of some of the very striking accusations that you've drawn our attention to? For example, these indications that, "We'll give you a medal if you don't testify," is there any record of that, other than verbal?

Senator DORGAN. That is, Senator Warner, the most unbelievable thing to read. I will provide you with the letters that were sent to the truck drivers saying that, "We want you to sign this waiver," which is designed to look like a waiver with respect to medical or—but it—"And we're going to award you a medal, or recommend"—and, by the way, this medal can only be given by the Secretary of Defense—but suggesting that the company's going to give them a medal.

Senator WARNER. You do have those letters?

Senator DORGAN. Absolutely. In writing—when I saw them, it as unbelievable.

Senator WARNER. I think it's important that that evidentiary material be made available to the committee.

Likewise, I'm always concerned about the whistleblower situation, and you relate that an individual who did come forward—did she not seek the normal legislative protection that Congress has given whistleblowers, and prevent that demotion?

Senator DORGAN. Let me tell you about Bunnatine Greenhouse. I'll do it in just 30 seconds. Bunnatine Greenhouse, an unbelievable success story, and 2 nights ago, I was on the phone with the general who made her the top contracting official in the United States. He's retired now, for 6 years. I said, "General"—I called him at 9 o'clock at night—I said, "General, the fact is they've demoted her and given her bad"—she had performance evaluations that were outstanding every year, top of the class. All of a sudden, once she decided to say that this abuse was the most blatant abuse she'd seen—she's talking about having the companies in the meetings where the contracts are being developed—all of a sudden, her recommendations were awful and she was demoted. The general that I talked to the other night who was the one that promoted her said, "She has taken an unbelievable beating, and it's been unbelievably unfair to her. This woman should not have been treated that way. She was the top of the class of people that are working for the Federal Government in contracting."

So, I hope you will call her in front of this committee. She came to one of the hearings I held and spoke out. She had a lot of courage to do it. She knew that she was in trouble over there. But I hope you'll call her in front of this committee.

Senator WARNER. Now, this was in the Corps of Engineers?

Senator DORGAN. This is the United States Corps of Engineers—the Army Corps of Engineers.

Senator WARNER. Yes, I'm familiar, yes.

Senator DORGAN. The person that rose to the top—this is a great story with this woman and her family.

Senator WARNER. Without getting into further details, by coincidence I met with the nominated officer to become the new head of the Corps of Engineers, and it might well be that, Mr. Chairman, we would ask, as a part of his—he's already been reviewed by our committee, but it's not too late to open the record to determine what knowledge this individual may have had, and his willingness to begin to give it a second examination as to its fairness.

Chairman LEVIN. There's also a pending IG review.

Senator DORGAN. There's a review of her allegations about the contract abuse that has been sent by the IG, after review, to the DOJ, and it's under criminal investigation, according to the letter. But there's no IG review, I don't believe, of her demotion. The issue of her employment was a different issue. She's paid a horrible price for having the courage to speak out.

Chairman LEVIN. Yes, what we'll do is, on that specific case, then, we'll ask the DOJ to tell us what the status is, just what the status is of the investigation, when they expect their review to be completed, and we will refer the entire matter to—if there's not been an IG review of it, the IG for his report.

Senator DORGAN. The main point of it is, I think we want to encourage people to speak out.

Chairman LEVIN. Absolutely. We're going to protect whistleblowers. We've made a big effort in this in Congress, to protect whistleblowers. We've even had a big battle, in terms of the Senate Select Committee on Intelligence. We want to make it possible for whistleblowers who have classified information to present that information to any Member of Congress with clearance, or anybody who has clearance to hear it. Instead, we've been thwarted by the administration in even receiving that whistleblower information. But there's a pending nominee to be the Director of the Corps of Engineers. So, as Senator Warner suggests, we will ask that witness if that person is willing to undertake a review of this matter if, and when, that person is confirmed.

Senator DORGAN. Senator Warner, let me, just with one more point, say that that was on the RIO contract, not the LOGCAP contract. But, again, what this woman, the top contracting official, said, "It is the worst contract abuse I have witnessed during my entire professional career." She's talking about the mechanics and the way this contract was created and awarded. For that, she paid for it with her career.

Senator WARNER. As the chairman said, and we've worked together here these many years on this committee, and Senator Grassley has been a pioneer on the question of whistleblowers, along with members on both sides, and that is—one of the strongest oversight tools that Congress has is the utilization of corroborated testimony from whistleblowers.

Senator BILL NELSON. Mr. Chairman?

Chairman LEVIN. Senator Nelson?

Senator BILL NELSON. It's my understanding from listening to you and Senator Warner, that we are going to make it clear to the nominee to be the top general in the Corps of Engineers that he must state to us that he will have a thorough examination of this issue before we would proceed with the confirmation of his nomination. Is that correct?

Senator WARNER. Well, I'm not sure—

Chairman LEVIN. He's going to confirm—he will state whether or not, before we vote on his confirmation, he is willing to undertake a thorough review of this matter. We can't complete the review before the vote on his confirmation, but what we can do, and will do, is ask him this question, before the vote on his confirmation: "Will you undertake a thorough review of this matter?"

Senator WARNER. That would be the correct thing, Mr. Chairman. This gentleman, whom I have had the privilege of meeting, is an extraordinary nominee to be the head of the Corps. In all probability, he has no direct knowledge or participation in these matters, as such, just the representation to the Senate that, as a part of the confirmation process, he will undertake an examination of this issue.

Chairman LEVIN. Thank you.

Thank you, again, Senator Dorgan.

Senator WARNER. Thank you, Senator Dorgan.

Chairman LEVIN. Secretary Bolton, would you like to begin with your opening statement?

**STATEMENT OF HON. CLAUDE M. BOLTON, JR., ASSISTANT
SECRETARY OF THE ARMY FOR ACQUISITION, LOGISTICS,
AND TECHNOLOGY**

Mr. BOLTON. Mr. Chairman, thank you very much. Good morning, Chairman Levin.

Chairman LEVIN. Let me interrupt you for just one moment while we seat the other witnesses. Let's get the right names again in front of the witnesses, so we can all be clear as to who is talking. Thank you.

Secretary Bolton, you begin, please.

Mr. BOLTON. Again, thank you very much. To you and to Senator Warner, distinguished committee members, thank you for this opportunity to appear before you to discuss the Army's LOGCAP.

I respectfully request that my written statement be made part of the record for today's hearing.

Let me begin by thanking you, on behalf of the members of the acquisition and logistics workforce and our soldiers, who serve with great distinction throughout the world, for your continuing support.

Now, I'll be brief. We have two important missions in Iraq, to support reconstruction, contracting, and to provide support to our courageous men and women in uniform. Contracting to support the reconstruction of Iraq, and troop support, is carried out by the Joint Contracting Command Iraq and Afghanistan. However, support to U.S. and coalition forces is provided under the LOGCAP III contract, which is under the auspices of the United States Army Materiel Command with support provided by the Defense Contract Management Agency (DCMA).

LOGCAP was established in 1985 to provide basic life support and facility support until other support capabilities arrived or could be arranged. World events, however, have zeroed in on LOGCAP as, often, the only option to provide complex, rapid, and diversified area support requirements in multiple countries, mostly under harsh and hostile conditions. The exponential growth in the existing LOGCAP contract, over a relatively short time, has stressed both the Government and contract resources, as well as the business systems and processes. We have made, and will continue to make, improvements to our processes, our systems, and contract. The program's strength lies in the dedication, innovation, and perseverance of the LOGCAP personnel—military, civilian, and contractor. We are proud of the dedication, commitment, and hard work displayed by the LOGCAP personnel in supporting our troops and in rebuilding Iraq.

Mr. Chairman, this concludes my opening remarks. Again, I want to thank you, the distinguished members of this committee, for your continuing wisdom, your guidance, your steadfast support, and I look forward to your questions.

Thank you very much.

[The prepared statement of Mr. Bolton follows:]

PREPARED STATEMENT BY HON. CLAUDE M. BOLTON, JR.

Thank you for this opportunity to report to you on the United States Army's Logistics Civil Augmentation Program (LOGCAP). I am pleased to represent U.S. Army leadership as well as the military and civilian men and women who are, along with our contractors, supporting our fighting forces and working to reconstruct Iraq. Our success would be impossible without the tremendous support the Army receives

from you, the members of the Senate Armed Services Committee. We thank you for your wisdom, advice, and strong support.

The U.S. Army acquisition workforce has two very important missions in Iraq: to support reconstruction contracting and to provide support for the troops. Contracting to support reconstruction is carried out by the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) under the acquisition authority of the U.S. Army. JCC-I/A also provides support to the Multi-National Security Transition Command-Iraq (MNSTC-I) in training and equipping Iraqi forces and to the U.S. Government's mission in Afghanistan. Support to U.S. and coalition forces is provided under the LOGCAP-III contract under the auspices of the U.S. Army Material Command (AMC).

The Army has worked with contractors to provide supplies and services during both peacetime and contingency operations dating back to the Revolutionary War. On December 6, 1985, LOGCAP was established with the publication of Army Regulation 700-137. The newly established program was used in 1988 when the Third United States Army requested that the U.S. Army Corps of Engineers (USACE) contract out a management plan to construct and maintain two petroleum pipeline systems in Southwest Asia in support of contingency operations.

The first comprehensive multifunctional LOGCAP Support (LOGCAP I) contract was competitively awarded by the USACE in August 1992 and this effort supported most U.S. military operations from 1992-1996.

LOGCAP was not envisioned to remain in place for years and the original intent of the LOGCAP contract was only to provide basic life and facilities support such as base camps, dining facilities, food service, supply point operations, local and line haul motor transport, and sea and aerial points until other support capabilities arrived or could be arranged. However, external world events have shown that LOGCAP is often the only option that could provide complex, rapid, and diversified area support requirements.

In 1996, AMC assumed the contract administration, management, and execution responsibilities for the LOGCAP Umbrella Support Contract. AMC re-competed the contract in 1997 (LOGCAP II) and again in 2001 (LOGCAP III). With the sudden and tragic events of September 11, 2001, the dynamics of logistics civil augmentation support significantly changed from anything we've seen in history. LOGCAP proved again to be rapid, responsive, and flexible. There is no other organic support (Active-Duty, Reserve, or National Guard) that allows us to meet these type of needs and thus LOGCAP is, and will remain, a vital avenue to prosecute the global war on terrorism. LOGCAP supports multiple countries, services, and agencies, most under harsh and hostile conditions. The LOGCAP III contract is approximately \$23 billion, with an outside the continental United States force structure of 55,715 men and women of which approximately 29,200 are subcontractors. Under the LOGCAP contract, the Army has delivered to our forces: 36.2 million bags of mail; 200 million tons of ice; 7.6 billion gallons of potable water; 533 million meals; and 26.7 million bundles of laundry. The services provided to our uniformed men and women have been of the highest quality. Still, with these services come associated challenges.

The exponential growth in the existing LOGCAP contract over a relatively short period of time has stressed both Government and contractor resources, as well as business systems and processes. We have made and will continue to make improvements to our processes, systems, and contract. For example, to improve management of our processes and refine requirements we have established three program offices in Iraq, Kuwait, and Afghanistan. The offices are staffed with a cadre of logistics analysts, contract specialists, and cost analysts. Workforce members are in daily contact with senior commanders and logisticians and participate in all aspects of operational planning and execution. We continue to work closely with the Defense Contract Management Agency (DCMA) on contractor systems issues. DCMA has deployed Administrative Contracting Officers and Quality Assurance Representatives throughout the region to provide oversight. In addition, we have appointed more than 450 Contracting Officer Representatives to provide daily oversight of contractor performance. Under my direction AMC, DCMA and the Defense Contract Audit Agency have worked hard to resolve the backlog of undefinitized contract actions (UCAs)—with success. There currently are no outstanding UCAs. The LOGCAP office, with support from other Department of Defense agencies, is aggressively managing and monitoring the contractor's cost performance; the Joint Acquisition Review Board adds another measure of cost control through the management and approval of requirements, thus ensuring expenditures are for bona fide needs.

The mission in Iraq is one of constant change. Support to Iraqi Forces has increased as we have worked to hand over the fight for freedom and the battle against the insurgency to the Iraqi Government. The LOGCAP contract is also changing as we move away from a one contractor configuration as currently exists under

LOGCAP III to multiple contractors under LOGCAP IV. We are confident that the additional execution capability—providing for competition at the individual task order level—will provide us with more robust capacity and effectiveness.

Regardless of the contract vehicle, however, one thing has and will remain constant over time: our commitment to ensuring that all contractors who support our courageous military men and women and reconstruction efforts in Iraq comply with the terms and conditions of their contracts.

On January 30, 2007, the Army learned that Kellogg, Brown, and Root (KBR) services may have inappropriately charged the Army for security costs under LOGCAP III. In light of this information and on the basis that privately acquired security should not have been charged or paid under the contract, the contracting officer took action to adjust over \$19 million in payments to KBR.

The U.S. Army is committed to providing full disclosure of the results of any investigations. If KBR violated the terms and conditions of the LOGCAP III contract and knowingly or unknowingly incurred costs under the contract, the U.S. Army will take appropriate steps under the terms of the contract to recoup any funds paid for those services.

LOGCAP capitalizes on the synergistic effect of integrating the combined capabilities of the military members of the U.S. Army, as well as Army civilians and the commercial civil sector. The program's strength, however, lies in the dedication, innovation, and perseverance of LOGCAP personnel—military, civilian, and contractor. We are proud of the dedication, commitment, and hard work displayed by LOGCAP personnel in supporting our troops and rebuilding Iraq.

Chairman LEVIN. Thank you very much, Secretary Bolton.

Let us now call on Mr. Ernst, who's the Acting Director of the DCMA.

Mr. Ernst?

**STATEMENT OF KEITH D. ERNST, ACTING DIRECTOR,
DEFENSE CONTRACT MANAGEMENT AGENCY**

Mr. ERNST. Good morning, Mr. Chairman and members of the committee. I appreciate this opportunity to appear before you today to discuss the role of the DCMA in ensuring performance under the LOGCAP in Iraq and Afghanistan.

I respectfully request that my written statement be made part of the record for today's hearing.

DCMA's oversight of contractor-provided services for our Nation's deployed forces in Iraq and Afghanistan is a responsibility of unprecedented magnitude, and one with a commensurate level of challenge. DCMA maintains a cadre of approximately 83 military and civilian personnel in Iraq, Afghanistan, and Kuwait to support LOGCAP. These individuals deploy in theater for 6-month tours and specialize in one of three functional areas: contract administration, quality assurance, or property management.

In carrying out their responsibilities, these personnel ensure that the LOGCAP contractor is performing in a manner consistent with contract requirements, is using adequate effective quality processes, is recommending cost-containment strategies, and is adapting the level and nature of their support to meet shifting requirements.

DCMA's in-theater cadre is complemented by a network of non-DCMA personnel, referred to as contracting officer representatives (CORs). CORs receive specialized training in one of several LOGCAP support functions, such as food preparation, laundry service, or waste disposal. Currently numbering approximately 450, the CORs are members of the deployed units that receive the contractor-provided services. DCMA's in-theater cadre and the CORs

serve as a team that closely monitors contractor performance of LOGCAP services at their respective locations.

At the corporate level, DCMA provided oversight of dining facilities renegotiations, resulting in more favorable contract terms. We supported the DCAA's revocation of direct billing privileges for KBR, meaning that every cost voucher submitted by KBR must now be approved by DCAA before payment. DCMA also identifies to LOGCAP negotiators any risk posed by estimating system issues to ensure these issues are adequately considered and mitigated during negotiations.

The in-theater contract management mission is clearly a formidable one. Aspects of such a mission, including personnel security and safety, workload shifts and dispersions, and personnel placement, are a continual challenge. DCMA constantly works to effectively balance resource requirements between our core mission and contingency contracting administration service commitments to ensure that core mission areas, such as flight-critical product and level I subsafe hardware, along with high-investment programs and sustainment support, continue to achieve their intended goals.

This concludes my prepared remarks. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Ernst follows:]

PREPARED STATEMENT BY KEITH D. ERNST

Mr. Chairman and members of the committee: I appreciate this opportunity to appear before you today to discuss the role of the Defense Contract Management Agency (DCMA) in ensuring contractor performance under the Logistics Civil Augmentation Program (LOGCAP) in Iraq. DCMA's oversight of contractor-provided services for our Nation's deployed forces in Iraq is a responsibility of unprecedented magnitude and one with a commensurate level of challenge.

DCMA maintains a cadre of approximately 83 military and civilian personnel in Iraq, Afghanistan, and Kuwait to support LOGCAP. These individuals deploy in theater for 6-month tours and specialize in one of three functional areas: contract administration, quality assurance, or property management. In carrying out their responsibilities, these personnel ensure that LOGCAP contractor's performance is consistent with contract requirements; is using adequate, effective quality processes; is recommending cost-containment strategies; and is adapting the level and nature on their support to meet shifting requirements.

Prior to their deployment to theater, these personnel undergo specialized training for the demands of their LOGCAP-related duties. Each of DCMA's deployed Administrative Contracting Officers (ACOs) and most of our Quality Assurance Representatives (QARs) are certified in accordance with the Defense Acquisition Workforce Improvement Act (DAWIA). DCMA's in-theater cadre is complemented by a network of non-DCMA personnel referred to as Contracting Officer Representatives (CORs). CORs receive specialized training in one of several LOGCAP support functions, such as food preparation, laundry service, or waste disposal. Currently numbering approximately 450, the CORs are members of the deployed units that receive the contractor-provided services. DCMA's in theater cadre and the CORs serve as a team that closely monitors contractor performance of certain services at their respective locations. The CORs routinely submit input to DCMA's QARs. The CORs also have a direct line to the cognizant DCMA ACOs.

Our ACOs receive requirements from the LOGCAP Support Unit (LSU) after that unit makes should-cost estimates on the requirement. The assigned ACO then requests a proposal from the contractor, and, once the LSU validates the proposal for accuracy and cost reasonableness, formally tasks the contractor to begin work. In theatre, our ACOs also provide material requisition approval, lease approval, and consent to subcontract in accordance with prescribed contract terms. At the corporate level, DCMA establishes and monitors various overhead rates and factors. Our ACOs also conduct formal Performance Evaluation Boards (PEBs) using the identified award fee criteria. DCMA and the supported customer's CORs provide feedback to the contractor on acceptable performance as well as on those areas needing improvement. In the conduct of the PEB, our ACOs review the contractor's Cost

Avoidance Measures (CAMs). CAMs are submitted by the contractor to document cost savings and avoidances. The contractor is motivated to submit CAMs as they are tied directly to fee initiatives in the Award Fee Board criteria. The contractor can increase the amount of fee it is awarded by demonstrating good stewardship of taxpayer dollars. Our ACOs also provide input for the semi-annual Award Fee Evaluation Board—the board which determines the contractor's level of earned fee.

At the corporate level, DCMA provides oversight of Dining Facilities renegotiations, resulting in more favorable contract terms. In this regard, we supported the Defense Contract Audit Agency's (DCAA) revocation of direct billing privileges for Kellogg Brown and Root (KBR), meaning that every cost voucher submitted by KBR now must be approved by DCAA before payment. DCMA also identifies to LOGCAP negotiators any risks posed by estimating system issues to ensure they are adequately considered and mitigated during negotiations.

The role of our property administrators is to ensure the contractor has a viable property management system—one that minimizes and controls the loss, theft, misuse, and destruction of Government property. Property Administrators are also responsible for investigating incidents of property loss to determine accountability. A DCMA conducted survey in 2006 on the principal LOGCAP contractor examined 14 property management functional areas. Our survey uncovered no systemic issues, and we deemed the contractor's property management system to be satisfactory.

The in-theater contract-oversight mission is clearly a formidable one. Aspects of such a mission, including personnel security and safety, workload shifts and dispersion, and personnel placement, are a continual challenge. DCMA constantly works to effectively balance resource requirements between its core mission and its Contingency Contract Administration Services commitments to ensure that core mission areas such as Flight Critical and Level I Subsafe hardware, along with high-investment programs and sustainment support, continue to achieve their intended goals.

This concludes my prepared remarks. I will be happy to answer any questions you may have.

Chairman LEVIN. Thank you, Mr. Ernst.

Let us go now to General Johnson, Commanding General of the United States Army Sustainment Command.

General Johnson?

STATEMENT OF MG JEROME JOHNSON, USA, COMMANDING GENERAL, UNITED STATES ARMY SUSTAINMENT COMMAND

General JOHNSON. Good morning, Mr. Chairman and members of the Senate Armed Services Committee. Thank you for the opportunity to report to you on the United States Army's LOGCAP.

The Army Sustainment Command is responsible for the execution of LOGCAP, in addition to several other missions: coordination of Army materiel commands, field support operations, coordination of reset, materiel management, armor preposition stocks, and contingency contracting.

The Army Sustainment Command executes this through 11 brigades located throughout the world—7 field support brigades, which handles logistics missions, and 4 contingency contract brigades, recently created.

It is my privilege to represent the United States Army, as well as its dedicated military, DOD civilians, and contractors whose steadfast support of America's fighting forces in Afghanistan, Iraq, and Kuwait are critical to our efforts. Our work and our success to date are directly attributable to the resources and guidance you provide. I thank you for the oversight and direction as we continue to improve LOGCAP.

I would also like to thank Claude Bolton, Assistant Secretary of the Army for Acquisition, Logistics, and Technology (AL&T), who is here today; Tina Ballard, who is the Deputy Assistant Secretary of the Army for Policy and Procurement; General Benjamin Griffin,

who commands the Army Materiel Command; and my other colleagues at the table who have participated in improving this program. Their leadership has helped us address numerous challenges and develop improvements in managing LOGCAP.

From three qualified bidders, the LOGCAP contract was competitively awarded to KBR in December 2001. Under the contract, individual task orders are developed to provide specific support services. The contractor is paid a cost-plus 1 percent base fee, and the contractor may earn up to 2 percent award fee on negotiated costs. The program has grown rapidly from a peacetime value of several million dollars to over \$5 billion today. As a result, we encountered the following challenges: controlling theater requirements, contractor business systems not meeting the standard, definitizing task orders, conducting timely award-fee boards, accounting for property, and outright fraud and criminal activity.

In August 2004, we aggressively attacked these issues and began corrective actions. These challenges were validated by both the DCAA, the AAA, and the DCMA. The actions we took were as follows: appointed a senior contracting official to run the program, establishing a requirement review process, establishing a review process of business systems of the contractor, definitizing all over-age contracts, conducting timely award fee boards, establishing property controls, working with the DOJ to prosecute those who broke the law, and expanding our partnership with the DCMA and the DCAA.

With Mr. Bolton's help, we've established a senior executive program manager for LOGCAP. James Loehrl, who is here with me today, serves as the LOGCAP manager and also as my principal assistant responsible for contracting.

We established four program management offices in Afghanistan, Iraq, and Kuwait. We also improved predeployment training for our LOGCAP support unit. We continue to improve oversight and management of the program. Only yesterday, we promoted Lee Thompson, who's here with me today, to the Senior Executive Service to act as Director for LOGCAP Support Operations. This will allow Mr. Loehrl to focus primarily on the contracting issues, while Mr. Thompson will dig deeper into how we support the forces on the ground.

To address theater requirements, we established a Joint Acquisition Review Board to review and approve all LOGCAP work requirements. We also have a Coalition Acquisition Review Board that provides additional review and approval or work requirements over \$10 million. Now, with the help of DCAA and DCMA, all of the contractors' business systems are acceptable. They're not where we want them to be, but they meet the standard.

As I mentioned before, in October 2004 we began the establishment of four program management offices in Afghanistan, Iraq, and Kuwait. These offices are staffed with logistics specialists, contract specialists, and cost analysis who provide detailed oversight of the contract and independent Government estimates.

Additionally, our DCMA and our DCAA partners are co-located and integrated with the deputy program manager staff. Between November 2004 and March 2005, we definitized 55 over-age task orders valued at \$14 billion. Now all new task orders are defini-

tized before they are issued or within the 180-day standard required by regulation.

Contract award fee evaluations are now on schedule. Mr. Loehrl, the LOGCAP manager, has made 11 trips to the theater to chair award fee boards.

We have established a Contractor-Acquired Property Review Board that ensures excess contract property is distributed to locations needed. The contractor is required to use excess equipment prior to purchasing new items. We directed the contractor to improve his supply chain. As a result, the contractor implemented, along with the help of Defense Logistics Agency, competitive commodity agreements with support vendors for equipments and supplies, such as generators, communication items, vehicles, and lumber. This standardizes maintenance and reduces spare parts costs needed to maintain equipment. To date, these efforts have resulted in a cost avoidance of over \$26 million.

In cases of waste, fraud, and abuse, the U.S. Attorney's Office has indicted six people, and successfully prosecuted four cases of fraud. In all cases, restitution has been ordered against the individuals convicted of fraud.

With regard to cost control, the contractor is required to provide cost reports every 2 weeks on active task orders. These reports identify variances between budgets, actual expenditures, and available funding. This allows the management personnel in theater to identify trends needing correction immediately.

Our "Alpha Contracting" initiative brings the combatant commanders' representatives, the contractor, the contracting officer, and the DCAA, along with the DCMA, together so we can rapidly agree on costs and estimates for needed support operations in theater. Cost avoidance for this process has been dramatic. In 2005 and 2006, initial LOGCAP estimates for work in Iraq exceeded \$10 billion. Through "Alpha Contracting" initiative and should-cost analysis and independent Government estimates, this was reduced to \$4 billion, a \$6 billion cost avoidance.

We recognize the need to have closer oversight of subcontract actions. The prime contractor is now required to obtain our consent to subcontract for services that exceed \$500,000. A review is done of any contracting actions with the subcontractor.

LOGCAP III grew so rapidly that it nearly exceeded a single contractor's capacity. To minimize this risk, LOGCAP IV will use multiple contractors. This will increase Government contract oversight and reduce program risk, while reducing cost through competitive, continuous task-order competition.

You specifically asked for my views on the cost-effectiveness of the program. This program is operating in a very difficult, complex, and ever-changing environment. Given what this program has been asked to do and the circumstances it operates under, it is cost-effective. However, there is a breakeven point as we continue with the war on a long-term basis. With your continued support and guidance, this program will continue to improve and ensure basic support is provided to America's fighting forces, at the least cost, on time, and to standard.

Thank you for allowing me to speak today. I look forward to your questions.

[The prepared statement of General Johnson follows:]

PREPARED STATEMENT BY MG JEROME JOHNSON, USA

Mr. Chairman, members of the Senate Armed Services Committee, thank you for this opportunity to report to you on the United States Army's Logistics Civil Augmentation Program (LOGCAP). It is my privilege to represent the United States Army, as well as the dedicated military, Department of Defense (DOD) civilians, and contractors whose steadfast support of America's fighting forces in Afghanistan, Iraq, and Kuwait are critical to our efforts. Our work and our success to date are directly attributable to the resources and guidance you provide. I thank you for your oversight and direction as we continue to improve LOGCAP.

I would also like to thank Claude Bolton, Assistant Secretary of the Army for Acquisition, Logistics, and Technology, who is here today; Tina Ballard, who is the Deputy Assistant Secretary of the Army for Policy and Procurement; and General Benjamin Griffin, who commands the Army Materiel Command. Their leadership has helped us address numerous challenges and develop improvements in managing LOGCAP.

From three qualified bidders, the LOGCAP III contract was competitively awarded to Kellogg, Brown, and Root, Incorporated, in December 2001. Under the contract, individual task orders are developed to provide specific support services. For many task orders, the contractor is paid negotiated costs plus a 1-percent base fee; the contractor may earn up to a 2-percent award fee on the negotiated costs. The program has grown rapidly from a peacetime value of several million dollars per year to over \$5 billion per year today. The program provides logistics and life support services to our fighting forces, freeing them to focus on their combat missions. The program is designed to rapidly expand during contingency operations and to drawdown during peacetime.

LOGCAP III was first used in Southwest Asia in support of the troop buildup in Kuwait. Once U.S. forces crossed the berm into Iraq, LOGCAP crossed with them:

- establishing and operating base camps
- feeding hungry troops
- furnishing transportation services
- operating warehouses
- delivering mail
- transporting fuel and supplies

LOGCAP personnel became a force multiplier for our warfighters.

We encountered a number of challenges with LOGCAP III during the rapid build-up of our forces in Southwest Asia. These challenges included:

- controlling theater requirements
- overwhelming the contractor's business systems
- definitizing task orders
- conducting timely award fee boards
- accounting for property
- fraud

Despite early challenges, at no time did our servicemembers go without our LOGCAP support, we always placed their needs first.

In August 2004, we aggressively attacked these issues and began corrective actions. Many of the issues were later validated in audits conducted by the Defense Contract Audit Agency (DCAA), the Army Audit Agency (AAA) and the DOD Inspector General.

While LOGCAP still has a number of challenges, we have implemented a number of improvements, including:

- Appointing a senior contracting official to run the program
- Establishing a requirement review process
- Insisting KBR improve their business systems
- Definitizing all over-age task orders
- Conducting timely award fee boards
- Establishing property controls
- Working with the Department of Justice to prosecute those who broke the law
- Expanding our partnership with DCMA and DCAA

Rapid program growth drove the need for enhanced oversight. With Mr. Bolton's help, we have established a Senior Executive Service Program Manager for LOGCAP. This person serves as the focal point for day-to-day management of LOGCAP and staff direction. James Loehrl, who is with me today, serves as my

LOGCAP Manager and also my Principal Assistant Responsible for Contracting. We established Deputy Program Management offices in Afghanistan, Iraq, and Kuwait. We also improved pre-deployment training for our Logistics Support Unit soldiers.

To address theater requirements, we work directly with forward units to identify and define needed services. We established a Joint Acquisition Review Board to review and approve LOGCAP work requirements. We have a Coalition Acquisition Review Board that provides an additional review and approval for work requirements over \$10 million.

Along with our Defense Contract Management Agency (DCMA) and DCAA partners, we insisted KBR improve their business systems. Now, all of KBR's business systems are acceptable. As I mentioned before, in October 2004 we began establishing Deputy Program Management offices in Afghanistan, Iraq, and Kuwait. These offices are staffed by: logistics specialists, contract specialists, and cost analysts who provide detailed oversight of the contract. Additionally, our DCMA and DCAA partners are collocated and integrated with the Deputy Program Manager staff.

Between November 2004 and March 2005, we definitized 55 over-age task orders valued at \$14 billion. Now, all new task orders are definitized before they are issued or within the normal 180-day standard.

Contract award fee evaluations are now on schedule. The LOGCAP Manager has made 11 trips to theater to chair award fee boards. Every 3 months, we evaluate contractor performance and determine appropriate award fees. Through November 2006, KBR earned \$256 million of a potential \$287 million in award fees; this equates to 89 percent of potential fees. This process provides the contractor with important feedback on where improvements are needed.

To maximize the use of contract-purchased property, we have established a Contractor Acquired Property Review Board that ensures excess contract property is distributed to needed locations. The contractor is required to utilize excess equipment prior to purchasing new items. Also, the contractor implemented a competitive commodity agreement with support vendors for equipment such as generators, communications items and vehicles. This standardizes maintenance and reduces the number of spare and repair parts needed to maintain equipment. To date these efforts have saved over \$26 million.

In cases of waste, fraud, and abuse, we fully cooperate with any and all investigations and prosecutions. The U.S. Attorney's office has indicted six people and successfully prosecuted four cases of fraud. In all cases, restitution has been ordered against the individuals convicted of fraud.

We work closely with DCMA and DCAA to address recommendations, improve contract administration, and improve contractor oversight. To date, we have sustained over \$600 million of DCAA recommendations in our task order negotiations.

We continue to learn and grow from our experience and implement changes as they are needed. Every day we seek to:

- reduce costs
- improve performance and oversight
- reduce program risk

As LOGCAP continues to mature, we recognize that future LOGCAP contract oversight staffs must be on the ground quickly—ready to operate. We will be positioned to move Deputy Program Management offices into theaters as required. Tied to this is the rapid development of independent Government cost estimates. These estimates will assure that we remain good stewards of the resources provided to us. We are developing automated tools to assist our Government teams in preparing statements of work and cost estimates. We will not let future oversight lag when the program grows rapidly to meet warfighter needs.

With regards to cost control the contractor is required to provide cost reports every 2 weeks for active task orders. These reports identify variances between budgets, actual expenditures, and available funding. This management tool provides DCMA and other program personnel with a quick understanding of trends needing attention.

Another lesson learned that we will carry into future LOGCAP operations is to have standardized statements of work which will allow combatant commanders to quickly select support options. This standardization will allow the LOGCAP contractor to efficiently plan and establish logistics and life support operations.

Our "Alpha Contracting" initiative emerged from our need to streamline the task order negotiation process. This initiative brings the combatant commander, the contractor, the contracting officer, and the DCAA together so they can rapidly agree on and put needed support operations in place. Cost avoidance from this process has been dramatic. In 2005 and 2006, initial LOGCAP estimates for work in Iraq ex-

ceeded \$10 billion. Through the Alpha Contracting initiative and General Casey's directive to minimize services, this was reduced to \$4 billion—a \$6 billion avoidance. This is also one of the places we are making use of AAA reviews. When AAA identifies potential areas of overstaffing or underutilization of equipment, we use that information as a part of our negotiation process.

We recognize the need to have closer oversight of subcontract actions. The prime contractor is now required to obtain our consent to subcontract for services that exceed \$500,000.

LOGCAP III grew so rapidly that it nearly exceeded a single contractor's capacity. To minimize this risk, LOGCAP IV will utilize multiple contractors. One contractor will provide pre-war planning and program management support. Up to three contractors will provide performance services, with all of them competing for work identified in separate task orders. This will increase Government contract oversight and reduce the program risk of exceeding a single contractor's capacity, while reducing costs through continuous task order competition.

LOGCAP IV will go a long way toward expanding performance capacity, reducing costs, and improving Government oversight. It will also provide us with increased flexibility to meet rapidly changing requirements.

In conclusion, LOGCAP is more than just a contract. It is a critical program designed to provide essential support services to our Nation's sons and daughters who fight for our freedom.

You specifically asked for my views about the cost effectiveness of this program. I will tell you that this program is operating in a very difficult, complex and ever-changing environment. Given what this program has been asked to do, and the circumstance it operates under, it is cost effective. We've managed to overcome numerous challenges in LOGCAP while always maintaining our support to our Nation's soldiers, sailors, airmen, and marines.

Despite any and all program challenges, we performed our mission and succeeded in supporting our servicemembers. In forward battle zones, LOGCAP has served over 533 million meals to hungry troops, washed over 26 million bundles of their laundry, and delivered over 36 million bags of mail that included letters from their loved ones at home.

We stand ready to meet tomorrow's challenges to support America's warfighters where and when they need us.

Thank you for inviting me to speak with you today; this concludes my statement.

Chairman LEVIN. Thank you so much, General Johnson.
Now let's call on William Reed, the Director of the DCAA.
Mr. Reed.

STATEMENT OF WILLIAM H. REED, DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY

Mr. REED. Mr. Chairman, Senator Warner, and members of the committee, thank you for the opportunity to appear today to discuss DCAA's oversight of contract costs related to military operations and reconstruction in Iraq, particularly related to the LOGCAP.

DCAA has been an integral part of the oversight and management controls instituted by DOD to ensure integrity and regulatory compliance by contractors performing services in Iraq. Our services include audits and professional advice to acquisition officials on accounting and financial matters, to assist them in the negotiating, award, administration, and settlement of contracts. Decision-making authority on DCAA recommendations resides with contracting officers within the procurement organizations who work closely with DCAA throughout the contracting process.

Since April 2003, DCAA has worked with all U.S. procurement organizations, including those of the United States Agency for International Development and the State Department, to establish the resources and planning information needed to provide audits of contracts for Iraq reconstruction. To carry out these audit requirements, DCAA opened an office in Iraq in May 2003, and imple-

mented planning and coordination procedures to effectively integrate audit work between that office and more than 50 DCAA continental United States audit offices with cognizance of companies performing contracts in Iraq.

Currently, we are auditing contracts of 93 contractors, holding 175 prime contracts with contract ceiling amounts of \$51.8 billion, of which \$38.5 billion has been funded at the end of fiscal year 2006.

I would like to point out that DCAA audits of cost-reimbursable contracts represent a continuous effort from evaluation of proposed prices to final closeout and payment. Initial audits of contractor business systems, internal controls, and preliminary testing of contract costs are carried out to provide a basis for provisional approval of contractor interim payments and early detection of deficiencies. Comprehensive contract cost audits are performed annually throughout the life of the contract, and are used by the contracting activity to adjust provisionally approved interim payments and ultimately to negotiate final payment to contractors.

Through fiscal year 2006, we have issued more than 1,800 reports on Iraq-related contracts. Approximately 350 of those reports were on KBR specifically. We estimate to issue another 600 reports in fiscal year 2007. DCAA oversight of contracts in Iraq have found a number of problems. Our actions have ranged from recommending changes in business processes, to reduction of proposed or billed costs, to referral of our findings to the IG for investigation and possible legal action against the contractor. Overall, these audits have recommended reductions in proposed and billed costs of \$4.9 billion.

Where appropriate, we have taken action to reduce contractor-billed costs for disputed amounts, pending a contracting officer decision.

In addition, we have found \$5.1 billion of estimated costs where the contractor did not provide sufficient information to explain the basis of the estimated amounts. These unsupported costs are usually resolved through contractor's submission of additional documentation at the time of contract price negotiations.

Turning now to the LOGCAP, it is the single largest Iraq-related contract. It was awarded to Halliburton subsidiary, KBR, and currently has a contract ceiling of \$22.5 billion. DCAA has provided comprehensive and continuous contract audit oversight on the LOGCAP, and I would like today to comment on some of our work in that regard.

In supporting the Army contracting officers in the pricing of contracts, DCAA has audited 68 LOGCAP task order proposals, valued at \$16.2 billion, and have found audit exceptions or costs questioned of \$1.9 billion. DCAA has received and analyzed the results of negotiation on task orders, valued at \$12.8 billion, and negotiated price reductions of \$600 million have been achieved to date.

A recent example of our audit work in this area is the review of the proposal for task order 139. Task order 139 is the latest order for dining facilities, laundry, and other life-support measures for U.S. troops and civilians. Our review of the initial proposal was completed in August 2006. We questioned \$262 million of the \$3.7

billion proposal. KBR agreed to \$160 million of the questioned costs, and the balance was addressed at recent negotiations.

It is notable that in this pricing action, that there was a significant improvement over previous similar proposals which were plagued by estimating deficiencies, causing multiple proposal submissions and delays in negotiating the task-order price.

I'd now like to comment on our audit work, in terms of the reliability of business systems affecting contract costs. Our audits have addressed the adequacy of contractor internal controls and business systems, as well as compliance with acquisition regulations and contract terms. While KBR's business systems are adequate overall, our reviews have disclosed a number of estimating and accounting-system deficiencies requiring improvement. The contractor has submitted corrective action plans, and DCAA, in coordination with the responsible contracting officers, are monitoring progress and making the needed improvements.

Another area of our work has been accelerated testing of billed costs. Due to the unique risk of contingency contracting and conditions in Iraq, DCAA has placed more emphasis on examining contractor costs as they are being incurred, rather than waiting until the contractor submits its annual incurred-cost claims.

One example of our audit work in this area is our review of dining facility costs, as was mentioned, Mr. Chairman, in your opening statement. KBR provides meal services to the troops and other DOD personnel at over 60 dining facilities in Iraq and Kuwait. Our audit work, beginning in late 2003, found that KBR and its subcontractors were basing their payment requests on an estimated number of meals, which substantially exceeded the actual number of meals served. For the period May 2004 to May 2005, DCAA withheld \$212 million from KBR interim billings, pending resolution of this matter.

KBR and its subcontractors believe the terms of their respective contracts and subcontracts permitted this billing practice. The Army contracting officer negotiated a settlement, which denied reimbursement of \$55.1 million of the actual cost. Most notable, however, the early identification of this issue by DCAA and the support of the Army Sustainment Command contracting officials led to KBR negotiating new subcontracts which corrected the billing practices of concern to DCAA and the Army. We estimate that the new subcontract terms and prices save more than \$200 million over what would have been paid under the old subcontract terms for a comparable period.

In this example and others, DCAA worked closely with the Army acquisition community, both at the headquarters and field level, to reduce contractor billed costs for potentially unreasonable expenditures. In the past, DCAA withholdings have totaled more than \$230 million on LOGCAP task orders. Currently, we are withholding \$49.6 million from KBR billings.

The most recent example of withholdings is related to security costs. The LOGCAP contract specifically states that the Army will provide necessary security to contractor personnel performing the contract.

As such, the Army believes costs incurred by KBR and its lower-tier subcontractors for security are unallowable, and should not be

reimbursed under the LOGCAP contract. DCAA is working with the Army to identify lower-tier subcontract security costs, and currently the Army has directed DCAA to withhold \$19.7 million from KBR billings, pending resolution of this matter.

In closing, I want to underscore that DCAA is an integral part of the oversight and management controls instituted by DOD to ensure an integrated and well-managed contract audit process in Iraq. We've had a continuous presence in Iraq, in the Middle East theater of operations since May 2003, staffing our office entirely with civilian volunteers. To date, more than 180 DCAA auditors have served tours, and, fortunately, none have been injured or killed.

The challenges in applying business practices and auditing in Iraq are daunting, and have required our auditors to be flexible, while insisting that the DOD will not tolerate the billing of costs that do not comply with contract terms or are not appropriately documented and supported.

Thank you, again, for the opportunity to appear before you today, and I look forward to addressing whatever questions you may have for me.

Thank you.

[The prepared statement of Mr. Reed follows:]

PREPARED STATEMENT BY WILLIAM H. REED

Mr. Chairman, members of the committee, my statement will summarize the Defense Contract Audit Agency's (DCAA) oversight of contract costs related to military operations and reconstruction in Iraq including audit work related to the Logistics Civil Augmentation Program.

DOD CONTRACT PERFORMANCE OVERSIGHT RESPONSIBILITY

DCAA has been an integral part of the oversight and management controls instituted by DOD to ensure integrity and regulatory compliance by contractors performing services in Iraq. DCAA's services include audits and professional advice to acquisition officials on accounting and financial matters to assist them in the negotiation, award, administration, and settlement of contracts. Decisionmaking authority on DCAA recommendations resides with contracting officers within the procurement organizations who work closely with DCAA throughout the contracting process.

DCAA STAFFING AND ACTIONS

Since April 2003, DCAA has worked with all U.S. procurement organizations, including those of the United States Agency for International Development and the State Department, to establish the resources and planning information needed to provide audits of contracts for Iraq Reconstruction. To carry out these extensive audit requirements, DCAA opened an office in Iraq in May 2003 and implemented planning and coordination procedures to effectively integrate audit work between that office and more than 50 DCAA continental United States Audit Offices with cognizance of companies performing contracts in Iraq. DCAA is responsible for auditing Iraq-related contracts at 93 contractors. These contractors hold more than 175 prime contracts with contract ceiling amounts of \$51.8 billion, of which \$38.5 billion had been funded at the end of fiscal year 2006.

DCAA audits of cost-reimbursable contracts represent a continuous effort from evaluation of proposed prices to final closeout and payment. Initial audits of contractor business system internal controls and preliminary testing of contract costs are carried out to provide a basis for provisional approval of contractor interim payments and early detection of deficiencies. Comprehensive contract cost audits are performed annually throughout the life of the contract and are used by the contracting activity to adjust provisionally approved interim payments and ultimately to negotiate final payment to the contractor.

DCAA AUDIT RESULTS

Through fiscal year 2006 DCAA has issued more than 1,800 reports on Iraq-related contracts. We estimate issuing another 600 reports in fiscal year 2007. DCAA oversight of contracts in Iraq has found a number of problems. Our actions have ranged from recommending changes in business processes—to reduction of proposed or billed costs—to referral of our findings to the Inspector General for investigation and possible legal action against a contractor. Overall, these audits have recommended reductions in proposed and billed contract costs of \$4.9 billion. Where appropriate, DCAA has taken action to reduce contractor billed costs for disputed amounts pending a contracting officer decision. In addition, DCAA has identified \$5.1 billion of estimated costs where the contractor did not provide sufficient information to explain the basis for the estimated amounts. These unsupported costs were usually resolved through contractor submission of additional supporting information at the time of contract price negotiation.

LOGISTICS CIVIL AUGMENTATION PROGRAM

The Logistics Civil Augmentation Program (LOGCAP) is the single largest Iraq-related contract. The LOGCAP contract was awarded to the Halliburton subsidiary, Kellogg, Brown, and Root (KBR) and currently has a contract ceiling of \$22.5 billion. The contract provides for logistical and life support for U.S. troops and civilians in Iraq, Kuwait, and Afghanistan. DCAA has provided comprehensive and continuous contract audit oversight on the LOGCAP. The results of our audit work to date by major type of activity are as follows:

1. Support to Army Contracting Officers in the Pricing of Contracts—DCAA audits of 68 LOGCAP task order proposals valued at \$16.2 billion resulted in audit exceptions (costs questioned) of \$1.9 billion. DCAA has received and analyzed the results of negotiations on task orders valued at \$12.8 billion. Negotiated price reductions of \$600 million have been achieved to date. A recent example of our audit work in this area is our review of the proposal for task order 139. Task order 139 is the latest order for dining facilities, laundry and other life support measures for the U.S. troops and civilians. Our review of the initial proposal was completed in August 2006. DCAA questioned \$262 million of the \$3.7 billion proposal. KBR agreed to \$160 million of the questioned cost and the balance was addressed at recent negotiations. Most notable is that this pricing action was a significant improvement over previous similar proposal reviews which were plagued by estimating deficiencies, causing multiple proposal submissions and delays in negotiating the task order price.
2. Reliability of Business Systems Affecting Contract Costs—DCAA audits have addressed the adequacy of contractor internal controls and business systems, as well as compliance with acquisition regulations and contract terms. While KBR's business systems are adequate overall, DCAA reviews have disclosed a number of estimating and accounting system deficiencies requiring improvement. The contractor has submitted corrective action plans and DCAA, in coordination with the responsible contracting officers, are monitoring progress in making the needed improvements.
3. Accelerated Testing of Billed Costs—Due to the unique risks of contingency contracting and conditions in Iraq, DCAA has placed more emphasis on examining contractor costs as they are being incurred, rather than waiting until the contractor submits its annual incurred cost claim. One example of our audit work in this area is our review of dining facility costs. KBR provides meal services to the troops and other DOD personnel at over 60 dining facilities in Iraq and Kuwait. DCAA audits beginning in late 2003 found that KBR and its subcontractors were basing their payment requests on an estimated number of meals which substantially exceeded the actual number of meals served. For the period May 2004 to May 2005, DCAA withheld \$212 million from KBR interim billings pending resolution of this matter. KBR and its subcontractors believed that the terms of their respective contracts and subcontracts permitted this billing practice. The Army contracting officer negotiated a settlement which denied reimbursement of \$55.1 million of the actual cost. The early identification of this issue by DCAA, and the support of the Army Sustainment Command contracting officials, led to KBR negotiating new subcontracts which corrected the billing practices of concern to DCAA and the Army. We estimate that the new subcontract terms and prices saved more than \$200 million over what would have been paid under the old subcontract terms for a comparable period.

In this example and others, DCAA worked closely with the Army acquisition community, both at the Headquarters and field level, to reduce contractor billed costs for potentially unreasonable expenditures. In the past, DCAA withholdings have totaled more than \$230 million on LOGCAP task orders. Currently, DCAA is withholding \$49.6 million from KBR billings. A recent example is the withholding related to security costs. The LOGCAP contract specifically states that the Army will provide necessary security to contractor personnel performing on the contract. As such, the Army believes costs incurred by KBR and its lower tier subcontractors for security are unallowable and should not be reimbursed under the LOGCAP contract. DCAA is working with the Army to identify lower tier subcontractor security costs and the Army has directed DCAA to withhold \$19.7 million from KBR billings.

CLOSING

In closing, I want to underscore that DCAA is an integral part of the oversight and management controls instituted by DOD to ensure an integrated and well-managed contract audit process in Iraq. We have had a continuous presence in Iraq and the Middle East Theatre of Operations since May 2003, staffing our office entirely with civilian volunteers. To date more than 180 DCAA auditors have served tours and fortunately, none have been injured or killed. The challenges in applying business practices and auditing in Iraq are daunting and have required our auditors to be flexible while insisting that the Department will not tolerate the billing of costs that do not comply with contract terms or are not appropriately documented and supported. DCAA has been and will continue to be vigilant about contract audit oversight and protecting the taxpayers' interests.

I look forward to addressing whatever questions or comments you have on DCAA's important role in Iraq. Thank you.

Chairman LEVIN. Thank you so much, Mr. Reed.

Now let me call on Patrick Fitzgerald, the Auditor General for the Army.

Mr. Fitzgerald?

STATEMENT OF PATRICK J. FITZGERALD, THE AUDITOR GENERAL, DEPARTMENT OF THE ARMY

Mr. FITZGERALD. Mr. Chairman and distinguished members of the committee, thank you for the opportunity to be here today to discuss our audit work related to LOGCAP.

I have submitted my full statement to the committee, and I ask, respectfully, that that be made part of the hearing record.

Chairman LEVIN. It will be made part of the record.

Mr. FITZGERALD. Thank you, Senator.

I have been with the U.S. AAA for more than 26 years, and became the Auditor General in March 2006. As the Auditor General, I am responsible for the worldwide operations of Army audit. The agency is the Army's internal audit organization, and, throughout our history, we have deployed with our troops: in Vietnam, in Bosnia, during Operations Desert Storm and Desert Shield, and, most recently, in Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF).

Since 2002, we have done extensive work on LOGCAP in support of both OEF and OIF. In December 2004, General Casey asked us to help him reduce the overall cost of the LOGCAP contract in support of OIF. We promptly established a permanent presence on the ground in Iraq, and, since May 2005, we've continually had 10 to 30 auditors deployed in theater.

We established two audit objectives to support General Casey's request. These objectives were: (1) to determine if the overall management of LOGCAP was adequate, and (2) to determine if the contractor was providing the needed services in a cost-effective manner.

Since beginning our LOGCAP work in Iraq, we have issued 15 audit reports that included monetary benefits of about \$175 million. We have also identified other initiatives that improve cost-effectiveness of the program, but we could not quantify the monetary benefits.

In April 2006, we reported improvements in the overall management of the LOGCAP. However, we also reported that the management structure in Iraq was not conducive to making sure LOGCAP was managed in the most efficient manner. For example, we found that more centralized control was needed to make sure requirements were properly identified and to make sure contract support was effectively integrated into the command's combat service support mission. We also found that contracting activities in the theater were fragmented and did not have enough personnel to provide adequate contractor oversight.

To evaluate the adequacy and cost-effectiveness of the services, we conducted a series of audits focusing on specific LOGCAP functions. Some of these functions included theater transportation, warehouse staffing, distribution functions, the use of nontactical vehicles, and operation of clothing facilities. Our work to date has shown that LOGCAP operations were providing services needed to support our soldiers. Commanders and soldiers were consistently satisfied with the services. However, we also found that the Army could acquire services more cost-effectively by making improvements in several areas, such as reducing staffing levels at distribution centers, reducing the quantity of material handling equipment and nontactical vehicles, and increasing the accountability and visibility over material and equipment.

In our 15 reports, we have made many recommendations to Army commands, and those commands have agreed to take corrective action in response to those recommendations. In fact, in many cases, commanders in the field took immediate action to fix the problems that we brought to their attention.

In closing, I would like to thank you, once again, Mr. Chairman, for inviting me to appear before this committee to discuss this very important topic. We are continuing our LOGCAP work and have audits ongoing. We plan to remain responsive to Army leadership and continue to work to the best possible solutions to these many Army challenges.

Since 2005, the agency has deployed 96 auditors, who have served on the ground with our soldiers in Iraq, Afghanistan, and Kuwait. Our auditors are proud to serve alongside our soldiers. The dedication and hard work of our auditors have provided valuable realtime support to the Army.

Thank you, again, for the opportunity to testify before you today, and I would be glad to answer any questions.

[The prepared statement of Mr. Fitzgerald follows:]

PREPARED STATEMENT BY PATRICK J. FITZGERALD

Mr. Chairman and distinguished members of the committee, it is my pleasure to be here today and have the opportunity to discuss with you our audit work related to the Logistics Civil Augmentation Program (LOGCAP).

I have been with U.S. Army Audit Agency for more than 26 years and became The Auditor General of the Army in March 2006. As The Auditor General, I am responsible for the worldwide operations of Army Audit. The Agency is the Army's in-

ternal audit organization, and we provide objective and independent auditing services that help Army leaders make informed decisions, resolve issues, use resources effectively and efficiently, and satisfy statutory and fiduciary responsibilities. The scope of our audit responsibility includes selecting the subjects and organizations within the Army to audit, as well as responding to requests for audit service from Army officials.

Throughout its history, Army Audit Agency has deployed with our troops—in Vietnam and Bosnia, during Operations Desert Storm and Desert Shield, and lately in support of Operation Enduring Freedom and Operation Iraqi Freedom. We have performed extensive audit work on LOGCAP in support of Operation Enduring Freedom and Operation Iraqi Freedom dating back to 2002. During 2003 General Kern, the Commander, U.S. Army Materiel Command, asked us to conduct an overall audit of LOGCAP operations. LOGCAP is the Army's program for using civilian contractors as an additional means to adequately support the current and programmed force by performing selected services during wartime and other operations. The principal objective of LOGCAP is to provide combat support and combat service support to combatant commanders and Army service component commanders, primarily during contingency operations, throughout the full range of military operations, including reconstitution and replenishment.

In response to General Kern's request, we focused our audit on overall program management, cost controls, and asset management. We did audit work at various locations in the United States and overseas—including Uzbekistan, Afghanistan, Kuwait, and Turkey—and in November 2005 we issued a summary report on our LOGCAP work.

In this report we stated that, overall, the Army was adequately managing the LOGCAP contract. The program provided essential services to soldiers and did a good job of meeting the Army's needs. Adequate procedures were in place to control costs under the contract, standards of services were recorded in theater-level documents, and acquisition review boards were in place to review and approve requirements. However, we did find systemic problems related to preparing independent Government cost estimates, reviewing contractor rough orders of magnitude, and definitizing task orders. It is important to note that some of these problems occurred because of the large volume of work involved and the need to process contract actions quickly.

Because responsibility for property administration under this contract was delegated to Defense Contract Management Agency, we were unable to fully evaluate accountability for assets under the contract. But we did find some areas where improvements were needed in managing Government-furnished property given to or acquired by the contractor.

Including our summary report, we issued eight audit reports and made audit recommendations to various organizations involved in the LOGCAP process. Some key recommendations were that the:

- Assistant Secretary of the Army (Acquisition, Logistics, and Technology) develop Army guidance for approving requirements for deployment operations, including acquisition approval thresholds, members of joint acquisition review boards, and documentation of board actions.
- Deputy Chief of Staff, G-4 establish guidance addressing how to transfer Government property to contractors in the absence of a Government property officer to conduct joint inventories and to summarize key management controls related to LOGCAP in an annex to Army Regulation 715-9 (Contractors Accompanying the Force).
- Commander, U.S. Army Field Support Command (now, U.S. Army Sustainment Command) makes sure Defense Contract Audit Agency stayed actively involved in monitoring costs.

Army organizations agreed with our recommendations and said they would take implementing actions.

In December 2004 General Casey, the Commander, Multi-National Force-Iraq, asked us to audit LOGCAP operations supporting Operation Iraqi Freedom. General Casey's goal was to reduce overall costs without degrading the welfare of our deployed forces. Accordingly, we established two audit objectives to help reach the Army's goal. These objectives are to determine whether:

- Overall management of the program was adequate.
- The contractor was providing the needed services in a cost-effective manner.

We promptly established a permanent presence on the ground in Iraq, and since May 2005 we have had from 10 to 30 auditors in the Southwest Asia theater of operations at any given time. Early on, we found that the Army faced some significant

challenges regarding LOGCAP operations. One challenge was that LOGCAP in the Iraq Area of Operations is the U.S. Army's greatest reliance on contractor support in its history. The Army had about 90 Forward Operating Bases and LOGCAP supported about 60 of them. Other major challenges were that the nature of operations was asymmetric, and personnel did not have freedom of movement and communications.

Since beginning our LOGCAP work in Iraq, we have issued 15 audit reports that include agreed-to monetary benefits totaling about \$175 million. We have also identified other cost avoidance initiatives we could not reasonably estimate the value of.

In April 2006 we reported that activities were improving overall management of the program. However, we also reported that the management structure in the Iraq Area of Operations was not conducive to making sure LOGCAP was managed in the most effective and efficient manner. More specifically:

- Contracting activities in theater were fragmented and too understaffed to effectively scrutinize command's requirements.
- More centralized control was needed to make sure requirements were properly identified and contract support was effectively integrated into the command's combat service support mission.
- Dispersed locations and high turnover of personnel who managed the contract made it difficult to ensure that requirements were fully necessary and cost-efficiently obtained, and that ongoing work was properly managed.

To address these problems, we recommended that the:

- Commander, Multi-National Force-Iraq establish a forces requirements branch for centralized control and better interface with LOGCAP management within the theater, and make sure the branch is adequately staffed (personnel and expertise) and headed by an individual who can effectively interface with all command levels.
- Commander, Army Sustainment Command coordinate with the Commander, Multi-National Force-Iraq to define roles between LOGCAP managers in each organization and establish training classes on LOGCAP that include exercises on developing statements of work, independent Government cost estimates, and requirements.
- Commander, Army Materiel Command include information on the role of the LOGCAP Support Unit and establish a permanent presence by the unit at predeployment planning meetings.

To examine and evaluate the adequacy and cost-effectiveness of services, we conducted a series of audits focusing on specific functions under the LOGCAP contract. Some of these functions included theater transportation, warehouse staffing, nontactical vehicles, distribution functions, and clothing issue facilities.

Our body of work to date has shown that LOGCAP operations were providing the services needed to support our soldiers and satisfy the mission. Commanders and soldiers were consistently satisfied with the services. However, our audit work also showed that services under the LOGCAP contract could be acquired more cost-effectively. For example:

- Staffing levels at many distribution centers exceeded operational needs.
- Onhand material handling equipment exceeded requirements.
- A significant number of the contractor's nontactical vehicles were underused and the contractor had more vehicles than needed.

Some of the recommendations from our function-specific reports were that the Army:

- Evaluate contractor personnel levels to make sure staffing levels (for both labor and management) are appropriate.
- Use underutilized assets to offset future contractor procurements.
- Develop and follow quality assurance surveillance plans to make sure the contractor performs as efficiently as possible.
- Use standard property book systems to gain and maintain accountability over assets, and perform 100-percent inventories.

In the 23 reports we have issued on LOGCAP, we have made many recommendations to the responsible Army commands. (A complete list of the reports is attached to this statement.) These commands have stated they would take corrective action in response to our recommendations. In many cases commanders in the field took immediate action to correct problems we brought to their attention.

In addition to our completed work, we have ongoing audits addressing these LOGCAP areas: dining facility operations, supply support activity operations, bulk fuel controls, cross-leveling and distribution of Government-furnished property managed by contractors, and Defense Basing Act insurance rates.

In conclusion, I would like to say that I am very proud of my auditors on the ground with our soldiers in Iraq, Afghanistan, and Kuwait. Their dedication and hard work have provided valuable, real-time help to the Army. I appreciate the opportunity to testify before you today to provide a summary status of our LOGCAP audit work, and I will be glad to respond to your questions.

Army Audit Agency Reports on LOGCAP

Report Number	Date	Title
A-2003-0110-IMU	31 Dec 02	Logistics Civil Augmentation Program; Camp Stronghold Freedom, Uzbekistan
A-2003-0367-IMU	21 Jul 03	Followup of Recommendations From Audit of Logistics Civil Augmentation Program
A-2004-0033-IMU	23 Oct 03	Management of Resources, Army Forces–Turkey
A-2004-0156-IMU	27 Feb 04	Operation Enduring Freedom—Logistics Civil Augmentation Program
A-2004-0438-AML	12 Aug 04	Definitization of Task Orders—Audit of Logistics Civil Augmentation Program
A-2005-0043-ALE	24 Nov 04	Logistics Civil Augmentation Program in Kuwait, U.S. Army Field Support Command
A-2006-0018-ALL	17 Nov 05	Logistics Civil Augmentation Program Support Unit Training
A-2006-0022-ALL	28 Nov 05	Logistics Civil Augmentation Program, U.S. Army Materiel Command
A-2006-0047-ALL	11 Jan 06	Base Closure Process in the Iraq Area of Operations
A-2006-0081-ALL	17 Mar 06	Audit of Unliquidated Obligations, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0083-ALL	21 Mar 06	Audit of Retrograde Operations (Task Order 87), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0091-ALL	4 Apr 06	Audit of Management of the Theater Transportation Mission (Task Order 88), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0099-ALL	25 Apr 06	Audit of Program Management in the Iraq Area of Operations, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0158-ALL	11 Jul 06	Report on Class IX (Aviation) Warehouse Staffing, Camp Anaconda, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0168-ALL	4 Aug 06	Report on the Subsistence Prime Vendor Contract, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0233-ALL	22 Sep 06	Clothing Issue Facilities, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0246-ALL	27 Sep 06	Audit of the Cost-Effectiveness of Transitioning Task Order 66 - Kuwait Naval Base Camp Support From Contingency to Sustainment Contracting, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom – Phase II (Kuwait)

Report Number	Date	Title
A-2006-0253-ALL	28 Sep 06	Audit of the Cost-Effectiveness of Transitioning the General Support Supply Support Activity (Task Order 87) From Contingency to Sustainment Contracting, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2006-0254-ALL	29 Sep 06	Audit of the Procedures for Transferring Property During the Base Closure Process in Support of Operation Iraqi Freedom
A-2007-0011-ALL	16 Nov 06	Audit of Nontactical Vehicle Usage in the Iraq Area of Operations, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2007-0019-ALL	21 Nov 06	Audit of Distribution Functions, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2007-0093-ALL	9 Mar 07	Audit of the Cost-Effectiveness of Transitioning Selected Functions Performed at the Theater Distribution Center (Task Order 87) From Contingency to Sustainment Contracting, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom
A-2007-0104-ALL	23 Mar 07	Summary Audit Report on the Cost-Effectiveness of Transitioning Work Under the Logistics Civil Augmentation Program Contingency Contract to Sustainment Contracting, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom

Chairman LEVIN. Thank you, Mr. Fitzgerald.

Let me start by going into an issue involving what are called “living containers,” which is a type of trailer. KBR subcontracted to acquire a large number of these containers from a number of sources, and the contractor determined that it could obtain them for somewhere between \$8,000 to \$19,000 each. Despite that, they ordered thousands of units from other vendors, whose bid prices were in the range of \$35,000 to \$40,000 per unit. So, as a result, KBR paid 260 percent to 600 percent of the reasonable price for the trailers.

Now, over a 2-year period, the DCAA tried to pin down a rationale for these added costs. KBR contended that it went to the high bidders because they claimed the low bidders first lacked adequate production capacity. The DCAA found that was not true. Then KBR claimed that the low bidders were not qualified to perform the work. The auditors found that KBR’s own documents indicated that the low bidders were qualified. Then they claimed that the plan was to concentrate one supplier for each camp. The DCAA was unable to identify any such alleged plan. Then KBR claimed that the high bidders offered features and amenities that were not available from the low bidders. The DCAA found that the features and amenities were comparable. Then KBR claimed that they paid a premium for prompt delivery to shift the risk to the subcontractor for late delivery or damage to the trailers. The DCAA noted that KBR actually rebutted its own argument on that point by paying a claim related to delay and damage.

Now, first, Mr. Reed, did I accurately summarize DCAA’s findings relative to the trailers?

Mr. REED. Yes, you did.

Chairman LEVIN. Now, Secretary Bolton, the FAR says that the DOD pays costs incurred under a cost-plus contract only if those costs are reasonable. In this case, KBR paid its subcontractors 260 percent to 600 percent of the prices that KBR itself had determined to be reasonable. Not one of those explanations that were given by the company for doing so, for paying the high price, hold any water. Yet, the DOD decided to pay KBR the full \$100 million, which is at issue here, by which the subcontracts were overpriced. Why did the DOD pay that extra money?

Mr. BOLTON. Mr. Chairman, let me defer to General Johnson, who has all the information.

Chairman LEVIN. All right, thank you.

General Johnson?

General JOHNSON. Sir, the DOD has not paid KBR the \$100 million for the trailers. As a matter of fact, KBR's costs are still suspended. We have allowed a minor portion for the provided appropriate, acceptable documentation and negotiated costs of \$1.4 million against a \$5.6 million bill, and \$25 million where they've provided appropriate documented evidence and reasonable costs have been negotiated against the remaining \$51 million of \$25.6 million; \$4.2 million is still being withheld, \$25.7 million is also pending against the second order. The remaining roughly \$45 million have been taken off of the table.

Chairman LEVIN. General, the document that you provided to the committee says the following, that "the parties have agreed to recognize the costs of the containers acquired." The letter dated January 24, 2006, memorandum to the attention of Mr. Valiant DuHart.

General JOHNSON. Sir, Mr. DuHart is a procurement contracting officer within my command. I have not recognized those costs. The current status is what I explained to you.

Chairman LEVIN. This is January 24, 2006.

General JOHNSON. Yes, sir. As of today's date, the only costs that have been recognized are the \$1.4 million and the \$25.6 million that I just identified. The remaining costs are pending, and KBR has not provided appropriate documentation or demonstrated reasonableness of cost.

Chairman LEVIN. Is that, then, inaccurate, that memo of a year ago?

General JOHNSON. That letter is inaccurate. Sir, frankly, I review most of those before they go out. Sometimes they get out prior to my and Mr. Loehrl's review. Obviously, that's one that did. But those costs have not been recognized.

Chairman LEVIN. So, the \$100 million that I've described for overpricing of those containers has not been paid? While you're looking at that, let me move on, because of the timing here.

General JOHNSON. Sir, we'll update that information for you.

[The information referred to follows:]



DEPARTMENT OF THE ARMY
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103 ARMY PENTAGON
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DEC 06 2007

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

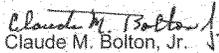
We would like to advise the Committee that the Insert for Record (IFR) response (enclosed) regarding testimony given to the Committee on April 19, 2007 should have been titled a "correction for the record".

Upon review of our oral testimony we determined that incorrect information was provided to the Committee regarding payment to the Logistics Civil Augmentation Program (LOGCAP) III contractor for living containers. Due to the complexity and number of related cost issues associated with living containers under the LOGCAP contract, MG Johnson (then) U.S. Army Sustainment Command (ASC) Commander, did not provide an accurate response in regard to the amounts paid at the time of his testimony.

We believe the attached clearly lays out the three separate, but related cost issues with living containers. Kellogg Brown and Root was reimbursed approximately \$99M for the living container costs questioned by DCAA as noted by the Committee. However, no Base or Award Fees were paid against these costs. Costs questioned by Defense Contract Audit Agency in regard to two related living container buys are either in a suspended or partially disallowed status. These two related, but separate issues, led to the confusion in the ASC Commander's testimony.

We sincerely regret the confusion that arose during the testimony and apologize for any impact to the Committee's deliberations.

Sincerely,


Claude M. Bolton, Jr.
Assistant Secretary of the Army
(Acquisition, Logistics and Technology)

Enclosure

I wish to further address the issue of living containers as discussed in the April 19, 2007 hearing on LOGCAP before the Senate Armed Services Committee. The Committee questioned the amount KBR was reimbursed for the containers. I want to take this opportunity to clarify the issues on living containers.

There are three separate issues regarding living containers: the \$99M that was questioned during the hearing; a \$4.5M disallowance regarding the price to purchase containers from two higher priced vendors; and a \$51M claim paid by KBR to First Kuwaiti Trading & Contracting (FKTC) for costs incurred by FKTC because of a delay in moving containers from Kuwait into Iraq. I will address each of these issues separately.

The first issue involves the \$99M questioned regarding payment for containers purchased by KBR in the performance of Task Order (TO) 59. The Defense Contract Audit Agency (DCAA) reviewed the TO costs as a part of the definitization process for TO 59. As a result of their review on March 24, 2005, DCAA initially questioned approximately \$99M as an unreasonable expense. KBR purchased the containers from someone other than the low bidder without, in the judgment of DCAA, adequate justification. This issue was included in the March 2005 TO 59 definitization negotiations. KBR's position was that they had purchased the containers from an agent other than the low offeror because of capacity and delivery issues. The PCO, Mr. Valiant Duhart, resolved the issue by allowing the cost for the containers but not paying any Base or Award Fee on these costs. DCAA was aware of the PCO's position and took no exception. In the settlement, the PCO included a re-opener provision allowing KBR to submit a request for the withheld fee if they were able to provide further data supporting their actions. The DCAA letter of 24 January 2006 offered assistance to the PCO should additional negotiations become necessary. KBR has not submitted a request for fee and, as a consequence, has not been paid any base or award fee on the \$99M.

The second issue involves the \$4.5M disallowance for purchase of the containers from two higher priced vendors. This disallowance involves a different subcontractor than that involved in the TO 59 payment. This \$4.5M disallowance is a result of an audit of incurred cost rather than an audit of proposed cost. KBR purchased containers from seven different vendors, with two of those vendors more highly priced than the lower priced offeror Tepe. KBR stated that they did not purchase containers from Tepe due to lack of capacity. In their April 7, 2006 review, DCAA disagreed with KBR's assertion that Tepe did not have the capacity. The \$4.5M difference between what KBR paid the two higher priced vendors and what KBR could have paid had they gone to Tepe has been disallowed and not paid to KBR. On August 30, 2006, DCAA lowered

the disapproved costs from \$4,511,164 to \$4,162,997 to reflect lower average costs for containers from KBR's subcontractor. Under the terms of the contract, when costs are disallowed by DCAA, KBR has the right to request the cognizant contracting officer to consider whether the unreimbursed costs should be paid. Under the LOGCAP contract, the cognizant contracting officer for issues of cost allowability is the Administrative Contracting Officer (ACO) at the Defense Contract Management Agency (DCMA). KBR requested such reconsideration, and the ACO is currently awaiting KBR's additional information.

The third issue with containers involves a \$51.3M claim paid by KBR to FKTC for costs incurred by FKTC as a result of Government delays in moving living containers from Kuwait to Iraq. In this particular case, DCAA suspended and ultimately disallowed the \$51.3M KBR paid to FKTC on the claim. KBR then requested that the ACO consider whether the unreimbursed costs should be paid. Interim determination made by DCMA on December 29, 2006 allowed \$25.6M, which was adequately justified by KBR. The remaining \$25.7M is still under review by the ACO.

To further clarify, when I stated in my testimony that the container costs had not been paid to KBR, I was referring to the \$4.5M and the \$25.7M discussed above; fee has not been paid on these costs.

Chairman LEVIN. Despite what that document says, you're saying that \$100 million has been paid. Is that what you're saying?

General JOHNSON. No, sir, I'm not saying none of it's been paid. \$1.4 million has been paid.

Chairman LEVIN. No, I'm just talking about the \$100 million that I have identified. Of that \$100 million, which is in excess of the reasonable cost—I've identified it, I've described it here for you—that the reasonable cost here, what they could have obtained these containers for versus what they paid for them, we estimated is \$100 million. You're saying some of that \$100 million has been paid?

General JOHNSON. A total of \$27 million has been paid, has been allowed.

Chairman LEVIN. The gentleman's shaking his head no, behind you.

General JOHNSON. Sir, we're getting a bit of apples and oranges mixed here.

Chairman LEVIN. Okay.

General JOHNSON. Okay?

Chairman LEVIN. All right, you're saying \$27 million of that \$100 million has been paid. Is that your bottom line?

General JOHNSON. I will say \$27 million has been paid to KBR for container operations of those questioned costs.

Chairman LEVIN. All right.

General JOHNSON. \$100 million I'm not aware of.

Chairman LEVIN. All right.

General JOHNSON. Okay?

Chairman LEVIN. Now, on top of the \$100 million—and I think maybe this is one of the issues—the subcontractor claims that KBR and the Government owe it an additional \$50 million because that was caused by delays that resulted from its waiting for military convoys into Iraq. The DCAA has determined that that was not true, that that \$50 million that they claim was not caused by delays. They've made no such showing, no documentation, of delays costing it \$50 million in addition to what it had previously been promised.

Is that, first of all true, Mr. Reed?

Mr. REED. Yes. I would point out that DCAA's point was we were not given documentation that would substantiate that allegation.

Chairman LEVIN. But first it gave you documentation, did it not—it claimed that its cost for the truck and driver was \$750 a day. Is that true? That's what it first told you?

Then it reduced it to \$500 a day, then it said its costs were \$300 a day, and then it provided no documentation that it had paid any of those amounts. Is that accurate?

Mr. REED. Yes, sir.

Chairman LEVIN. So, first they claimed \$700, then they say they paid \$500, then they said they paid \$300—none of which was true, because they obviously changed their story—and then they provided no documentation for the \$300. That \$50 million is part of the \$150 million, General Johnson, that we're talking about here. The man behind you—and what is your name, sir? The gentleman behind you?

General JOHNSON. That's Mr. Loehrl, sir. He's the Director of the LOGCAP.

Chairman LEVIN. He's shaking his head this way. Would you agree with his head-shake, up and down, yes?

General JOHNSON. Roger, sir.

Chairman LEVIN. Okay. So, now, you're saying, of that \$150 million, so far only \$100-and—only \$27 million has been paid. Is that where we're at?

General JOHNSON. That's right, sir.

Chairman LEVIN. Okay.

General JOHNSON. Now, some of those costs were negotiated away and never reached the point of even being considered. That's why the difference in the numbers you're seeing.

Chairman LEVIN. All right. Is there still an outstanding claim for the balance of \$150 million?

General JOHNSON. There's an outstanding claim for \$25 plus \$4.2 million—\$29.9 million. That's all the outstanding claim that remains. The rest of those costs were negotiated away.

Chairman LEVIN. All right. So, we're all talking about the container contract.

General JOHNSON. That's right, sir. The only thing that's pending on the container contract is \$29.9 million.

Chairman LEVIN. All right. The facts that I gave, that KBR tried to obtain from us the reimbursement for the containers that they paid, which were unreasonable—is that correct?

General JOHNSON. That's correct, sir.

Chairman LEVIN. When they decided to pay the higher price instead of the lower price, and they decided that they were going to pay 260 percent to 600 percent of prices which were reasonable, when they billed us for that, did they also get profit—did they expect to be paid a profit on that amount, at that time, when they billed us for it?

General JOHNSON. I don't know what KBR expected. I will tell you the way it works.

Chairman LEVIN. No, not the way it worked. Wouldn't they assume that they would get a profit on the amount of money—

General JOHNSON. They would probably assume that they would get at least the base fee of 1 percent, and they'd have an opportunity for 2 percent in award fees.

Chairman LEVIN. All right. So, therefore, they would normally expect that the more they paid for those containers, the greater their profit would be. Is that fair?

General JOHNSON. That's fair, sir.

Chairman LEVIN. All right. That's one of the big issues here, obviously, is, they overpay for containers, they send us the bill, they got paid part of it, which they never should have been paid, and then, on top of that, the more they pay for containers, because of the lack of competition, the more they expect to be paid in profit, as well. Is that a fair statement? Normally, they would expect that.

General JOHNSON. They have to understand, they have to get through the audit process, the price negotiation, and independent Government estimate, but, yes.

Chairman LEVIN. Yes. Okay. With that expectation, they would expect that the more they were able to pay for those containers, if

it was approved by the auditors and by the system, that the greater their profit would be. Is that fair?

General JOHNSON. That's fair, sir.

Chairman LEVIN. Thank you. My time's up.

Senator WARNER.

Senator WARNER. Thank you, Mr. Chairman.

This subject is an extremely important one, and it has a degree of complexity that's somewhat unusual for our types of hearings, in that it requires so many detailed documents and other means of evidence. I felt that your opening statement listed a number of very serious allegations, and, with your concurrence, I would like to, as my first question, submit your opening statement, in its entirety, to each of our witnesses, asking them to make such comments for the record as they deem appropriate and given their particular areas of expertise. Do you concur?

Chairman LEVIN. I would very much welcome that, as a matter of fact. We were quoting their audits in that statement at great length, so we're happy to have them review those quotes, or anything else in that statement, of course.

Senator WARNER. I thank the chair, because I think the committee will need that for the record.

[The information referred to follows:]

REVIEW BY PATRICK J. FITZGERALD

At the Senate Armed Services Committee hearing on the Logistics Civil Augmentation Program (LOGCAP) on April 19, 2007, Senator Warner asked the witness panel to review Chairman Levin's opening statement and provide comments.

We have reviewed Chairman Levin's statement and believe the general themes are consistent with our audit results that contractor oversight was insufficient and improvements in cost-effectiveness were needed in LOGCAP operations. We believe the statement fairly and accurately presented the issues, challenges, and problems we found during our work on LOGCAP.

We identified a few minor issues. The third and fourth bullets reference November 2005 Army Audit Agency (AAA) audit reports. These reports were issued in November 2006. A sentence in the fourth bullet stated that AAA found that "Staffing levels at the numerous distribution centers were excessive," but our report states that "Staffing levels at the numerous distribution centers appeared excessive."

We appreciate the opportunity to participate in the committee's review of LOGCAP operations.

Senator WARNER. Before I go to some other more detailed questions, our distinguished colleague, Senator Dorgan, raised this question of the water, and that's the type of reporting that will come out of a hearing like this and, understandably, will attract the attention of those following this case, because it's simple and straightforward, and water is something that all of us depend on every day. Does anyone have any knowledge of this water problem to which our distinguished colleague referred? Is it an isolated case that occurred? I assume there are probably several hundred watering situations throughout that AOR in Iraq. Is this but one? Were there a number of them? What steps are we taking to correct it or verify the accuracy of the reports?

General, would you like to start on that?

First, General, it would be helpful if the record would reflect how long have you been in this important position that you now occupy?

General JOHNSON. Sir, I assumed command in June 2004. I've been in command approximately 2 years and 9 months.

Senator WARNER. Fine. Secretary Bolton, you've been, for some time, haven't you?

Mr. BOLTON. Yes, sir.

Senator WARNER. How many years is that?

Mr. BOLTON. We're going into the 6th year, sir.

Senator WARNER. Six years. So, each of you had an opportunity to really have a period within which to understand these problems and deal with it.

Mr. BOLTON. Absolutely.

Senator WARNER. Now, you're going to address the water problem, General.

General JOHNSON. Sir, we've looked into the water power problem at Al Ramadi. A couple of issues.

One, during the time of the allegation, KBR was not operating the water site. It was being operated by an Army unit during Reverse Osmosis Water Purification Unit (ROWPU) operations.

Senator WARNER. So, KBR was not involved in this water?

General JOHNSON. Not during the time that the allegation was made. KBR assumed control of the operation about 2 months later.

Senator WARNER. All right, we have to get this straight. So, at the time of the allegations, KBR did not have a responsibility. That responsibility rested entirely with the Corps of Engineers?

General JOHNSON. It was an Army water unit that had the capability to produce water using an Army ROWPU.

Senator WARNER. Now, those units indigenous in the core table of organization or in the regular divisional—

General JOHNSON. They are part of normal organizations. I think that was an Air Force unit. I'd have to check my facts on what type of unit, because we had Air Force, Navy, and Army units producing water at that time.

Senator WARNER. All right.

General JOHNSON. I don't remember exactly which one it was. I just know it was a military unit, and not KBR, at that time.

Senator WARNER. All right. So, in any event, the responsibility for the potability and safety of that water rested with the Army, as opposed to any LOGCAP contractor.

General JOHNSON. At that time.

Senator WARNER. At that time, all right.

Now, was this an isolated incident at one installation, or was this type of problem being experienced prevalent throughout other areas of the AOR?

General JOHNSON. Al Ramadi is the only reported incident that we have that I know of.

Senator WARNER. This gentleman keeps coming up. Maybe he could join us at the table.

General JOHNSON. Oh, okay. For the first couple of years of this operation, I was doing it personally. He's the guy that took over for me.

Senator WARNER. All right.

General JOHNSON. He works for me.

Senator WARNER. I'm not dismissing his credibility. I'm just trying to associate for the record, which will be read by others, his participation. His name, sir?

General JOHNSON. His name is James Loehrl. He's the Director of the LOGCAP for the Army Sustainment Command. He works under my supervision.

Senator WARNER. Thank you very much. We welcome him.

Go right ahead.

General JOHNSON. Yes, sir.

What he just provided me was that the Army units produce, KBR distributes, a Navy medical unit did preventive med evaluation of the water and found no problem. Additionally, the DOD IG has been doing a complete investigation of water in Iraq. No issues have been found thus far that I'm aware of.

Senator WARNER. Other than this one.

General JOHNSON. We found no issues there, sir.

Senator WARNER. I beg your pardon?

General JOHNSON. We found no issues with the water there. After the inspection, we did not confirm the allegations that were made.

Senator WARNER. I see. So, the representations made by our colleague this morning were examined, and no facts were found to sustain the allegations?

General JOHNSON. That is correct.

[The information referred to follows:]

REVIEW BY MG JEROME JOHNSON, USA,

I testified before the Senate Armed Services Committee on April 19, 2007, on the Department of Defense's management of costs under the Logistics Civil Augmentation Program contract in Iraq. Senator Dorgan has questioned the accuracy of my testimony during the hearing regarding the water quality provided to our troops in Iraq.

Prior to my testimony before the committee, I reviewed all information available to the Army on this issue, including the information presented before the Democratic Policy Committee. After Senator Dorgan raised his concerns, I reviewed my testimony for accuracy. Based on my review of the information available to me at that time, my testimony regarding the provision of water to our soldiers was true and accurate.

It appears, however, that there is some confusion as to the extent of the Army review of this issue. The Army reviewed the provision of water throughout Iraq focusing on the allegations that contaminated water was provided to our troops at Al Ramadi and at Q West.

Mr. BOLTON. Senator Warner, if I could add to what General Johnson's already talked about—

Senator WARNER. Now, wait a minute. Just a minute. Would you go more slowly?

Mr. BOLTON. Yes, sir. If I may add to what General Johnson has already said, my first visit to the AOR was at the time of the allegation. So, I took personal interest in this, and followed it. As General Johnson's already pointed out, KBR was not in charge of the water at the time. A military unit was. In addition to the checks that were made, we also checked all medical records to see if anyone had gotten ill from any tainted water. We found zero of those, and we checked those twice.

I would tell you that water, as you pointed out, is extremely important. We have produced, under LOGCAP, 7.5 billion gallons of water and some 200 tons of ice during the course of this contract.

Senator WARNER. All right.

Mr. BOLTON. So, this is very important.

Senator WARNER. I must press on, gentlemen. I think you have put before the committee a rebuttal of this case with regard to water, which we accept, for the moment.

At the time the Army awarded the LOGCAP III contract to KBR, were there any other companies that bid on it, or could have bid on it, or delivered the same level of service? I am just unfamiliar with what the competition is, particularly at the time LOGCAP III was offered.

Mr. BOLTON. Senator Warner, there were three competitors, to include KBR, and they submitted their proposals. The Army did a source selection on that and picked KBR. I won't go into the other proposals, but the other proposals lacked what we needed, and they were also more expensive.

Senator WARNER. All right.

Now, the performance contracts under LOGCAP IV, to Secretary Bolton and General Johnson, how many companies competed? You said this. You've already answered that. But why does the Army intend to limit the number of contractors to three in the current bidding process for four?

Mr. BOLTON. I don't know if I have a good answer on that. It is an open competition. In fact, we intend to have a contractor who will do the planning and work for us, and then we'll have up to three additional contractors. So, you could have four contractors here. They will actually do the tasks, and we'll compete those tasks.

Senator WARNER. All right. My last question, to the General, from a military standpoint, do you factor in, in the bidding of these contracts, and judging the performance of the contracts, the extenuating circumstances in-country that the contractors are experiencing? In other words, it is a high-risk area. It's what we call 360-degree risk area. In other words, there's no clear front line and rear echelon, as you and I were trained as youngsters, that existed in other conflicts. Everybody's in it. To what extent do you factor those factual circumstances of high risk, ever-changing operating tempo, requirement to feed so many troops one day, and the next day they're augmented or have been transported somewhere else—how has that complicated the implementation of these contracts, from your professional military standpoint?

General JOHNSON. Sir, it's caused significant complication. First of all, the contract is supposed to be awarded and executed in what we call a permissive environment—i.e. front lines, real lines—and the contractor would operate in that permissive environment, where he would not be under attack, normally. The complicating factor is the nonpermissive environment. The contractor is operating under stress of attack. We have to provide tactical combat forces to protect the convoys when they go.

To the contractors' credit—and, frankly, to some personal individuals over there that I found enormous; and, frankly, it's probably because they're a bunch of retired guys who didn't know that they were out of uniform—Paul Cerjan, Remo Williams—who physically accompanied convoys through hostile environments early in the war to ensure that the troops were provided with appropriate services.

Now, frankly, we had some issues with the KBR management structure at the kind of senior-to-mid level, but these guys on the ground—the Cerjans, the Williams²—what they did was far and beyond what the contract called for. Had they not taken those actions, we would not have been able to support our soldiers.

Additionally, I might add, when brought to KBR's attention, the issues that we were having at the contractor level—Mr. Loehrl and the procurement contracting officer, with many of their mid-level managers—KBR replaced an entire group of mid-level managers, and that situation's improved quite a bit, the estimates have gotten better, and the cooperation with the contracting officers have gotten quite a bit better. They're not where we want to be, but, when they replaced that management structure, it made a significant difference.

Senator WARNER. I thank the witnesses.

General JOHNSON. I hope that answers your question.

Senator WARNER. I thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Warner.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

I would like to thank all the witnesses for being here today, and would particularly like to thank Senator Dorgan for his efforts to investigate these contracting problems during the last Congress. I did support him in his legislation, that was dropped at the end of the 109th Congress, on these problems. Like Senator Dorgan, I continue to be very concerned about the contracting abuses and war profiteering in Iraq. So, I thank you, Mr. Chairman, for calling this very important hearing today.

No question, we feel that the resources in our country are not unlimited, and it is our duty to the taxpayers that our service men and women have all that they need, and to make sure that the tax dollars meant to be used for defense of our Nation are not wasted. That's where I am. We've heard cases of abuses here, and I'm sure we have many more. But I want to look at what problems may be here in Washington, DC.

Secretary Bolton, this has to do with the acquisition workforce. In April 2006, the AAA reported that DOD remains insufficiently staffed and inadequately organized to provide effective oversight for the LOGCAP contract. Mr. Secretary, why is it that 4 years into the war in Iraq, we still haven't been able to provide adequate staffing to oversee this contract? Do you believe that the shortage of contract oversight personnel is specific to this contract, or is it symptomatic of a broader shortage in the DOD?

Mr. BOLTON. Senator Akaka, thank you very much for the question. It's good seeing you again, sir.

I'll go back several years, when I was confirmed here, in front of Senator Levin and Senator Warner at the time, I made a statement during that particular confirmation hearing, that I had a grave concern on the declining nature of the acquisition workforce. I stated then, and it's come to pass, that, within my tenure, a large number of professional acquisition types would retire, that demographics were against us. They're still against us. What remains of my workforce over the next 3 years, half of the civilian workforce—that's roughly 45,000—are eligible to retire. Not a whole lot of folks

coming in behind them. The workload continues to increase. Rough numbers, when the wall went down in 1989, the Army had about 140,000 people in this area. Today, we have 45,000.

Now, we've been able to do the workload, because of a lot of things that you've heard this morning on LOGCAP. We have put evaluation boards in place. We rely heavily upon the audit agencies and others. We used to do a lot of that internally. We have to rely upon these agencies. On this particular contract, it really exploded—no pun intended. LOGCAP was designed, as I said in my opening comments, to do contingency, short-term, until you can get in with regular pieces of contracts and so forth. That didn't happen here because of the nature of the war.

Now, going back to the workforce, trying to pull people out of the United States to put over there who are already working very, very hard on other activities, and then making that happen, and also putting them into an environment, as noted earlier by Senator Warner, a very difficult environment—austere, hostile, without the infrastructure of having a computer system, a business system, a banking system—and yet, myself and others here—when it comes to auditing, only know one way of doing that, and that's the way we do it stateside, in an air-conditioned building with an infrastructure, and we impose that upon our people. They did a fantastic job.

But, to your point, could we use more people? Yes, we could. We've enlisted others from other agencies to do that. There are roughly 500 people auditing this contract right now in country; 350 of them live with the various posts and camps out there, reviewing what the contractor's doing on a daily basis. Then, as others here have testified, they have 50 to 100 or so of their own auditors who are in and out of there.

The caution of just saying "more people" is the environment. It's a hostile environment. Every person I send over there is a target. Unfortunately, I've had people hurt, and several killed. So, as I look at this, we do the best job we can, and I think it's a pretty good job, under very difficult conditions. I believe we need to—and this is all of us, and we've talked about this before, as a group here—take a look at what's required in this type of an environment, and make sure that the next time we do this, we have the right contract vehicles in place, but, more importantly, we have the right processes and tools for dedicated Americans to actually do very good work in a very difficult environment.

So, to your point, I think it's absolutely right, it is systemic. We could use more, but we have to be cautious on the environment. I believe there are other tools we could use. LOGCAP IV is a perfect example, where we will be competing the task orders and drive a lot of the concerns down. But the auditing folks will still be there. For those who don't know, at one time I used to be an IG, so I know the value of this work and what needs to be done.

Senator AKAKA. My concern is, there are problems out there. They've been mentioned. We are short. But what are we doing to try to correct these problems? I'm saying this because this is my same concern with Hurricane Katrina. After 20 hearings, we discovered that many of the problems were because there were positions that were unfilled. They could not carry out what needed to

be done. If that's the case also here, then we need to make changes immediately to correct that. This is what I'm looking for, and that was what my question was all about.

Mr. Fitzgerald and General Johnson, it is striking that all of the instances of the use of LOGCAP funds for military construction activities appear to occur in Iraq. But there were no similar cases in Afghanistan. I may be wrong, correct me if I am. My question to you is, please explain why this was the case. Was there a leadership problem in Iraq? Why would there not have been consistent guidance from the Army and Central Command such that we would have seen these problems in both countries, or in neither of them, rather than only in Iraq?

Mr. Fitzgerald?

Mr. FITZGERALD. Sir, our audit work did show that some funds were used to do military construction in Iraq. When we made command aware of that—command was already aware of it when we made them aware of it, and our understanding was that they were taking action to report that the funding may have not been the right funding to be used, and it was being worked in accordance with the procedures and policies of the Army at that point.

I can't comment on any construction work done in Afghanistan, sir.

Senator AKAKA. General?

General JOHNSON. Sir, we received guidance early on in the war, and, in accordance with regulation, construction, if you will, or purchase of equipment that's contingent or necessary to execute an operational mission may be done. That was done both in Afghanistan and Iraq. As we moved from really volatile contingency operations, constantly moving, we got to a situation where the lawyers began to tell us that, "You need to look more at contingency construction authority rather than using the earlier pieces of that legislation that said, incidental to providing the service." We've done that, and that's been a gradual process, and that's what you've been hearing about.

The reason that you hear more of that in Iraq than you do in Afghanistan is, frankly, the nature of the battlefield and the nature of the fight. Iraq is an open country. It's a war that started off very much as a maneuver warfare. So, in many cases the contracting goes back to the dining facility (DFAC) problem that we identified earlier on. A commander might say that, "I have objective A that's in the western part of this country, and this brigade's going there. I need food services, I need a base camp, I need laundry services, and I need fuel and food brought there as I execute the mission." In a maneuver operation, you may start out at objective A, you may get instructions, in the middle of the process, to move to objective B, C, or D. That happened in Iraq. So you end up with those kind of things happening, and that led to the DFAC piece, where they bought food and stuff, and spent money, but did not service as many troops as initially planned. The same thing with construction. You've built facilities in order to execute missions.

In Afghanistan, you had some of the same situations occur, but, because it wasn't as much of a maneuver operation, they did not need as much construction, so, therefore, it never got to the point

where we started to interfere with military civic action, and we got out of the contingency phase.

I hope that's clear.

Senator AKAKA. Thank you. Thank you for your response. My time is up.

Chairman LEVIN. Thank you, Senator Akaka.

Senator McCaskill.

Senator McCASKILL. Thank you, Mr. Chairman.

This hearing is very, very important to me. Sixty-six years ago, almost to the exact date, a man by the name of Harry S. Truman held the Senate seat that I sit in. At that point in time, he decided that, on behalf of the American people, he was not going to tolerate war profiteering. After reading all the information for this hearing, as an auditor, I am stunned. As a Senator, I'm sick to my stomach, and as an American, I'm angry.

The testimony that has been given so far about whether or not there is sufficient personnel within the Army to monitor these contracts, I, frankly, don't buy. I have reviewed reports from the AAA, from the DCAA, from the Monthly Performance Evaluation Boards, and the semi-annual award fee evaluation. I have read reports dating beginning—and I let it go the first few years, understanding that there was rapidly changing circumstances and difficulty on the ground. So, beginning mid-June, I began reading. In June 2005, July 2005, August 2005, September 2005, October 2005, several reports in November 2005, in January 2006, March 2006, April 2006, May 2006, June 2006, September 2006, November 2006, and December 2006, there were reports generated by dedicated auditors and by people that work for the United States Government that continually set out problems with contractor management, problems with cost performance, problems with access to information on behalf of this contractor. You would have to be deaf, dumb, and blind to read all of these reports and not come away with the inescapable conclusion that something is terribly wrong with this contractor.

The most outrageous fact that is incontrovertible at this hearing this morning—and, frankly, one of the most depressing things is how few Senators are here—is that that contract was renewed in December 2006. Wait. That's not the worst. The worst part is, in this contract there is a provision for a performance bonus for work well done. Seventy percent of the evaluation for that bonus—70 percent of the criteria in the contract for getting a performance bonus is contractor management and cost performance. Believe it or not, you gave them "excellent" and you gave them hundreds of millions of dollars for a job well done.

Now, Secretary Bolton, did you approve that bonus?

Mr. BOLTON. I didn't approve that.

Senator McCASKILL. Who approved that bonus?

Mr. BOLTON. The command who has that contract. That is not my privy.

Senator McCASKILL. Shouldn't it be?

Mr. BOLTON. No, it shouldn't be.

Senator McCASKILL. Okay. Then, who is the person—I want to know the name of the person who decided that this contractor, after all the reports I just laid out all the work done by these great

auditors—who is the person that thought that their job was excellent?

Mr. BOLTON. We can certainly provide the process, as well as the names. It is not unlike any other contract. In this particular case, the Evaluation Board meets every month to take a look at the contractor and costs and schedule and technical, as well as quality. While he may get an excellent in some areas, other areas he doesn't. So, the average that this contractor has gotten, over the periods, has been about 88 percent, 89 percent. That equates to about \$250 million, of the \$280 million or so that he could get.

I remind the Senator, as well, that when you look at the fee structure on this for award fee, it's only 2 percent. Compared to any other contract that I've seen, that's an incredibly small amount of money.

With regards to the comments that were made earlier on the cost-plus, what we do on the cost-plus, in terms of that fee, is not unlike any other contract that we have in the Federal Government. That's why we have all these auditors and an Evaluation Board whose job it is, with all the comments, whether it's yours or anybody else, to go and look at every one of those as we review the contractor and the costs. That's why we have upwards of several hundred million dollars in question right now.

Senator MCCASKILL. With all due respect, Mr. Secretary, I have read all these reports, as an auditor, looking from the outside, and if you think this Evaluation Board—it would be different if 100 percent of the award was on technical performance, because, in reading all the information, clearly there are a number of favorable comments about the work that was actually performed. But 70 percent of this award—and, by the way, I'm not going to feel sorry for them that they only got 2 percent. This is not a time to think, "Well, gosh, it was only 2 percent. We ought to give it to them." Seventy percent, according to your specifications, are contractor management and cost performance.

Mr. BOLTON. That's right.

Senator MCCASKILL. Now, do you think that bonus should have been paid? Is that your testimony today?

Mr. BOLTON. I'm deferring to the experts in the field, who see this day in and day out, who made the judgment in the field. I would not question a field commander. I can make a lot of decisions back here, but I rely upon the people, the experts, the men and women we put there who have the experience, just as you have, to make that judgment.

Senator MCCASKILL. Let me ask the auditors on the panel. Would you have paid that award bonus, based on what you know about this contractor?

Mr. REED. It's really not appropriate for the auditors to engage directly in the Award Fee Board decisions. We certainly were consulted. We did provide input. That's our role, to provide the input. The results of our reports were provided. We were at the Award Fee Board meetings, and we were given a chance to speak and make presentations.

Senator MCCASKILL. Were your presentations that this was an excellent contractor, when it came to contractor management and

cost performance? Was that the testimony that your agency gave, as an audit agency?

Mr. REED. No.

Senator MCCASKILL. Mr. Fitzgerald, how about you?

Mr. FITZGERALD. Senator, we work closely—I would echo what Mr. Reed said, that we work closely with General Johnson's command to make sure that they know what we're doing, what we're finding, and so that they can take that into consideration as they go forward on these award fee boards.

Senator MCCASKILL. Was it your recommendation, at any time, that you thought this contractor deserved an excellent rating in contractor management and cost performance?

Mr. FITZGERALD. To be very specific, we weren't asked for a recommendation, and, no, we didn't give a recommendation.

Senator MCCASKILL. General Johnson, do you believe that there were any mistakes made, in terms of awarding this contractor a bonus for excellence in contractor management and cost performance?

General JOHNSON. Senator, ultimately I'm responsible for that. What I do every time—and I review each one of those award fee letters—initially, I was very concerned, and I talked to each commander in the field. In fact, I just came back from Iraq last month. The commanders in the field are, frankly, elated with the support they're receiving from the contractor. Its cost performance and cost systems are not what we want them to be, and they have been rated accordingly in the award fee process. Their performance, the technical and the managerial, if you put those two together, represents 60 percent of the award fee process, versus the 70 percent if you throw in the cost and the management. But if you put the performance, the management, and the technical, which is delivering support to troops in the field, they have performed excellent. That's a fact that is constantly echoed in both Iraq and Afghanistan and Kuwait. That's incontrovertible. I can't argue with the guy in the field.

Their cost systems, we have asked—we've had constant review on them. We've had DCAA, DCMA, and the AAA review their cost systems. When their cost systems were not meeting the standard, we appropriately deducted that from the award fee process. It was taken into consideration.

Early on in the process, they were receiving less than 80 percent of the total award fee. As their cost systems became acceptable, which they are now—they're not what we want them to be, but they are acceptable, so they don't get excellents for costs, but they do get excellents for management, and they get excellents for technical performance.

Senator MCCASKILL. It seems to me that the reports that are generated by the people that are supposed to be evaluating their performance, should hold precedence over the field commanders when it comes to contractor management and cost performance. I will tell you that, time and time again, throughout these reports in 2005 and 2006, they were cited for contractor management, they were cited for the inability to move people, who weren't working, into jobs where they would be working, people who were sitting around doing nothing. It is stunning how bad this is. Frankly,

what's even more stunning is, there doesn't seem to be an acknowledgment, either by you, Secretary Bolton, or by you, General Johnson, that there's something wrong with the systems if we're paying \$200 and some million for good work when a record like this exists.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Mr. Fitzgerald, in a series of audits over the last 2 years, the AAA has found that KBR hired more employees than it needed to run warehouses, then paid its staff to sit and wait for work that didn't show up; bought more nontactical vehicles than it needed, at a cost of as much as \$100 million; purchased more material and handling equipment than it needed, at a cost of \$26 million; overstaffed at distribution centers, and refused to move idle personnel or equipment placed in one location to another to accomplish needed work. Is that a fair summary of some of the conclusions?

Mr. FITZGERALD. Yes, Senator. Our work indicates that there were opportunities where we could have been more cost-effective.

Senator REED. Now, are these results typical of the LOGCAP contracts you reviewed, or is this an aberration? Are we consistently seeing these problems on other contracts?

Mr. FITZGERALD. We have seen, in our work—there are always challenges in defining and developing requirements, translating those into good statement of work to make sure—especially in a cost-plus contract, to make sure that we have a good, independent Government cost estimate so that we're in a good position to negotiate a fair and reasonable price, and then, finally, obviously, to do good contractor administration and oversight to make sure we get what we contracted for.

Senator REED. Right. But let me go back to the question. Is this typical of what you've found, in looking at other contracts, or is this just an aberration—total aberration?

Mr. FITZGERALD. The opportunities for improvement here are probably more so than we see on other contracts.

Senator REED. I think what you're saying is that this is not atypical, that this was found in other contracts.

Mr. FITZGERALD. Yes, sir.

Senator REED. I'm told that you've briefed our committee staff, and indicated that if there are adequate program management personnel representing the Government, that contract surveillance, quality assurance—we would have at least been able to identify these problems earlier, and correct these problems. Is that accurate?

Mr. FITZGERALD. Yes, Senator. On two occasions, we made recommendations—and the Army has reacted to those to create a force requirements branch in command to make sure that we define and develop requirements well so that they can be translated to good statements of work, and also to establish clear lines of responsibilities—there's a lot of people playing in this arena—to make sure that we get what we're paying for, and to make sure we had good roles and responsibilities and accountability.

Senator REED. How early did you notify your superiors in the Department of Army that this management oversight function was deficient?

Mr. FITZGERALD. The work we did was probably mostly in the calendar year 2005, and that would be the time. As soon as things come to our attention, we get with command and start working that. I have to say, when we did get with General Johnson's folks, they did take action to start addressing those issues.

Senator REED. So, most of your audit activity and resulting recommendations were in calendar year 2005/2006. That's where you discovered a lot of these particular deficiencies with KBR.

Mr. FITZGERALD. With regard to LOGCAP in OIF and OEF, yes, sir.

Senator REED. Are you confident that if you went out today, these problems would not exist, that you've fixed the system, that you have enough people out there, with the contract review and surveillance and quality assurance?

Mr. FITZGERALD. Senator, I think improvements have been made. But to say that everything is perfect now, I wouldn't go that far.

One of the things I would like to add, though, is, we talk about staffing; it's not just the number of people, it's having the right people in the right places with the right skills and competencies to do the jobs that they need to do.

Senator REED. No, I agree with you. One of the persistent themes—and it's not just LOGCAP, it's translators, it's types of equipment bought, et cetera. Everyone will tell you, "We need the right people and expertise, et cetera." We've been at this now for more than 4 years, and, if we don't have the right people, and enough of them, then it's the responsibility of Secretary Bolton and General Johnson to stand up, at this committee, and say, "We don't have them, we need them."

So, Secretary Bolton, do we have all the people we need with the expertise deployed to overlook these contracts now?

Mr. BOLTON. I would agree with the auditor that we could use more. As I mentioned earlier, more of the right expertise—but just having more in this particular theater may not be the right answer, because of the nature of the war. As I said earlier, every person I send over there becomes a target, and I have lost people over there. So, we have to guard against that. So, finding ways of doing the job better, which we've done, with the help of the auditors over the last couple of years, is one way of doing that.

Senator REED. General Johnson, do you have enough people with the expertise to do this job? If you don't, have you made the request to your superiors for additional resources, in terms of personnel? Or are these personnel so scarce or unwilling that it's impossible to fill all the holes?

General JOHNSON. Yes. Yes, sir. You've answered the question, frankly.

I have made the request. As I mentioned during my statement, Mr. Bolton, with significant effort, has obtained two Senior Executive Service (SES) positions for me, and that's really helped a lot. We've also staffed up the program officers. We started doing that, and, really we had to justify that, and that's where Mr. Reed and

Mr. Fitzgerald came in handy in going out, auditing, and verifying what we were saying we needed.

So, we got people. The bottom line, though, falls back to your latter statement, sir. In many cases, the right skillset is just not there, and putting another person over there as a target does not help us.

Senator REED. Thank you very much. I think this just, once again, demonstrates to me that we've not mobilized the Nation to fight this war. We've just sent a lot of good soldiers, marines, and sailors out there, but we haven't mobilized the Nation.

Thank you.

Chairman LEVIN. Thank you, Senator Reed.

Senator Webb, I haven't been handed a card, but I believe that Senator Webb is next.

Senator WEBB. Thank you, Mr. Chairman.

Gentlemen, I would like to start by saying that I hope you all understand that this is not political posturing on this side of the aisle over here on these issues. There's a wide spectrum of experience up here, different types of experience, and there's a great concern that we have felt from our constituents about the amount of money that's been put into programs that don't have a lot of transparency. That's what we're really trying to do here.

Mr. Chairman, I would like to say, just as a starting point, that I don't want us to leave this hearing today with the notion, from people who've watched it, thinking that this is simply an Army problem. It's not an Army problem, it's not a DOD problem, it's a national problem with respect to these programs over in Iraq. It's more about war profiteering, accountability, transparency, and the proper use of civilians in a war zone. It's every bit as much of that as it is about the programs that we're looking at, although it's very important to be looking at them.

I'd like to associate myself with something that Senator McCaskill began with when she mentioned Senator Truman. There is a natural tendency toward corporate excess. There's no way to deny that. That's why we have to have a balance in the system. One of the things that then-Senator Truman did at the very beginning of World War II, actually before we had been attacked at Pearl Harbor, after mobilization, was to work very hard to put accountability into the corporate process. They had extensive hearings over a period of years. I think that the country was better off for the fact that that happened.

I have a couple of questions, and I suppose they would properly—at least the first couple, be directed toward Secretary Bolton, but if someone else would be better to answer them, that would be fine, too. I had to step out of the room for a moment. When I came back in, I believe the question had been answered, asked, and answered about the initial contract here with KBR. That was a competed contract? Is that correct? Who were the other competitors in that contract?

General JOHNSON. Sir, there were three competitors: Raytheon, DynCorp, and KBR.

Senator WEBB. This was a 10-year contract that was awarded?

General JOHNSON. Sir, that's correct. One prime year, and 9 option years.

Senator WEBB. Is that usual—10-year contracts, are they usual?

Mr. BOLTON. On this particular—if you say “usual,” for LOGCAP or just in general?

Senator WEBB. For these types of services that are being provided.

Mr. BOLTON. It has been, for LOGCAP, on this one. LOGCAP IV, we plan to do the same thing, a base year, plus 9 options.

Senator WEBB. You wouldn't say that it's unusual to get a 10-year contract?

Mr. BOLTON. No, sir, not at all. With the option years, it allows us to stop, as we will with the three, rather than taking that to the end.

Senator WEBB. Okay.

I am interested in a historical reference, in terms of trying to compare the costs. This is something that you obviously may not have today, you may, but I would like to know how much the Government pays KBR for a meal, per meal, or you can do it per day, and what that cost entails, and if there's any historical referent on that when these services were provided, inside the military itself.

Mr. BOLTON. I don't know about the historical part, but today it's about \$3.05 per meal.

Senator WEBB. That's for the food.

Mr. BOLTON. That's for the food, yes, sir.

Senator WEBB. All right. I would like to give you a written question on this, so we can get a historical referent in terms of manpower costs versus what it would have been like when the military was providing those services.

Mr. BOLTON. Right. Will do.

[The information referred to follows:]

[See question for the record #41.]

Senator WEBB. Now, I have another question that concerns me. I've spent a good bit of time over the past couple of years expressing my concern about the private security contractors in Iraq. I know this is not the subject of the hearing today, but there have been a number of reports about the lack of accountability from these people, the lack of rules of engagement, the lack of legal accountability, in terms of incidents that have occurred. We have heard, at the staff level, that in the next couple of months in the LOGCAP contracts, the contract that will be awarded will require the contractors to actually be responsible for their own security. I don't know if that's true, but I'd be interested to know if that's true, first of all.

Mr. BOLTON. Obviously, we can take that for the record.

We're in the source selection right now, but the instructions going in were not to do that. That's not the case with the current LOGCAP III. It hasn't been. In fact, we are withholding some money from the KBR right now, because we suspect that one of their subs actually did that.

Now, under other contracts in Iraq—reconstruction, for example—it is permissible, in those particular contracts. There are very strict rules about how to do that, which even require the okay of the commander there.

But, on this particular contract, no. I don't believe.

Senator WEBB. So, in your contracts, you're not putting in an expansion in the responsibilities of civilian security folks?

Mr. BOLTON. Senator Webb, to my knowledge, no, but I'll check on that, and we'll get that for the record.

[The information referred to follows:]

The Theater Commander will provide force protection for the LOGCAP IV performance contractor in theater. If the Government cannot provide force protection, the contract permits the contractor to request, through the contracting officer to the Theater Commander, for the use of private armed security.

Mr. BOLTON. There are a number of reasons we do this. Under the original LOGCAP, and the theme of the LOGCAP—a contingency, you're in and you're out. The military forces there will provide the security for you. If I start arming civilians, they become combatants. That's not good under international law. That's not good for them, it's not good for us. So, it's been banned on this particular contract.

Senator WEBB. Appreciate that. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Webb.

Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman. Thank you for holding this hearing. It is especially important to get to the bottom of the questions that we're asking today.

Mr. Chairman, I would respectfully request that you perhaps consider either charging one of our existing subcommittees or creating a special subcommittee to delve more deeply into the issues that are being raised here. The seriousness of these allegations, and, frankly, the waste and fraud that is so evident from so much of what we've heard, merits that. But, in addition, we have to figure out what we're going to do, going forward. We cannot afford to continue this.

Over the last 4 years, we have paid KBR \$20 billion to provide logistics support in Iraq. Now, I thought when we entered a contract, we were in charge of telling the contractor what to do. But some of the reports that we have seen on this committee make it sound as though the contractor is in charge of telling the United States military, the United States Government, what to do.

Here are a few excerpts from some of the DOD documents:

From July 2005, "There were concerns as to the contractor's reluctance to downsize the labor force after the transfer or support missions to the sustainment contractor."

Also July 2005, "The use of self-directed work added additional costs to the task order, with no visible benefit to the Government."

March 2006, "There was no effort to coordinate with the contracting officer to de-scope changes based on the reduction of requirements and to establish a new definite price."

April 2006, "Command personnel advised us that the contractor wouldn't move idle personnel or equipment assigned from one task order to another task order to accomplish needed work. When we brought this situation to the attention of top contractor operational personnel, they informed us this was a company policy."

Secretary Bolton, why is the contractor permitted to be "reluctant to downsize the labor force"? Why are they adding self-directed work to the contract? Why aren't they coordinating with

Government officials in order to reduce requirements and costs? How can they have a company policy that requires the United States taxpayer to pay for idle workers? Who's in charge of this contact? DOD or the contractor?

Mr. BOLTON. I would hope that the DOD is, Senator Clinton.

In response to allegations such as those, what we have done is put together several panels, run by the Government, run by the Army. One is to look at requirements—these are requirements that come on a regular basis from the commanders to make sure that the commander is getting what he or she really wants. Sometimes those requirements are inflated. We also have a group whose job it is, once we have those requirements, to actually figure out how much it's going to cost, and then negotiate that with the contractor, who has already put in a bid. Many times, those bids are a lot larger and higher than we'd like them to be. So, we put people in place to correct some of the things that you've just mentioned.

Are we there yet? Are we perfect yet? No. I'll take your allegations and anybody else that I get from the auditors here, which we've done over the years, and we will correct those. I think we're getting better, but we are not there yet.

Senator CLINTON. Of course, one of the problems has been the extraordinary increase in the outsourcing of Government functions to private contractors. I think the latest figures I saw is that we now have three times more private contract employees than we do military and civilian employees. There is no evidence that these contract employees perform better than Government employees, or that they do it more cost-effectively. There has been no database or system of accountability to keep track of all of these contractors.

Now, in October 2005, DOD issued DOD Instruction 302.42, which included the requirement that DOD develop or designate a joint database to maintain by-name accountability of contractors deploying with the force, and a summary of the services or capabilities they provide. Government Accountability Office (GAO) Report 0714, titled, "Military Operations High Level DOD Action Needed to Address Longstanding Problems with Management and Oversight of Contractors Supporting Deployed Forces," provides great detail on these DOD instructions and the importance of having full accountability.

May I ask, starting with Secretary Bolton, for a yes-or-no answer, if any of you have reviewed GAO Report 0714?

Secretary Bolton?

Mr. BOLTON. Only at the summary level.

Senator CLINTON. Next, please?

Mr. REED. No.

Mr. ERNST. Yes, ma'am.

Mr. FITZGERALD. Yes, Senator.

General JOHNSON. Yes, Senator.

Senator CLINTON. Okay.

The GAO report concluded that the Army was still in the process of implementing the database, and that it is uncertain when the process will be completed. So, this has been going on now for 2½ years—or 2—I guess, a little less than that, and we still don't have it. Does anyone know when the process will be completed? Can any witness answer that? [No response.]

Does anyone know when our deployed senior leaders and commanders will have a grasp of the accountability problem with all these contractors? [No response.]

I'll let the record show that, to both questions, all of the witnesses shook their heads no.

Chairman LEVIN. The record will indicate that, unless the witnesses indicate, right now, otherwise.

Mr. BOLTON. Only to talk about the database, we do have a Synchronized Predeployment Operational Tracker (SPOT) report that we provide the commanders. That's still an emerging database. That does account for the contractors.

The problem that the commander has is more than just the people that I have on contract. Since that commander is responsible for the entire battlespace, it's not only my contractors, it's contractors from the coalition forces, it's a contractor from private companies, that he also has to be concerned.

The database that you referenced earlier is still maturing. That's at the DOD level. We are part of that. I cannot answer your question in terms of when it will be complete and how we'll keep it updated.

Senator CLINTON. Secretary Bolton, which Army staff agency is responsible for the implementation of this database?

Mr. BOLTON. That will fall under me. If we're talking about contracting and contractors, once I have that, I'll issue a policy on it.

Senator CLINTON. There was a disagreement reported in the GAO report as to whether this falls under logistics or personnel. Has that disagreement been resolved?

Mr. BOLTON. I don't know if it's been resolved yet or not.

General Johnson?

General JOHNSON. No, it has not been resolved. I'm a bit reluctant in answering this, because I don't know the current status, I'm in the field now, versus the building.

There was a system and a team established as we moved into the warfight. We called it "Triple C," which is a Contract Control Cell. It was established by the Army's Materiel Command, operated under my command, to make an effort to account for contractors on the battlefield. Frankly, it was bigger than us. That's when we got the help of DOD, the Logistics Management and Readiness crew, and they came up with a SPOT report.

Now, we have taken that to the field commanders. They have looked at it. In many cases, it does not provide some of the data points that they want so that they can manage these contractors, and it's going to require some implementation of procedures, as Mr. Bolton has outlined, that we currently just don't have. So, in some cases we have some accountability. We don't have what we need.

LOGCAP's a bit different. We probably have pretty close to—I'd be in the 90-percent-range confident that I know how many LOGCAP contractors I have on the battlefield, and where. But when we open up the scope to all the contractors on the battlefield, we have contractors who perform what we call field service representatives, who follow particular systems that are in the field that have—that require contract repair, and we have numerous other contractors that—supporting contractors. So, that's the complexity of the problem.

Doesn't answer, and doesn't give an excuse for not having the capability. We are working very hard at it. We're just not there yet.

Mr. BOLTON. Senator Clinton, if I could just add a note that I was handed on SPOT, that's the tracking of the contractors, that is in the Office of Secretary of Defense Business Transformation Office, and it's still under development.

Senator CLINTON. Mr. Chairman, I think that the issues that this hearing has raised are such serious ones, this whole question about contracting out services, where the chain of command either doesn't exist or it's essentially outsourced, as well, to the contractor, or whether it's certainly confused, and where people cannot be held accountable. The failure to have adequate databases, and that's on top of the testimony from our colleague, Senator Dorgan, about just outright fraud and abuse and just heartbreaking waste in the system. So, I think that this certainly is an issue that demands our attention and perhaps an effort to try to sort out all of these various problems of accountability, trying to get a better handle on what should or shouldn't be outsourced. I hope that this committee can take a lead on trying to establish a strong foundation, similar to what our colleague, Senator McCaskill, referred to with the groundbreaking work of then-Senator Truman, because we just cannot let this go on. It's not fair to the people in the field, it's not fair to the people in the DOD who are, frankly, outmanned, they have inadequate databases, it's like sending them into a battle with a popgun against heavy artillery, because the contractors have so much more capacity to be able to manipulate the system. The end loser is the soldier in the field and, frankly, all the rest of us.

Chairman LEVIN. We will have a second and third round here, and this hearing is far from the end of this investigation, I can assure all members of the committee. We're now going to start a second round.

I just want to close the loop on the containers, which we were overcharged for. The document, General, which you have seen, if you could, for the record, explain why it is that that document says that something was paid, which wasn't paid, that would be satisfactory on that. If you could do that for the record.

General JOHNSON. Yes, sir, I will.

[The information referred to follows:]

Several different cost issues were covered during the discussion on container costs. We had three separate issues with KBR concerning costs for containers. One of these issues involved a claim KBR received and paid to a subcontractor, First Kuwaiti Trading Company (FKTC), for alleged Government-caused delays. The other two issues involved the purchase price paid by KBR. During the hearing, when I stated that costs had not been paid, I was referring to the costs of the claim (\$51.3 million) and one of the instances involving container purchase price (\$4.5 million). The document the committee chair had in his possession involved the third issue of container purchase price and questioned costs of \$99 million. These costs have been reimbursed.

The \$51.3 million claim was submitted by KBR for costs it paid to a subcontractor (FKTC). The subcontractor claimed that these costs were incurred as a result of Government delays in moving living containers from Kuwait to Iraq. Based on a DCAA audit recommendation, the Government did not pay \$25.7 million of this claim. On the second issue, concerning higher costs for living containers, \$4.5 million was not paid to KBR. This reflected the difference in costs between the higher cost containers obtained from Prime Projects International and La Nouvelle and lower cost containers that could have been obtained from a supplier named Tepe.

The January 24, 2006, letter you mention is from DCAA to the contracting officer, Mr. Duhart. It is separate from the two situations mentioned above. The \$99 mil-

lion, an element of KBR's definitization proposal for task order 0059, was questioned by DCAA as container costs in excess of those available from a lower cost supplier. KBR asserted the lower cost containers had different features which might not be technically acceptable and the low cost supplier might not be able to meet the delivery requirements due to limited capacity. With the acknowledgement of DCAA, the contracting officer resolved this during negotiations by allowing the cost for the containers but not paying any base or award fee on those costs. The negotiated settlement included a re-opener provision for KBR to submit a request for the withheld fee if they could provide further data to support their actions. KBR has not provided that information and, as a consequence, has not been paid any fee on those costs.

Chairman LEVIN. Let's talk, now, about access to information.

Back in December 2005, the DCAA audit report says that, "We encountered significant problems in obtaining supporting cost or pricing data. In some cases, the procurement files were not provided for review. In other cases, key information was not included in the procurement files. Failure to disclose cost or pricing data to the Government significantly impairs the reliability of the proposal as an acceptable basis for negotiation of a fair and reasonable price."

Then, in December 2006—this was just a few months ago; this isn't 2003, 2004, 2005—still, the DCAA audit, November, says that they could not qualify their audit, because of inadequate documentation. Here's what they say: "We implore KBR management and its Government compliance group to address the cited deficiencies and to work with the DCAA to improve its systems." Why do we have to implore people that we're paying billions of dollars to? Secretary Bolton, why should we need to implore? Why don't we direct them to either do it or we're going to get a different contractor, which, of course, we should have had a long time ago?

Mr. BOLTON. I'll defer, in terms of the wording of that particular document, to my—

Chairman LEVIN. Should we have to implore? I'll ask you that.

Mr. BOLTON. No, we should really have the information that we want.

Chairman LEVIN. All right.

Mr. BOLTON. The contractors know that when they're going into business with us. Why it happened here, I just don't know.

Chairman LEVIN. All right.

Mr. BOLTON. I will tell you, Mr. Chairman, that it's not isolated to this. I have other contractors where I have had similar problems in the past, not related to the LOGCAP or this area of the world. But I agree with you.

Chairman LEVIN. This is one of a large number of problems with the LOGCAP contract. As was answered to Senator Reed, this isn't the way the Pentagon usually handles contracts. This is an unusual number of audit reports—month after month after month after month. In my opening statement, which you're going to respond to at Senator Warner's request, Senator McCaskill went through, month by month by month, audit reports showing inadequacies, failures, overstatements, exaggerated claims. So, I hope this isn't a typical contract. It better not be, for the sake of all of us. But it's totally unacceptable, I think, to everybody.

Here's what happened in September 2006. Again, this is relatively recently. The Army Evaluation Board report for the LOGCAP contract said the following, that the DCMA, Mr. Ernst, this is your agency, this is what you said a few months ago for the

LOGCAP—relative to the LOGCAP contract, “DCMA sees a downward trend in performance in responding on critical information requests from the corporate office.”

Now, I can understand the fog of war and all the other issues that relate to your folks in the field. General Johnson, I think we have great respect—and I’ll tell you all that—for folks who take real risks to get what our troops need. Okay? That, I hope, would be clear. We have no respect for a company that does not provide information to people sitting in your air-conditioned offices, Secretary Bolton. That’s what we’re talking about here. We’re not talking about these folks in the field who are providing the meals. We’re talking about a company, which, month after month, overstates, overcharges, and misstates what the claims are. We’re going to keep going at it. This is not the last hearing that we’re going to have on this matter.

But in September 2006, DCMA sees a downward trend in performance in responding on critical information requests, from the corporate office: “Often, the DCAA does not receive information they request from KBR. The sluggish responsiveness to Government requests at the corporate level must be aggressively addressed.”

By the way, when the requests for information are sent to KBR, here’s what the Evaluation Board said in December 2006, that “requests for information received pushback due to corporate policy regarding internal documents.”

Now, Mr. Reed, does KBR have any right to deny auditors and program officials access to documents supporting its contract costs on the grounds that these are internal documents?

Mr. REED. No, they do not, if it’s related to the specific costs being claimed or billed on their contract.

Chairman LEVIN. All right. So, now, what did we do about it, Mr. Secretary?

What action did we take against KBR when they pushed back and said, “these are internal documents”?

Mr. BOLTON. KBR, or anybody else—and we’ve done it with KBR—when we find that the auditors or my managers are not getting what they want, we withhold some money. We have a \$55 million settlement, for example. I told them if they didn’t provide the documents, I would take that, unilaterally, and they could sue me in court.

By the way, when we did that, when I did that, they provided the documents.

Chairman LEVIN. This is 4 years after they get a contract, you have to threaten them to get documents. Why do we tolerate this for 4 years?

Secretary Bolton, this committee has pushed very hard to get some competition into this deal, for the last couple of years, at least. You’ve agreed that this LOGCAP contract was designed to handle short-term contingencies. Short-term contingencies. As a matter of fact, this scope of work in this LOGCAP contract was that the contractor will initiate support for a force up to 25,000 personnel. That was supposed to be the scope of the work, 25,000 personnel. Then, the contractor may be required to increase support for up to 50,000 personnel. We’re over 150,000 personnel.

Now, why has this noncompetitive situation been going on for so long? We've brought this to your attention for the last couple of years, Mr. Secretary.

Mr. BOLTON. In response to your concerns—and, quite frankly, ours—we are in the middle of source selection to have other contractors—in fact, more contractors—do this.

Chairman LEVIN. Why has it taken so long? We've raised this question for 2 years, at least.

Mr. BOLTON. I think, in terms of keeping this current contractor, it's just the nature of the—

Chairman LEVIN. No, I'm talking about lack of competition. Why have we not had multiple contractors so we could have competition on task orders for this many years? We brought this to your attention in 2004 and 2005, and now we're negotiating multiple contracts. Why has it taken so long? When you have a contractor who, month after month after month, is supplying exaggerated estimates, has provided erroneous information, refuses to give documents, which are absolutely required under law, why has it taken so many years to negotiate multiple contracts?

Mr. BOLTON. I think you'll find, 2005, we did recompete some of the work there, and that was beneficial to us. As I just mentioned, LOGCAP IV is in its source selection right now to provide more contractors there. With regard to the earlier concerns, "Why didn't we do this sooner?," if you look at where we started, in 2002, the scope—and you've mentioned it in your remarks there, going from 25 to 50—it was a lack of time to adequately go out and compete all the task orders when we had a constant demand, and an escalating demand, from the warfighter.

Chairman LEVIN. No, but you could have—look, if you—we have time now—we're still at war—you have time now to negotiate multiple contracts so you can get—

Mr. BOLTON. Oh, no—what I was talking about is an ongoing contract.

Chairman LEVIN. I understand. But why didn't you negotiate multiple contracts so you could have some competition for task orders before now? That's the question.

Mr. BOLTON. If you go back to when we put this contract together before the war, we looked at it the same way we did all the others.

Chairman LEVIN. I understand.

Mr. BOLTON. We looked at it as a contingent, and we only had roughly \$50 million when we looked at the first task order.

Chairman LEVIN. I understand. I'm not asking about that. I'm saying why didn't you do, in 2004, what you're doing now? Why didn't you do, in 2005, what you're doing now? Get multiple contractors? Why didn't you do, in 2006, what you're doing now? That's my question. We brought this to your attention in 2004 and 2005. Why didn't you do, in 2004 and 2005, what you're doing now?

Mr. BOLTON. Good question. I don't have a good answer for you.

Chairman LEVIN. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

In recent years, the DOD has institutionalized civilian contracting such that it's become a necessary function of large-scale military operations, and, in all likelihood, the prevalence of con-

tracting use as a vehicle for service distribution will likely increase. I would pose this to any of the members of the panel. Do you have any reason to believe that the amount of civilian contracting concurrent to military operations will decrease?

Mr. BOLTON. Given where we are today, I don't see it decreasing. As long as we have warfighters in the field, we will have this. One of the reasons we have the LOGCAP was so that we could put more soldiers, or military, in combat. If I were to replace that with organic soldiers, just one-on-one, I'd look at 56,000 additional soldiers to do the work that's being done right now. Rightly or wrongly, if you say that, then you have to almost double or triple that. The reason is that you're going to have to rotate those soldiers. You're going to have to have a group there to take care of the work, you have to have someone getting ready to come over, and then you have to have someone who's idle. That's a lot of soldiers.

In addition, if you look at the funding part of this, a soldier, once we recruit them, we have the soldier and the family. So, I have families back home here that I'm also going to have to support and fund. With a contractor, he's on the field, and, when he leaves, I don't pay him anymore.

So, I think, from just a business sense, it's the right thing for the Army, and, quite frankly, the other Services, because they have similar vehicles to do this. What this war has taught us, the lessons learned here, is, once you protract this, and particularly if it's a protraction where things are changing in the field constantly, how are you going to accommodate for that? We think the LOGCAP IV will allow us to do that, in terms of having several contractors. We can compete these task orders rather than setting up a separate source selection during the time of war to recompetete a task order, and run the risk of not having service to the warfighter. I think that will be better.

The other is training of our folks. We do contingency training very, very well, but that's a short-term answer. Nation-building or protracted, we need to learn how to do that better, both in contracting, management, and even auditing. So, I think we'll learn more there. I wish I had a crystal ball that said we're going to be finished with this next year, next month, and all of the LOGCAP folks will be coming home. I just don't have that.

Senator THUNE. What alternatives to a LOGCAP-type—or a LOGCAP-like contracting vehicle have been considered? Are there other alternatives?

Mr. BOLTON. The only alternative that I know of—and I'll defer to General Johnson here in a bit—is putting organic there. You're either going to have civilians—a contractor—or you're going to do it with soldiers, airmen, or seamen. Starting in the mid-1980s, we were asked by Congress to take a look at using contract or civil manpower to do the jobs that they could do for us, and that's what we've done. I think the first contract was in the 1988 timeframe. Then another one in 1992, then 1996, and then the follow-on.

But all of those were always geared at short-term. I think your question was spot-on, in terms of if you're going to have a protraction here—and the chairman's also indicated this—is there a better way? Right now, I don't know of a better way.

General Johnson may have some additional thoughts.

General JOHNSON. Sir, we've looked at this real hard, and there are a couple of alternatives. One, if you decide to go with all military personnel. Mr. Bolton has explained that fairly well. In essence, the LOGCAP exists virtually as a theater support command would exist, with about 50,000 to 60,000 personnel. You'd need 120,000 to 200,000 soldiers to replicate that capability with the assorted infrastructure that goes with soldiers, hospitals, housing, and, of course, their long-term retirement pay, and the rotation and training bases to keep them in action to replicate the LOGCAP 57,000 or so that are in theater.

As Mr. Bolton said, when the contractor leaves the battlefield, he's left the battlefield; you don't pay him when he comes back, and his infrastructure is up to him or her.

So, that's if you try to put soldiers, alone. But we do probably need more soldier or military structure for early-entry operations. The contractor, in early-entry operations, is not the best answer, and I think the Army is working on that in their total Army analysis process.

For the longer-term operation, if you decided to go with something other than a LOGCAP, one of the problems we're having right now is we had multiple contingency contractors with each brigade, and each brigade were beginning to exercise their contingency contracting capability to support themselves. I've been in about 12 to 15 different military operations over my 30-year career. That's a fallacy that we're trying to correct by creating contingency contractor brigades. Those contingency contractor brigades provide area support and give us some kind of joint acquisition review before we buy anything.

For instance, moving into Bosnia, I can remember the days we were down in Zapania buying hay to keep the trucks and things from sinking in gravel. You had a contingency contractor for each brigade. A bail of hay ended up being \$1,000. That's terrible. We finally instituted a Joint Acquisition Board so that we flattened that out.

So, if you did something other than this LOGCAP piece, you would have unnecessarily created competitiveness and cause prices to go up within the area. If you then move into nation-building, you've probably decimated the local economy, because the local businessmen will not be able to compete with the prices that the U.S. Government will cause to be created, something that we've had to work in this case with KBR on their supply-chain piece, to make agreements external to the theater for supplies so the prices level off in both Afghanistan and Iraq.

Lastly, you will create a management nightmare. We do not have, as we've stated, people with the necessary expertise, right now, to man as we would like to. I think we're doing it adequate, but adequate is not what we seek here. We have to do a better job for our American soldiers and our American taxpayers. Our American military and our taxpayers deserve better. But we're doing an adequate job in management. We do not have the number of people with the appropriate skills to manage the contracts that we have, to include LOGCAP.

If you broke LOGCAP down into various contracts, you create multiple contract administration requirements, you will complicate

the commander's ability to execute operations in theater, because then, when he wanted to move troops, he could end up talking to a base-camp contractor, a transportation contractor, an ammunition contractor, a food-supply contractor, and it just depends on how many pieces you break that up into, rather than having one point of contact that he can talk to and say, "Here's what I have to do," and then allow the Government to work the requirements and then come up with one contractor to perform the mission. So, we're going to have to have balance there.

Then, as I said in my opening statement, we've really got to look at what we do in long-term war, because there is a breakeven point, even on an instrument such as LOGCAP. I think it's cost-effective now. It's like buying a house in Washington and—I guess the price is probably close to \$900,000 now for a house—but if you paid that cash, you paid \$900,000. That's kind of what we're doing for LOGCAP, we're paying cash. If you paid that over the 30- to 50-year life span of a mortgage, you're going to pay three times that. So, that's the price you have to determine of what you want to pay and how you want to pay it over time. Frankly, that's for you to determine, not me. I'll just tell you what the complexities are of executing a war in this environment, given those types of instruments to support the forces.

Thank you. I hope that answers your question, sir.

Senator THUNE. It did, and just one quick follow-up. The whole basic principle of hiring civilian contractors is to augment military operations, as I understand, and provide assistance in meeting support requirements, and that they would not be a replacement for force structure. In this particular case, which category does KBR fall into when executing LOGCAP? Do they augment force structure, or are they replacing it?

General JOHNSON. Sir, that's a question I would prefer that the building handle. In the total Army analysis process, there is what we call a COMPO 9, which is for contractor support and civilian military equivalents for soldiers. So, I would defer that so we can take back and get you an appropriate answer from the appropriate force-structure personnel.

[The information referred to follows:]

LOGCAP is mitigating force structure shortfalls during this time of persistent conflict to enable commanders to accomplish operational missions. The current force structure is a result of force management decisions made previously which assumed risk largely in Combat Service Support (CSS) functions which are offset by LOGCAP and host nation support. DOD policy, however, directs that functions where there is a potential risk of engaging in direct hostile fire be deemed inherently governmental and military essential. This includes many support functions on a noncontiguous battlefield covered by LOGCAP contracts. The Grow the Army Plan addresses many of these CSS shortfalls now supported by LOGCAP, but will require some time to build these unit capabilities. The Army will strive to ensure that only non-inherently governmental functions are contracted out.

Senator THUNE. I see, Mr. Chairman, my time is expired.

Chairman LEVIN. Thank you, Senator Thune.

Senator McCaskill.

Senator McCaskill. Thank you, Mr. Chairman.

General Johnson, who is your contact person at KBR? Who is the individual you deal with at your level?

General JOHNSON. I deal with Bruce Stanski, who's the president of KBR.

Senator MCCASKILL. Bruce Stanski? Would you have any objection—or, Secretary Bolton, would you have any objection, in this contract you're about to execute, saying that the first time that it is documented that there is a difficulty getting access to information by the auditors, that they would be no longer eligible for a performance bonus?

Mr. BOLTON. With any contractor, regardless of their actions, we keep what I call a report card—and you may be familiar with that—a contract performance report. We do that on a regular basis. That becomes part of a file. When I do a source selection, I look at the history on all those contractors. If I discover there's been a problem, that is used as part of the evaluation criteria for a contractor.

So, whoever is selected to be—all the contractors for the LOGCAP IV, if they do not perform, and that's documented, it will become part of their file, which we will review during any future source selection.

Senator MCCASKILL. What I would then like to see, if possible, are the documents that recommend these bonuses, because the chairman outlined a number of instances that are specific, recent, where—the arrogance of this company as to whether or not their information belongs to us or belongs to them. When you enter in a contract with a Government agency to do work for them, the documents surrounding that work don't belong to you, they belong to the Government that you're working for. The idea that they're saying that these are internal documents, and that they're causing the auditors—and, by the way, every time an auditor is denied access, it costs us money. Time is money when it comes to audit work. I am blown away by the concept that there would be this kind of history of access issues, and they'd be “excellent.” Either access issues are not important to you as a contracting agency of the Government, or you don't think they're important, in terms of whether or not someone is doing their job for the United States of America.

Mr. BOLTON. Senator, as I pointed out earlier, when it got to my level that we were having some problems, we took a unilateral action, which is basically to hold their money, and, if they wanted it back, they can sue me in court. We get the documents that we wanted. I agree with you, that's not the performance we expect out of a contractor.

I also agree with you, when you waste your time going into audit, and someone's not providing you that information, that is wrong, that is not what we expect, and we take the appropriate actions. So, when it got to my level, we did what I thought was right.

Senator MCCASKILL. The difficult part of this—and this kind of a macro-look at it, is that in Government—in the private sector, there is accountability, called the “bottom line.” It's called “profit.” If you're not making a profit, you're in trouble. That is an incredible discipline over a private entity. In Government, the accountability is in the process of contracting, the oversight of those contracts, and how and when they get their money, and, frankly, whether or not people are disciplined, that work for the Government that mess it up. What is amazing to me about this entire inci-

dent is that it had gone on for years, and there was no accountability. None whatsoever. No money was withheld. Maybe you threatened it once. The bottom line is, how in the world would this company think they're in trouble if we're telling them, every year, they're excellent? We told them, every year, "You're excellent"—not, "You're average," not that, "You're below average," but that, "You're excellent." That's why I am so confused about the bottom line coming out of this hearing.

The same thing with cost-plus. The abstract—and I get the abstract—is that we do civilian contracting because it saves us money, that we can put them in place when we need them, and we don't need them anymore, we don't have the contract, unlike the ongoing support costs of the Active military. The problem is, when you do cost-plus, you are giving them a license to make profit. They don't have to have accountability anymore, because the profit's built in. They can relax. They can put their feet up, put their head back, don't worry about profit. Do you know, Secretary Bolton, what kind of profit Halliburton has made on this contract for the last 5 years?

Mr. BOLTON. I don't know about Halliburton. My contract's with KBR. They, according to the contract, have a 1 percent base fee, which is very low compared to any cost-plus contract I've ever seen in the 30 years I've been at this, and an award fee of only 2 percent, and normally it's much, much higher than that. So, my questions tend to be why a contractor would even go into this, because the bottom line is so small, particularly when you look at when they competed for this, and there was no war, there was no idea that there would be billions and billions of dollars here.

But, to your point, we take a very close look at the amount of money that we pay. I feel the same way, that, "I want a dollar's worth of work out of you." When we discover—whether it's through the auditors—I think the chairman mentioned several incidents of evaluation boards—those are my people, those are the folks I put there to—and along with the DCMA—check on this, on a monthly basis. They found that. They challenged the contractor. When they challenged the contractor, several hundred million dollars, whatever, then we talked to them, and they don't get all of that. When it comes to the award fee, as General Johnson mentioned earlier, there are three parts. A couple of those parts, they did very, very well, and we get that from the field commanders. There are parts they didn't do well, and they didn't get the money. So, if we concentrate—

Senator MCCASKILL. They got 88 percent of it.

Mr. BOLTON. That's right, they did, and some—

Senator MCCASKILL. Eighty-eight percent—when my kids come home with 88 percent, they don't get grounded. Eighty-eight percent is pretty darn good for this kind of record.

Mr. BOLTON. Yes, ma'am. But it's interesting for me to note, as I sit here—I have been taken to task many, many times on contracts, in the award fee. That is because folks are above 88 percent—way above 80 percent. When I hit, at 60, 70, or 80 percent on a contract, where I've grown up, folks say, "Okay, I guess you're doing your job." In this particular contract, when you look at all the monies that we've withheld over the 4 years, and all things

that we've done, it amounts to about 4.7 percent; 4.7 percent. I compare that against all other contracts, and I find I'm in the ballpark. That means, even though I have two, three, or four times the number of auditors on this big contract, apparently the folks who are actually doing the work—not just the contractor, but those who are in the management office overseeing—are doing a pretty good job, because they're hitting about the same average I would expect from any contract, in terms of the number of times they will question the contract, the amount of money that they're withholding, and so forth.

Now, could we do better? Yes, we might be able to bump that up 5 percent, maybe even 6 percent. But that's still not too bad. Perfect? Absolutely not, because we'd like to drive that to something else. But I think the men and women who are actually doing the work are doing the very best they can, and, I think, quite frankly, a very good job.

Senator MCCASKILL. What percentage of the civilian contracts in Iraq are cost-plus?

Mr. BOLTON. I think it's a third when you look at—well, when you say "Iraq"—I'm talking about LOGCAP right now, because we'll have a cost-plus, we'll have a fixed-fee, and a reimbursable type. So, I think it's about a third in terms of the types of contracts. We can get that for the record, to be more precise.

Senator MCCASKILL. I would appreciate that.

Mr. BOLTON. Yes, ma'am.

Senator MCCASKILL. In terms of dollars spent, I'd like the percentages, too, not just number of contracts, but in terms of dollars spent, how much is cost-plus.

Mr. BOLTON. Absolutely.

[The information referred to follows:]

In the first years of the Iraq conflict, cost-type contracts were used because uncertainties involved in contract performance did not permit costs to be estimated with the accuracy needed to use fixed-price types of contracts. Over the 4-year span of fiscal years 2003–2006, roughly 46 percent of Army contracts in Iraq were cost-type contracts.

Notable, however, is that: (1) the percentage of cost-type contracts in fiscal year 2006 was approximately 13 percent, and (2) the highest percentage of cost-type contracts was in fiscal year 2004, at roughly 83 percent. This is due principally to the fact that in 2004, design-build contract task orders were awarded (on a cost basis) across the spectrum of Iraq reconstruction: electricity, water, and oil infrastructure and numerous health care (e.g., health care centers, hospitals) and public safety/security and justice projects (e.g., police stations, fire stations, courts). In 2006, the Army, and in particular the Joint Contracting Command-Iraq/Afghanistan made a concerted effort to migrate towards fixed-price contracts.

Senator MCCASKILL. The other thing I would like is some kind of information for the record, Mr. Chairman, about Antideficiency Act (ADA) violations. I've discovered, in the short time I've been here, that we've gotten into a habit, in some instances, of using operational monies to build what they call "temporary buildings." I had the opportunity to visit one of those temporary buildings at Fort Belvoir. It didn't feel very temporary to me. It was 230,000 square feet. So, I—and at the Army Materiel Command, I might add—and so if we are building buildings with O&M money instead of MILCON money, I would like to know how much of that is going on within LOGCAP and what ADA violations, if any, any of you

are aware of, and what the status of those violations is as it relates to this contracting in this particular theater.

Mr. BOLTON. Senator, happy to take that for the record.

[The information referred to follows:]

Three of the five cases initiated thus far have been closed as “No ADA” and the Army expects to complete the two remaining ADA investigations by 30 December 2007. In the three cases that have been closed, the funding was either determined appropriate (e.g., within the \$1.5 million limitation for life, health, and safety) or the proper funding was obtained. As a result, we have found no failure to conform to the Federal Acquisition Regulations.

Senator MCCASKILL. Thank you.

Mr. BOLTON. Thank you.

Senator MCCASKILL. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you.

Let me pick up where Senator McCaskill was on these ratings. She doesn’t understand how they could possibly get the ratings that they got. Let me give you some of the underlying data which supports what she’s saying.

KBR’s ratings over the—I’m just going to take an 18-month period, from July 2005 to December 2006—they got 61 “excellent” ratings, 42 “very good” ratings, 7 “good” ratings, and no “average or below” rating for contract costs. That flies in the face of what happened during that period:

October 2005, DCAA report, labor costs overstated.

November 2005, AAA audit, KBR wasted between \$40 and \$113 million by purchasing more vehicles than necessary.

A November 2005 Army audit report, staffing levels excessive.

An Evaluation Board report, November 2005, estimates inflated.

2006 DCAA report, KBR proposal was overpriced by \$70 million; subcontract costs, overstated by 21 percent; equipment costs, overstated by 21 percent.

March 2006, Evaluation Board said they overstated costs and proposals, and overengineered customer requirements.

May 2006, DCAA audit report, proposal of KBR overstated costs by \$70 million.

August 2006, DCAA audit finds KBR’s proposed subcontract costs for one task order were overstated by roughly \$100 million.

That’s what’s going on during this period. That’s what the audit reports say. How in the heck could they be given these ratings? Not one “poor” one. Not one “poor” one.

By the way, in order to even get a “good” rating, according to your own definitions, the cost system established must be not inflated. To get a “good” rating, you cannot inflate costs. They shouldn’t have been given even a “good” rating. How did this happen?

Mr. BOLTON. Obviously, we can take each one of those for the record and give you a reason, and compare and contrast that.

[The information referred to follows:]

The audit and Performance Evaluation Board (PEB) comments discussed during our testimony correctly identify shortcomings with the contractor’s cost proposals and Rough Order of Magnitude estimates. However the purpose of the audit, and the purpose of the PEB are different. The auditor report is based only on what KBR provided to support proposed costs, as it should be. The award fee board considers several factors in deciding on an adjectival rating in the cost area. One factor the board can consider in contractor proposals that the auditor does not is the environment in which the proposals were required—frequently changing Government re-

quirements, expedited cost submissions, and many foreign subcontractors to collect cost information from. These conditions affect the quality of the cost proposals. Other factors the board considered were the contractor's cost system to track and report costs, and cost avoidance measures resulting in cost underruns from the negotiated cost baseline. The adjectival rating is the result of the board considering the proposal problems, as well as the proposal environment and positive performance that occurred during this period.

Chairman LEVIN. Are you not a bit, yourself, concerned that you could have all these kind of—these are separate ratings, by the way, for costs.

Mr. BOLTON. Right.

Chairman LEVIN. I'm not talking about technical and management performance, because that's a different issue; we accept that. On costs, though, 18-month period, they didn't get one "below-average" rating, they got seven "goods," which they didn't deserve. But 61 "excellents" and 42 "very goods." Are you not troubled by that?

Mr. BOLTON. Senator, I'm always concerned—

Chairman LEVIN. Not always. Specifically concerned. Are you not specifically concerned, when I read those numbers to you?

Mr. BOLTON. Let me put it this way. I say I'm "always concerned," because my job is not to look at a glass that's half empty, nor a glass that's half full, just to look at the glass. So, you stated in there that the Evaluation Board, for example, determined that the proposal was inflated. That's exactly what that board is designed to do. We didn't pay that price, though, because the board said to the contractor, "You've given me your proposal that I will not accept; and, therefore, you need to bring that down."

Chairman LEVIN. Right.

Mr. BOLTON. Now, that part of it is not part—

Chairman LEVIN. But the award-fee determinations are supported by these ratings.

Mr. BOLTON. But the award fee takes place later.

Chairman LEVIN. I understand.

Look at those ratings that they're based on. Aren't you troubled that you're providing award fees based on ratings which are so totally unrealistic, in terms of what your own boards were finding?

You are not concerned by that?

Mr. BOLTON. I'm not concerned, from the standpoint of with the example that we've just discussed. If the Evaluation Board is doing their job—and it sounds as if, according to what you've read there, they are—and they're in front of the process where I'm going to make an award, which is 6 months down the road, and the contractor brings the cost down because I identified it, and starts to perform, then he's going to be judged on that, not what happened during the negotiation.

Chairman LEVIN. Okay, I am concerned. I don't see how you can award fees based on these kind of ratings, when the ratings completely ignore what has happened, in terms of overpricing, exaggeration, statements of fact which aren't true, and so forth. So, I'm sorry to hear you're not concerned, but I'm very much concerned, because those award fees, which Senator McCaskill's talking about, are based on those ratings.

Let me go on to the scope of the contract. This contract basically told this contractor that, "You would be providing the support for up to 50,000 personnel in Iraq." Now, would you not agree that,

since there's 150,000 troops in Iraq alone, that the LOGCAP effort goes beyond that scope?

Mr. BOLTON. It certainly goes beyond what we initially intended.

Chairman LEVIN. Not just intended, but what the contract provided for: Up to 50,000.

Mr. BOLTON. The reason I'm hesitating is that scope has a very definite legal interpretation, and I would be stepping out of my lane to say we are operating on a contract that's beyond scope. I don't believe that to be the case. But I'd have to take that for the record to get the legal opinion.

[The information referred to follows:]

The contract was not modified, did not need to be modified.

Chairman LEVIN. Okay, you would, then, agree that the contractor is being, presumably, paid to support up to 150,000 troops in Iraq. You'd agree to that much.

Mr. BOLTON. Oh, yes, sir.

Chairman LEVIN. Would you agree that the contract says that the purpose of the contract, or the scope of the contract, is for the contractor to provide for support—and I'm reading this—for up to 50,000 personnel in Iraq? Would you agree to that?

Mr. BOLTON. At one time, that's true.

Chairman LEVIN. Was the contract modified?

Mr. BOLTON. I believe it was, but I'd have to check. I'd have to take that for the record.

[The information referred to follows:]

No. The 50,000 figure is mentioned only in the scope of work under planning requirements. This specifically relates to the upper limit the contractor should use in developing a written contingency plan for the Worldwide Management and Staffing Plan, and does not establish the scope of the whole contract. Clause B.2 of the contract relates to the scope of contractor support in actual operations. It states the Government's maximum level of support required on the contract shall not exceed the equivalent of two Major Regional Conflicts plus one small scale contingency per year for the life of the contract. The contractor's support of troops in Southwest Asia is within the scope of the contract.

Chairman LEVIN. General Johnson, was the contract modified?

General JOHNSON. Sir, the contract was not modified, did not need to be modified.

Chairman LEVIN. All right.

General JOHNSON. The 50,000 was for the planning effort. That's what they formulated their plan on, for up to 50,000. The requirement for the contract supported the Army's strategic plan for two regional major contingencies, which obviously would equate to more than 50,000 individuals. The 50,000 was a planning figure that they always had to be prepared to execute.

Chairman LEVIN. I understand. So, you're saying that the statement of work in the LOGCAP contract itself is not what I'm reading from the LOGCAP contract, which is "Contractor may be required"——

All right. Let me read you the piece of the contract that I'm referring to, "Contractor may be required to increase support for up to 50,000 personnel per event," which means Iraq. Is there a different part of the contract you're referring to?

General JOHNSON. The execution phases of the contract requires the contractor to be able to execute operations for two major contingencies in accordance with the Army's strategy.

Chairman LEVIN. All right. You'll get us the language, then, in the contract, which you say supercedes this limit of 50,000?

General JOHNSON. Roger, sir. We'll provide you what's necessary to show you the total effect.

[The information referred to follows:]

Clause: B.2. The Government's minimum requirement is the Worldwide Management and Staffing Plan including the Army Transformation Annex, which includes CLINs 0001AA, 0001AB, and 0001AC. While the locations and types of support required in a given year may be varied and may include a mix of Major Regional Contingencies (MRCs), small scale contingencies, or other efforts identified in the SOW, the Government's maximum level of support shall not exceed the equivalent of two MRCs plus one small-scale contingency per year for the life of the contract. All contract requirements will be awarded by individual task order.

Chairman LEVIN. All right.

According to a February 2005 DCAA report, KBR entered into a sole-source, cost-plus subcontract with Navigant Consulting. Is that a familiar contract to either—okay. Here's what it did. It's a sole-source, cost-plus contract with Navigant Consulting to "obtain advice and assistance regarding Federal Government procurement requirements and procedures." That's in quotes. The report questions whether the costs of this subcontract were reasonable. Are you familiar, Mr. Reed, with the DCAA report on Navigant?

Mr. REED. Not in great detail, but generally, with that summary, yes, sir.

Chairman LEVIN. All right. Is it fair to say that they entered into a contract with a subcontractor to advise them as to whether or not they—relative to requirements and procedures—is that fair?

Mr. REED. That's my understanding, yes.

Chairman LEVIN. All right.

Now, why are we paying a contractor to pay somebody to give them assistance regarding Government procurement procedures? Why is that appropriate? Why is that within the scope of the contract? As a matter of fact, is it?

Mr. REED. It's not so unusual, I believe, for Government contractors to use different types of expert consultants, be they legal, contracting, or whatever. I guess the question is, was it appropriate in this particular circumstance?

Chairman LEVIN. All right. Was it? Did you find it was?

Mr. REED. I would have to go refresh my memory of that audit-report language.

Chairman LEVIN. Okay. Do you know whether or not they would earn a fee on that subcontract?

Mr. REED. Yes, they would.

Chairman LEVIN. So, they are hiring somebody to advise them on meeting the requirements of our procedures, our Government procurement procedures. The more that they pay someone to advise them on what, presumably, they knew when they entered into the contract, the more they make, because they get a fee based on what they pay contractors. Is that as absurd as it sounds to me?

Mr. REED. I think, in some circumstances, we might actually have encouraged them to seek additional professional help, given the problems we—

Chairman LEVIN. To meet our requirements.

Mr. REED. To meet our requirements, because of their own lack of capability and deficiencies in their business systems—they, themselves, had told us that they did suffer, at times, from inexperienced people. They promised us to get more help to—

Chairman LEVIN. Didn't they promise to meet those requirements when they got the contract?

Mr. REED. Yes.

Chairman LEVIN. That's a promise they made to us when we entered into the contract.

Mr. REED. Yes.

Chairman LEVIN. When they don't meet those requirements, and they hire a subcontractor to advise them on that, they even make a fee on that.

Mr. REED. That's correct.

Chairman LEVIN. Something's wrong here, folks. You can't have a contractor that promises to do something, not do it, hire somebody to advise them what they should do, and then make money on their failure to do it. They're making a profit on their own failure. It's intolerable.

I don't think anyone disagrees with that, so—if anyone disagrees with that, why don't you say you disagree.

Mr. BOLTON. I wouldn't say we would disagree.

Chairman LEVIN. You do, okay.

Mr. BOLTON. No, I would say we would not disagree.

Chairman LEVIN. Okay.

Mr. BOLTON. But, I think, as Mr. Reed's already pointed out—and if you go back to when the Government accepted the bid as the winner in this proposal, we were looking at this—and I'm sure the contractor was, too—as another LOGCAP short-scope contingency. We have the expertise. When we evaluated them, said, "Yes, this person has the expertise," we have escalated way beyond that. My opening statement said that as well, that we had stretched and stressed Government, as well as contractor, capabilities. So, it doesn't surprise me that the contractor is looking for additional expertise. Now, what we need to do—and I think this is—your original comment—is to find out whether or not that's really justified.

Chairman LEVIN. General Johnson said that the contract required them to be prepared to provide this service for two major contingencies. So, Secretary Bolton, it's not acceptable, if what he says is accurate, that you continually use the excuse that this was intended to be just a short-term provision of services. It's one or the other.

Mr. BOLTON. No, I don't know if I can follow your comment, or your question.

Chairman LEVIN. Then let me try again. General Johnson said that, no, the contract didn't just say 25,000 or 50,000, it says whatever was required for two major contingencies. You're now saying that, no, it was intended for something that would be just short-term and few people. It's one or the other.

Mr. BOLTON. No, you can actually have both. You can have two major contingencies going on that are—

Chairman LEVIN. Both short-term?

Mr. BOLTON.—that are short-term.

Chairman LEVIN. I see.

Mr. BOLTON. But when they get protracted for several years, I really do think you need to look at things differently, which we're trying to do. Mr. Chairman, I think that's where you're trying to drive us.

Chairman LEVIN. I was trying to drive you there 2 years ago, without success.

Mr. BOLTON. Yes, sir.

Chairman LEVIN. Senator Martinez.

Senator MARTINEZ. Mr. Chairman, thank you very much, sir.

I have just a couple of questions. I guess I should ask General Johnson, in the light of all of these problems—and I noted, in your testimony, you indicated some of the things that were done in improvements. But having come a little late, I wondered if you can restate for me what is the way forward here, how are we making improvements, how will the mistakes that have been made not be repeated?

General JOHNSON. Yes, Senator.

Weaknesses that we noticed, that we found in KBR, or the contractor, early on, included—it was really with the entire program, the process, requirement escalation, uncontrolled, not centralized, not validated appropriately. The contractor's business systems were not capable of expanding to handle the volume of workload, dollarswise, personnelwise, cost-estimationwise, to provide us the information we needed. There was fraud that had occurred in the system, in the contractor's efforts.

We instituted several actions to take control of that and try to fix the problems that had occurred. Oh, and, additionally, at the time that I took command, we had 55 task orders worth about \$14 billion that were undefinitized. I assume you know what "definitization" means.

Senator MARTINEZ. No.

General JOHNSON. Okay. What that means is that we had not properly structured the statement of work to say specifically what the contractor was responsible to do. So, and it goes back to, probably, the comments about the contractor taking on a workload and giving himself a workload. Without a definitized contract, if he's asked to do something in support of a commander, he may elect to do that, because there are not the parameters in the process that should be. We had 55 of those that we had to work through.

Award Fee Boards had not been conducted at all. Now, that's to the contractor's credit, and we need to give them credit for executing this program for more than a year without an Award Fee Board, and carrying, on their own books, a total of about \$1.1 billion worth of Government bills, and continuing to execute. Accounting for property was not where it should have been. As I mentioned earlier, fraud.

The actions we took—and, frankly, this was with Mr. Bolton's help, Mrs. Ballard, and these gentlemen at the table, because when I took command and we started identifying these, of course, as with any military process or Government process, you have to validate the reasons why you need people, why you need the resources that you're asking for. By asking the DCMA, the DCAA, and the AAA to go in the field and look at these, they began to validate the prob-

lems that I just mentioned to you. But we didn't wait for that to start taking action.

We appointed a senior contracting official, Jim Loehrl, who eventually was promoted to SES and became the LOGCAP director to run the program. We established a requirements review process, in conjunction with the field, and, later on, with the help of AAA's recommendation to General Casey, a Requirements Board, and a division was set up inside the Multinational Force-Iraq over there, to help scope the requirements.

We took KBR to task, establishing a process to review their business systems over and over. To the credit of DCMA and DCAA, they've brought those business systems to an acceptable range. Frankly, that's what stuck us with giving them a fairly high award fee. I was not comfortable with it, but the fact is, their business systems were acceptable, and their technical and managerial performance in executing the mission in the field, frankly, was as close to flawless as you could have for a contractor. We couldn't argue that. So, given the procurement rules, they earned their award fee; it was not given to them. In fact, on each one of the Award Fee Boards, Mr. Loehrl went to theater more than 11 times, he sat down with commanders. Before the award-fee approving official signed the letter, I reviewed it. I made personal phone calls and visits, myself, to the field. Most of the negative comments about KBR, frankly, came from our own personal staff about their accounting systems and their contracting processes, but it was that they were unacceptable, they just weren't where we had wanted them to be.

To the credit of Bruce Stanski, when we leaned on him pretty hard, he replaced his entire mid-level management, to include some senior vice presidents, so that we would have a much better relationship and a more responsive organization to our requests.

We completed definitization, with a lot of help from Mrs. Ballard. I called her the "Lady with the Chains." She beat us until we got it done. We finished that up between November 2004 and March 2005, and got those definitized. In the process of doing that, with the help of Mr. Reed's folks, we looked at the DFAC's problems, where the costs had been inflated. We negotiated down to a point—and we used our should-cost analysis, our own independent Government estimates, to determine what we were going to pay KBR, and we disallowed \$55 million of the costs. That's just the way that went.

We currently have in process about—we've had to spend the costs of over \$288 million as a result of those audits. We've disapproved that \$55 million. We've only allowed \$183 million of the \$288 million. We're giving them the opportunity to go out and provide the appropriate justification that will meet the audit standards to pay them. If they don't do it, we'll use our own independent Government estimate to determine what they should be paid, or not.

We have completed the Award Fee Board process, as I mentioned. We established property controls. We established a board to manage contractor-acquired property. That board decides where the property will go, because, in many cases, as was mentioned earlier, KBR bought excess property. What had happened, frankly,

early in the process, military commanders said, "I'm going to do this." Of course, we had political decisions that reversed some of those more aggressive actions that they were going to go take, and they had bought property and trucks to execute those missions, and, of course, they were excess. Because of task orders, moving equipment or personnel from one task order to another, it's like moving equipment or personnel from one contract to another, it requires an accounting system that works, it requires changing the plans, and so forth. KBR was trying to get their business systems acceptable, so they were reluctant to do that, because every time they did it, it would cause more problems, and we'd put them back to task.

As a result of that, what we did was collapse many of the task orders that were supporting the forces into a major task order. We started that out with 59. That evolved to 89, and now 139. What that allowed them to do was have all of that capability on one task order, so moving people around became very easy to do, so we wouldn't have an overage on one task order and a shortage on another task order of personnel and equipment. We do that with the Requirements Board and the contractor—the Equipment Board.

Of course, to the credit of good people on the ground—Paul Cerjan, Remo Williams, and other folks—they identified to us, even before it became public knowledge, that they had some individuals who had committed fraud and criminal activity. When they did that, we engaged the Criminal Investigation Division of the Army, verified those, and we took those folks to task. Four out of six have been indicted, and four out of the six have been convicted. Again, we created an "Alpha Contracting" process, we call it, where we bring the requiring activity in theater, the contracting officer, the DCMA, the DCAA, and we bring all those folks into a room together, because we're having these estimating-system problems in estimations from KBR that were, frankly, where they were trying to meet commanders-in-the-fields' requirement probably more than they should have. We come up with agreements on the price. That has saved us, in fiscal years 2004/2005, the estimated cost as \$10 billion to execute the operations in Iraq. We got that down to \$4 billion.

Senator MARTINEZ. From \$10 to \$4 billion?

General JOHNSON. Yes, sir.

Senator MARTINEZ. I know my time is expired, but I'd just like a quick question here.

At some point, you went to a fixed price on the subcontracts, from a cost-plus basis?

General JOHNSON. That's correct.

Senator MARTINEZ. When was that?

General JOHNSON. That was after we finished the definitization process, and we did the independent cost estimates for the DFAC. What we found, that we would be better off with a fixed price, and we negotiated that with KBR and got it done.

Senator MARTINEZ. Has that realized in cost savings, as well?

General JOHNSON. Yes. I think DCAA said around \$200 million—Mr. Reed?

Mr. REED. Yes, that's correct.

Senator MARTINEZ. My time is expired. Thank you very much.

Chairman LEVIN. Just to fill in one blank that I didn't get on Senator Martinez's question, when was that change made? What year and month?

General JOHNSON. For the fixed-price piece?

Chairman LEVIN. Yes.

General JOHNSON. That was, what, March?

Mr. REED. December.

General JOHNSON. December?

Chairman LEVIN. Of what timeframe?

Mr. REED. December-March timeframe, I think.

General JOHNSON. Right, when we were doing the definitization.

Chairman LEVIN. Of what year?

General JOHNSON. 2004—early 2005, I think.

Mr. REED. 2005.

General JOHNSON. Yes, that's right.

General JOHNSON. Early 2005.

Chairman LEVIN. Thank you.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman. I have to preside at 1 o'clock, so I'll be short.

Anybody on the panel, the auditors or the other witnesses, are any of you ever aware of any punishment that a contractor has received for instructing their employees not to tell about waste, fraud, and abuse? Any punishment for retaliation against a whistleblower that works for any of these contractors? [No response.]

None? [No response.]

Are you aware of any investigations that have been undertaken concerning protecting the whistleblowers? Not Government whistleblowers that work for the Government, but whistleblowers that work for these contractors?

Mr. REED. I would speak of one issue. Certainly, if we needed to interview employees relevant to an audit that we were conducting, and those employees were not made available to us to answer our legitimate and reasonable questions, then we would certainly disallow those costs and not reimburse them, and perhaps even take some other action, like referring it for investigation.

The more difficult issue is, I think, when you want a general availability to people which is not tied to a specific audit in question, where you get this—you can't really dispute the fact that they caution their employees, who they feel may not understand the issues and the facts correctly, to go through the proper channels of their management to talk to us.

Senator MCCASKILL. There is a law on the books about protection of whistleblowers that work for contractors. Is there any requirement in any of the contracts that you all are involved in that law, along with a promise of anonymity and a phone number, be given to every employee hired by that contractor?

Mr. REED. I don't know if that's a provision of this particular contract, or—

Senator MCCASKILL. Don't you think that would be a great idea?

Mr. REED. It's the law, so—and I'll tell you, we have 20 ongoing investigation, criminal types; half of those are the result of the whistleblower. They are protected.

Senator MCCASKILL. They're the best. Having done this for a while, the very best information you get—and particularly in this environment, because I refuse to believe that many of the people hired by these companies aren't Americans first, just like all of you are. When they're over there, and they're watching trucks being burned, and they're watching people sitting around doing no work, they want to tell someone, because they're not making the plus on the cost-plus. They want to tell, and I want to know, are they handed a card when they go to work for this contractor under these contracts that they can put in their wallet that says, "You are protected under the law, your anonymity will be protected, it would be—your boss would be punished, and here is a number you can call"—is that happening right now with our defense contracts?

Mr. BOLTON. I don't believe so, but I'll take that for the record. [The information referred to follows:]

The Federal Acquisition Regulation (FAR) Subpart 3.9—Whistleblower Protection for Contractor Employees implements 10 U.S.C. 2409 and 41 U.S.C. 251. This allows any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against may file a complaint with the Inspector General of the agency that awarded the contract. FAR Subpart 3.9 also addresses the procedures for investigating complaints and remedies. The maximum penalty for violation is complete compensation for damages to the employee. This can include rehiring, back pay, employment benefits, attorneys' fees, or other fees that were lost or otherwise reasonably incurred by the whistleblower throughout the course of bringing the complaint regarding the reprisal to the head of the agency. Defense contractor employees seeking whistleblower reprisal protection must report allegations directly to the Department of Defense (DOD) Inspector General (IG). There is no known requirement provided in the contracts that would require contractors to provide written notice of whistleblower protection to its employees. However, the Defense Federal Acquisition Supplement Subpart 203.7002, requires the use of a clause (252.203-7002) in solicitations and contracts expected to exceed \$5 million, except when performance will take place in a foreign country. Clause 252.203-7002 (Display of DOD Hotline Poster) requires the following:

(a) The contractor shall display prominently in common work areas within business segments performing work under DOD contracts, DOD Hotline Posters prepared by the DOD Office of the Inspector General.

(b) DOD Hotline Posters may be obtained from the DOD IG, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22262-2884.

(c) The contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

Therefore, through the use of the above clause, contractor employees should have visible access to the DOD IG hotline phone number for reporting fraud, waste, abuse, mismanagement, and reprisals.

Mr. BOLTON. Again, I'll say, not only this contract, since we're talking to LOGCAP, we've had several criminal investigations—and General Johnson mentioned 4 of those—the 20 that are ongoing right now—and there may be more—half of those are because of the whistleblower.

Senator MCCASKILL. Right

Mr. BOLTON. They are protected. So, people do know about it.

Senator MCCASKILL. But we've heard from whistleblowers—I think you heard Senator Dorgan talk about it—that were banished to Fallujah, that were told that they were not allowed to do this, or they would be terminated, or they would be punished. It's bad enough, hard enough, I mean, we heard the story of the Government employee who's been demoted after being a whistleblower—it's hard enough for us to protect the whistleblowers that work for

the Government. Is it one step removed and much more difficult to protect whistleblowers that work for a private contractor. I think if we want that flow of information, and if we're serious at all about holding down costs under these circumstances, particularly in these environments, I think we have an affirmative duty to make sure that every one of those employees understands that they're protected and how much we would appreciate knowing the waste, fraud, and abuse that they are witnessing, day in and day out.

Frankly, I haven't even had time today to talk about the stories I've heard from my friends who have come back from over there. The unit where the people that were trained on food service were told that what they were supposed to do at times of meals—they took turns—some of them sat around, but some of them took turns standing at the door just doing the counter for KBR. Now, they were trained to work in the kitchen, they were trained to be cooks, but, instead, what they did is they stood outside the door of the dining facility with a counter, and their job was to make sure KBR got all the money they were entitled to.

Now, I haven't even had time to get into all that, but I do think the protection of these whistleblowers in the private sector is something that we are ignoring. I don't think we're taking it seriously enough. I would certainly appreciate it—and I'll follow up with this, and I hope the committee will follow up with this, with Secretary Gates—it wouldn't be hard to do this, to require our contractors to give that information to everybody who works for them.

Mr. ERNST. Senator, could I make a comment, please?

Just for a point of reference, DCMA, we have a Contract Integrity Center, and we do annual fraud awareness and things of that type, and whistleblower protection, for our folks. It's interesting that periodically we do get hits on our Web site from contractor employees raising issues. Of course, we refer each hit to the appropriate authorities at that point in time when it comes in.

Senator MCCASKILL. I bet there's a lot more out there. But think about how you feel. You're working for this private contractor, they're paying your salary, you're not sure what's going to happen to you if you say anything. I think that the environment is not conducive for us getting the best information. We can save, I think, hundreds of millions of dollars if we just take that simple step, letting them know that they're protected, and then following up and protecting them if there's a retaliation. I'm hopeful that we will follow up on this hearing for this Government employee that was demoted, because if we don't hold people accountable that demote whistleblowers, we're in a world of hurt. Frankly, after this hearing, I will tell you, I think we're in a world of hurt, and I can understand why the DOD has been on the GAO high-risk list since 1990.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

I just have one additional question, and then I'll call on Senator Thune to see if he has any additional questions.

This is to you, Mr. Reed. In your prepared statement, you state that the DCAA audits of Iraq contracts have recommended reduc-

tions in the proposed LOGCAP contract of about \$1.9 billion, there was excessive billings of \$1.9 billion. Does that sound right?

Mr. REED. The \$1.9 billion is the correct amount, it includes both billings and proposed costs.

Chairman LEVIN. All right. So, that \$1.9 billion in costs that have been billed and proposed costs, both.

Mr. REED. That's correct.

Chairman LEVIN. Okay. Now, the negotiated price reductions have been \$600 million, is that correct?

Mr. REED. That's correct.

Chairman LEVIN. Which leaves \$1.3 billion which has either been paid or is still at issue. Is that correct?

Mr. REED. That's correct.

Chairman LEVIN. Of that \$1.3 billion, how much of that has already been paid, approximately?

Mr. REED. Let me see if I can—if I may restate, just for a moment, to get it straight in my own mind. Of the \$1.9 billion, \$1.1 billion has been negotiated.

Chairman LEVIN. Does that mean paid?

Mr. REED. Yes.

Chairman LEVIN. Okay.

Mr. REED. Or allowed in the price—

Chairman LEVIN. Or allowed?

Mr. REED.—and ultimately—

Chairman LEVIN. It would be—it's allowed.

Mr. REED.—and, ultimately, to be paid.

Chairman LEVIN. Okay. To be paid, or has been paid, \$1.9 billion.

Mr. REED. That's correct.

Chairman LEVIN. Okay.

Mr. REED. So, of the \$1.9 billion, \$1.1 billion has been negotiated, of which—

Chairman LEVIN. Well, don't—

Mr. REED.—\$600 million—

Chairman LEVIN.—say “negotiated,” if you don't mind. Use the word that is more accurate for us, which is—

Mr. REED. Accepted.

Chairman LEVIN.—it's accepted, it's allowed.

Mr. REED. Accepted.

Chairman LEVIN. Okay. Yes.

Mr. REED. \$1.1 billion has been resolved. They've allowed \$500 million, and disallowed \$600 million of that \$1.1 billion. No?

Chairman LEVIN. I don't think so, not according to our numbers.

Mr. REED. Perhaps I should submit that for the record, because I—

Chairman LEVIN. No, I think we ought to go—

Mr. REED.—think we're getting all—

Chairman LEVIN.—through it now.

Mr. REED.—confused here.

Chairman LEVIN. Let's go back to the \$1.9 billion you have recommended should not be allowed. Start with that.

Mr. REED. Okay.

Chairman LEVIN. You've recommended \$1.9 billion be disallowed. Is that correct?

Mr. REED. We started off with \$1.9 billion that we said—
Chairman LEVIN. You've recommended that should be disallowed.

Mr. REED. It should not be accepted in prices or paid.

Chairman LEVIN. Right. It should not be accepted, \$1.9 billion.

Mr. REED. Right. Of the \$1.9 billion—

Chairman LEVIN. How much has been paid or allowed? \$1.1 billion—that's what you just said, I think.

Mr. REED. I believe what I'm saying is, to the best of my recollection, of the \$1.9 billion, \$1.1 billion of those exceptions have been addressed, and \$600 million of the \$1.1 billion has—

Chairman LEVIN. No, of the \$1.9 billion—

Mr. REED.—not been allowed.

Chairman LEVIN.—of the \$1.9 billion.

Mr. REED. Of—\$700 million of the \$1.9 billion is still outstanding.

Chairman LEVIN. Okay. Here we go. \$700 million is still outstanding.

Mr. REED. Right.

Chairman LEVIN. \$600 million has been—is not going to be allowed—they've agreed would not be paid, and—

Mr. REED. Okay, but—

Chairman LEVIN.—one-point—

Mr. REED.—may I—let me just take one more shot.

Chairman LEVIN. Go ahead.

Mr. REED. Okay. We started with \$1.9 billion of exceptions.

Chairman LEVIN. Which you've recommended should not be paid.

Mr. REED. Which we recommended should not be paid.

Chairman LEVIN. Right.

Mr. REED. Negotiations have taken place. Issues have been resolved on \$1.1 billion of those exceptions—

Chairman LEVIN. Okay.

Mr. REED.—leaving \$800 million still to be addressed.

Chairman LEVIN. Okay. Of the \$1.1 billion that has been resolved, how much has been resolved in favor of the contractor, how much resolved in favor of the Government?

Mr. REED. In favor of the Government, \$600 million—

Chairman LEVIN. Okay.

Mr. REED.—of the \$1.1 billion—

Chairman LEVIN. Yes.

Mr. REED.—has been sustained—

Chairman LEVIN. Okay.

Mr. REED.—as a disallowance.

Chairman LEVIN. Right. That leaves \$500 million has been allowed.

Mr. REED. Correct.

Chairman LEVIN. Okay. Got it.

What is the normal average typical resolution of these recommendations of yours to disallow costs? Does it typically come out around two-thirds?

Mr. REED. Yes, it does. Over time, and in hundreds of reports, it comes out to about two-thirds.

Chairman LEVIN. About two-thirds. So far, it's about 55 percent has been—

Mr. REED. Approximately, yes.

Chairman LEVIN. So far, in terms of what's been resolved, these disputed, it's below the long-term average, in terms of the Government prevailing.

Mr. REED. Yes, but I would caution that when you compare an average over—

Chairman LEVIN. I agree.

Mr. REED.—over years, with one specific action—there's a lot of variability in these—

Chairman LEVIN. I understand.

Mr. REED.—settlements and individual actions.

Chairman LEVIN. I'm sure—these are a lot of individual actions in this \$1.9 billion, is it not?

Mr. REED. Yes.

Chairman LEVIN. Okay.

Senator Thune.

Senator MARTINEZ. No—

Chairman LEVIN. I'm sorry, Senator Martinez. Forgive me. Mel, I apologize. I'm so used to seeing John Thune there for the morning, I called on Senator Thune.

Senator Martinez.

Senator MARTINEZ. Not a problem, sir. Thank you, but, no, I have no further questions.

Chairman LEVIN. Thank you.

Okay. I want to thank our witnesses for a number of things. Obviously, this is a hearing which is a very, very important hearing, going into a contract which has been a matter of huge concern because of the lack of competitive pricing which results from this contract going to one contractor instead of to multiple contractors who would be able to provide some competition when it comes to the tasking orders, which is what counts.

We've gone through, this morning, facts that show that the costs which have been—and the estimated costs by this contractor which have been provided to the Government have been overstated, overpriced, inflated, that there's been waste of taxpayers' dollars, and there's been unsupported claims by this contractor.

Obviously, this is a very disturbing situation. Many of you have spent a good deal of time trying to correct it. We thank you for those efforts to correct these flaws. We thank you for your efforts to provide services to our troops at a fair cost.

But we still have, with this contract, what I am afraid has been true, which is, they've gotten treatment which they should not have been given, which was too favorable when it comes to what they've been allowed, what they've been allowed to get away with, and what they've denied us, which is the documentation so that we can do the proper auditing in a prompt fashion. So, we end up by saying we're not going to end here, by a longshot.

To each of you, and to your agencies, you've been cooperative with the committee, and we thank you for that. To each of you, those of you, particularly, who have devoted so much of your time to try to straighten this out and to try to get a fair deal for the Government, we are grateful to those of you who have spent a great deal of your time in doing that.

To those, particularly in your agencies, that are out there on the front line and—we commend them for their willingness to take those risks. We know that the provision of the services themselves has been not only satisfactory, but, in many cases, exemplary out in the field. We've witnessed that ourselves in our visits.

But what we also have witnessed is something which is totally unacceptable, and that is overcharging, overpricing, overstating, inflated costs for services which are good services, but still, because of the costs which they've charged us, we cannot accept that, even for a good service. If you get a good automobile and you're satisfied with it, you still don't want to be overcharged for that automobile, or anything else. It's inexcusable that we have a company that's tried to get away with it, and has gotten away with too much. At the same time, they and their people have provided, in many cases, services under very difficult circumstances.

Both things are true, and we're grateful for part of it, and we're very, very unwilling to accept the excesses and the abuses and the waste just because, in the process, our soldiers have been given some damn good meals under some very difficult circumstances.

So, that's where it sits. Senator Martinez, would you like to add a comment?

Senator MARTINEZ. Mr. Chairman, I think you adequately expressed a lot of the concerns and frustrations. I also believe that it's important for us to keep in mind the magnitude and scope of the project, which is enormous, and the length of time involved. So, I think, from that standpoint, it's also important to keep some perspective on the difficulty ahead, and thank all of the witnesses for their participation today and the work that they're doing on behalf of the American people and to serve our Armed Forces, and particularly those in harm's way.

Chairman LEVIN. Thank you very much, Senator Martinez.

We, again, thank our witnesses for their appearance and for their cooperation with this committee, which has been consistent. We will stand adjourned.

[The information provided by Senator Dorgan follows:]

KBR

Report Of Findings & Root Cause

Water Mission B4 Ar Ramadi

13May2005

Author: Wil Granger – Theatre Water Quality Manager

Contributing Author: Steve Outain – Theatre Water Manager

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1. SUMMARY

This document is the result of an investigation prompted by communications sent to Halliburton/KBR officials alleging personnel exposure to unfit water conditions at B4 Ar Ramadi. The cursory investigation was performed by William Granger (author) "Senior Technical Professional Leader" specializing in water quality and Kevin Pope "Theatre HSE Special Projects".

Causal factors indicated in this report identify program control deficiencies and guide early corrective actions as noted. The basic reason for investigating and reporting the cause of this event is to verify the occurrence of an event, and, in the case of such an event, enable the identification of corrective actions adequate to prevent recurrence and thereby protect the health and safety of KBR personnel, subcontractors, and the military client.

2. DEFINITIONS

Facility. Any equipment, structure, system, process, or activity that fulfills a specific purpose. Examples include storage areas, testing laboratories, and production or processing plants to include reverse osmosis units run by/or both Military and KBR.

Reportable Occurrence. An event or condition, to be reported according to the criteria defined in KBR corporate policies.

Occurrence Report. An occurrence report is a written evaluation of an event or condition that is prepared in sufficient detail to enable the reader to assess its significance, consequences, or implications and evaluate actions being employed to correct the condition or to avoid recurrence.

Event. A real-time occurrence that may be documented or not and is also anything that could seriously impact the intended mission of KBR.

Condition. Any as-found state, whether or not resulting from an event, that may have adverse safety, health, quality assurance, security, operational, or environmental implications. A rendition is usually programmatic in nature; for example, an (existing) error in analysis or calculation, an anomaly associated with (resulting from) design or performance, or an item indicating a weakness in the management process are all conditions.

Cause (Causal Factor). A condition or an event that results in an effect (anything that shapes or influences the outcome). This may be anything from noise in an instrument channel, a pipe break, an operator error, or a weakness or deficiency in management or administration. In the context of this document there are seven major cause (causal factor) categories. These major categories are subdivided into a total of 32 subcategories (see Appendix A).

Causal Factor Chain (Sequence of Events and Causal Factors). A cause and effect sequence in which a specific action creates a condition that contributes to or results in an event. This creates new conditions that, in turn, result in another event. Earlier events or conditions in a sequence are called upstream factors.

Direct Cause. The cause that directly resulted in the occurrence. For example, in the case of a leak, the direct cause could have been the problem in the component or equipment that leaked. In the case of a system misalignment, the direct cause could have been operator error in the alignment.

Contributing Cause. A cause that contributed to an occurrence but, by itself, would not have caused the occurrence. For example, in the case of a leak, a contributing cause could be lack of adequate operator training in leak detection and response, resulting in a more severe event than would have otherwise occurred. In the case of a system misalignment, a contributing cause could be excessive distractions to the operators during shift change, resulting in less-than-adequate attention to important details during system alignment.

Root Cause. The cause that, if corrected, would prevent recurrence of this and similar occurrences. The root cause does not apply to this occurrence only, but has generic implications to a broad group of possible occurrences, and it is the most fundamental aspect of the cause that can logically be identified and corrected. There may be a series of causes that can be identified, one leading to another. This series should be pursued until the fundamental, correctable cause has been identified.

For example, in the case of a leak, the root cause could be management not ensuring that maintenance is effectively managed and controlled. This cause could have led to the use of improper seal material or missed preventive maintenance on a component, which ultimately led to the leak. In the case of a system misalignment, the root cause could be a problem in the training program, leading to a situation in which operators are not fully familiar with control room procedures and are willing to accept excessive distractions.

3. Occurrence Data Collection

The initial collection of data for this report occurred >35 days after the signifying event (alleged larvae). This considerable length of time allowed for the apparent loss of significant data from the local site. This loss is attributed to demobilization and/or termination of key personnel, the loss of hard drives, and a general disregard for data creation. Investigators made medium efforts to retrieve data from before, during, and after the occurrence to include personnel involvement. A level of medium effort was used as this investigation was defined as a "fact finding" mission and not the definitive legal summary of the occurrence and subsequent impacts. With that understanding, written statements, data mining, digital forensics, recordings, inquiries into military logs, and access to military personnel was very limited or not initiated.

4. Report of Findings

Summary of Occurrence:

KBR personnel allegedly discovered unidentified larvae in a commode at B4 Ar Ramadi on 23 March 2005. Initial investigation by a water purification operator (Ben Carter) found that the camp's non-potable water system showed no free chlorine and believed that the system had been contaminated and that the immediate actions taken should include disinfecting the camp's non-potable water distribution system. Additional deficiencies to system configurations were noted and those deficiencies were corrected in a timely manner. These deficiencies were the lack of chlorination pumps, an open manway to tank, and vertical vents turned upward to environment. It would appear that the personnel immediately notified were the site Harold Orr - HSE Supervisor, Suzanne Raku-Williams - Site Manager - and the site ROWPU foreman-Walter Myers

The system was taken out of service for a period of 24 hours while the disinfection evolution was in progress. A safety stand down meeting was convened and all personnel were told at that time not to use shower water until told otherwise. The system after 24 hours was declared safe and was returned to service. After that regular chlorination of the system continued for an unspecified amount of time. The termination of regular chlorination is believed to be tied directly to the demobilization of the water purification operator (Ben Carter) who had taken "ownership" of the practice. At that time (est 07 Apr 2005), exposure to non-disinfected non-potable water continued. The exposure was still in progress when the investigating team showed up on site to collect data for this report. Upon receipt of the lab analysis initiated by the investigating team, recommendation to commence chlorination immediately was made to both "B" site DPM's.

The initial incident report is attached and located in section 7.

Points of interest:

- Key personnel missing during this signifying event is the current KBR waterpoint supervisor and the medic who were both on R+R.
- KBR waterpoint was not commissioned at the point of the signifying event or subsequent identification by the investigating team.
- Water supplied to KBR camp came from Army 3k ROWPU via subcontractor.
- In the interim between the Larvae event and the investigating team arriving on site, the camp manager and chief of services were terminated and replaced.
- In the interim between the Larvae event and the investigating team arriving on site, the Acting Lead Rowpu operator demobilized.

Problem Identification:

The alleged discovery of unidentified larvae in an LSA toilet at B4 Ar Ramadi in late March immediately revealed:

- **No disinfection to non-potable water was occurring for water designated for showering purposes. This caused an unknown population to be exposed to potentially harmful water for an undetermined amount of time**

The approximate beginning date of the exposure to personnel has not yet been established. Military records would most likely determine the start date of such an exposure, as long as records were kept and appropriately taken. The very minimum time of exposure would be 6 weeks less 15 days (the time that recovery efforts were made then subsequently dropped). The maximum amount of time of exposure would be concurrent with the establishment of the water mission by the Army.

The number of personnel exposed has not yet been determined. This is in part due to not having established the duration of the casualty. Realistically, all personnel having showered during the established dates of exposure (to be determined) would have been exposed. This would include all base camp personnel (military and civilian) and would include transients to the camp who showered using the non-disinfected water.

The subsequent investigation revealed that while the exposure to personnel was valid, the effects of exposure seemed to be negligible if any. Documentation of medical visits during the timeframe shows no deviation in number of medical visits by either expats or subcontractors. The medical facility onsite maintained an average number of 16 visits per month. No abnormal numbers of gastrointestinal symptoms or rashes were documented.

The consequences of this particular event are understood to be minimal at the time of this report. The greatest impact will be realized if documentation of chronic related sicknesses surface or if this matter is brought to arbitration or litigation. **This event should be considered a "NEAR MISS" as the consequences of these actions could have been VERY SEVERE resulting in mass sickness or death.**

The likelihood of recurrence of a similar event is considered high if no actions to correct widespread program deficiencies are taken. The deficiencies of the camp where the event occurred is not exclusive to that camp; meaning that country wide, all camps suffer to some extent from all or some of the deficiencies noted.

Within B4 Ar Ramadi there existed several contributing causes to the event.

- Lack of procedure defining roles and responsibilities when receiving outsourced water.
- No training provided to key individuals
- Inadequate documentation control
- Work organization deficiency
- Inadequate technical oversight
- Improper resource allocation
- Policy not adequately defined, disseminated, and enforced

Contributing Cause Definitions:

Lack of procedure defining roles and responsibilities when receiving outsourced water.

The circumstance where KBR was receiving water from the Military was an abnormal situation not clearly defined in any procedure or administrative guideline. Such documentation would have defined roles and responsibilities in regards to the disinfection of the water intended for shower use. The military was unaware of the intended use of the water being delivered to KBR. The uses could vary from making concrete, dust abatement, car washes, or well drilling. The military most likely assumed that KBR would disinfect the water if they used it for an application that required disinfection (such as showers). Local KBR management was either unaware of the requirements concerning shower water or assumed the military would disinfect the water.

No training provided to key individuals.

The event revealed that possibly only one person on the camp was aware of the governing documents that determined the disinfectant requirements of shower water; a letter from Ben Carter to camp management offering a corrective action to the event determined this to be most likely. The realization that only one person was in the "know" creates vulnerability to an organization in that human error prevention techniques recommend one or more subject matter experts be allowed to interact in the decision matrix to ensure the qualification, validation, and verification of proposed evolutions are fundamentally sound in nature. Simply put, this is called a "peer check". There was no one to countermand or validate the corrective actions put in place. While Ben Carter's immediate actions were well intended, there were some instances where he was wrong in the interpretation of regulations and not correct in his shock treatment of the camp distribution main. A peer check by another trained individual at this point would have beneficial to the organization.

Additionally, this letter shows direction and information flowing upward through the organization rather than downward. It has been demonstrated that Project Managers rely on their DOL's to run their services. DOL's rely on their waterpoint supervisors. There are no formalized training programs in place for any ROWPU operators in Iraq. Formalized training is defined as a documented On The Job Training / Task Performance Evaluation (OJT/TPE) process to include training records and guidance involving the LOTD, SOW, SOP's, standardization efforts, and regulations concerning the process that they are involved in.

Theatre wide there is no formalized training for anyone at any level in concerns to water operations.

Inadequate documentation controls.

The investigation revealed that little to no documentation had been generated or retained in regards to water inventories, chemistries, audits, QA/QC, meetings, safety stand-downs, procedures, or issues of standing orders.

This lack of documentation shows a lack of oversight and understanding as to the requirements necessary for the production, distribution, consumption, and uses of water; both potable and non-potable. Documentation is necessary to validate the quality of our services to prevent both liability and injury.

Could not find any record of:

- QA/QC performing any audit functions on the non-potable water system.
- Delivery times and quantities to the non-potable water holding tanks.
- Chlorine residuals for any water supplied to the non-potable water system.
- Preventative medicine filings or inspections in regards to the non-potable water system. Tanks inspected etc. Preventative Medicine should have these reports on file, but it is necessary for us to retain copies of these reports for liability purposes.
- SOP performance dates
- Minutes of Safety Stand Downs for time frame of the event or for earlier dates.
- SOP for water operations.
- Standing orders or special instructions issued in regards to water operations.
- Inspections of subcontractor's delivery vehicle stating it was acceptable and within specification to deliver waters.
- Logs showing alterations, modifications, or operator "work arounds" to non-potable system
- A "Procedure in Place" during an abnormal evolution. (Chlorination of the non-potable water system via submersible pumps)

Work Organization Deficiency

Leaning on semi-skilled labor

As stated in earlier sections, it has been demonstrated that Project Managers rely on their DOL's to run their services. DOL's rely on their waterpoint personnel to run their water operations. Within the camp structure waterpoint personnel are considered "subject matter experts" and are the focal point of decisions regarding water operations. It should be noted however that KBR has identified the ROWPU worker and associated department as "semi-skilled LABOR" and pays them as "Unskilled" in the KBR Compensation Classification Structure. This is an apparent conflict of logic and is a poor defense in litigation as we have essentially labeled our "Subject Matter Experts" as "Semi-skilled" and have paid them as "Unskilled".

Communication breakdown

The event that was submitted in a report to local camp management should have been classified as a recordable occurrence and communicated to senior management in a

timely manner. The primary awareness to this event came through threat of domestic litigation.

Inadequate Technical Oversight

Document Interpretation and collection

The generation of reports required should have been a monitored event by a managerial entity in the form of oversight. The absence of these reports from a centralized work center would have been an indicator revealing the non-performance of required documentation by a camp or camps. The current structure of management countrywide does not support the ability to identify sites with non-performance issues in regards to required paperwork. The identification of these deficiencies is only identified after a problem has occurred and this is considered "reactive" rather than "proactive".

Additionally, it should be noted that a centralized point of collection is not adequate in itself. The interpretation of the results, parameters, and specifications will ensure that the work has been performed satisfactorily, and that there are no indicators that are suspect to the work/ surveillance being performed. This requires knowledgeable oversight from the engineering and science fields.

Guided Response to Abnormal Events or Casualties

In the case of Ben Carter responding to the abnormal event, he identified the appropriate document to work from. He, however, did not interpret various readings correctly and did not properly sanitize the non-potable water system. While the effort to respond was noble, the action is not defensible in litigation, as procedure was not followed. Had there been a policy in place that required reporting of the abnormal event to an organization of with technical oversight, the event or casualty could have been mitigated in a timely manner with assurance that it was dealt with correctly. Furthermore, it would reassign the decision making during abnormal events or casualties from the least knowledgeable employees to an employee set that has been recognized for their education, expertise, and pay grade.

Improper Resource Allocation

It could be argued that the entire event could have been prevented had KBR water operations been fully commissioned and functional. The investigation revealed that Reverse Osmosis Units had been on site for a considerable amount of time without assembly and that this lead to the continued reliance on a non-KBR water production point.

Various interviews revealed a general consensus of a vote of "no confidence" toward the current waterpoint foreman. It was conveyed that he allegedly has resisted forward progress by consistently creating artificial barriers. It is believed that he does not want the waterpoint operational, as it would expose his weak knowledge base once it is operating. It was communicated that he is aggressively seeking a transfer as the waterpoint is nearing operational status. The time constraints of our investigation along with his absence from site for issuance of a new badge prevented a detailed inquiry into this allegation. A meeting with a subject matter expert from the Theatre Quality offices who spent considerable time on the site assembling the waterpoint conveyed strong doubts about the abilities of this individual. This matter was communicated to the DPM David Stallard for further observations on his part.

Policy not adequately defined, disseminated, and enforced

Adequate Definition

SOP 1M "Water Operations Standard Operating Procedure" states in section 1;

1.0 Purpose

KBR will provide management and oversight for all water operations, including production, testing, maintenance, troubleshooting, repairs, and reporting.

- There is no place in the procedure that discusses management roles and responsibilities, communication standards, oversight, or any classical hierarchy associated with business structure,
- Troubleshooting is not addressed in the procedure.

The section on Operations and Production is 199 words. This is supposed to be the definitive document on conduct of operations. It is assumed to be the definitive document as no other KBR procedures could be procured or found that detailed fully the operations and production methodology.

The section on testing does not mention standards and methodologies that are normally associated with laboratory analysis. It mentions only chlorine levels, pH, and microbiological testing. It makes no mention of the minimum 10 other parameters required for testing. Additionally it misstates the requirements for microbiological testing and acceptable pH ranges. The microbiological testing requirement stated is not acceptable as it is less conservative than the guidance given to us in our LOTD. The pH range quoted is more conservative than the LOTD parameters and thus should be designated within the procedure as an "administrative control".

The section on Maintenance and Repair states that all competencies will be developed by "on the job" training. KBR has no documented "on the job" training program for water operations and equipments.

The section on reporting states that KBR will maintain accountability of all water issued, produced, and received. The instruction does not define the "accountability" in terms of definition of reports to be generated, frequency, parameters, etc.

If B4 had been working from this procedure at the time of the event, then a more stringent definition would have been an indicator to them as to their deficiencies.

The last section of the procedure is the reference section. It is missing references clearly defined in our LOTD – Continuing Operations, DAAA09-02-D-007.

Dissemination

This procedure was not found at B4 Ar Ramadi so the adequate dissemination of this procedure is suspect. A more thorough investigation will have to be conducted to determine the breakdown in the communication of this document.

Enforcement

The enforcement of this procedure is to be done under an audit function of QA/QC. It would appear that this was not done at B4 Ar Ramadi.

5. Corrective Actions

B4 Ar Ramadi:

Immediate:

- After a disinfection of the camp distribution main as defined per appendix C TB Med 577, commence chlorination of non-potable shower water to 2.0-4.0 ppm. The minimum for shower water is defined as 1.0 ppm but placing a more conservative administrative control so as to ensure compliance reflects safe and conservative operations standpoint.
- Place placards on all points of distribution that are affected by non-potable water. The placard should read "NONPOTABLE WATER: DO NOT DRINK". This should include such sources as showers, construction water points, untested water faucets, cisterns, vehicle washing supplies etc. This is defined in 4-5 of TB Med 577
- Chlorine levels of the non-potable system will be checked every 8 hours and will be ensured to contain 2.0 ppm. This is defined in 8-10a of TB Med 577.
- Obtain a letter from the command surgeon general or IMA to approve the use of lower quality water for personal hygiene. This is directed to us in the LOTD – Continuing Operations, DAAA09-02-D-007.

NOTE: This last step need only be done if the current waterpoint will not be commissioned immediately.

Near Future:

- Send a remediation team to the site to educate the camp management and applicable personnel as to the full scope of work and responsibilities associated with water operations.

(Corrective actions continued)

KBR Organizational

The nature of this event revealed massive programmatic issues that will have to be dealt with at a very elevated level of management to ensure that prevention of recurrence is eliminated and thereby protects the health and safety of KBR personnel, subcontractors, and the military client. Additionally, senior management shall ensure that the corrective actions are compatible with company commitments and other obligations. Once accepted, the corrective actions should be implemented in a timely manner, as any delay in the identification of similar conditions within the company would lend itself as an enabler of a possible secondary event with perhaps even greater consequences.

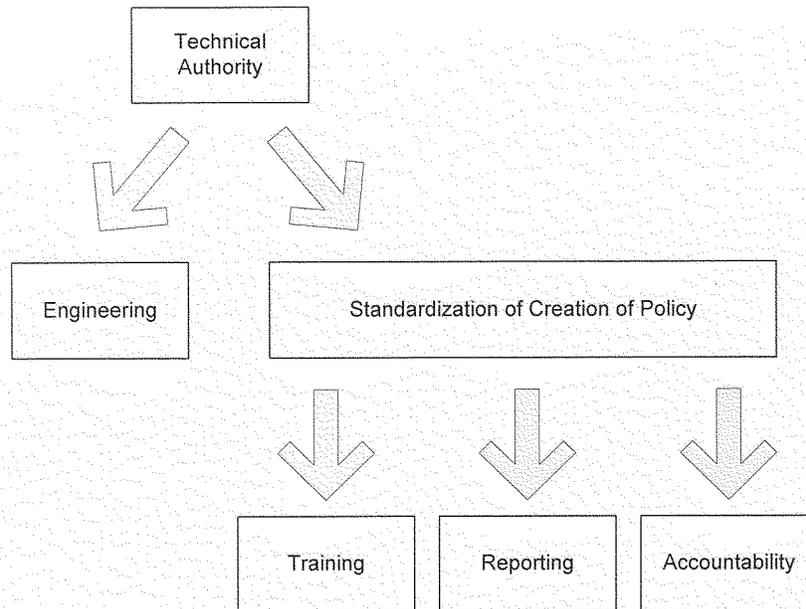
The recommendations to follow are based on the premise that standardization and technical oversight is necessary to protect the company from future litigation and programmatic breakdowns. Standardization is needed to ensure that a cohesive mission is in place that can react to administrative as well as technical changes. As standardization is achieved, reporting will allow for the easy identification of anomalies towards compliance measures. Technical oversight is needed to drive policy and procedure and to perform the audit function of the standardization. Together, these two facets will steer the water mission towards a stature of control and compliance.

The water mission needs technical guidance from above. It needs management with the authority to dictate policy; policy that will be standardized, disseminated, and audited across all water missions. This technical oversight needs to be placed in the organization above the project manager level to ensure compliance is absolute and above reproach.

Beyond the benefits to the internal customer, this approach is even more beneficial to our external customer. It allows for the military to have a centralized point of interface to communicate changes in expectations, discuss potential problems, receive clarifications, transmit information, and work casualty scenarios in an efficient manner. Rather than them try to communicate to numerous water missions through area Preventative Medicine Units, they can contact one office in KBR and be satisfied knowing that transmittal will be completely received throughout the organization.

The Technical Management team created will as a mission perform:

- Policy development to be implemented country wide.
- Engineering of specific needs for individual sites.
- Development of specific training for targeted positions that interface with the water mission
- Development of standardized reporting
- Auditing of sites for compliance to determined policies
- Review of reports to identify deficiencies
- Dissemination of changes in SOW, Regulations, or special concerns.
- Take command and control of casualty situations and abnormal events.
- The function of liaison with client to receive clarification and to provide support to the military.
- The function of a "solutions center" for specific questions from site personnel on various issues.
- Development of programs to harness cost avoidance measures.



This diagram shows a technical team, that when given authority over the country wide water program, will create policy for:

- 1) Training– standardization of a training policy for all levels of site management to target the specific needs for each level of the organization that interfaces with the water mission.
- 2) Reporting – standardization of a reporting policy will enable visibility into each site to measure its compliance and to verify the success of a site. It will follow production, training, process control parameters, burn rates, and allow for upward reporting of unusual events or casualty scenarios.
- 3) Accountability – standardization of accountability will occur through a policy that clearly defines the roles and responsibilities of each member in the organization during normal and abnormal operations to include definition of training required, knowledge base necessary, reports required, communication standards mandatory, and overall business conduct in regards to the water mission. Once in place, auditing of the water program will be streamlined.

6. Technical Rationale

Military Water Quality Standards and their application to B4 Ar Ramadi

Military regulations pertaining to water and all of its facets from production, storage, disinfection, and distribution, can be found in varying military documents, ranging from field expedient Technical Bulletins, (577) to Garrison document (OEBGD 4715.5g)

- Technical Bulletin 577 Occupational And Environmental Health Sanitary Control and Surveillance Of Field Water Supplies (March 1986)
- Technical Bulletin 576 Occupational And Environmental Health Sanitary Control and Surveillance Of Water Supplies At Fixed Installations (March 1982)
- DoD 4715.5-g Overseas Environmental Baseline Guidance Document (Chapter 3 Water)(March 2000)

For all referencing in this report, I will show that under worse case scenario (field use), there is a proper use and procedure for water disinfection.

I will refer to each chapter on scenarios involving this report document. Some may be a slight stretch, and can be interpreted as such.

Source water

B4 Ar Ramadi military installation uses a raw water intake directly from the Euphrates River.

Treatment Technique

Conventional water purification uses many techniques such as

- Chemical coagulation
- Flocculation
- Sedimentation
- Filtration
- Disinfection.

The removal of suspended material (measured in NTU-Nephelometric Turbidity Unit), dissolved organic material (measured in TOC – Total Organic Carbon), and disinfection (killing effect to remove *Giardia lamblia*, *Cryptosporidium homini*, *Escherichia coli*, and other enteric protozoa, bacteria or virus causing intestinal tract disease)

Purification basically removes dirt (turbidity), filters fine particles, and disinfects the water to prevent water borne disease. BAT (Best Available Technology) removes particles at the micron level (1-5 µm) disinfection removes any pathogens making it through the process that are less than $\leq 1-5$ micron level.

Reverse Osmosis is primarily used in beverage, microchip/microprocessor, or medical industry. It has application in the military field in that its removal efficiency is on the molecular level. Microfiltration, ultrafiltration, nanofiltration, and reverse osmosis are the most commonly used membrane processes for microbial removal. Microfiltration membranes have the largest pore size ($\geq 0.1 \mu\text{m}$), while reverse osmosis membranes have the smallest pore size ($\geq 0.0001 \mu\text{m}$) (Taylor and Weisner, 1999). This treatment technique is used for the ability to reject aqueous salt, metal ions, and all matter of pathogens and virus that may be used in a hostile manner against the military for sabotage.

The extreme efficiency of this technology shows a high percent of removal, (many cases a 99.8% salt reject) that it virtually strips the water of all contaminants. The following example shows a calculation to configure total dissolved solids (TDS). This is a measure of the dissolved material in solution. The reverse osmosis system is based on two flow streams; permeate (finished water passing through the membrane - purified), concentrate (waste stream rejected from the process and is a concentrated waste stream)

Example: measure of TDS in mg/L example using a number range derived from current KBR water operations on site at B4.

Raw Water	Multimedia (sand) filtration	Reverse Osmosis	
		(Permeate)	(Concentrate)
600 mg/L	600 mg/L	50mg/L	1150 mg/L

These numbers are based on historical data from Euphrates River water (The raw water intake is outside the security wire at B4, and therefore could not get a sample on this visit). The following formula derives the Concentrate TDS in mg/L

$$(C1)(V1) + (C2)(V2) = (Cr)(Vr)$$

C1 (Concentration of concentrate)	= X mg/L
V1 (Volume concentrate)	= 50,000 gallons
C2 (Concentration of permeate)	= 50 mg/L
V2 (Volume permeate)	= 50,000 gallons
Cr (Concentration of raw)	= 600 mg/L
Vr (Volume raw)	= 100,000 gallons

$$(X \text{ mg/L}) (50,000 \text{ gals}) + (50 \text{ mg/L}) (50,000 \text{ gals}) = (600 \text{ mg/L}) (100,000 \text{ gals})$$

$$(50,000 X) + (2,500,000) = 60,000,000$$

$$X = \frac{(60,000,000) - (2,500,000)}{50,000}$$

$$X = 1150 \text{ mg/L}$$

This exercise shows the inherent problem with the existing setup at B4. The military's choice of using Concentrate waste stream, as a non-potable water source for ablution and shower blocks, has many ramifications. The visible 92% increase in concentration of dissolved solids is a verifiable physical parameter. We can surmise the concentration of all physical constituents in the raw water would thus be concentrated at levels equivalent to this. Most naturally occurring bodies of water are exposed to waste from warm blooded animals (in this case mammal). The Euphrates would have an increased exposure due to untreated wastewater effluent upstream (infrastructure and regulatory compliance departments are fledgling at best in the new Iraqi government). It would reason that increased concentrations of *Giardia* cysts, *Cryptosporidium* oocysts, along with *e coli* would significantly increase the exposure risk to contraction of disease(s) related to these organisms.

The B4 water point would theoretically be at lower risk if it were to pump raw water straight from the Euphrates and use it for ablution and shower water.

TB MED 577 Purification Discharge Requirements

Below is an excerpt from TB MED 577 in discussion on the topic of wastewater (concentrate) from field purification reverse osmosis unit.

5-5. Special procedures

a. Waste disposal.

(1) *Environmental considerations.* According to AR 200-1, paragraph 3-5b(1), the U.S. Environmental Protection Agency (EPA) or a State may require a discharge permit for field water purification units. Commanders with field water purification units participating in field training exercises in the United States or its possessions will coordinate with the installation facility engineer's environmental officer to determine how to dispose of wastewater and other treatment wastes. The environmental officer can assist the commander in securing a discharge permit if it is required. Outside the continental United States, commanders will coordinate wastewater disposal with the environmental agency in the host country.

(2) *Procedures.*

(a) *Regulated discharges.* In cases where a discharge permit has been secured, the water purification section chief will comply with the permit to prevent contamination of the receiving water body. In cases where a permit has been denied, the section chief should contact the environmental officer of the installation to determine if wastewater could be discharged into a sanitary manhole. Such action should also involve coordination with the chief of the wastewater treatment plant.

(b) *Unregulated discharges.* Even when a discharge permit is not required, the section chief should still take precautions to avoid contaminating a

TB MED 577

receiving body of water which may be needed somewhere downstream or along the shore for a water source for another activity. Wastewater should be discharged at least 25 yards (23 meters) away from the raw water intake and downstream for flowing sources or downwind for standing bodies of water. Filter backwash water and sludges should be discharged into sumps to prevent gross contamination of the water source. When the unit vacates the area, sumps will be closed out and properly marked to include the closing date and type of waste.

(3) *Technical assistance.* Requests for technical assistance in disposing of wastewater should be referred to the appropriate Army agency or laboratory listed in appendix B.

If you refer to section 5-5 Special procedures

(a) Waste disposal (1) Environmental considerations. This stipulates that a permit is required to discharge wastewater from field water purification unit. It gives no standards for re-use of this waste stream.

Section 9 Conservation Recycle and Reuse (TB MED 577)

In the following excerpt we see minimum standards for re-use or recycled water in areas with minimal supply. In 9-3 it states that a procedure must be followed to treat the water (physical/chemical) Section 9-4 lists the minimum standards, which include pH and chlorine residual of no less than 5 mg/L (water temperature above 68 deg F) and no less than 10 mg/L (water temperature below 68 deg F)

9-3. Treatment

Batch treatment for recycling can be accomplished with static tanks and onsite treatment processes. Advice of water treatment experts in environmental engineering medical detachments (LC Teams) should be obtained to plan and implement treatment systems. A physical/chemical treatment system might include coagulation, sedimentation, filtration, and the addition of powdered activated carbon. Disinfection will be required in all cases of recycling involving human contact with the water.

9-4. Recycled water standards

- a. *Purpose.* The purpose of these standards is to protect the health of the troops, including prevention of skin and eye irritation from recycled shower water.
- b. *Standards.* These standards represent the maximum acceptable limit of each constituent.
 - (1) pH: 6.5 to 7.5 units.
 - (2) Turbidity: 5 NTU.
 - (3) Hardness: 500 mg/L.
- c. *Chlorine residuals.* The recycled water will be disinfected with chlorine using a minimum contact time of 30 minutes. The chlorine residual will be maintained at 5 ppm for water temperatures at or above 68 °F (20 °C) and at 10 ppm for water temperatures below 68 °F (20 °C).

9-5. Operational control monitoring

Personnel operating recycling equipment will perform monitoring to control the process involved. Assistance in determining the operational control monitoring required can be obtained from LC teams. Water recycled for operations involving personal contact will be tested hourly for chlorine residual.

9-6. Preventive medicine inspection program

- a. *Purpose.* Sanitary inspections of recycling operations safeguard the health of the troops by ensuring the treatment and handling of recycled wastewater is conducted properly.
- b. *Inspection requirement.* Water recycling equipment will not be evaluated in the garrison situations unless it cannot be evaluated in the field training envi-

9-1

Further investigation shows that there has a military regulation for proper shower testing and maximum contaminant levels.

8-12. Shower water samples

- a. The PVNTMED inspector will collect shower water samples from shower heads at each shower point. These samples will be analyzed for the following constituents:
 - (1) Chlorine residual.
 - (2) Chemical agents.
 - (3) Radioactivity.
 - (4) Water temperature.
- b. Concentrations of chemical agents and radioactivity will not exceed the standards for those constituents listed in table 3-2. The chlorine residual and water temperature should conform to the levels specified in paragraph 8-10a.

The following section deals with No consumptive uses in 3-3 a. Rationale. It states the standard is to prevent contact with skin, inhalation, or ingestion in small amounts.

3-3. Nonconsumptive uses

a. *Rationale.* The standards in table 3-3 were established to protect troops from contracting diseases from water that comes in contact with their skin or are incidentally inhaled or ingested in small amounts. The standards were also designed to protect equipment and clothing from deterioration.

b. *Standards.* Water quality standards for nonconsumptive uses are presented in table 3-3.

c. Variances from water quality standards.

(1) Water of the next higher quality may be used for any of the purposes listed in table 3-3 when water conservation considerations permit.

(2) Water of the next lower quality will not be used unless an emergency exists. The PVNTMED personnel will evaluate the situation and provide alternatives to the command surgeon. The command surgeon will recommend the use of lower quality water.

Table 3-3. Water quality standards for nonconsumptive uses

Water quality	Uses include
Potable water	a. Mess operations such as food washing. b. Personal hygiene such as shaving, brushing teeth, helmet baths, and comfort cooling. c. Medical treatment. d. Photo processing for quality control. e. Ice production for food preservation and cooling. f. Water hose and pipeline testing and flushing.
Disinfected nonpotable fresh water	a. Centralized hygiene such as field showers. b. Decontamination of personnel. c. Retrograde cargo washing. d. Heat casualty body cooling. e. Graves registration personnel sanitation. f. Well development.
Nonpotable fresh water	a. Vehicle coolant. b. Aircraft washing. c. Pest control. d. Field laundry. e. Canteen construction. f. Well drilling.
Seawater	a. Vehicle washing.* b. Electrical grounding. c. Fire fighting. d. Nuclear, biological, and chemical (NBC) decontamination of material. e. Road construction.

*Seawater may lead to significant corrosion of some mechanical parts. Consider nonpotable fresh water if available.

Under disinfected nonpotable fresh water (a) Centralized hygiene such as a field shower

Conclusion:

- Reverse Osmosis treatment technique is highly effective at removing pathogens, virus, and bacteria, as well as aqueous salts and metal ions.
- The military is required to acquire a discharge permit for the concentrate or rejected waste stream from the reverse osmosis process.
- The military has a procedure for the reuse or recycle of water for other operations (other than human consumption)
 - Physical/chemical treatment
 - Maximum Turbidity; minimum pH, and Chlorine disinfection standards
- Non consumptive uses for water state that showers can use disinfected nonpotable water

The logic/rationale for the operation of using concentrate waste stream for non-potable ablation/shower consumption is incorrect. Perhaps someone surmised the total water passing through the reverse osmosis system, had effectively gone through a treatment process. The illogical portion is this: the concentrate is just that, it is concentrated waste that was removed from the treatment process. Again it would be more logical to use untreated raw Euphrates water as non-potable use. The problem is further intensified by the blatant disregard of disinfection use and the necessary contact time for an effective kill.

7. Initial Report From Ben Carter

From: Ben Carter
Sent: Thursday, March 24, 2005 10:40 AM
To: Suzanne Raku-Williams; Warren Smith
Cc: Lisa Waterman; Walter Meyers
Subject: Incident report from 23-March-2005 Water contamination

On Wednesday morning I was notified by our Labor Foreman #1 of suspected micro-organisms in his water. Electric#1 had done a visual inspection and reported to me that he also had seen "small worms" moving in the toilet bowl. I went to inspect this myself and saw what I believe were mosquito larvae. This is by no means to be considered to be a fact. I then immediately tested the cold water from the lav sink in Labor #1's hooch for free chlorine. There was none detected. It had been my understanding that this water was non-potable but was chlorinated.

I then proceeded to test several other locations including directly from the water storage tanks. I decided it was necessary to super chlorinate the entire KBR man camp water system. Also after close inspection of the water system, I noticed the storage tank air vents were completely open to outside contamination from a variety of sources. I directed the plumbers to cap the 2" vents on each tank and to install turned down elbows with screens on the 4" openings. This has been completed. There is still improvement needed in securing the manhole covers from future contamination. I obtained two submersible pumps from rowpu and installed them in the tanks, the electrical department responded immediately to install the required wiring. The water tanks were then dosed with HTH chlorine of 68%. After a short period of time a free chlorine residual of 11ppm was obtained. I ran water in the man camp at the furthest point from the tanks until a residual of 13ppm was obtained. At this point in time, we directed all personnel to run the water in their hooch's until chlorine was present at all points. It was determined that the water system should be allowed to sit for a 24 hour period of time. All personnel were directed to not shower or wash clothes until after 24 hours elapsed.

During this same period of time I went out to the military rowpu site to inquire of SFC Roux (Spelling?) about the chlorination of their non-potable water. I was informed that they do not chlorinate this water at all. It is pumped only through their multi-media filter and dispensed from there. This is absolutely unsatisfactory for numerous reasons. To protect from hard-shell cysts, the only approved method is filtration down to 1 micron. Giardia cysts can range in size, but typically 5 micron is acceptable. These cysts cannot be killed effectively with chlorination. It is my opinion that the water source is without question contaminated with numerous micro-organisms, including Coliform bacteria. There is little doubt that raw sewage is routinely dumped upstream of intake much less than the required 2 mile distance. Therefore it is my conclusion that chlorination of our water tanks, while certainly beneficial is not sufficient protection from parasitic exposure. Possibly this can be remedied by additional filtering at the military rowpu through their cartridge filter system. My plan for now until the Water Works rowpu is operational is to perform routine chlorine analysis of the water, and to maintain a 5.0 ppm free chlorine residual at all times. To ensure the success off this new task, I must be informed of every new delivery of water to the tanks prior to filling.

If there is anything I have missed, please feel free to contact me with any questions.

Ben Carter
KBR Services
 Rowpu Acting Lead
Camp Ar Ramadi (B-4)
 APO AE 09395
ben.carter@halliburton.com
 281-669-2248

8. References

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From: CPT Callahan, A. Michelle
Sent: Friday, March 31, 2006 6:49 AM
To: Higgins, Neal (DPC)
Subject: Q-West water contamination

Sir,

I am the 101st Sustainment Brigade Surgeon (a family physician), currently serving in Iraq. My mother contacted your office previously and she forwarded me your request for more information about our water contamination. I have read information on the internet about the situation you are investigating in Ar Ramadi. The situation here was almost identical. I am glad to know your office is looking into this. I find it concerning that even after KBR had gone through the investigation at Ar Ramadi they still provided doubly contaminated water to soldiers at our FOB (Q-West). But I will try to stay away from opinions and give you an objective description of our situation.

In January I noticed the water in our Showering facility was cloudy and had a foul odor. At the same time (over a 2 week period) I had a sudden increase in soldiers with bacterial infections presenting to me for treatment. All of these soldiers live in the same living area (PAD 103) and use the same water to shower. I had 4 cases of skin abscesses, 1 case of cellulitis, and one case of bacterial conjunctivitis. On January 20th I asked our preventive medicine environmental science officer (1LT Simon Strating) to test the water at PAD 103. I also asked the FOB Medical Clinic physician if he had seen an increase in bacterial infections. He stated he had not. At this point I thought it was a problem just with the water storage tank at PAD 103. PM tests results of the PAD 103 water showed no chlorine residual and was positive for coliform bacteria. Still thinking this was a problem isolated to PAD 103, we had KBR clean and super chlorinate the storage tank. After this was completed the tank water was retested. Chlorine levels were adequate and there was no bacterial growth. The water was still cloudy.

Although we had treated the problem, we still did not have a satisfactory answer as to why the water was contaminated. During a discussion (on 1 Feb 2006) between LT Strating and a newly hired KBR water quality technician (Mr. Bill Gist) LT Strating mentioned the bacterial infections that I had been seeing in my clinic. Mr. Gist told LT Strating he had concerns that the ROWPU concentrate reject was being used to fill the water tanks at the PADs. After hearing this LT Strating investigated. He went to the water treatment site and followed the lines from the ROWPU concentrate drain to water trucks filling up with this water. He then followed this truck and observed it pumping the water into the water storage tank at PAD 206. The PM team tested the water at the ROWPU concentrate distribution point. The results are as follows: FAC 0.01% mg/L, pH 6.5, Coliform Positive, E. coli Positive, Turbidity 129NTU (if you want the complete list of results please let me know). After discovering that KBR was filling the water storage tanks with ROWPU concentrate, LT Strating gathered the base mayor (COL Grayson), The Q-West KBR site manager (Bernardo Torres), Rachel Vanhorn (KRB LNO), Mathew Wallace (KBR ROWPU Manager) and Bill Gist (water quality technician) to the ROWPU site and told them all at the same time that he had identified that KBR was filling the water storage tanks with ROWPU concentrate. Mr. Wallace stated that it has always been done this way and there is not a problem with it. LT Strating explained that it is against Army regulations (TB MED 577) to use ROWPU reject for personal hygiene. Mr. Wallace argued that since the raw water from the Tigris is first filtered through carbon prior to going into the ROWPU that it is acceptable for hygiene. This argument is wrong. Charcoal filtration only removes particulate mater and binds some chemicals. All the bacteria and chemicals that make it though the charcoal are concentrated to twice the level as in the Raw water. This is the water with which the soldiers at Q-West have been showering, shaving, and brushing their teeth.

After this was reported to higher, KBR sent a team of water experts to Q-west. I am not sure what all they did while they were here. The Army sent Mr. Eric Bell, from the DCMA office to investigate. I do not know details of his findings. What I do know is that KBR stopped this practice. They could not produce enough clean water for our shower units with the ROWPU units they had on had. They brought in a 3rd unit and now comply with the contract they have with us. The contract requires that they conform to the standards as per TB MED 577.

This is as detailed an account I can give. I am sure if your office investigates, they will be able to get further information.

I hope this helps. Please let me know if you have additional questions.

Respectfully,

A. Michelle Callahan, MD
CPT, MC
Brigade Surgeon
101st Sustainment Brigade



Jennifer Caldwell
Government Operations - LOGCAP III
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Telephone: (713) 751.4538 Fax: (713) 753.3952

11 November 2004

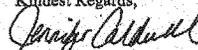
Dear Mr. Stannard,

I hope this finds you well and enjoying a swift recovery. Per our conversation today, I have included the Medical Records Release Form. This form authorizes me to share your medical records with the Pentagon Review Board for the purposes of awarding you the Secretary of Defense Medal for the Defense of Freedom.

The Defense of Freedom Medal is an honor bestowed on rare occasions to government contractors who are wounded in hostile acts while serving on a government contract. You most certainly qualify, and I am working to ensure that you receive this much-deserved piece of recognition. Due to the steps involved in awarding the Medal, it usually takes 6 months to approve. If you have any questions regarding your nomination or the Medal in general, please do not hesitate to contact me at the numbers above.

Thank you for your hard work and sacrifice while working for KBR. I wish you the best of luck in the future.

Kindest Regards,


Jennifer Caldwell
Special Projects Liaison

KELLOGG BROWN & ROOT, INC.

Authorization and Release Form

Use and Disclosure of Protected Information

I, _____, hereby authorize Kellogg Brown & Root, Inc., including its affiliates ("KBR") to use or disclose information relating to my physical or mental health that could be used to identify me (called "Protected Information") as described below.

Protected Information is any information that relates to:

- My past, present, or future physical or mental health or condition;
- Health care I have received or will receive; or
- Payment for health care I have received or will receive.

1. I authorize KBR to use or disclose the following information:

Any and all information, including but not limited to Protected Information, in whatever form available, necessary to process an application on my behalf for a Defense of Freedom Medal with the Department of the Army, any other branch of the United States military, any applicable Review Board, and any of their representatives wherever located, but in particular at the Pentagon in Washington, D.C. (hereinafter referred to collectively as "the Military").

2. I authorize the following people to use or disclose the information and Protected Information listed above in section 1:

Any employee of KBR, including but not limited to Jennifer Caldwell, authorized by KBR for the purpose described above in section 1.

3. I authorize the following people to receive the Protected Information listed above in section 1:

The Military for the purpose described above in section 1

4. I understand that the use and disclosure is being made at my request.

5. I understand that I have the right to revoke this authorization (but not the release in section 9 below) at any time prior to its expiration date. Any revocation I make must be

made in writing and submitted to KBR. I also understand that a revocation is effective except to the extent that KBR already has taken action in reliance upon this authorization prior to its receipt of the revocation.

6. I understand that the information or Protected Information used or disclosed pursuant to this Authorization may be disclosed further by the receiving party.
7. I understand that this authorization and release is voluntary.
8. I may see and copy the information or Protected Information described on this form if I request it.
9. Release: I agree that in consideration for the application for a Defense of Freedom Medal on my behalf that on behalf of myself, my heirs, executors, administrators, assigns, and successors, I hereby release, acquit and discharge and do hereby release, acquit and discharge KBR, all KBR employees, the Military, and any of their representatives (in both their official and individual capacities), collectively and individually, with respect to and from any and all claims and any and all causes of action, of any kind or character, whether now known or unknown, I may have against any of them which exist as of the date of this authorization and all claims or causes of action arising from or related to this authorization or the use or disclosure of the information or Protected Information described in section 1 above by any of the aforementioned parties. This release also applies to any claims brought by any person or agency or class action under which I may have a right or benefit.
10. This authorization expires on October 1, 2005.

Signature of Individual or Individual's Representative*

Date

(Form must be completed before signing.)

* If this form is signed by a personal representative, another signed and completed form authorizing such legal representation (as may be acceptable to KBR) must be attached to this form, unless such a representation form is waived by KBR or is otherwise not applicable.

Senate Democratic Policy Committee Hearing**“An Oversight Hearing on Whether Halliburton Has Failed to Provide Clean Water to United States Troops in Iraq”**

Ken May
Former Halliburton Employee

January 23, 2006

My name is Ken May, and I am a retail manager in Louisville, Kentucky. From January 2005 to April 2005, I was an acting operations specialist in the KBR operations department at Camp Ar Ramadi, Iraq. My responsibilities in that position included daily, weekly, and monthly reports to both site management and the KBR project management office in Al Asad, Iraq; coordinating air and ground transportation with the military for KBR and VIP personnel; and performing payroll and other human resource functions. In my time with KBR, I also fulfilled a variety of other short-term duties and assignments

I became aware of water quality problems at the base on March 23, 2005, when Ben Carter asked me to instruct KBR personnel to leave their water running, which would assist with chlorination of the water distribution system. Ben told me that another KBR employee had reported a larva in his lavatory, which Ben had confirmed. I later learned from Harold Orr, who went by Mo, that Ben had discovered problems with the water.

In the days that followed, as I performed my regular duties, I heard rumors that KBR site management was still discussing the water quality problem. Mo told me that site management wasn't really addressing the issue, and suggested that they were simply trying to sweep it under the rug. I knew that Mo, our Health, Safety, and Environment coordinator, had other problems with site management, and specifically with site manager Suzanne Raku-Williams, so I didn't know how much credence to give what he told me about the water.

Within a few days, however, I learned from Ben that what Mo had said was in fact accurate: that the water had not been properly chlorinated, and that Ben had independently found a U.S. Government report that detailed contaminants and pathogenic organisms in the Euphrates River.

On March 26, 2005, senior KBR employee relations specialist Terence Copling came to Ar Ramadi to investigate unrelated complaints about site management. During his visit, Copling interviewed me about allegations that site management had knowingly and unnecessarily put employees in harm's way. More specifically, Copling was

investigating site management's retaliatory conduct toward employees who raised concerns about everything from our force protection shelters to health and safety issues.

In the course of that interview, I mentioned to Copling that, on top of everything else, we appeared to have a water contamination problem. Copling told me then that he would resolve the problem, meaning site management. No action was immediately forthcoming, although the site manager and chief of services were terminated within two months. Before then, however, they had succeeded in forcing their critics — including me, Ben, and Mo — to resign and leave Iraq. I have brought with me today Mo's letter of resignation, in which he expressed his disgust with site management.

After I returned to the States, I remained in contact with Ben. We were both concerned with the problems we had uncovered, and concerned as well about our own health and safety. After a barber at Ar Ramadi knicked the back of my neck with a razor, and after I had washed the cut in the sink, I developed a bad and sustained rash that I believed to be connected to the water. Both in Ar Ramadi and after my return to the States, I also experienced occasional but recurring gastrointestinal problems, comparable to food poisoning. I know many others who have experienced similar symptoms. Last but not least, since returning from Iraq, I have noticed vertical ridges in my fingernails, which I understand to be a possible indicator of various digestive or other health problems.

Because Ben has had continuing difficulty pursuing his own health claims with Halliburton and their insurer, AIG, I have chosen not to commit to a course of treatment until I know that I will be properly taken care of. I have recently moved to a new job in a new state, and cannot afford the time required to fight, as Ben has. I also believe that Halliburton knows that it exposed both its employees and American troops to contaminated water, and has a duty and responsibility to provide necessary testing and support. I do not believe they have done so.

Like Ben, I have remained in contact with former Halliburton colleagues still in Iraq. Last spring they informed me that, after my own departure in April 2005, the reports that Ben, Mo, and I had sent up the KBR chain of command led Wil Granger to investigate Ben's findings. In an e-mail forwarded to me by another KBR employee, Granger concluded, "Fact: We exposed a base camp population (military and civilian) to a water source that was not treated... The level of contamination was roughly 2x the normal contamination of untreated water from the Euphrates River." When asked how long the exposure may have lasted, Granger later wrote that the "exposure may have been occurring since the initial presence of KBR individuals at Ar Ramadi."

During my tenure at Ar Ramadi, I and many others observed repeated acts of poor behavior by site management and the project management office in Al Asad. The fact that these behavior patterns undermined essential checks and balances to ensure contract obligations came as no surprise to me. I, along with many others, observed on an almost daily basis how our KBR site management team made our presence more of a burden to the military than the essential resource that we should have been. The disregard for

essential health, safety and security measures, time card fraud, fraudulent documentation, and overbilling — not to mention the constant barrage of daily threats and retaliatory behavior from our leadership — made life at Ar Ramadi nearly unbearable.

Because of the ongoing unresolved problems at Ar Ramadi prior to discovery of water contamination, during discovery and ensuing investigations, and the continued cover-up after discovery to this day, immediate attention is required. The fact that Halliburton denies a water contamination problem ever existed is incredible, especially given that their own internal company documentation clearly indicates otherwise.

Had the project management office required site management to implement and track water analysis checks three times a day, as per the contract requirements at Ar Ramadi, not to mention countless other camps in Iraq, the issue of water contamination would have been identified immediately and corrective measures implemented. Instead, it is my belief that Halliburton officials knew of this problem long before the discovery at Ar Ramadi and weighed the costs of disclosing that information against their 1% - 3% cost-plus profit margin. Halliburton's continued denial and inaction has allowed nine more months to pass, possibly exposing thousands of military personnel and contractors to unnecessary risk. This in my mind borders on treasonous if not subversive conduct, which simply cannot be tolerated.

While aware of my own health concerns, both immediately and over the long term, I also realize that our troops in Iraq put their lives on the line every day. The least I can do, the least we as a nation can do — and certainly the least Halliburton can do — is to tell our troops the truth and to provide them with the resources that they expect and deserve.

Senate Democratic Policy Committee Hearing**“An Oversight Hearing on Whether Halliburton Has Failed to Provide Clean Water to United States Troops in Iraq”****Ben Carter**

Former Halliburton Employee

January 23, 2006

My name is Ben Carter, and for the last twenty years I have worked as a water purification specialist. I currently reside in Cedar City, Utah. From January 2005 through early April 2005, I worked for Halliburton subsidiary KBR at Camp Ar Ramadi in Iraq, also known as Junction City. Ar Ramadi is home to between 5,000 and 7,000 troops at any given time, served by roughly 70 KBR personnel.

During my time at Ar Ramadi, I served as the acting foreman of the reverse osmosis water purification unit, also known as the ROWPU. The ROWPU is a standard piece of equipment, roughly the size of two shipping containers, that purifies water by separating out any dissolved solids and other impurities. Ar Ramadi needed a ROWPU to decontaminate highly polluted water from the Euphrates River, which was then pumped to the base for both potable and non-potable uses.

Potable water is used for cooking and drinking purposes, and requires a higher level of purification and cleaner delivery systems. At Ar Ramadi, non-potable water was used for all other purposes, including bathing, showering, shaving, laundry, and cleaning. I sometimes saw people use non-potable water to make coffee and brush their teeth, simply because it was more convenient than using bottled water. Management occasionally warned against such practices, but failed to post signs reminding people of the dangers associated with consuming non-potable water.

Although not intended for drinking or cooking, even non-potable water must meet certain minimum safety standards widely accepted in the water purification industry and adopted by the Army in their operations manuals. When you shower, bathe, or shave, you can't help but be exposed to any contaminants in the water, whether through your eyes, nostrils, mouth, or open cuts or wounds. Water treatment specialists design safe delivery systems and test regularly to ensure that non-potable water meets these minimum standards. Their job is to protect the health and safety of the people who use that water.

Although I was hired to work as a water treatment specialist, I was not allowed to inspect the Ar Ramadi water delivery systems until more than a month after I arrived at the base. Until then I volunteered for whatever other work I could find, often in the

carpenters' shop — where I mostly built home entertainment units for other KBR employees, who didn't have enough work to keep them busy and instead passed their days watching DVDs and playing Nintendo.

After a month, I was finally allowed to work with the ROWPU unit. Two weeks later, the usual ROWPU foreman returned to the States on leave and I became the acting ROWPU lead. For the first time, I had full access to all of the water treatment equipment and documentation. Shortly thereafter, on March 23, 2005, another KBR employee reported to management that he had discovered an organism in his toilet bowl. On inspection, I confirmed that there was what appeared to be a larva swimming in the toilet bowl.

I had been told by the usual ROWPU lead that the water was chlorinated, and knew that such an organism could not survive in chlorinated water. I decided at that point to test the water in the employee's bathroom for chlorination. The test results indicated zero presence of chlorine. I then tested at several other locations in the KBR section of the base, and discovered no chlorine at those sites either. I then tested the non-potable water storage tank and, to my shock, realized that the water in the tank tested negative for chlorine; that the access lid of the tank was not in place, let alone secure; and that the air vents to the tank were turned upward and left unscreened, leaving the water supply vulnerable to contamination from dust, insects, rodents, or even enemy attack. I was stunned. No trained water treatment specialist could claim that the water was fit for human use.

Having come to that conclusion, and despite the resistance of KBR site management, I immediately chlorinated the non-potable water tank supplying KBR personnel. I also made a public announcement over the KBR radio network that all personnel should run their taps to move the chlorine through the water distribution system. I then informed site management that we needed to notify the military that they should immediately chlorinate their water storage tanks, which drew from the same source. I was told by Suzanne Raku-Williams, the KBR site manager, that the military was none of my concern. I was ordered to concern myself only with the health and safety of KBR personnel.

Leaving Suzanne in disgust and disbelief, I continued with securing the KBR water supply. KBR employees began to arrive back at their living facilities, to run their water as instructed, and started asking questions about the water quality. Many had health concerns. I explained to them that I had discovered that the water was not being chlorinated, and that I had immediately and manually chlorinated the water.

After answering their questions, I drove out to the ROWPU site at the Euphrates River. I notified the ROWPU operator, a sergeant, that there was no chlorine in the water. Until that point I had assumed that we were experiencing a temporary equipment malfunction or human error — that something had just gone wrong. In fact, I was told, they had never chlorinated the water. I later learned that it was KBR's responsibility to

test the water quality three times a day to confirm the presence of chlorine. To my knowledge, such testing never occurred.

To make matters worse, the sergeant admitted to me that he was not using sub-micron cartridge filters in the ROWPU process. That meant water from the Euphrates River — collected less than a mile downstream from a raw sewage outlet — was passing through only a multi-media filter before being pumped into our non-potable water storage tank. The same water was being pumped into the Army's non-potable water storage tank.

On returning to the base, I was approached by Harold Orr, known as Mo, who was the KBR Health, Safety and Environment coordinator. I was surprised to hear that he had only just learned of my discovery. Mo had been critical of health and safety violations at the camp, and management had apparently failed to inform him of my conclusions. Mo instructed me to prepare a detailed incident report of what had occurred that day, which he wanted on his desk that night. When KBR site management learned that I was preparing a report, they insisted on approving its contents before I sent it to Mo. I did, and they offered comments questioning my conclusions. I have brought a copy of that e-mail exchange with me today.

I made the required corrections and sent my incident report to Mo, who in turn sent it to KBR management in Al Asad, Iraq. At that point, Suzanne, the KBR site manager in Ar Ramadi, instructed me that I should not e-mail anyone off the base. She and the director of operations then stopped talking to me altogether. That weekend, without informing me or Mo, they scheduled a meeting to address the concerns of KBR employees regarding the quality of water at the camp. They invited a medic from another camp to speak, which he did, emphasizing that we were now chlorinating the water, that there were many ways someone could get sick other than the water, and that he was sure KBR would offer to test all employees for Hepatitis on their return to the States.

That day I knew that I had to quit KBR and leave Iraq.

After returning from Iraq, Ken May forwarded to me internal documents and correspondence that confirmed my findings in Ar Ramadi. In one message, Wil Granger, then the KBR Water Quality Manager for all of Iraq and Kuwait, wrote that KBR had exposed the entire camp to water twice as contaminated as raw water from the Euphrates River. I later spoke with Granger and asked him how the water could be twice as contaminated. He told me that KBR was apparently taking the waste water from the ROWPU process, which should have been dumped back in the river, and using that as the non-potable water supply. Such problems had been happening for more than a year, but Granger knew of no effort to inform the exposed population.

More disturbingly, I learned from Granger that, as late as September 2005, the same problems existed throughout Iraq. Granger also told me of a 21-page report he had written, detailing the nationwide problems. He said that Halliburton was worried sick that I might have a copy. I asked him to publicly confirm my story. Granger was reluctant and told me that, after a group named Halliburton Watch asked the company

about his report, Halliburton lawyers grilled him about our communications and threatened to hold him personally liable for any damage the company incurred. Although I do not have a copy of Granger's report, I do have an e-mail message in which he writes, "I have yet to find an installation that does the required testing let alone has such documents to support their testing activities."

I accepted a position with Halliburton with the belief that my particular skills would be of service to the troops in Iraq. But when I tried to notify the troops that they may be exposed to a serious health risk, I was told that the military was none of my concern, and to keep my mouth shut. I don't know how bad the problem might be — how many troops may have been exposed to untreated water, and how many might have gotten sick as a result. I can't know, because Halliburton apparently has no records and refuses to acknowledge there might be a problem. I do know that I have been diagnosed with an unidentified organism in my digestive tract, and that I sometimes suffer from gastrointestinal problems that I did not experience before going to Iraq.

Let me conclude by saying that I'm here today because I believe that supporting the troops has to be more than a slogan. Our men and women overseas deserve the best our taxpayer dollars can buy, and it saddens me to report that we're falling short on something as simple and essential as providing them with clean, safe water.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR EDWARD M. KENNEDY

CONTRACT MISMANAGEMENT

1. Senator KENNEDY. Major General Johnson, in your testimony, you stated that the Logistics Civil Augmentation Program (LOGCAP) has grown rapidly from a value of “several million” dollars per year to over \$5 billion per year today. I am concerned that this exceptional cost growth calls into question the validity of the original competition for the contract and arguably amounts to a cardinal change. At any time, did the Army discuss this cost growth and the potential need for a new competition?

General JOHNSON. The growth of this program is within the scope of the awarded contract, which is directly tied to the number of major conflicts that could occur each year (two major conflicts and one minor conflict per year). The contract was intentionally structured to allow for rapid growth and flexibility to support unknown future contingencies. Nonetheless, as the program grew and began to strain the resources of a single contractor, the Army in 2004 took action to identify various methods of increasing contractor support and to assess the risks involved with various strategies. This involved developing an acquisition strategy for LOGCAP support with multiple contractors competitively responding to global requirements for urgent support. This strategy was discussed with industry, and with senior Army leadership to obtain input and to refine and select a future strategy for LOGCAP. Because of the breadth and depth of the program, a thorough analysis was performed and the final strategy determined in 2006. This strategy resulted in a separate LOGCAP IV Planning contract, which was awarded in February 2007, and the multiple LOGCAP IV Performance contracts, which are anticipated to be awarded in June 2007.

[Update—The Army announced on June 27, 2007 that it had awarded LOGCAP IV Performance contracts to three companies. The three companies are DynCorp; Fluor; and Kellogg, Brown, & Root, (KBR).]

2. Senator KENNEDY. Secretary Bolton and Major General Johnson, the Army chose to select a single awardee under the LOGCAP III contract. Please provide any and all documentation laying out the justification for that decision. Was there any discussion on making other awards as the size of the contract grew?

Mr. BOLTON and General JOHNSON. There is no specific documentation justifying awarding a single contract on LOGCAP III. In late 2000 and early 2001, the Army developed the acquisition approach to award the LOGCAP III contract. There was discussion about the number of contracts to award on LOGCAP III. Prior and recent experience on LOGCAP II revealed there were sporadic small operations requiring LOGCAP support, resulting in workload that did not support more than one LOGCAP contractor. Based on that limited workload, the decision was made to award and maintain only one LOGCAP III contractor, and not pay to sustain multiple contractors. Since the LOGCAP III contract was structured as a series of 1 year options, the Government had the ability to bring on additional contractors or replace the LOGCAP III contract, as performance or workload warranted. As LOGCAP III requirements grew to support troops in Afghanistan and Iraq, the Army in 2004 began looking at ways to expand the number of contractors supporting LOGCAP. This resulted in solicitations being issued in August 2006 to replace LOGCAP III with multiple LOGCAP IV performance contractors.

3. Senator KENNEDY. Major General Johnson, in your testimony you mentioned that one of the improvements made during contract performance was the definitization of all “over-age” task orders. Please provide a list of all task orders that fits these criteria with a brief description of the goods or services to be provided under them, all not-to-exceed figures during the life of the task order, final value, and the number of days each task order was undefinitized.

General JOHNSON. Between November 2004 and March 2005, we definitized 46 task orders of which 42 were over-aged. The high tempo of operations resulted in numerous new combatant command requirements and changes necessitating immediate placement of LOGCAP task orders. This resulted in our placing a priority on awards rather than definitizing actions. As of July 6, 2007, there are no undefinitized contractual actions.

The over-aged task orders are identified in the following spreadsheet.

OVER-AGED TASK ORDER LIST
 LOGCAP CONTRACT DAAA09-02-D-0007
 ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED

TASK ORDER	DESCRIPTION	CEILING PRICE	DEFINITIZED VALUE	DAYS AS UCA
T.O. 0006	Providing Force Provider and Harvest Eagle operations and maintenance and airfield maintenance support for US Forces at Uzbekistan	\$17,590,632.00	\$17,590,154.00	1004
T.O. 0013	Providing base camp operations Tier 3 Tents, Force Provider Harvest Eagle operations support at Baghram AFB	\$216,263,785.00	\$169,849,170.00	822
T.O. 0014	Transition of Authority For Water Packaging System/Consolidated Ice Plant, Government Furnished Equipment, and Contractor Acquired Items (Kandahar AFB)	\$144,864,958.00	\$98,325,230.00	781
T.O. 0015	Provide operation and maintenance support to US Forces at Djibouti	\$113,746,205.00	\$108,311,023.00	898
T.O. 0028	Provide on-site logistics expertise to plan for transport of a heavy division (EUCOM)	\$685,745.00	\$539,663.00	798
T.O. 0027	Provide Fire Fighting Services, operations and maintenance of six Force Provider modules, Dining Facility, Laundry and MWR operations (Anifan)	\$425,376,503.00	\$179,784,684.00	883
T.O. 0028	Provide life support for US forces, logistical/engineering support, and physical security of designated US Government provided and Contractor acquired equipment and supplies. (Republic of Georgia)	\$16,669,048.00	\$16,669,048.00	846
T.O. 0031***	OFFICE OF SECRETARY OF DEFENSE (OSD PLAN - Classified SOW)	\$1,883,681.00	\$2,042,767.00	829
T.O. 0033	Provide operation and maintenance support to US and Coalition Forces in Jordan	\$68,511,100.00	\$37,963,966.00	750
T.O. 0034	Complete all necessary services at Kuwait Seaport of Debarikaton force provider mission tasks in support of OIF	\$136,548,891.00	\$68,016,382.00	821
T.O. 0035	Provide support to U.S. Forces in Base clusters/camps in Kuwait	\$49,007,066.00	\$9,182,691.00	784
T.O. 0036	Provide operation and maintenance support to US Forces at the Aerial Port of Debarikaton. Perform the mission of providing set-up, operations and maintenance of two (2) Force Provider Modules	\$234,145,103.00	\$148,185,184.00	796
T.O. 0037	Provide contractor accountability and services support for the US Army Materiel Command, by augmenting/supporting deployed Logistics Support Elements, which will accomplish the accountability and support mission	\$3,871,335.00	\$3,051,968.00	483
T.O. 0040	Provide all services to complete preparatory tasks in support of USAREUR project #2. (Turkey)	\$215,194,163.00	\$44,389,377.00	710
T.O. 0041	Provide life support to 500 Coalition Force Personnel in Kuwait	\$7,226,318.00	\$2,924,671.00	632
T.O. 0042	Pre-positioning Resources for Iraq Oil Restoration (OSD)	\$37,500,000.00	\$29,533,453.00	643
T.O. 0043	Provide services to complete Kuwait Theater Transportation Mission tasks in support of OIF	\$1,516,040,806.00	\$1,173,471,164.00	769
T.O. 0044	Provide logistics and life support for two separate advanced regional teams at initial staging locations in the North and South with the ability to assist the advance regional teams during forward movement (CPA)	\$623,806,300.00	\$504,681,763.00	754
T.O. 0045	Provide life support to LSE-SWA	\$3,940,669.00	\$2,827,786.00	763
T.O. 0046	Provide services in Iraq to construct 2 Enemy Prisoner of War (EPW) facilities and operate/maintain 4 EPW Facilities (CENTCOM AOR)	\$121,615,971.00	\$50,823,693.00	711

OVER-AGED TASK ORDER LIST
LOGCAP CONTRACT DAA409.02.D.007
ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED

TASK ORDER	DESCRIPTION	CEILING PRICE	DEFINITIZED VALUE	DAYS AS UCA
T.O. 0047***	Provide services to complete Force Provider and Harvest Eagle operations and maintenance, airfield maintenance and hazardous waste management mission tasks for US Forces in support of OIF (Uzbekistan)	\$52,305,045.00	\$78,828,046.00	403
T.O. 0048	Provide services to complete the Field Repair Activity tasks in support of OIF	\$937,590.00	\$539,970.00	505
T.O. 0049	Provide operation and maintenance support to TF Seminole at one 500 man EPW Holding Area (Jordan) with 100 additional support personnel	\$6,300,796.00	\$191,107.00	647
T.O. 0050	Provide services necessary to augment and support Theater Bulk Fuel Mission tasks in support of OIF (Kuwait)	\$42,499,066.00	\$34,452,938.00	686
T.O. 0054	Kabul Military Training Center operating Base 195 Mission tasks in support of OEF (AF)	\$6,686,616.00	\$4,359,063.00	667
T.O. 0056	Complete the Defense Intelligence Agency's Iraqi Survey Group tasks in support of OIF	\$235,662,213.00	\$116,246,890.00	245
T.O. 0057	Provide services for LSA Cedar II & LSA Addeh (Iraq)	\$491,887,874.00	\$166,729,305.00	666
T.O. 0058	Provide services, resources & mgmt for retrograde of all classes of supply in theater; the mgmt and operation of Class I, II, III (P), IV, and IX Direct Support & General Support forward distribution points/supply support activities (Camp Arifjan, Kuwait)	\$291,690,630.00	\$279,603,441.00	306
T.O. 0059	Provide logistic and life support services to the V Corps in various locations in Iraq	\$8,719,151,154.00	\$6,263,143,259.00	657
T.O. 0060	Acquire/construct additional facilities and provide infrastructure improvement to support base operations in Kabul	\$13,607,138.00	\$7,641,921.00	549
T.O. 0061	Provide logistics and life support services to the V-Corps, Polish Coalition, in Iraq	\$483,579,866.00	\$233,520,419.00	612
T.O. 0062	Poi-e-Charki - Complete Trainer Compound Mission tasks (Afghanistan)	\$12,387,683.00	\$11,407,180.00	606
T.O. 0063***	Setup and operate the Federal Deployment Center pie-deployment record collection point/processing center at a CONUS site and OCONUS sites for personnel deploying and redeploying in support of CPA authorized personnel (Fort Belvoir, Virginia)	\$15,382,162.00	\$15,774,603.00	586
T.O. 0064	Provide services necessary to setup, operate, and maintain a Support Base Camp to support the training of the New Iraqi Army	\$41,667,915.00	\$18,352,648.00	579
T.O. 0066	Provide services necessary for the Camp Kuwait Naval Base (KNEB)	\$14,246,510.00	\$5,793,011.00	287
T.O. 0070	Provide support the 82nd Logistic Support Element	\$520,579.00	\$217,190.00	484
T.O. 0072	Provide support to operate and maintain an Army Oil Analysis Program Lab in Iraq	\$2,754,448.00	\$1,602,318.00	281
T.O. 0075	Provide support to operate and maintain a Test Measurement and Diagnostic Equipment in Kuwait, Afghanistan and Iraq	\$4,284,860.00	\$2,565,423.00	678
T.O. 0077	Provide services to complete the Event for the Defense Threat Reduction Agency in support of OIF	\$2,887,672.00	\$1,372,891.00	185

OVER-AGED TASK ORDER LIST
 LOGCAP CONTRACT DAAA09-02-D-0007
 ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED

TASK ORDER	DESCRIPTION	CEILING PRICE	DEFINITIZED VALUE	DAYS AS UCA
T.O. 0081	Provide services to augment and support the Navistar-Camp Big Sky Oasis Mission tasks in support of OIF	\$32,205,798.00	\$7,425,761.00	299
T.O. 0084	Provide services to augment and support the Firebase Salerno Mission tasks in support of OEF	\$52,152,040.00	\$38,591,378.00	192
T.O. 0094	Augment and support the Djibouti Year 3 Mission tasks in support of OEF	\$57,714,210.00	\$51,730,380.00	192
42	TOTAL TASK ORDERS	\$15,534,949,055.00	\$10,008,181,881.00	
ALL UNDEFINITIZED CONTRACTUAL ACTIONS HAVE BEEN DEFINITIZED				
***T.O. 0031	Additional costs resulted from government directed changes to the period of performance			
***T.O. 0047	Additional costs resulted from a broadened scope of work directed by the government			
***T.O. 0063	Actual costs incurred exceeded ceiling price due to travel charges not included in the original forecast and an increase in food service requirements			

4. Senator KENNEDY. Major General Johnson, for all undefinitized task orders, please provide a separate spread sheet giving a brief description of each task order, its value, and the number of days it was undefinitized.

General JOHNSON. Between November 2004 and March 2005, we definitized 46 task orders of which 42 were over-aged. As of July 6, 2007, there are no undefinitized contractual actions.

The referenced definitized task orders are identified in the following spreadsheet.

OVER-AGED TASK ORDER LIST
LOGCAP CONTRACT DAAA09-02-D-0007
ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED

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T.O. 0013	Providing base camp operations .Tier 3 Tents, Force Provider/ Harvest Eagle operations support at Bagram AFB	\$216,263,785.00	\$169,649,170.00	822
T.O. 0014	Transition of Authority For Water Packaging System/Consolidated Ice Plant, Government Furnished Equipment, and Contractor Acquired Items (Kandahar AFB)	\$144,864,959.00	\$88,325,230.00	781
T.O. 0015	Provide operation and maintenance support to US Forces at Djibouti	\$113,746,205.00	\$108,311,023.00	898
T.O. 0026	Provide on-site logistics expertise to plan for transport of a heavy division (EUCOM)	\$985,745.00	\$539,663.00	758
T.O. 0027	Provide Fire Fighting Services, operations and maintenance of six Force Provider modules, Dining Facility, Laundry and MWR operators (Anifjan)	\$425,376,503.00	\$179,764,684.00	893
T.O. 0028	Provide life support for US forces, logistical/engineering support, and physical security of designated US Government provided and Contractor acquired equipment and supplies. (Republic of Georgia)	\$16,669,048.00	\$16,669,048.00	846
T.O. 0031***	OFFICE OF SECRETARY OF DEFENSE (OSD PLAN - Classified SOW)	\$1,893,681.00	\$2,042,767.00	829
T.O. 0033	Provide operation and maintenance support to US and Coalition Forces in Jordan	\$68,511,100.00	\$37,963,968.00	750
T.O. 0034	Complete all necessary services at Kuwait Seaport of Debarikaton force provider mission tasks in support of OIF	\$136,548,891.00	\$68,016,382.00	821
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T.O. 0040	Provide all services to complete preparatory tasks in support of USAREUR project #2 (Turkey)	\$215,154,163.00	\$44,368,377.00	710
T.O. 0041	Provide life support to 500 Coalition Forces Personnel in Kuwait	\$7,226,318.00	\$2,924,671.00	632
T.O. 0042	Pre-positioning Resources for Iraq Oil Restoration (OSD)	\$37,500,000.00	\$29,533,453.00	643
T.O. 0043	Provide services to complete Kuwait Theater Transportation Mission tasks in support of OIF	\$1,516,040,906.00	\$1,173,471,184.00	769
T.O. 0044	Provide logistics and life support for two separate advanced regional teams at initial staging locations in the North and South with the ability to assist the advance regional teams during forward movement (CPA)	\$623,906,300.00	\$504,681,763.00	754
T.O. 0045	Provide life support to LSE-SWA	\$3,940,669.00	\$2,827,786.00	763
T.O. 0046	Provide services in Iraq to construct 2 Enemy Prisoner of War (EPW) facilities and operate/maintain 4 EPW Facilities (CENTCOM/ACR)	\$121,815,971.00	\$50,823,593.00	711

OVER-AGED TASK ORDER LIST
 LOGCAP CONTRACT DAAA09-02-D-0007
 ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED

TASK ORDER	DESCRIPTION	CEILING PRICE	DEFINITIZED VALUE	DAYS AS UCA
T.O. 0047***	Provide services to complete Force Provider and Harvest Eagle operations and maintenance, airfield maintenance and hazardous waste management mission tasks for US Forces in support of OIF (Uzbekistan)	\$52,305,045.00	\$78,829,046.00	403
T.O. 0048	Provide services to complete the Field Repair Activity tasks in support of OIF	\$937,590.00	\$639,970.00	505
T.O. 0049	Provide operation and maintenance support to TF Seminoles at one 500 man EPW Holding Area (Jordan) with 100 additional support personnel	\$6,300,796.00	\$191,107.00	647
T.O. 0050	Provide services necessary to augment and support Theater Bulk Fuel Mission tasks in support of OIF (Kuwait)	\$42,499,066.00	\$34,462,938.00	666
T.O. 0054	Kabul Military Training Center operating Base. 105 Mission tasks in support of OEF (AF)	\$6,686,616.00	\$4,359,063.00	667
T.O. 0056	Complete the Defense Intelligence Agency's Iraqi Survey Group tasks in support of OIF	\$235,662,213.00	\$116,246,890.00	245
T.O. 0057	Provide services for LSA Cedar II & LSA Adder (Iraq)	\$491,887,874.00	\$166,729,305.00	666
T.O. 0058	Provide services, resources & mgmt for retrograde of all classes of supply in theater; the mgmt and operation activities (Camp Arifjan, Kuwait)	\$291,690,630.00	\$279,603,441.00	306
T.O. 0059	Provide logistic and life support services to the V Corps in various locations in Iraq	\$9,719,151,154.00	\$6,263,143,259.00	657
T.O. 0060	Acquire/construct additional facilities and provide infrastructure improvement to support base operations in Kabul	\$13,607,136.00	\$7,641,921.00	549
T.O. 0061	Provide logistics and life support services to the V-Corps, Polish Coalition, in Iraq	\$483,578,666.00	\$233,520,419.00	612
T.O. 0062	Pol-e-Charki - Complete Trainer Compound Mission tasks (Afghanistan)	\$12,387,683.00	\$11,407,180.00	606
T.O. 0063***	Setup and operate the Federal Deployment Center pie-deployment record collection point/processing center at a CONUS site and OCONUS sites for personnel deploying and redeploying in support of CPA authorized personnel (Fort Belvoir, Virginia)	\$15,382,152.00	\$15,774,603.00	586
T.O. 0064	Provide services necessary to setup, operate, and maintain a Support Base Camp to support the training of the New Iraqi Army	\$41,667,915.00	\$18,352,648.00	579
T.O. 0066	Provide services necessary for the Camp Kuwait Naval Base (KNEB)	\$14,246,510.00	\$5,793,011.00	297
T.O. 0070	Provide support the 82nd Logistic Support Element	\$520,679.00	\$217,190.00	484
T.O. 0072	Provide support to operate and maintain an Army Oil Analysis Program Lab in Iraq	\$2,754,446.00	\$1,602,318.00	281
T.O. 0075	Provide support to operate and maintain a Test Measurement and Diagnostic Equipment in Kuwait, Afghanistan and Iraq	\$4,284,880.00	\$2,566,423.00	678
T.O. 0077	Provide services to complete the Event for the Defense Threat Reduction Agency in support of OIF	\$2,887,672.00	\$1,372,861.00	185

OVER-AGED TASK ORDER LIST
 LOGCAP CONTRACT DAA40942-D-0007
****ALL OVER-AGED ACTIONS HAVE BEEN DEFINITIZED****

TASK ORDER	DESCRIPTION	CEILING PRICE	DEFINITIZED VALUE	DAYS AS UCA
T.O. 0081	Provide services to augment and support the Navistar-Camp Big Sky Oasis Mission tasks in support of OIF	\$32,205,798.00	\$7,425,761.00	299
T.O. 0084	Provide services to augment and support the Firebase Salerno Mission tasks in support of OEF	\$52,152,040.00	\$38,591,378.00	192
T.O. 0094	Augment and support the Djibouti Year 3 Mission tasks in support of OEF	\$57,714,210.00	\$51,730,380.00	192
42 TOTAL TASK ORDERS		\$15,534,949,055.00	\$10,008,181,881.00	
ALL UNDEFINITIZED CONTRACTUAL ACTIONS HAVE BEEN DEFINITIZED				
***T.O. 0031	Additional costs resulted from government directed changes to the period of performance			
***T.O. 0047	Additional costs resulted from a broadened scope of work directed by the government			
***T.O. 0063	Actual costs incurred exceeded ceiling price due to travel charges not included in the original forecast and an increase in food service requirements			

5. Senator KENNEDY. Major General Johnson, did the Army ever unilaterally supply missing terms to any undefinitized task orders, and if so, did the contractor ever challenge such action through the disputes process?

General JOHNSON. No unilateral terms or definitizations were ever forced upon the contractor. There were no challenges through the disputes process.

6. Senator KENNEDY. Major General Johnson, please describe in greater detail the Joint Acquisition Review Board (JARB) and the Coalition Acquisition Review Board (CARB).

General JOHNSON.

Acquisition Review Boards (JARB, CARB, Super-Coalition Acquisition Review Board (SUPERCARB))

In Kuwait, Iraq and Afghanistan, the leadership maintains a strict approval process for all requirements, to include those executed under the LOGCAP contract. Every new requirement that exceeds \$50,000 must be validated by an Acquisition Review Board (JARB and CARB) and approved by a general officer. This approval process also includes internal purchases or actions executed by KBR. Requirements that exceed \$10 million must go through further scrutiny (SUPERCARB) and be approved by a centralized review board in Kuwait. No requirement is funded unless commands gain the recommendation of these boards and final approval at the general officer level. While not a funding process, these review boards review the proposed funds to ensure they are appropriate for the type of work to be awarded.

Joint Acquisition Review Board

The JARB is a requirements validation process held in Iraq that reviews Combat Support/Combat Services Support (CS/CSS) requirements for supported units. The board ensures the requirements are consistent with and necessary to support operations

Coalition Acquisition Review Board

The CARB is fundamentally the same as the JARB but reviews requirements associated with acquisitions for Kuwait/Afghanistan.

Super-Coalition Acquisition Review Board

If a cost estimate associated with a requirement is over \$10 million for Iraq, Kuwait or Afghanistan, the packet must go to Coalition Forces Land Component Command (CFLCC) for the "SUPERCARB" review and approval, basically a JARB process at a higher level of command.

No requirement is funded unless the customer obtains the recommendation of these boards and final approval of general officer level leadership.

7. Senator KENNEDY. Major General Johnson, is cost reasonableness a factor for determining appropriate award fees? If so, how is that factor used to determine award fees?

General JOHNSON. First of all, the size of the award fee pool is established based on estimated task order costs, which are negotiated on each task order. The size of the award fee pool is not based upon actual cost. Cost reasonableness is considered as a part of this process.

Second, the award fee criteria have always considered cost control as a significant factor (40 percent of the overall assessment). The cost control factor includes assessment of a number of cost control measures such as the contractor's ability to provide proper cost estimates, cost tracking, cost avoidance measures, and cost reasonableness, all taken in the context of the contingency environment.

8. Senator KENNEDY. Secretary Bolton, in your testimony, you stated that "the dynamics of logistics civil augmentation support significantly changed from anything we've seen." I am concerned that this "significant change" coupled with the exceptional cost growth calls into question the validity of the original competition for the contract and arguably amounts to a cardinal change. At any time, did the Army discuss this cost growth and the potential need for a new competition?

Mr. BOLTON. The growth of LOGCAP support is within the scope of the contract, which is tied to the number of major conflicts that could occur each year. See the discussion in the response to question #1.

9. Senator KENNEDY. Secretary Bolton, Congress has a clear preference for multiple awards when the Government issues Infinite Delivery-Infinite Quality (IDIQ) contracts. Cost reimbursement contracts are one of the least desirable contract types available. Would it negatively impact the Army's mission if Congress prevented the use of cost reimbursement task orders under single award IDIQ contracts for services valued over \$100 million?

Mr. BOLTON. No. Unless specifically authorized by Congress, all Army contracts must comply with applicable statutes including those involving military construction.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

CONTRACT MISMANAGEMENT

10. Senator BYRD. Mr. Reed, Mr. Ernst, and Mr. Fitzgerald, with the pending relocation of Halliburton corporate headquarters to the Middle East, have adequate measures been taken to ensure that the records of KBR, Inc. will remain available and accessible for current and future congressional oversight and other investigations?

Mr. REED. Yes, we believe adequate measures are in place to ensure access to KBR, Inc. records. Prime contractors are obligated and accountable for performing in accordance with the terms and conditions of their U.S. Government contracts. The terms and conditions of a Department of Defense (DOD) prime contract apply regardless of changes to the prime contractor's organization. Corporate reorganizations or relocations of corporate headquarters or business units do not affect the applicability of the contract's terms or diminish the responsibilities of the prime contractor. For example, the contract clause that provides the Government with access to records of negotiated contracts (FAR 52.215-2, "Audit and Records-Negotiation") remains applicable.

The "Audit and Records-Negotiation" clause requires the prime contractor to maintain records and make them available to the Government for examination, audit, or reproduction until 3 years after final payment under the contract or any longer period required by statute or by other clauses of the contract. This clause provides for Government access by not only the Government contracting officer and authorized representatives of the contracting officer (normally Defense Contract Audit Agency (DCAA)), but also by the Comptroller General of the United States or an authorized representative. The Comptroller General is given access to and the right to examine any of the contractor's directly pertinent records involving transactions related to the contract or its subcontractors. The Inspector General also has statutory authority to gain access to contractor records under the Inspector General Act of 1978, as amended.

There would be significant impact if Halliburton decides to become organized under the laws of Dubai. However, it is our understanding that action by the company to merge with or acquire domestic companies would be subject to review by the Treasury Department's Committee on Foreign Investments in the United States.

Mr. ERNST. The Halliburton corporate headquarters is not relocating to the Middle East. This has been misreported. Halliburton is expanding its presence in the Middle East and is relocating certain key executives to Dubai to focus on development of the Middle East market. This will have no effect on the availability of KBR records.

Mr. FITZGERALD. To date, we haven't encountered any problems with access to KBR records and we don't anticipate future problems with access to KBR records as a result of the pending relocation of Halliburton corporate headquarters to the Middle East. Our LOGCAP audit work focuses on evaluating Army policies, processes, and controls. When we need information from KBR we go to the procuring contracting officer (forward or rear) to make arrangements to obtain it. This is done under the auspices of contract clauses.

11. Senator BYRD. Mr. Reed, Mr. Ernst, and Mr. Fitzgerald, do you have any concerns related to Halliburton's divestment of KBR and your agencies' continued ability to audit KBR, Inc.'s activities during the course of the LOGCAP contract?

Mr. REED. Halliburton's divestment of KBR should have no impact on our ability to audit KBR, Inc. or the LOGCAP contract. Regardless of the divestiture, KBR must maintain all appropriate contractor records and make them available to the Government for examination and audit.

Mr. ERNST. I have no concern with our continued ability to audit KBR activities after the divestiture as our access to records should improve since only KBR records will now be required for audit. However, Halliburton records will still be required for the settlement of costs incurred prior to the divestiture of KBR by Halliburton.

Mr. FITZGERALD. To date, we haven't encountered any problems with access to KBR records or personnel and we don't anticipate future problems despite Halliburton's divestiture of KBR. Our LOGCAP audit work focuses on evaluating Army policies, processes, and controls. When we need information from KBR we go to the procuring contracting officer (forward or rear) to make arrangements to obtain it. This is done under the auspices of contract clauses.

12. Senator BYRD. Mr. Fitzgerald, when were Army auditors first stationed on the ground in Iraq and why were they not in Iraq earlier?

Mr. FITZGERALD. U.S. Army Audit Agency (USAAA) auditors were first permanently stationed on the ground in Iraq in May 2005 to audit LOGCAP operations related to Operation Iraqi Freedom. Since May 2005, we have had a continuous presence on the ground in Iraq. Intermittently during the period June 2002 through August 2003 USAAA personnel operated in deployed environments in Uzbekistan, Afghanistan, Turkey, and Kuwait to audit LOGCAP operations in support of Operation Enduring Freedom and Operation Iraqi Freedom. Additionally, auditors were on the ground in Baghdad intermittently during calendar years 2004 and 2005 while performing three audits of the Commander's Emergency Response Program/Quick Response Fund.

13. Senator BYRD. Mr. Fitzgerald, do policies exist regarding the deployment of Army auditors to the field during military engagements that involve contractors?

Mr. FITZGERALD. There are no specific Army policies dealing with the deployment of Army auditors during military engagements that involve contractors. However, USAAA personnel have historically deployed with our troops to audit Army and/or contractor operations dating back to the Vietnam War. Currently, USAAA's authority to operate in a deployed environment is supported in Army Regulation 36-5 (Auditing Service in the Department of the Army dated 16 December 1991). The regulation specifies that USAAA has unrestricted access to Army operations. For joint operations, such as Operation Iraqi Freedom, we also coordinate our audit coverage of joint activities and non-Army DOD activities with the DOD Inspector General's Office.

14. Senator BYRD. Mr. Fitzgerald, should those policies be reviewed in light of the experience with the LOGCAP contract?

Mr. FITZGERALD. Army Regulation 36-5 has served USAAA's purposes over the years with regard to operating in a deployed environment. I believe, however, that my staff could deploy more timely and efficiently if operation plans recognized the need for audit controls and oversight early in contingency operations. We are in the initial stages of exploring options as to how this can best be accomplished, to include making USAAA part of operation plans for engagements so that our deployed role and related logistical support requirements can be recognized and addressed from the outset of an engagement. In a similar vein, based on our recent experiences with Hurricane Katrina, we are working with the Army Corps of Engineers to enhance our ability to deploy rapidly in the event of a natural disaster.

15. Senator BYRD. Mr. Reed and Mr. Ernst, does the DCAA have sufficient auditors to provide detailed oversight of the billions of dollars in contracts across the DOD?

Mr. REED. Yes, DCAA has sufficient auditors to fulfill our contract audit mission for the Department. While it is true that the volume of contracts for which we have responsibility has grown, DCAA has made good use of new technologies (i.e., automated working papers, enhanced communications infrastructure) to increase auditor productivity.

Mr. ERNST. Defense Contract Management Agency (DCMA) believes that DCAA has sufficient auditors to accomplish their mission.

16. Senator BYRD. Mr. Reed and Mr. Ernst, do your auditors have sufficient authority to receive all of the support they require?

Mr. REED. Yes, DCAA has sufficient authority to obtain the access to required contractor books and records. The FAR clause at 52.215-2 provides our auditors with the primary authority for access to contractor records. This clause must be inserted in all negotiated contracts except those: (i) not exceeding the simplified acquisition threshold; (ii) for commercial items; or (iii) for utility services. This clause provides the contracting officer's representative with the authority to examine and audit contractors' books, records, documents and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, et cetera) or type (e.g., data bases, application software, data base management software, utilities, et cetera), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing cost-reimbursement, incentive, time-and-material, labor-hour, or price-redeterminable contracts. For the most part, contractors are cooperative and support the Agency's audit efforts. However, the Agency does have procedures in place to pursue instances where contractors deny or unreasonably delay our access to records.

Mr. ERNST. Current Federal Acquisition Regulations provide sufficient authority to auditors.

17. Senator BYRD. Mr. Reed and Mr. Ernst, do audits that uncover fraud or mismanagement receive the attention and action from the Service Chiefs that they deserve?

Mr. REED. DCAA has in place standard procedures for reporting potential fraud and mismanagement. To date, DCAA has made more than 20 referrals related to Iraq reconstruction effort to the appropriate investigative agencies. To the best of our knowledge, the investigative agencies have taken these referrals seriously, and the referrals are actively being worked.

Mr. ERNST. DCMA believes these audits receive the attention and action from the Service Chiefs that they deserve.

18. Senator BYRD. Secretary Bolton, in light of some of the issues that have been raised at today's hearing, what problems or challenges do you see with the increasing reliance upon civilian contractors to provide essential support services to the U.S. military, particularly to those units and personnel deployed overseas?

Mr. BOLTON. Contractors have played a vital role in supporting U.S. Forces since the Revolutionary War. The highest number was during World War II when an estimated 734,000 contractors supported the warfight. While the U.S. Army is less than 40 percent of its size of 35 years ago, the sustained strategic demand is unprecedented. The use of contractors is a force multiplier enabling the U.S. Army to keep soldiers engaged in core U.S. Army missions.

The Army is working tirelessly to balance the need to use contractors to provide needed services while using soldiers and Army civilians to perform inherently governmental functions. I see three primary challenges with the Army's increasing reliance on civilian contractors:

(1) The perception that we pay unreasonable and unallowable costs. We do not. All incurred costs are reviewed prior to payment and all costs are audited;

(2) The perception that contract fraud is prevalent overseas. It is not. For example, the Special Inspector General for Iraq Reconstruction (SIGIR) testified before a Subcommittee of the House Judiciary Committee that contracting fraud in Iraq is a relatively small component of the overall multi-million dollar financial investment in the reconstruction of Iraq; and,

(3) The belief that there are insufficient Government personnel to perform proper contract administration and to monitor contract performance. The Army has been stretched beyond its capacity to support current contingency deployment demands. The Army supports contingency operations with only 285 military contracting officers and civilian volunteers. To address the military support we have designed deployable modular contracting brigades. We are looking at recruitment bonuses and retention bonuses to increase our cadre of deployable civilians.

19. Senator BYRD. Secretary Bolton, how should procedures be revised considering the U.S. military's experience with contractors in Iraq?

Mr. BOLTON. Considering the U.S. military's experience with contractors in Iraq, we need to collectively recognize the role and importance of Government contracting personnel to execute, administer, and oversee contracts for contractor support services and reconstruction. Procedures for training the operational and Big "A" Army in acquisition (from requirements generation to contractor performance for sustainment) must become a staple of military education and operational planning. Lessons learned in Iraq and future conflicts must be captured, and we are in the process of capturing and documenting these lessons in order to form future operational plans and to include contracting in training exercises. We go to war with logistics capability and we must doctrinally and procedurally recognize that we must also go to war with the business side of soldier support.

The Army is in the final stages of staffing of two guides for contingency contracting—an OCONUS Contingency Contracting Guide and a CONUS Guide for Supporting Emergencies within the United States. Additionally, documenting systems and processes in the development of Joint Publication 4-10, Contracting and Contractor Management in Joint Operations, and the updating of Army Regulation 715-9, Contractors Accompanying the Force, will be useful tools for contracting officers.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

ARMY AUDIT AGENCY

20. Senator AKAKA. Secretary Bolton, in April 2006, the Army Audit Agency (AAA) reported that DOD remains insufficiently staffed and inadequately organized to provide effective oversight for the LOGCAP contract. The AAA report states:

“[T]he current management structure over LOGCAP operations in the Iraq area of operations isn’t conducive to ensuring the program is managed in the most effective and efficient manner. . . . Specifically, contracting activities in the theater have been fragmented and too understaffed. . . . [O]perational fragmentation among the key management offices, along with the dispersed location and high turnover of personnel responsible for managing work under the contract, make it difficult to ensure new requirements are fully necessary or being obtained in the most cost-efficient manner. . . .”

During the hearing, we discussed the shortage of contract oversight personnel in the DOD. Please provide your plans to address this shortage, as well as the potential loss of significant numbers of additional acquisition personnel due to retirement in the upcoming years. If the current fiscal year 2008 DOD budget request does not provide sufficient resources for you to address shortages of acquisition personnel, please indicate what level of resources is needed.

Mr. BOLTON. The Army does not have a sufficient number of contracting officers and contract administrators. Currently, there are 5,563 1102s (contract specialist/contracting officer) within the Army. This number is expected to decrease by 38 percent to 3,472 by 2011. This projected loss is due to both retirement, and attrition (migration to private industry, BRAC actions, regional hiring difficulties due to lack of PCS funding, et cetera). Since 1995, the workforce numbers have decreased by 53 percent, while the workload actions have increased by 278 percent. The decrease in 1102s has resulted in a lack of contract administration (which has been validated by several outside audits), and a lack of contract planning. New hires (1102s) of 418 per year would result in 0 percent growth over the next 5 years and new hires (1102s) of 529 per year would result in 10 percent growth over the next 5 years. The shortage is particularly severe for the Army’s population of 285 military contracting officers who support operations in Iraq and Afghanistan. The Army, along with the other military services, has been unable to provide the total number of Level II and III certified military contracting officers requested by commanders in Iraq and Afghanistan. This shortage is also evident within the DCMA which, on a few occasions, was forced to turn down requests from the Army for the administration for theater support contracts citing a lack of resources.

Over recent years the size of the contracting workforce has been a flat line while our workload has increased, in some cases as much as 200 percent or more. We are working within the Army to determine how to resource our personnel requirements. We are also looking at our civilian intern programs, and at our civilian recruitment and retention practices. As the Army increases its strength, I have tasked my Director, Acquisition Career Management, and Deputy Assistant Secretary of the Army for Policy and Procurement to examine the manning requirements in order to increase our 285 military contingency contracting officers and our deployable civilian workforce. Last, I am reexamining our utilization of CORs. The Army has already taken steps to improve oversight of contract services by requiring trained CORs and a Quality Assurance Surveillance Plan on service contracts greater than \$2,500.

21. Senator AKAKA. Secretary Bolton, regarding the work environment that contract oversight people in Iraq must deal with, and the difficulty with sending civilian personnel into that environment, I have serious concerns regarding the problems DOD is experiencing. Specifically, the Department is relying heavily on auditors to find contracting problems after the fact rather than direct oversight by the contracting officer’s technical representatives (COTRs). In my opinion, it is inefficient to wait until an audit finds a problem to deal with contractor performance problems because the audit is performed too late to ensure that the contractor meets the needs of the commanders in the field. Because of this, should the Department consider having a cadre of Active-Duty military COTRs who can handle oversight of contracts supporting our troops in combat zones?

Mr. BOLTON. I agree that we must have the ability to provide “real-time” oversight of contractors supporting our troops in combat zones. The Army has maintained a proactive approach in identifying and rectifying contract discrepancies and does not rely solely on audits to discover problems. In addition to military who are COTRs, we work closely with the DCMA and the DCAA reviewing contractor per-

formance as it occurs and auditing vouchers at the time of submission. We have a cadre of Contingency Contracting Teams and we are developing a new approach to form and sustain a cadre of emergency essential Department of the Army civilians to provide contracting and oversight in combat zones. We are also assessing our practices to identify, train, and utilize our COTRs.

CONTRACT MISMANAGEMENT

22. Senator AKAKA. Secretary Bolton, a cost-plus award fee contract removes all risk from the contractor, and places it on the Government. The only incentive for the contractor to control costs is supposed to be the award fee. However, since the award fee is a percentage of the contract costs, the contractor really does not have any incentive to control costs, especially if the contractor gets the maximum fees regardless of their performance. The only defense for the Government is diligent contract oversight. It is pretty clear from the numerous audit findings of AAA and the DCAA that diligent oversight has been lacking. Why did the Army not use a fixed-fee type contract for LOGCAP?

Mr. BOLTON. The LOGCAP III contract has multiple contract types, including firm fixed price, that can be used when there are firm requirements that are not susceptible to changes in scope, quantity, or schedule. Since the predominant effort under LOGCAP III has involved supporting contingency operations which are subject to continuous changes in requirements, it is unrealistic to negotiate firm fixed prices for this type of effort. As a result, the Government must bear some of the risk through the use of a cost-type contract. We use incentives such as award fee or incentive fee to encourage better performance or cost control on larger dollar orders. For smaller dollar orders, we can use cost plus fixed fee to avoid the administrative burden associated with collecting information and evaluating performance IAW established fee criteria, as well as holding boards to determine award fee amounts. In those cases the administrative costs far outweigh the amount of a fixed fee. To clarify: fee is paid on negotiated costs, not actual costs and the contractor's efforts to control costs will be reflected in award fee decisions and past performance ratings. As a result, the contractor has little incentive to run up costs. For cost plus award fee actions, a portion of fee related to cost control can be withheld if it is shown they did not reasonably control costs.

Furthermore, the contractor is not entitled to recover certain types of costs (those identified as "unallowable" under the FAR), and the contractor can only recover costs that are deemed "reasonable" under the circumstances.

23. Senator AKAKA. Secretary Bolton, why did the Army not select more than one contractor, in order to create competition?

Mr. BOLTON. In late 2000 and early 2001, the Army was developing the acquisition approach to award the next LOGCAP III contract in late 2001. There was discussion about the number of contracts to award on LOGCAP III. Multiple awards were considered. However, through almost 4 years of LOGCAP II at that time, there had been sporadic small operations requiring LOGCAP support, resulting in workload that did not support more than one LOGCAP contractor. Based on that limited workload experienced at that time, the decision was made to award and maintain only one LOGCAP III contractor, and not pay to sustain multiple contractors. The LOGCAP III contract was competitively awarded.

24. Senator AKAKA. Secretary Bolton, why is one contract used for all logistical support work, instead of breaking it down into smaller contracts, some of which could probably be fixed-price contracts?

Mr. BOLTON. As noted in the answer to the previous question, the low activity on the LOGCAP II contract did not indicate a need for multiple contracts on LOGCAP III. The concept of a contingency contract at that time was to have a single contractor quickly respond to requirements and be responsible for overall management of all the logistics support work. LOGCAP support was envisioned to be for short periods of time, not for long, drawn out conflicts.

The Army has examined LOGCAP requirements to determine if they can be broken into smaller contracts, and in some cases, tasks were removed from the LOGCAP contract and awarded through other contracts. Due to the fluid and changing operational environments in Iraq and Afghanistan, it has been difficult to identify requirements that could be structured in smaller tasks and awarded on a fixed-price basis. Furthermore, operational commanders find it even more difficult to deal with multiple contractors in the area of conflict and they highly desire having one "belly-button" to turn to.

LOGCAP FUNDS FOR BOTH MILITARY CONSTRUCTION AND PROCUREMENT

25. Senator AKAKA. Secretary Bolton, last year the Army informally proposed language to the congressional defense committees to retroactively authorize the use of LOGCAP funds for both military construction and procurement during the four previous fiscal years, 2003 through 2006. The committees did not support or enact such legislative relief. Does the Army support such a proposal today, to retroactively authorize actions that may be under Anti-Deficiency Act (ADA) or other investigations?

Mr. BOLTON. No, the Army does not support such a proposal today. Since last year, the Army has worked with Central Command (CENTCOM) and Office of the Secretary of Defense Comptroller to document and request contingency construction authority for all construction projects that exceeded the threshold for use of operation and maintenance (O&M) funds. The Army has also put into place more stringent policies and procedures on the use of O&M funds for military construction projects and the procurement of equipment to prevent exceeding the expense/investment threshold. Army funds for construction using the LOGCAP contracting vehicle is approved only if the total project cost is within the threshold of \$750,000 or \$1.5 million if the project is in support of life, health, and safety. If the project exceeds this threshold the scope of work is reduced to ensure the project does not exceed the statutory limitation, or the requirement is processed as a Contingency Construction Authority (CCA) request (if applicable), or the project is cancelled for LOGCAP and forwarded to the U.S. Army Corps of Engineers for processing. Also, equipment purchases required to provide services under LOGCAP contracts that require procurement funding are identified and the contractor must obtain approval prior to commitment of any expenditure for any equipment that requires procurement funding. Additionally, we have provided clarifying guidance on the funding of leases of equipment.

26. Senator AKAKA. Secretary Bolton, does the Army believe the use of a LOGCAP contract as an acquisition method circumvents other statutes applicable to military construction?

Mr. BOLTON. No. Unless specifically authorized by Congress, all Army contracts must comply with applicable statutes including those involving military construction.

CONTRACTOR OVERSIGHT

27. Senator AKAKA. Secretary Bolton, in your statement, you discuss the large numbers of contractor personnel supporting our troops under this contract. Numerous potential problems with the contract have been identified due to the lack of adequate contractor oversight. A large number of security contractors are also supporting operations in Iraq, although I believe you indicated that it was under other contracts. However, contractor security personnel do not operate under the military's rules of engagement, and therefore, pose a potential risk to our counterinsurgency operations since they could potentially take actions that could inflame tensions. Given the problems with contractor oversight for security personnel, what is the DOD doing about this problem?

Mr. BOLTON. We address contractor oversight of personnel, including security personnel by requiring contractors to abide by the terms and conditions in their contracts. DOD contracts in Iraq, Afghanistan, and Kuwait require contractors and their subcontractors, authorized to accompany U.S. Armed Forces deployed to those regions; to comply with all applicable U.S., host nation, and third country national laws. They are also required to comply with policies and directives of the Combatant Commander.

DOD contractors, to include private security contractors, are required to comply with the rules for use of force, which have been established by the U.S. CENTCOM. Private security contractors in Iraq must also observe U.S. CENTCOM arming policies and host nation licensing and registration requirements. The performance work statement and terms and conditions of private security contracts specifically prohibit the contractor from engaging in any offensive operations, such as military combat maneuvers and counterinsurgency operations. Private security contractors are limited to defensive actions to protect persons and/or property identified in their contracts.

ARMY OVERSIGHT OF LOGCAP

28. Senator AKAKA. Mr. Fitzgerald, in your prepared statement, you stated that the Army is adequately managing the LOGCAP contract. This finding is somewhat difficult for me to understand given all of the problems that have been identified with this contract. The AAA reported on April 25, 2006, that "Overall, we concluded that the current management structure over LOGCAP operations in the Iraq area of operations isn't conducive to ensuring the program is managed in the most effective and efficient manner." Both the AAA and the DCAA have identified hundreds of millions of dollars of overcharges and potential fraud in this contract. Please explain what criteria is being used to determine the adequacy of the Army's management of this contract.

Mr. FITZGERALD. Our criteria for evaluating how well the Army managed the LOGCAP contract hasn't changed. However, the two referenced conclusions we drew were based on a different body of evidence and different timeframes. In our summary report A-2006-0022-ALL, dated 28 November 2005, we concluded that "Overall, the Army's management of the LOGCAP contract was adequate." This conclusion, which was referenced in my prepared testimony, was based on our body of field work and tests we conducted during June 2002-February 2004 in the United States and in Turkey, Uzbekistan, Kuwait, and Afghanistan. During this timeframe, the scope of LOGCAP operations was much smaller than it grew to be during March 2004 and beyond. Notwithstanding our overall conclusion, our summary report and the six preceding supporting reports contained numerous recommendations to improve management of LOGCAP operations. In report A-2006-0099-ALL, dated 25 April 2006, we concluded that ". . . the current management structure over LOGCAP operations in the Iraq area of operations isn't conducive to ensuring the program is managed in the most effective and efficient manner." Unlike the prior conclusion, this conclusion was based exclusively on field work conducted in Iraq. The fieldwork and tests supporting this conclusion were completed during May-July 2005.

29. Senator AKAKA. Mr. Fitzgerald, it is clear that the Army is relying on auditors to identify contract problems after the fact, rather than direct oversight by COTRs to manage the contract. Management of contracts through the audit process does not seem to be an effective management process. At what point would the Army's management of the contract be evaluated as inadequate?

Mr. FITZGERALD. The Army is using USAAA's audit work as one of the tools it has to help improve the management and internal control structure of the LOGCAP contract. All recommendations we made dealing with the LOGCAP contract for both Operation Enduring Freedom and Operation Iraqi Freedom were designed to improve both current and future operations, processes, and controls. We view our work as complementary to the work performed by COTRs and other contracting and resource management officials who are working on various aspects of the LOGCAP contract.

INVESTIGATIONS OF POTENTIAL ANTI-DEFICIENCY ACT VIOLATIONS

30. Senator AKAKA. Secretary Bolton and Mr. Fitzgerald, for over a year now, the Army and the Office of the Secretary of Defense Comptroller have been conducting investigations of potential ADA violations concerning the use of operations and maintenance funds for military construction and procurement activities through the LOGCAP in Iraq. These investigations are in part resultant from a memo from the DOD Office of General Counsel dated March 7, 2006, to the Office of the Legal Counsel to the Chairman, Joint Chiefs of Staff. This committee was briefed last October that up to \$600 million in operations and maintenance funds may have been carried out through LOGCAP for unauthorized and illegal investment items and leases. In the Army's internal review and investigation, at what organization or level of contracting review did the failure to conform to Federal Acquisition Regulations occur?

Mr. BOLTON and Mr. FITZGERALD. Since the committee was briefed in October 2006, the Army's Office of the ASA (FM&C) has been conducting an investigation into potential ADA violations concerning the use of operations and maintenance funds for military construction and procurement activities. While our investigations are nearing completion, no ADA violations have been identified to date (see question #32 for status). To improve our overall funds controls concerning the expenditure of O&M, thus minimizing and/or eliminating the potential for future ADA violations, we have taken several proactive measures.

First, all LOGCAP construction requirements are reviewed in accordance with DA PAM 420-11, Project Definition and Work Classification, by the Multi-National Corps-Iraq (MNC-I) Joint Facilities Review Board to ensure proper funding has been allocated to the project. The LOGCAP Support Officer is responsible for ensuring all construction projects incidental to services performed by the LOGCAP contractor are reviewed and approved by the MNC-I Joint Facilities Utilization Board (JFUB) in accordance with applicable Multi-National Forces-Iraq and MNC-I Fragmentary Orders and requirements management guidance. If the total cost of the construction project exceeds \$750,000, (\$1.5 million for construction in support of life, health, and safety) the construction project is not approved for LOGCAP. When this is the case, one of three courses of action will be taken by MNC-I:

- Reduce the scope of work to ensure total project will not exceed the statutory limitation.
- Hold the requirement and process a request for CCA.
- Cancel the project for LOGCAP and forward package to the U.S. Army Corps of Engineers for processing.

Second, the ASA (FM&C) has issued a funding memorandum that provides guidance to ARCENT activities to determine the type of funding used for specified in-theater service contracts that involve capital assets. Two major leasing actions were addressed: Prime Power Generation Equipment and Dining Facilities. The intent of the memorandum was to assist resource managers, contracting officers, and contractors alike in making better use of O&M funding for procurement actions particularly as they relate to LOGCAP. It provides a detailed discussion and analysis of the regulatory guidance impacting these leasing actions.

Lastly, the ASA (FM&C) is finalizing a second memorandum that will provide guidance regarding the type of funding to be used for specified in-theater service contracts for leasing non-tactical vehicles.

Together, the above actions significantly improve the Army's ability to effectively manage, account for, and control the use of O&M funds for which it has been authorized and appropriated by Congress for use in the current theater of operations.

31. Senator AKAKA. Secretary Bolton and Mr. Fitzgerald, how has the Army changed its policies and review processes for LOGCAP delivery orders to ensure the proper authority is available for the use of various fund sources?

Mr. BOLTON and Mr. FITZGERALD.

Acquisition Review Boards (JARB, CARB, SUPERCARB)

In Kuwait, Iraq, and Afghanistan, the leadership maintains a strict approval process for all requirements, to include those executed under the LOGCAP contract. Every new requirement that exceeds \$50,000 must be validated by an Acquisition Review Board (JARB and CARB) and approved by a general officer. This approval process also includes internal purchases or actions executed by KBR. Requirements that exceed \$10 million must go through further scrutiny (SUPERCARB) and be approved by a centralized review board in Kuwait. No requirement is funded unless Commands gain the recommendation of these boards and final approval at the general officer level. While not a funding process, these review boards review the proposed funds to ensure they are appropriate for the type of work to be awarded.

Joint Acquisition Review Board

The JARB is a requirements validation process held in Iraq that reviews CS/CSS requirements for supported units. The board ensures the requirements are consistent with and necessary to support operations.

Coalition Acquisition Review Board

The CARB is fundamentally the same as the JARB but reviews requirements associated with acquisitions for Kuwait/Afghanistan.

Super-Coalition Acquisition Review Board

If a cost estimate associated with a requirement is over \$10 million for Iraq, Kuwait, or Afghanistan, the packet must go to CFLCC for the "SUPERCARB" review and approval, basically a JARB process at a higher level of command.

Joint Facilities Utilization Board

To control and manage construction, all commands have established a JFUB. These boards evaluate and reconcile requirements for real estate, use of existing facilities, and ensure all potential construction is in line with established master plans. Funding type and thresholds are also reviewed to ensure that no fiscal violations occur.

Material Requisition Review Process

Subsequent to the review of the Acquisition Review Board Approval, every requisition for supplies or services submitted by KBR over \$25,000 is personally reviewed and approved by the Government Administrative Contracting Officer. In Iraq, those requisitions that exceed \$250,000 are reviewed and approved by the Command Comptroller before KBR is authorized to execute the procurement. Funding type and thresholds are reviewed to ensure that no fiscal violations occur.

32. Senator AKAKA. Secretary Bolton, what is the status of each investigation?
Mr. BOLTON. Army opened five investigations. Three are now closed; two are still open.

33. Senator AKAKA. Secretary Bolton, when are the investigations expected to be completed?

Mr. BOLTON. Army expects to complete the two remaining ADA investigations by 30 December 2007.

34. Senator AKAKA. Secretary Bolton, what results of the investigation can you share with us, and what personnel actions have been taken as a result of these investigations?

Mr. BOLTON. Three of the five cases have been closed as "No ADA". The funding was either determined appropriate (e.g., within the \$1.5 million limitation for life, health, and safety) or the proper funding was obtained.

35. Senator AKAKA. Mr. Fitzgerald, were you asked to take part in these investigations? If so, can you describe your role and any findings or observations you may have about the investigations?

Mr. FITZGERALD. I wasn't asked to take part, and USAAA didn't participate in the referenced investigations.

RECOMPETITION

36. Senator AKAKA. Mr. Ernst, it appears that the contract has been used beyond its intended scope of two regional conflicts of up to 25,000 troops each. Does DOD have a policy that requires recompetition of a contract when the scope has been exceeded? If so, under what conditions does the Department require the contract to undergo a new competition?

Mr. ERNST. Recompetition of the contract is not a function delegated to DCMA. This question would be more appropriately addressed to the Army Sustainment Command.

37. Senator AKAKA. Mr. Ernst, was that threshold exceeded in this case, and if so, why did the contract not undergo recompetition?

Mr. ERNST. Recompetition of the contract is not a function delegated to DCMA. This question would be more appropriately addressed to the Army Sustainment Command

AWARD FEES

38. Senator AKAKA. General Johnson, the Army has awarded 88 percent of the available award fees to KBR, Inc. This level of award fees is particularly surprising considering that technical performance is only a basis for 30 percent of the fee. Contractor management is also 30 percent, and cost performance is 40 percent.

How is it that the Army has awarded KBR, Inc. 88 percent of the available award fee despite numerous audit findings of overcharges totaling hundreds of millions of dollars, inadequate accounting and estimating systems, inadequate cost justifications, and KBR, Inc.'s reluctance to provide appropriate supporting documentation and information? Please provide a detailed and specific justification of how the contractor was evaluated at this level of award fee.

General JOHNSON. The purpose of the award fee process is twofold: One is to evaluate the contractor's performance and determine how much fee to award; the second is to provide feedback to the contractor on areas of strength the Government would like the contractor performance to continue, and to identify areas the Government would like to see improvement.

The award fee board and award fee determining official take all of the contractor's performance, both positive and negative, into consideration. The contractor's per-

formance, above the minimum required by the contract, is assessed for earning award fee. Weaknesses noted during performance are balanced with the total effort performed by the contractor to arrive at the overall rating, and award fee amount in accordance with the award fee plan. Any areas for improvement are described in the award fee letter so the contractor recognizes where they must do better to earn a higher percentage of fee.

The 88 percent of award fee paid is the total of award fee paid on over 150 individual task orders. It does not relate to any single task order. Contractors generally start off receiving a lower percent of their award fee and get better over time as they focus on the areas noted for improvement during the award fee boards. KBR has not earned award fee at the 88 percentage at every award fee board. The four award fee boards conducted earlier in the life of the contract (2005) resulted in award fees of 81 percent to approximately 83 percent. Specific areas noted for improvement during that timeframe were KBR business systems, relationship with DCAA, cost reporting, quality control, and subcontractor management. Strengths reported were outstanding technical performance considering the hostile and ever changing environment of operations, teaming relationship with Government personnel (KBR worked shoulder to shoulder with the soldiers), identification and resolution of problems, cost avoidance measures, emphasis on safety and reduction of accidents (resulting in decrease to DBA insurance rates), and inventory accountability.

The award fee board noted that improvements were occurring during this timeframe in the cost reporting/recording system. Also DCMA and DCAA were working closely with KBR on their business systems. Since early in 2007, all KBR business systems have been determined acceptable by DCMA.

Any contract overcharge is a concern to the U.S. Government. Due to some instances where DCAA has identified overcharges, KBR has not yet been authorized to direct bill even though their billing system has been approved. DCAA continues to be responsible for reviewing every cost voucher submitted by KBR to ensure that costs billed are allocable, allowable, and reasonable prior to payment. The contractor error rate on previous submissions was tracked so any trends could be analyzed. The error rate of 2-3 percent is very low and not indicative of major systemic problems.

The inadequate cost justifications relate to DCAA audit of KBR initial proposals. The challenge in a contingency environment is that proposals are required to be prepared very quickly, and the contractor may not have enough information to fully develop the rationale to support costs. This is unlike the normal CONUS contracting process where a contractor would have 30 to 60 days to gather information to support their proposal. The purpose of the DCAA review is to note any questioned or unsupported portions of a proposal. The DCAA findings are brought to the contractor's attention and, during negotiations are either supported with more information and accepted, or not accepted as part of the definitized price. The questioned costs noted in the DCAA review are tools used by the contracting officer during the negotiation process. As noted by DCAA, over \$600 million has been "saved" during this process, proving that the process is working.

39. Senator AKAKA. General Johnson, does the Army not consider numerous cases of overcharges as characteristic not only of poor cost performance, but of poor contractor management?

General JOHNSON. The Army is always concerned about overcharges. It also recognizes many factors come into play, including the environment where the support is provided, the urgency, and the magnitude of the requirement. Because of the operational tempo and rapid growth of the LOGCAP, KBR's estimating system and available proposal preparation resources were stressed. This resulted in poorly prepared and supported proposals for the initial task orders support OIF and OEF. Overall proposals and estimating systems have improved with the assistance and oversight of the DCAA and the DCMA. It is not unusual for DCAA to question costs on initial proposals. When we require quick turn around proposals where frequent changes of requirements exist it is also not unusual to have even more costs questioned. In the end, the contractor must provide support for their proposed costs. Government negotiators address all the DCAA questioned and unsupported costs in coming to a final negotiated agreement.

LOGCAP EVALUATION

40. Senator AKAKA. General Johnson, during the hearing you stated that you believe that the KBR, Inc. contract is cost effective relative to a military infrastructure

that provides the same services. Has a detailed evaluation been performed based on the actual costs encountered with the LOGCAP contract? If so, please provide that evaluation.

If not, please provide your basis for saying that it is cost effective. In addition, please provide a breakdown of the contract costs to date, including how much of the costs were overhead, labor, profit, and equipment/materiel. Please also provide in addition the Army's costs to issue and oversee the contract, including costs of the associated audits.

General JOHNSON. A Congressional Budget Office study dated October 2005, Logistics Support for Deployed Military Forces, was prepared for the Senate Armed Services Committee. It looked at the cost of contracted services on LOGCAP Task Order 59 and compared it to the CBO estimate for military units to provide the same services. Task Order 59 was the task order to provide LOGCAP support to Army units in most of Iraq. The CBO report states on page 89 of the report that "In all of the alternative combinations, the total cost of using Army units, including the cost of units in the rotation base, was higher than the costs incurred under the LOGCAP contract." And the last paragraph on the same page, "CBO concluded that the overall result of this analysis—that total costs for acquiring logistics support from the LOGCAP contractor would be lower than the cost of providing those services using Army units—would be unlikely to change if the split between recurring and non-recurring costs differed from the weighted average for the 10 sites."

QUESTIONS SUBMITTED BY SENATOR JIM WEBB

COST TO CONTRACT OUT FOOD SERVICES

41. Senator WEBB. Secretary Bolton, the purpose of these questions is to obtain a better understanding of the real cost to contract out food services and other logistical measures as part of the Army's LOGCAP. During the hearing, you stated that the cost of a soldier's meal served by KBR under its contract was \$3.05. What is the total cost to provide such contracted messing (per soldier, per day) when all costs under the food-services element of the contract with KBR are considered (e.g., construction of mess hall, contracted cooks and other personnel, shipping of pre-packaged food, et cetera)—in other words, what is the real cost to feed a soldier each day?

Mr. BOLTON. LOGCAP services include providing the dining facility, and preparation and service of food. It does not include purchasing, shipping, or transporting the food; this is a function of the Defense Logistics Agency.

In 2006, for CENTCOM AOR, the average cost for LOGCAP III to prepare and serve a meal was \$3.36. This includes all costs associated with providing food services; i.e. labor, materials, procuring services, equipment, leasing dining facilities, property management, and travel to mobilize/demobilize personnel.

42. Senator WEBB. Secretary Bolton, what has been the total cost of laundry services, using similar accounting methods?

Mr. BOLTON. The cost of laundry services under LOGCAP III, since inception to July 6, 2007, against 148 task orders, is \$380,993,968. This includes all costs associated with providing laundry services; i.e. labor, materials, procuring services, equipment, property management, and travel to mobilize/demobilize personnel.

43. Senator WEBB. Secretary Bolton, how much funding was obligated last year for food services and laundry services in the CENTCOM area of responsibility under the provisions of this contract? How much is funded this year?

Mr. BOLTON. The 2006 cost paid for laundry services was \$77,323,652 and for food services was \$595,392,194.

The 2007 estimated cost (as of July 6, 2007) for laundry services is \$75,614,455 and for food services is \$620,587,085. This includes actual costs to date and projections for the balance of 2007.

This includes costs associated with providing laundry and food services; i.e. labor, materials, procuring services, equipment, leasing dining facilities, property management, and travel to mobilize/demobilize personnel. However, for food services, this does not include purchasing, shipping, or transporting the food; this is a function of the Defense Logistics Agency.

44. Senator WEBB. Secretary Bolton, how many military servicemembers and U.S. Government civilian employees were fed last year under this contract? What is the estimate this year?

Mr. BOLTON. During calendar year 2006, LOGCAP provided 177,751,199 meals. LOGCAP provides support to 93 dining facilities across Iraq, Afghanistan, and Djibouti feeding approximately 221,000 personnel which includes all military Services, coalition forces, and civilians. With the plus up of 20,000 military and required support personnel, the number of meals will also increase by approximately 10 percent during 2007.

The U.S. military is responsible for counting the number of personnel that eat in the DFACs from which the contractor identifies the number of meals served.

45. Senator WEBB. Secretary Bolton, how does the cost identified in response to questions 39 and 40 compare to other historical examples for the Active component (e.g., Vietnam, U.S. European Command during the Cold War, et cetera); please normalize for "then-year" dollars?

Mr. BOLTON. There is no way to accurately compare the cost of food and laundry services in Iraq to historical costs in Vietnam and during the Cold War. One complicating factor is the fact that the costs paid under LOGCAP do not represent the total cost for food or laundry services. For example, the cost of food services does not include the direct cost of the food, which is provided under a separate DLA contract, or facilities, which are paid for in a separate task order. When other indirect costs, such as transportation, are considered, the complexity of the cost comparison becomes daunting. This is particularly true when one attempts to compare the cost of contracted services, such as LOGCAP, to services which were provided by organic combat support units during Vietnam and the Cold War.

A more accurate assessment of current and historical costs can be made by comparing specific elements of cost over time. Since labor is the largest cost driver in a service environment, a reasonable comparison can be made by estimating the incremental cost of replacing contracted support with combat support/combat service support units. An exhaustive study of this nature was published by the Congressional Budget Office in May 2005. In the report, titled "Options for Restructuring the Army," the CBO concluded that increasing the force structure is clearly more expensive than using contracted support over time.

QUESTIONS SUBMITTED BY SENATOR JOHN MCCAIN

CONTRACT MISMANAGEMENT

46. Senator MCCAIN. Mr. Reed, Mr. Ernst, and Mr. Fitzgerald, late last year, in a written report, the Office of the SIGIR complained that KBR, Inc. refused to provide it with information such as the amount of people fed each day in its dining facilities and the amount of fuel delivered to foreign embassies in Iraq, claiming that the data was proprietary. This is information that KBR, Inc. keeps in support of the LOGCAP contract. Reportedly, last year the Army Sustainment Command represented that it had implemented corrective actions on this issue. Has KBR, Inc. provided all the information your offices have requested to enable you to perform your work relating to the LOGCAP contract? If not, on what basis has KBR, Inc. refused to supply information and how has it impeded your oversight and management efforts?

Mr. REED. DCAA has experienced mixed results. Cooperation has been inconsistent over time, resulting in inadequate proposals or claims, delays in responding to DCAA document requests, and qualified audit reports. Initially we gave the company the benefit of the doubt due to its admission of inexperienced personnel and weak business processes. While these were contributing factors, it is also evident that KBR Government compliance representatives, who are the day-to-day interface with DCAA auditors, have not always facilitated the audit process. We believe they attempt to control the flow of documents and information to DCAA as a means of managing the audit process and outcomes. DCAA has challenged this practice and generally obtained the requested information or a statement that the records are incomplete or missing. If the contractor does not provide the required information, DCAA will take exception to the related costs when processing contractor billings, and in audit reports on contractor proposals and incurred cost submissions.

Mr. ERNST. To my knowledge, KBR has not refused to provide information to DCMA on this basis. Occasionally, KBR personnel at lower levels will mistakenly refuse to provide data, but once this is elevated to higher management levels, the refusal is revoked. I am aware that KBR does not always provide requested information, claiming difficulty in locating specific records. I do not consider this as a refusal and eventually most of the records are located, although the response is not timely and therefore it impedes the Government's evaluation of incurred costs.

Mr. FITZGERALD. KBR, Inc. has provided USAAA with all the information and data we requested relative to the LOGCAP contract. We haven't encountered problems in obtaining the information needed to perform our audits.

47. Senator MCCAIN. Mr. Reed, Mr. Ernst, and Mr. Fitzgerald, has KBR, Inc. labeled any information proprietary that, in your view, was not proprietary? If so, was this a widespread practice, or isolated occurrences?

Mr. REED. DCAA does not normally review contractor information to ensure the proprietary markings are correct. As a matter of standard business practice, contractors make available proprietary information to DCAA to perform our contract audit function. In response, DCAA protects this information from any unauthorized disclosure.

Mr. ERNST. Prior to the corrective action taken by ASC, the proprietary markings by KBR were too liberal and the use of the markings was widespread. Since the corrective action, I am unaware of any inappropriate markings.

Mr. FITZGERALD. USAAA hasn't encountered problems with KBR Inc. withholding information because it was "proprietary."

48. Senator MCCAIN. General Johnson, what corrective actions did the Army implement to prevent the practice of KBR, Inc. improperly labeling data as proprietary?

General JOHNSON. A SIGIR interim report titled "Interim Audit Report on Inappropriate Use of Proprietary Data Markings by the LOGCAP Contract" SIGIR-06-035 was issued on October 26, 2006. The report noted the SIGIR's difficulty in obtaining information from KBR due to the inappropriate use of markings on data. As the interim audit report identified, KBR was in fact inappropriately marking data as proprietary. The problem was brought to the attention of the LOGCAP Director prior to issuance of the report and the Procuring Contracting Officer (PCO) took immediate action to correct the problem. On September 20, 2006, the PCO provided written direction to KBR instructing them to release data requested by SIGIR that was inappropriately marked as proprietary. The PCO then issued a contract modification on October 30, 2006, directing KBR to adhere to proper marking requirements of law, regulation, and the contract, and clarified the Contracting Officer's right and intent to challenge improper markings. To preclude similar occurrences in the future, the PCO has also incorporated this language into LOGCAP IV solicitation.

On 14 Dec 06, subsequent to the above actions, the PCO issued KBR a letter requesting their corporate policy and implementation plan for marking data with proprietary legends. This letter referenced the SIGIR interim audit 06-035, as well as the aforementioned modification to the basic contract. KBR responded on 7 Jun 07 with a copy of their latest procedural documents and those are undergoing careful review. Any inconsistencies with the contract or DOD policy will be addressed by the PCO.

49. Senator MCCAIN. General Johnson, is KBR, Inc. following the Army's policy? If not, what does the Army intend to do about this practice?

General JOHNSON. On 14 Dec 06 the PCO issued KBR a letter requesting their corporate policy and implementation plan for marking data with proprietary legends. This letter referenced the SIGIR interim audit 06-035, as well as the modification which added new language addressing proprietary markings to the basic contract. KBR responded on 7 Jun 07 with a copy of their latest procedural documents and those are undergoing careful review. Any inconsistencies with the contract or DOD policy will be addressed by the PCO. There have been no instances of improper markings brought to the attention of the PCO since the SIGIR audit report.

50. Senator MCCAIN. Secretary Bolton, is this practice of contractors improperly labeling information proprietary a larger problem within the defense industry?

Mr. BOLTON. No. This problem has been isolated.

51. Senator MCCAIN. Secretary Bolton, what is the DOD doing broadly to check such an unacceptable practice?

Mr. BOLTON. This problem has been isolated and has been addressed with the contractor on a case-by-case basis.

52. Senator MCCAIN. Secretary Bolton and General Johnson, according to a February 16, 2007, News Release from U.S. Army Sustainment Command, the U.S. Army awarded a \$225 million planning and support contract for the LOGCAP IV

contract. The Release further states that the Army will award the contracts for the actual performance of the combat support/combat service support services later this year.

Under this planning and support contract, the contractor will, among things, develop scopes of work, prepare independent cost estimates, analyze the performance contractors' costs, and measure the other contractors' performance.

It appears the contractor will be performing acquisition functions closely associated with inherently Government functions. I am concerned that this arrangement is or will become in the field of services acquisitions the equivalent of the lead systems integrator in major defense acquisition programs. Why did the Army decide to task a contractor with these activities?

Mr. BOLTON and General JOHNSON. It is not the intent of the program to have the support contractor function as a lead integrator. All discretionary decisions on program management remain the responsibility of Government officials. The support contractor will only assist Government staff in generating the documents you mentioned. The Government will review all documents to ensure they reflect the Government's need and determine if and how the documents will be used, not the contractor. The support contractor is working to assist and augment the Government staff. In that regard they are like support contractors on other large programs who assist the program office in various locations, but do not direct actions. It was decided that the program and the supported units would be better served by a single support contractor who understood all aspects of the program. The use of contractor support to a core Government staff will make it easier to flex the workforce as LOGCAP requirements fluctuate.

The functions that the contractor will be performing have been determined to be non-governmental IAW FAR Sub-Part 7.5.

The contract Scope of Work (paragraph 1.3) states "It is not the intent of this contract to have the contractor perform inherently governmental functions, or to have the contractor make discretionary decisions for the Government relating to the program or contracted support. The contractor will primarily provide advice, analysis, and draft document submissions for Government approval."

The contractor has also been directed that when attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties they will identify themselves as contractors to avoid creating an impression that contract personnel are Government employees, or official representatives of a Governmental organization.

53. Senator McCAIN. Secretary Bolton and General Johnson, did the Army make a written determination that appropriate military and civilian DOD personnel cannot reasonably be made available to perform the functions? Please provide the relevant written determination(s).

Mr. BOLTON and General JOHNSON. A specific written determination was not made, but the LOGCAP IV acquisition strategy clearly articulated the need to hire contractor support to assist and augment the LOGCAP Government staff. The Army does not have sufficient personnel available to perform the functions the LOGCAP support contractor will perform. For those inherently governmental positions, such as the LOGCAP Deputy Program Directors for Afghanistan, Iraq, and Kuwait, the Army has hired additional Government personnel. There is a requirement on services contracts to make a determination that the services being procured are nonpersonal. That determination, dated July 6, 2006 and signed by the Contracting Officer, is attached. The use of contractor personnel in lieu of military and civilian DOD personnel for non-inherently governmental functions allows us to meet mission requirements.

Memorandum for Record (AMSAS-ACF-L)
 Subject: Determination of Non-Personal Service, Solicitation No. W52P1J-06-R-0072,
 LOGCAP IV Planning and Support

1. This office has received a requirement to purchase Logistic Civilian Augmentation Program Services for FY07. The LOGCAP program provides contractor logistics support to U.S. military forces worldwide. The principal objective of LOGCAP planning/support contract is to provide U.S. military forces a broad range of logistics support planning and LOGCAP program support services.
2. In accordance with FAR 37.103, I hereby determine that the requirements procured by this action are not personal services as defined by FAR 37.104(c) because:
 - a. The primary work to be performed are services provided under the contract that include such items as: augmenting Government capability to develop and update worldwide and regional management and staffing plans for contingencies; working with LOGCAP IV execution contractors to assure understanding of the plans; assisting theater planners to integrate LOGCAP into their plans; assisting planners in integrating a broad range of contracted logistics support; assisting in developing Performance Work Statements (PWS) and assisting with Independent Government Cost Estimates (IGCE) for task orders; assisting in analyzing contractor execution approaches and costs in task order proposals; collecting information and drafting input on LOGCAP IV contractor performance; and recommending process improvements in the above actions.
 - b. The Government will not exercise any control nor supervise the contractor's employees or its subcontractors.
 - d. The contractor is to furnish all working space, facilities, equipment and supplies necessary for contract performance.
 - e. Contractor employees will not be used interchangeably with the Government's organizational structure.
 - f. The requirements as provided are an integral part of the required contracted Performance of Work Statement (PWS). It is not feasible for these requirements to be accomplished by another source.



Valiant M. DuHart
 Date: 16 July 2006
 Procuring Contracting Officer
 LOGCAP IV

54. Senator MCCAIN. Secretary Bolton and General Johnson, how has the Army dealt with potential conflicts of interests? For example, if the planning and support contractor has a pre-existing business relationship with a performance contractor, how will that be dealt with?

Mr. BOLTON and General JOHNSON. The ASC legal office anticipated these concerns and carefully drafted extensive conflict of interest provisions for the support contract. This clause prohibits any financial interest in the performance contractors which might cause or give the appearance of a conflict of interest. The entire clause is included in answer #55, but paragraph C of that clause is included here as it specifically addresses this question. The support contractor is required to flow this clause down to their subcontractors.

Clause H-4, Business Integrity and Organizational Conflict of Interest: Paragraph C. The planning/support contractor (including its key personnel) cannot have any actual or pending financial interest in the LOGCAP IV performance contractors for the period of this contract which might cause, or give the appearance of, a conflict with the performance of the requirements under this contract. Clear mitigation of

any potential conflict must be presented to the satisfaction of the contracting officer. The planning/support contractor is specifically prohibited from performing under any of the LOGCAP IV contracts (resulting from solicitation W52P1J-06-R-0049) as a LOGCAP IV prime contractor, subsidiary, subcontractor-at any tier, vendor, supplier, joint venture and/or any in any other business capacity that might result in an OCI.

55. Senator MCCAIN. Secretary Bolton and General Johnson, is there an organizational conflict of interests clause, included directly or by reference, in the planning and support contract? If so, please provide a copy of the provision.

Mr. BOLTON and General JOHNSON. Yes, there is a clause addressing this in the LOGCAP IV Support Contract W52P1J-07-D-0010.

H-4 Business Integrity and Organizational Conflict of Interest

A. It is anticipated that the planning services provided under this solicitation will require access to, and knowledge of, the proprietary information of the LOGCAP IV performance contractors, non-public Government information, pre-solicitation information, and information which would impair the planning/support contractors objectivity. It is further anticipated that the planning/support contractor will work closely with each of the LOGCAP IV performance contractors after contract award to implement the Government LOGCAP mission. While the planning/support contractor will not engage in any activity that is deemed inherently governmental, it is expected by the parties that the contractor will be acting in support of, and in a fiduciary relationship with, the Army.

B. To maintain the integrity of the expenditure of public funds, it is imperative that the contractor maintain the highest degree of integrity and honesty, and have standards of conduct and internal control systems provide for:

- (1) A written code of business ethics and conduct and an ethics training program for all employees;
- (2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;
- (3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
- (4) Internal and/or external audits, as appropriate;
- (5) Disciplinary action for improper conduct;
- (6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and
- (7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

C. The planning/support contractor (including its key personnel) cannot have any actual or pending financial interest in the LOGCAP IV performance contractors for the period of this contract which might cause, or give the appearance of, a conflict with the performance of the requirements under this contract. Clear mitigation of any potential conflict must be presented to the satisfaction of the contracting officer. The planning/support contractor is specifically prohibited from performing under any of the LOGCAP IV contracts (resulting from solicitation W52P1J-06-R-0049) as a LOGCAP IV prime contractor, subsidiary, subcontractor—at any tier, vendor, supplier, joint venture, and/or any in any other business capacity that might result in an OCI.

D. The contractor shall enter into an agreement with the LOGCAP IV performance contractors to ensure proper access to, and protection of, the LOGCAP IV performance contractors proprietary data (see FAR 9.505-4(b)) and to establish working relationships, cooperation, and joint participation in meeting LOGCAP planning and CS/CSS support needs. The agreements shall address, at a minimum, the following:

- (1) Identify the parties and their relationship;
- (2) Identify the program involved and the relevant Government contracts of the parties;
- (3) Describe contractor interfaces by general subject matter;
- (4) Specify categories of information to be exchanged or support to be provided;
- (5) Give expiration date (or event) of the agreement;
- (6) State that if there is a conflict between the relevant Government contract(s) and the agreement, the contract(s) govern(s); and

(7) Have an agreement to protect proprietary data, including restrictions on employees.

A copy of this agreement shall be made available to the contracting officer. This agreement should be concluded as quickly as possible after the contract awards. Failure to have this agreement in place may limit the work that may be awarded under this contract until such agreement is signed.

E. Release of non-public information obtained under this contract, or use of such non-public information for purposes unrelated to the performance of this contract, is prohibited. Contractor shall ensure the return of all non-public information obtained under this contract prior to contract closeout.

F. The contractor shall maintain adequate and reasonable ethics policies and training procedures consistent with paragraph B above and DFARs Part 203.70 to prevent its employees from releasing non-public information or gaining any financial or employment interest that may create a conflict with their duties under this contract.

G. All contract personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating the potential for confusion. The contractor shall ensure that all employees wear badges (whether issued by the Government or a separate badge provided by the company) that clearly put others on notice that they are contractor employees. This shall be evident from a minimum distance of 10 feet (whether by color, large letters, or other means). The contractor must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

H. The intent of this provision is to prevent the improper release or disclosure of information, or any actual or perceived personal or organizational conflict of interest that might arise in the performance of this contract. In addition to other requirements, contractor shall bring any potential conflicting relationships or financial interests, held by the support contractor, its key employees, or subcontractors to the attention of the contracting officer throughout the life of this contract. If the contracting officer determines that an unacceptable conflict exists, the contractor will take the actions necessary to mitigate or eliminate the conflict.

I. This prohibition will remain in effect throughout the life of the planning contract through final payment. Further, the contractor shall include this prohibition in all negotiated subcontracts (to exclude routine supply and service subcontracts) that it enters into.

56. Senator MCCAIN. Secretary Bolton and General Johnson, was this contract subject to full and open competition? If so, how many companies competed for the contract?

Mr. BOLTON and General JOHNSON. Yes, the LOGCAP IV support contract was the result of full and open competition. Two companies provided proposals.

57. Senator MCCAIN. Secretary Bolton and General Johnson, what is the contract type and formula for compensation?

Mr. BOLTON and General JOHNSON. The LOGCAP IV support contract will have task orders that can use the contract type that best fits the requirement. The contract types used on the support contract are firm fixed price, cost plus fixed fee, cost plus award fee, and cost only.

The formula for compensation is to pay the negotiated firm fixed price or, for cost-reimbursable contracts, pay reasonable, allocable, and allowable costs and fees. Fees paid are based on a percentage of the negotiated estimated costs on cost reimbursable task orders as follows:

Cost plus fixed fee order: fee will not exceed 8 percent of the negotiated estimated cost.

Cost plus award fee order: total base and award fee combined will not exceed 8 percent of the negotiated estimated cost. The base fee will not exceed 2 percent.

These fees were proposed by the support contractor and accepted during the full and open competition for the LOGCAP IV support contract.

These fee percents are contractor proprietary information and protected from release under FOIA and the Trade Secrets Act.

58. Senator MCCAIN. Secretary Bolton and General Johnson, why does the Army intend to limit the number of performance contractors under LOGCAP IV to three? Why not more?

Mr. BOLTON and General JOHNSON. The Army looked at the optimum number of contractors to provide LOGCAP performance support. The intent was to ensure good competition, but recognize that obtaining and evaluating multiple proposals extends the time to award urgent task orders. At the same time, the Army needs to maintain the programmatic portion of the LOGCAP. One of the features that makes LOGCAP more than just a contract is the planning and readiness posture that must be maintained by the LOGCAP office and performance contractors. This becomes more difficult and cost prohibitive as the number of performance contractors increases.

To ensure competition, the LOGCAP IV performance contract requires each contractor to propose on every task order. The Army decided that receiving proposals from three very qualified LOGCAP contractors provides sufficient competition in this urgent award environment. More than three contractors would provide more competition, but the benefits would be marginal, if at all, and the drawbacks from delays in awarding task orders to provide support could be significant. Additionally, the Government must fund a minimum requirement for each IDIQ contract awarded. While this might not be a waste of resources during periods of high military activity, it would be an unnecessary cost during times of limited activity. Additional contractors also complicate issues associated with contractors on the battlefield, and increases administrative burden upon the Government to manage them.

59. Senator MCCAIN. Secretary Bolton and General Johnson, has the Army made any determination of the number of contractors available to perform the work?

Mr. BOLTON and General JOHNSON. The Army held industry days to discuss LOGCAP IV performance contract requirements and potential acquisition strategy approaches. Representatives from 80 companies attended, made up of both large and small businesses. Some were planning to be a prime contractor while others were looking for specific subcontract opportunities with prime contractors. Due to the potential size of each LOGCAP IV performance contract (up to \$5 billion per year), the Army anticipated some contractors would team up or have large subcontractor teams. The industry days showed at least four to six large contractors with the technical and financial capability of performing the work. For that reason, we expected good competition for LOGCAP IV.

60. Senator MCCAIN. Secretary Bolton and General Johnson, what will be the contract type and the compensation regimes under these contracts?

Mr. BOLTON and General JOHNSON. Like the support contract, the LOGCAP IV performance contracts will include task orders that can use the contract type that best fits the requirement. The contract types available on the performance contract are firm fixed price, cost plus fixed fee, cost plus award fee, and cost only.

The formula for compensation is to pay the negotiated firm fixed price or, for cost-reimbursable contracts, pay reasonable, allocable, and allowable costs and fees. Fees paid are based on a percentage of the negotiated estimated costs on cost reimbursable task orders as follows:

Cost plus fixed fee order: fee will not exceed 10 percent of the negotiated estimated cost.

Cost plus award fee order: total base and award fee combined will not exceed 10 percent of the negotiated estimated cost. The base fee will not exceed 3 percent.

These are the maximum fee percentages allowed by the Request for Proposal.

The actual fee percentages will be determined at the time of the award of each task order subject to the limitations described above.

61. Senator MCCAIN. Secretary Bolton, for over a year now, the Army and the Office of the Secretary of Defense Comptroller have been conducting investigations of potential ADA violations concerning the use of operations and maintenance funds for military construction and procurement activities through the LOGCAP in Iraq. These investigations result, in part, from a March 7, 2006, memorandum from the DOD Office of General Counsel to the Office of the Legal Counsel to the Chairman, Joint Chiefs of Staff. This committee was briefed last October that up to \$600 million in operations and maintenance funds may have been carried out through LOGCAP for unauthorized and illegal investment items and leases. Please provide an update on the status of each investigation, to include completion date, the results of the investigation, and any personnel actions taken as a result of the investigation.

Mr. BOLTON. Three of the five cases initiated thus far have been closed as "No ADA" and the Army expects to complete the two remaining ADA investigations by

30 December 2007. In the three cases that have been closed, the funding was either determined appropriate (e.g., within the \$1.5 million limitation for life, health, and safety) or the proper funding was obtained.

62. Senator MCCAIN. Secretary Bolton, in the Army's internal review and investigation, at what organization or level of contracting review did the failure to conform to Federal Acquisition Regulations occur?

Mr. BOLTON. We have found no failure to conform to Federal Acquisition Regulations. Three of the five cases have been closed as "No ADA" and the Army expects to complete the two remaining ADA investigations by 30 December 2007. In the three cases that have been closed, the funding was either determined appropriate (e.g., within the \$1.5 million limitation for life, health, and safety) or the proper funding was obtained.

63. Senator MCCAIN. Secretary Bolton, how has the Army changed its policies and review processes for LOGCAP task orders to ensure the proper authority is available for the use of various fund sources?

Mr. BOLTON.

Acquisition Review Boards (JARB, CARB, SUPERCARB)

In Kuwait, Iraq and Afghanistan, the leadership maintains a strict approval process for all requirements, to include those executed under the LOGCAP contract. Every new requirement that exceeds \$50,000 must be validated by an Acquisition Review Board (JARB and CARB) and approved by a general officer. This approval process also includes internal purchases or actions executed by KBR. Requirements that exceed \$10 million must go through further scrutiny (SUPERCARB) and be approved by a centralized review board in Kuwait. No requirement is funded unless commands gain the recommendation of these boards and final approval at the general officer level. While not a funding process, these review boards review the proposed funds to ensure they are appropriate for the type of work to be awarded.

Joint Acquisition Review Board

The JARB is a requirements validation process held in Iraq that reviews CS/CSS requirements for supported units. The board ensures the requirements are consistent with and necessary to support operations.

Coalition Acquisition Review Board

The CARB is fundamentally the same as the JARB but reviews requirements associated with acquisitions for Kuwait/Afghanistan.

Super-Coalition Acquisition Review Board

If a cost estimate associated with a requirement is over \$10 million for Iraq, Kuwait, or Afghanistan, the packet must go to CFLCC for the "SUPERCARB" review and approval, basically a JARB process at a higher level of command.

Joint Facilities Utilization Board

To control and manage construction, all commands have established a JFUB. These boards evaluate and reconcile requirements for real estate, use of existing facilities, and ensure all potential construction is in line with established master plans. Funding type and thresholds are also reviewed to ensure that no fiscal violations occur.

Material Requisition Review Process

Subsequent to the review of the Acquisition Review Board Approval, every requisition for supplies or services submitted by KBR over \$25,000 is personally reviewed and approved by the Government Administrative Contracting Officer. In Iraq, those requisitions that exceed \$250,000 are reviewed and approved by the Command Comptroller before KBR is authorized to execute the procurement. Funding type and thresholds are reviewed to ensure that no fiscal violations occur.

64. Senator MCCAIN. Mr. Fitzgerald, were you asked to take part in these investigations? If so, can you briefly describe your role and any findings or observations you may have about the investigations?

Mr. FITZGERALD. I wasn't asked to take part, and USAAA didn't participate in the referenced investigations.

65. Senator MCCAIN. Mr. Reed, a number of your reports have criticized KBR, Inc.'s cost estimating, accounting, and other systems. With respect to 2005 and 2006, has KBR, Inc. sufficiently improved its systems so that the inadequacies do

not materially impact its cost control efforts? If not, what problems still remain and if problems remain, what is KBR, Inc. doing to remedy the remaining problems?

Mr. REED. Yes, our reviews have disclosed a number of estimating and accounting system deficiencies. While important, these deficiencies impact only a part of KBR's overall business systems. KBR has developed corrective action plans to address the system deficiencies. DCAA, in coordination with the responsible contracting officer, is monitoring the progress of the contractor's corrective action plan, and the systems continue to be improved.

In the meantime, DCAA has established additional audit procedures to protect the Government's interest until these corrective actions are institutionalized. For example, DCAA performs transaction testing on current billings (public vouchers) to ensure the costs are accounted for properly (i.e.; the costs are allowable, allocable, and reasonable) and comply with KBR's policies and procedures.

66. Senator MCCAIN. General Johnson, what efforts have the Army and the contractor made to move from cost plus subcontracts to fixed-price subcontracts?

General JOHNSON. KBR has been actively pursuing the use of fixed-price subcontracts. The Government encourages this where it makes sense and requirements can be defined and priced. Many of KBR's subcontracts are fixed price with variable quantities. The fixed price is on a unit basis so as more, or less, of something is needed, the total price will change, but the unit price will not change. The DFAC pricing is an example of that.

The fixed-price method saves on administrative cost oversight since costs have been negotiated up front. We do not encourage fixed price where costs cannot reasonably be forecast. The result in those cases is usually higher prices for higher risk, or aggressive pricing that could raise the contractor's risk to deliver services or products if eventual costs are significantly underestimated. Additionally, competitively awarded fixed-priced subcontracts limit the Government's visibility over subcontractor cost data. As such, it becomes more difficult to understand the exact make up of certain subcontracted prices when they are fixed-priced competitively awarded subcontracts.

The downside is that there are many modifications to the KBR fixed-price subcontracts as the scope of work on the prime contract changes and exceeds the agreed upon quantity or service parameters on the subcontract. This fixed price with variable quantity works better at the subcontract level, with very specific, narrow requirements on a subcontract, where most elements of cost can be priced and only one variable applies, such as quantity. It does not work well in broadly defined requirements, where many of the individual elements making up the overall cost cannot be estimated.

67. Senator MCCAIN. General Johnson, when was the move initiated?

General JOHNSON. In discussion with DCMA, KBR has been using fixed-price variable quantity subcontracts early and often on the contract. These use fixed unit costs, with the actual costs varying based on the quantity of services provided.

68. Senator MCCAIN. General Johnson, what percentage of KBR, Inc.'s subcontractors are now on fixed-price contracts?

General JOHNSON. As of December 30, 2006, KBR had 472 active subcontracts. Of those, 467 or 98.94 percent, were fixed-price subcontracts. As noted in the response in question #66, many of these are fixed-price variable cost subcontracts. The fixed price is on a unit basis so as units are ordered, the total price will change, but the unit price will not change. This fixed price with variable quantity works better at the subcontract level, with very specific, narrow requirements on a subcontract, where most elements of cost can be priced and only one variable, such as quantity, applies.

69. Senator MCCAIN. General Johnson, how much in cost savings have been realized so far by moving to fixed-price contracts?

General JOHNSON. At this time we have not calculated cost savings by moving to fixed-price contracts. Developing these cost savings will require extensive research of all of KBR's fixed-price subcontracts. However, even when those are identified, we believe many factors contribute to reduced costs, not just converting to a fixed-price instrument. The reasons for using a cost reimbursable vehicle is that requirements cannot be stabilized, which is usually the case in early contingency operations. There are initial inefficiencies and urgent actions to establish supply chains into a theater that will drive up costs. Once requirements become more stable, costs can be better estimated and a fixed-price instrument becomes more viable. There

should be a difference in costs because the conditions have changed from those uncertainties requiring a cost reimbursable instrument.

[Whereupon, at 1:06 p.m., the committee adjourned.]

