

CONTRACTING IN IRAQ AND AFGHANISTAN AND PRIVATE SECURITY CONTRACTS IN IRAQ AND AFGHANISTAN

BACKGROUND: The DoD has been criticized for its contracting practices in Iraq, and the accounting of contractor personnel in particular. This is the seventh quarterly update from the ADUSD (Program Support) reporting contractor numbers in theater and outlining DoD efforts to improve management of contractors accompanying U.S. forces.

KEY POINTS:

- Contractors play a critical role in support functions, thus allowing the military to focus on operational missions. The downsizing of military forces, post-Cold War, resulted in significant reductions to military logistical and support personnel and requires contractors to “fill the gap.” DoD is pursuing a program to improve the oversight and accountability of contractors accompanying the force to assure effectiveness and efficiency and to synchronize these efforts.
- To satisfy requirements in section 854 of the FY 2007 National Defense Authorization Act, the Office of the ADUSD (Program Support) was established in October 2006 under the Under Secretary of Defense for Acquisition, Technology and Logistics to provide centralized policy, management, and oversight for contracts and contractor performance in support of declared wars as well as contingency and post-conflict operations.
- The U.S. Central Command (USCENTCOM) provides information detailing DoD-funded contractors in the theater of operations in support of U.S. military forces in Iraq on a quarterly basis. At the end of the fourth quarter of fiscal year (FY) 2008, the U.S. Central Command (USCENTCOM) reported over 266,600 contractor personnel working for the DoD in the USCENTCOM area of responsibility (AOR). A breakdown of those personnel is provided below:

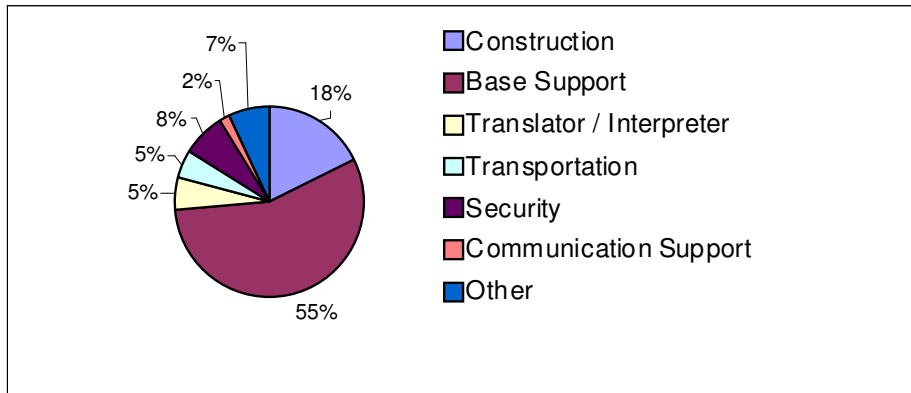
DoD Contractor Personnel in the USCENTCOM AOR

	Total Contractors	U.S. Citizens	Third Country Nationals	Local/Host Country Nationals
Iraq Only	163,446	28,045	72,109	63,292
Afghanistan Only	68,252	5,405	4,381	58,466
USCENTCOM AOR	266,678	40,890	100,640	125,148

Data does not include other U.S. Government Agencies/Departments

- These numbers represent a negligible 0.5% increase (from 162K to 163K) in the number of contractors in Iraq compared to the 3rd quarter 2008 census.
- There was a 65% increase (from 41K to 68K) in contractors in Afghanistan compared to the 3rd quarter 08 census due to Army-wide census scrub (26K additional USACE Afghanistan Engineer District (AED) LN contract employees reported).
- There was an AOR wide increase of 9% this quarter (from 242.5K to 266.6K) due to the Army review of contractor reporting.
- Contractors accompanying the force provide a broad range of capabilities. The main categories of contracts in Iraq and the percentages of contractors working on them are displayed below:

**Iraq DoD Contractor Personnel Breakdown
by Type of Service Provided (as of 31 Oct 08)**



General Data on the Number of Private Security Contractors in Iraq and Afghanistan

- Private security contractors perform personal security, convoy security, and static security missions.
- USCENTCOM reports, as of its 4th Quarter 2008 census, the following distribution of private security contractors in Iraq and Afghanistan:

	Total	US/Coalition	Third Country National	Local/Host Country National
Total DoD PSCs in Iraq	10,446	886	8,188	1,372
Armed DoD PSCs in Iraq	9,863	823	7,883	1,207
Total DoD PSCs in Afghanistan	3,847	9	32	3,806
Armed DoD PSCs in Afghanistan	3,144	4	20	3,120

We believe these numbers include most subcontractors and service contractors hired by prime contractors under DoD contracts.

General Conditions Regarding Contracts and Contractor Personnel

- The Combatant Commander has provided specific guidance on arming contractor personnel and private security contractors in the USCENTCOM AOR through a series of Fragmentary Orders (FRAGOs) and other authoritative guidance, including the following:
 - Private security contractor personnel are not authorized to participate in offensive operations and must comply with specific USCENTCOM Rules for the Use of Force (RUF). Under these RUF, private security contractors are authorized to use deadly force only when necessary in: self-defense, defense of facilities / persons as specified in their contract; prevention of life-threatening acts directed against civilians; or defense of Coalition-approved property specified within their contract. The Multi-National Force - Iraq (MNF-I) issues to approved private security contractors a weapons card authorizing them to carry a weapon. This weapons card also contains the guidance for the RUF and the contractor's signature acknowledging the difference between the RUF and the Rules of Engagement.
 - Private security contractors in Iraq must be properly licensed to carry arms in accordance with host nation law and must receive USCENTCOM / Coalition Forces' approval of their operations. Coalition Provisional Authority Order 17 (CPA 17), *Status of the Coalition, Foreign Liaison Missions, Their Personnel and Contractors* (June 23, 2003), is still in effect. It addresses Private Security Contractors operating in Iraq and requires the contractor's understanding of and compliance with all applicable:
 - U.S., host nation, and third country national laws;
 - Treaties and international agreements;
 - U.S. regulations, directives, instructions, policies; and
 - Orders, Standing Operating Procedures, and policies issued by the Combatant and / or Operational Commanders.
 - MNF-I forces are authorized to stop, search, seize weapons, and detain civilians armed under MNF –I Fragmentary Order, 07-428 (Armed Contractors / DoD Civilians and PSCs), if MNF-I forces observe a RUF violation, exhibitions of criminal behavior, or conduct that threatens security.
 - DoD contractors armed by DoD authority must report any use of force, including the firing of a weapon. This requirement and the required information to be submitted are identified within the terms of the contract and MNF–I FRAGO, 07-428. MNF-I forces must report any use of force by a civilian armed under the requirements of this FRAGO to their chain of command.

Improvements to Management and Oversight of DoD Contractors

- **Joint Operational Contract Support Planners (JOCSP).** *In September, 2008* OSD received the contract for 14 JOCSPs to be allocated among the COCOMs. Planners assist the CCDR in identifying gaps where contractor support capability may be required. They will then help to integrate required contractor support into plans and synchronize requirements with subordinate commands, the Military Departments, defense agencies, other USG Agencies, and coalition partners.
- **Authority of the Joint Contracting Command for Iraq and Afghanistan (JCC-I/A) to pre-clear all contracts and task orders to be implemented in Iraq and Afghanistan.** The USCENTCOM established a Joint Contracting Command reporting to MNF-I to provide centralized management and responsive operational contracting support to ongoing operations in Iraq and Afghanistan. As of October 19, 2007, the JCC I/A commander was given authority to approve statements of work and terms and conditions that relate to the delivery of supplies and services in or to Iraq or Afghanistan. This requirement will ensure contracts contain the appropriate terms and conditions for work to be accomplished in Iraq and Afghanistan and will ensure the planned work is in consonance with in-country commanders' plans.
- **Memorandum of Agreement (MOA) between the Department of Defense and the Department of State on USG Private Security Contractors.** *On December 5, 2007,* the DoD and the DoS signed a MOA defining a framework for improving accountability and strengthening operations of USG PSCs in Iraq. This MOA covers a broad range of management policies and procedures to achieve more effective management coordination of PSC operations in Iraq. MNF-I FRAGO 07-428 was published on 15 December 2007 implementing the MOA. We are working to develop a corresponding MOA and comprehensive FRAGO in Afghanistan
- **Increase in Defense Contract Management Agency (DCMA) staffing to strengthen pre and post-award contract oversight.** DCMA agreed to expand its presence in theater and take responsibility for the administration of the more complex contracts that require specialized and critical oversight functions. DCMA completed the deployment of an initial surge of 96 personnel into the USCENTCOM AOR on *December 31, 2007.* A Joint Manning Document (JMD) was submitted for six-month rotational deployments of a total of 348 personnel. The JMD was approved by SECDEF and is being source by DCMA and the Services.
- **Synchronized Predeployment and Operational Tracker (SPOT).** We continue to transition from manual accounting of contractors and have implemented a web-based, database tool (Synchronized Predeployment Operational Tracker – SPOT) to track contractors and contractor capability in theater. Near 100% of all private security contractors and translators and interpreters were registered in SPOT in *January, 2008.* Initial deployment of Joint Asset Management and Movement System (JAMMS) scanners to Kuwait and Iraq is complete and are continuing deployment to Afghanistan. (This scanning equipment captures movements of contractors through key life support

and movement nodes using their identification cards). Our short term goal is to have near 100% web-based accountability of DoD contractors in the USCENTCOM AOR by 1st Qtr 2009.

- **Implementation of UCMJ authority over DoD contractors.** Secretary of Defense memorandum, “UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” was *signed March 10, 2008*. This memo addresses concurrent authority and defines the authorities and policies for the implementation of UCMJ authority to DoD civilians and DoD contractors
- **DFAR and FAR changes.** *On March 31, 2008* DoD adopted an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD policy regarding contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. *On February 28, 2008* changes to the Federal Acquisition Regulation (FAR) were finalized addressing the issues of contractor personnel that are providing support to the U.S. Government outside the United States but are not covered by the DFARS rule.
- **Final 854 Report submitted.** This report, required by section 854 of the FY07 NDAA was submitted on *April 17 2008*. The report outlined a strategic policy framework for program management of DoD contractors and updated status on the initiatives related to contract management and oversight. A General Officer Steering Committee has been established to manage implementation.
- **Joint Contingency Acquisition Support Office.** The ADUSD (Program Support) is institutionalizing the establishment of the present Joint Contracting Command structure for future contingencies. This organization, called the JCASO, will have the capability to perform program management and operational synchronization of all theater related contracting support efforts. We conducted a pilot implementation of the concept during EUCOM exercise Austere Challenge in April 2008. On 20 October 2008, ADUSD (Program Support) stood up the provisional JCASO organization thus meeting its end of fiscal year (FY) 2008 target goal ahead of schedule. The target for full standup is the end of the first quarter FY 2010.
- **DoD documents being published, updated, and integrated.**
 - **Rewrite of DoDI 3020.41.** A revised version of DoD Instruction (DoDI) 3020.41, “Integrating Operational Contract Support into Contingency Operations,” formerly entitled “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” is in coordination. This version contains significant changes to the existing instruction including: (1) incorporation of lessons learned from current operations; (2) requirements for the development of contractor oversight plans; (3) requirements for adequate military personnel necessary to execute contract oversight; and, (4) standards of medical care for deployed contractors.

- ***Draft DoDI on U.S. Government Private Security Contractors Operating in a Designated Area of Combat Operations.*** This DoDI prescribes the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract in a designated area of combat operations. It also prescribes incident reporting, use of and accountability for equipment, rules for the use of force, and a process for the discipline or removal, as appropriate, of U.S. Government Private Security Contractor (USG PSC) personnel. The DoDI responds to requirements of section 862 of the FY08 NDAA
- ***Draft DoDD on Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and its Operational Execution.*** This new Directive establishes policy and assigns responsibilities for program management for the preparation and execution of acquisitions for contingency operations, and for the accountability, integration and management of all contractors supporting the DoD and all USG PSCs operating in an area of contingency operations.
- **Memorandum of Understanding between DoS, DoD and USAID Relating to Contracting in Iraq and Afghanistan.** Paragraph (b)(4) of section 861 of the NDAA for FY 2008 requires the identification of common databases among the DoD, DoS, and USAID to serve as repositories of information on contracts and contractor personnel in Iraq and Afghanistan. The Memorandum of Understanding (MOU) was signed on July 8, 2008. In it, the Agencies agreed that SPOT will serve as the interagency database for information on contractor personnel.
- **Establishment of a "911" Response Capability.** A DepSecDef memorandum providing guidance on the responsibility to respond to reports that these contractor and civilian employees have allegedly committed crimes or who are reported to be the victims of crimes was issued 10 September 08.
- **Continued development of an Operational Contract Support Concept of Operations (CONOPS).** Operational contract support (OCS) focuses on the proper and timely integration of commercial sector support to deployed US forces in an effective, efficient and fully synchronized manner. This integration is important not only to accomplish the military mission, but to meet the expectations of military personnel, commanders, Congress, and the American people. The challenge of meeting these complex expectations across the range of military operations requires a transformation in how the operational and acquisition communities plan and execute OCS during complex operations involving support, not just to the joint force, but to our multinational, other government agency and interagency partners as well
- **Programs of Instruction for the non-acquisition workforce.** Contingency Contracting is taught by the Defense Acquisition University as a special subject for key acquisition personnel. We are developing Programs of Instruction on contingency acquisition for our non acquisition workforce to be taught at military staff and senior

staff colleges. This training will focus all leaders on determining requirements, translating those requirements into SOWs and then overseeing work.

Legal Status of DoD Security Contractors in Iraq

- As a general matter, the DoD has a relationship with each contractor organization, not with its employees. The contractor has responsibility for performing the terms of its contract with the DoD. Accountability for contractor employees lies with the contractor. Although the contract may include requirements that the contractor must impose on its employees, such as following prescribed procedures for entering and leaving a country and complying with host country laws, the onus is on the contractor – not the DoD -- to direct and discipline its employees.
- In addition, Commanders may have limited ability to regulate individual contractor employee behavior depending upon the terms of the Status of Forces Agreement, where applicable, or in Iraq and Afghanistan, the nature of our presence.
- DoD contractors in Iraq operate under three levels of legal authority: (1) the international order of the laws and usages of war and resolutions of the United Nations Security Council; (2) U.S. law; and (3) Iraqi law, including orders of the Coalition Provisional Authority that have not been superseded (e.g. CPA 17) . Iraqi courts presently do not have jurisdiction to prosecute non-Iraqi civilians for conduct related to their contractual responsibilities without the permission of the United States. The pending security agreement with Iraq, if implemented, will give primary jurisdiction of all contractor personnel to the GOI.
- With respect to law enforcement, the Department's regulations require cooperation with the Department of Justice regarding DoD contractors, including subcontractors at any tier (excluding host country nationals) and their employees who commit felony offenses outside the U.S. that are subject to prosecution in Federal District Court under the Military Extraterritorial Jurisdiction Act (MEJA). The MEJA also provides Federal jurisdiction over contractors (at any tier) and their employees of any Federal agency or provisional authority who commit felony offenses outside the U.S. to the extent such employment relates to supporting the DoD mission.
- Congress has extended the Uniform Code of Military Justice (UCMJ) to civilians accompanying the Armed Forces of the U.S. during declared contingency operations, and the DoD is in the process of implementation. On March 10, 2008, the Secretary of Defense signed a memorandum that addresses concurrent authority and defines the authorities and policies for the implementation of UCMJ authority to DoD civilians and DoD contractors.
- The DoD Office of General Counsel on January 10, 2006, issued a legal opinion concluding that there is no law of war or DoD policy prohibiting the use of private security contractors to protect a military facility, personnel, or personal property, or certain military convoys.