

RIGHTSIZING AND MANAGING CONTRACTORS DURING THE IRAQ DRAWDOWN

MONDAY, MARCH 29, 2010

Commission on Wartime Contracting

Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m., in Room 106, Dirksen Senate Office Building, Hon. Chris Shays, Co-Chairman of the Commission, presiding.

Present: Commissioners Shays, Thibault, Ervin, Henke, Schinasi, Tiefer.

SHAYS:

I'm Christopher Shays, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan.

This opening statement is made on behalf of Co-Chairman Michael Thibault, my fellow commissioners, and myself.

Commissioners Dov Zakheim and Grant Green could not be here with us today. The other commissioners at the dais are Michael Thibault, Clark Kent Ervin, Robert Henke, Katherine Schinasi and Professor Charles Tiefer.

We are here today to talk about transitions in Iraq. March 20 was the seventh anniversary of the U.S., British, and other allies' invasion of Iraq. American combat operations there have lasted almost twice as long as the American Civil War or U.S. involvement in World War II.

American involvement in Iraq will continue for many more years in the form of political engagement and support for good governance and economic development. But the end of our active military involvement there is in sight.

The president has directed that American military forces in Iraq be reduced to no more than 50,000 by the end of this August. And our agreement with the government of Iraq calls for American troops to be out of the country entirely by the end of 2011.

The U.S. troop drawdown already underway is welcome news. It reflects significant success based on hard work, bravery, and sacrifice by coalition and Iraqi forces, federal civilian employees, contractors, and non-governmental organizations.

Extremists and terrorists still lash out at military, government, and civilian targets, but have become less of a threat to the government of Iraq.

Conducting the drawdown, of course, however, is not a simple task, like turning down a thermostat. Thousands of troops must be redeployed. Thousands of contractor employees must be reassigned or released. Hundreds of military bases have to be closed or handed over to the Iraqis. Millions of items of equipment, whether military or acquired by contractors and now government-owned, must be moved, donated or scrapped.

The bulk of this work will fall to contractors, who have been a vital part of U.S. operations in Iraq from the outset. The Department of Defense expects that contractor employees in Iraq will exceed 70,000 in August 2010. That would be about half the contractor count of August 2009, but still nearly one-and-a-half times the U.S. troop strength target for August.

Contractor employees have outnumbered military personnel in both Iraq and Afghanistan. This reflects the reduction in the size of the U.S. military since the end of the Cold War, as well as the extent of support services required for contingency operations. Those services include construction, dining facility and laundry operations, base security, transportation, equipment maintenance and much more.

We don't expect contractor employee numbers to decline in rigid lockstep with reductions in troop numbers. Some minimal number of people is needed to operate a dining facility. A certain number is needed to guard a base perimeter, even if the garrison is shrinking. And some staffing flexibility is needed to meet sudden demand.

Nonetheless, the contractor-to-military ratio expected in August requires looking carefully at our contractor planning and management arrangements.

The historical record shows that the United States went into Iraq assuming quick victory, swift handover of power, and rapid exit, and had therefore made no plans for contracting, managing and auditing large-scale logistic, security and reconstruction support for a long stay.

After seven years of sacrifice and enormous cost, we are examining whether planning and management of contracting for the drawdown is adequate and effective.

KBR expects to have about 30,000 employees in Iraq by late summer of this year, compared to more than 60,000 in March 2009. But the planning to synchronize contractors' drawdown with military needs does not appear to be as advanced as the military's planning for removing its own personnel and property. Part of the reason for that may be that the U.S. military has yet to make key decisions that will affect contractors' drawdown plans. It appears the government is not giving contractors adequate guidance on events, dates and requirements for them to trim or redeploy work forces appropriately.

We need proper mechanisms to ensure contractors are drawing down their personnel in Iraq, consistent with the reduction in military forces and with operational requirements. The military needs the right number of contractors in the right places as the drawdown continues. But

taxpayers need assurance that contractors don't have unnecessary staff hanging around—accidentally or by design—without work, and still drawing pay.

This hearing will also inquire whether a satisfactory transition is occurring in Iraq between version three and version four of the multi-billion-dollar LOGCAP contract for logistics support. As we have seen in earlier hearings, LOGCAP III is a competitively awarded, single-vendor contract upon which task orders for work are drawn as needed.

Under this contract, the sole vendor, KBR Inc., has collected \$15 billion in just the past three years—far more than anyone could have anticipated when our Iraq involvement began.

Work continues under LOGCAP III, but the intent is to transition new work to LOGCAP IV contract, which has three vendors—KBR, Fluor and DynCorp—each of whom must submit an offer for every new task order issued under the contract. The aim is to sharpen competition on price and performance.

On February 26th, KBR won the first task order competition for logistics support, postal service, and theater transportation. KBR could collect as much as \$2.3 billion under this one task order.

Even with the drawdown underway, such big expenditures raise important questions about government requirements, business planning, and contract oversight. For example, why has the transition taken so long? And does it still make economic sense to conduct the transition this close to American military's exit from Iraq?

We have two panels today. One panel will comprise senior officials. The other will feature two executives representing KBR, whose employees account for half of all contractors in the country.

We are interested in the government panel's view on planning and managing contractors during the drawdown and the LOGCAP transition. We look to KBR for its view of those matters, its plans and procedures for downsizing the Iraq workforce and its recommendations for improving the contracting process.

We also want to explore what appear to be alarming data revealed in audits by the Defense Contract Audit Agency and the inspector general of the Department of Defense. Those agencies' reviews of KBR Corp's logistics support services include tactical-vehicle maintenance work under LOGCAP III task order found labor force utilization rates at or below 10 percent, when Army regulations require at least 85 percent.

For the year ending August 31, 2009, the Department of Defense inspector general [DoD IG] calculated that this underutilization meant that about \$4.6 million of the \$5 million charged for this work at the Balad Base in Iraq, 92 percent of the cost, was not necessary—a waste. KBR

reported its labor utilization rates, but the IG's report says the Army did not adequately review the data or require corrective action.

We want to know why.

We also want to ask KBR about its sense of responsibility for managing a workforce that was clearly too big for the work being done. This case study raises serious questions about overall contractor performance and government oversight.

Our first panel has three witnesses, each with deep and direct knowledge of the issues that concern us today.

Lieutenant General James H. Pillsbury is deputy commanding general, Army Materiel Command. That Department of Defense agency is responsible for much of Army contracting, including LOGCAP and systems support contracts being used in both Iraq and Afghanistan.

Patrick Fitzgerald, director, Defense Contract Audit Agency, DCAA [Defense Contract Audit Agency]. DCAA is working at the request of the Defense Contract Management Agency, DCMA, to determine whether KBR is reducing its workforce in Iraq commensurate with the military drawdown and the de-scoping of work of LOGCAP III.

James Loehrl is executive director and principal assistant responsible for contracting, U.S. Army Contracting Center, Rock Island, which is part of the Army Sustainment Command. LOGCAP III and LOGCAP IV are under his jurisdiction.

Our second panel has two witnesses representing KBR Incorporated. They are executives involved in operations who can address our concerns about the company's performance and the adequacy of government planning and oversight of their projects: Doug Horn, vice president, operational maintenance and logistics, government and infrastructure; Guy H.A. LaBoa, principal program manager, LOGCAP III, Middle East and Central Asia, North American government and defense.

We have asked our witnesses to summarize their testimony in five minutes to allow adequate time for questions and answers. But given the length of my own statement, I'll be a little flexible here.

The full text of their statements will be entered into the hearing record and posted on the commission's Web site. We also ask that witnesses submit any additional information they may offer to provide and responses to any questions for the record within 15 business days following this hearing.

The commission appreciates the cooperation of all our witnesses and looks forward to an informative session. The Iraq drawdown and contract work under LOGCAP are operations of enormous importance to America's warfighters, taxpayers, and national security objectives.

Today's hearing will help us judge the status of those operations and identify areas that need improvement.

So, with that, I've introduced our witnesses. I'd like them to stand and I'll swear you in.

If you'd raise your right hand: Do you solemnly swear or affirm that the testimony you will give today will be the truth, the whole truth and nothing but the truth?

Note for the record that all our witnesses have responded in the affirmative. And I think we'll start with you, General.

PILLSBURY:

You want me to push the button?

SHAYS:

Is a button there? Then push it. OK. And is it red?

PILLSBURY:

Yes, sir.

SHAYS:

OK.

PILLSBURY:

Chairman Thibault, Chairman Shays and members of the commission, thank you for the opportunity to report on the U.S. Army Materiel Command's progress in supporting the Iraq drawdown.

I am Lieutenant General Jim Pillsbury, deputy commanding general for AMC [Army Materiel Command], and I have a short opening statement. My official written statement has been provided earlier to be included as part of the record.

AMC is a global enterprise with more than 66,000 military and civilian employees located in 48 states and 127 countries. I would like to share with you some of AMC's recent accomplishments in contracting support and direct support to the responsible drawdown being conducted in theater.

The progress in Army contingency contracting operations is a direct result of our aggressive implementation of the recommendations in the 2007 Gansler report and this commission's intensity to ensure compliance.

The report recommended the Army do several things, including:

First, increase the stature of military contracting personnel. We did this as the Army established five general officer positions within the contracting corps to provide the experienced, senior leadership critical to the future of our contracting efforts. The Army has also established an NCO career field that will ensure our NCOs have a career path on which to excel.

Second, the report recommended we restructure and restore responsibility to facilitate contracting and contract management in expeditionary and CONUS operations. We did this as AMC implemented a number of restructuring efforts that included the establishment of the Army Contracting Command [ACC] and its subordinate commands, the Expeditionary Contracting Command and the Mission and Installation Contracting Command. Each of these organizations is dedicated to ensuring professional, ethical, efficient and responsive contracting within the Army;

Thirdly, it was recommended that we provide training and tools for contracting in expeditionary operations. We have done this by enhancing the training of the contracting workforce and acquisition support staff to build the skills necessary to better support the warfighter and better manage contracted support.

To do this, the Army has added and improved multiple acquisition training courses, including instruction in 16 officer and noncommissioned-officer courses, incorporated contracting operations and planning into the Battle Command Training Program and Combat Training Centers, and included operational contracting support scenarios for contracting officer's representatives—CORs—during mission-readiness exercises prior to deployment.

Also, I just left Fort Leavenworth this weekend, where I talked to the logisticians at the class. And I was surprised and glad to hear that all students, regardless of branches, get 10 hours of contracting training at the Command and General Staff College.

In addition to required Defense Acquisition University training for CORs, the Army has also added required ethics training. To better train CORs for deployments, the ACC has developed and implemented a COR training program provided to units prior to deploying, which is a critical step in strengthening the Army's ability to oversee contractor performance.

The Army issued an execution order, an EXORD, to all commands requiring that commanders determine the numbers of CORs they will need in theater before they deploy, and to train sufficient CORs to fill those positions. But at a minimum, each brigade combat team must have 80 trained CORs, with correspondingly lower numbers for smaller units.

In 2009, AMC conducted a comprehensive assessment to enhance its visibility of contractors on the battlefield. Out of this assessment we developed a tool, and I believe the commissioner is aware of SPOT, the Synchronized Pre-deployment and Operational Tracker. This is a great tool as we work to get a better visibility of our contractors. And we are working with Mr. Gary Motsek at OSD [Office of the Secretary of Defense] to bring SPOT on as a program of record.

PILLSBURY:

Now, regarding AMC's role in the Iraqi drawdown, we are operating in direct support of United States Forces Iraq and Army Central, ARCENT, as they conduct a responsible drawdown. We have focused our efforts in four areas: ensure property accountability, enable total asset visibility; triage equipment forward, and provide timely disposition instructions for equipment and materiel, thus ensuring velocity throughout the process.

My boss, General Ann Dunwoody, tasked me to lead the Responsible Reset Task Force, R2TF. This task force is physically located in Kuwait, embedded in ARCENT's headquarters, and helps synchronize movements of equipment out of Iraq back to CONUS or on to Afghanistan.

We acknowledge the concerns raised by the GAO in its November, 2009 testimony regarding the adequacy of planning for the use of contractors, contractor oversight, and property disposition during the Iraq drawdown. As a result, we have moved aggressively to remedy identified shortcomings by developing a drawdown plan that ensures proper levels of contractors for effective oversight and responsible property disposition.

Working with the combatant commanders in theater, we have established a deliberate process for quickly identifying equipment excess to requirements that we can then redistribute within the theater, use to meet other Army requirements, or provide to other countries. Roughly one-third of the equipment and one-half of the tactical equipment sent to Afghanistan, for example, has come from stocks in Iraq that were no longer required for that area.

SHAYS:

You can read a little slower. I will give you a little more time.

PILLSBURY:

Yes, sir. And one-half of the wheeled vehicles needed in Afghanistan for the surge have come from Iraq.

In closing, AMC is actively supporting United States Forces Iraq and U.S. Central Command and ARCENT, and remains thoroughly engaged with all of our stakeholders to ensure an efficient, effective drawdown of forces from Iraq. We are fully committed to maintaining the highest standards of public stewardship, while supporting the requirements of our nation's warfighter on the battlefield.

I thank the commission for the opportunity to highlight AMC's role in the Iraq drawdown, and I look forward to your questions.

SHAYS:

Thank you, General. And we appreciate all your service to our country.

Thank you, Mr. Fitzgerald?

FITZGERALD:

Chairman Thibault, Chairman Shays and members of the commission, thank you for the opportunity to appear before you today.

As requested, I will highlight our initiatives in support of the contingency mission, and provide an update to our October, 2009 report on KBR's staffing during the Iraq drawdown.

I assumed the duties of the director of the Defense Contract Audit Agency in November, 2009. Previously, I served as the auditor general of the Army and led the U.S. Audit Agency. During my more than 30 years of government service, I have held a wide variety of headquarter and field assignments with the U.S. Army.

Dating back to May, 2003, DCAA has supported contingency operations with approximately 240 auditors who have volunteered to serve in Iraq, Kuwait, and Afghanistan. We also support the contingency operations at multiple U.S. field offices. Through February 2010, we have issued over 3,000 reports in support of in-theater contracts, reporting total exceptions of about \$17.5 billion.

As requested, I would like to take this opportunity to briefly update the commission on four current initiatives that we are taking to ensure we remain responsive to the warfighter and the taxpayers' needs.

The first initiative involves increasing the number of resources we are devoting to contingency operations. In 2010, we have made significant increases. For example, we have increased our presence in Afghanistan from four auditors in the spring of 2009, to 17 today. And we have also doubled our workforce devoted to LOGCAP contractors in the U.S. from 55 in 2009 to roughly 110 this year.

Secondly, we are reassessing contracting workload in the theater, to ensure we are knowledgeable of the risks and provide the appropriate oversight. As part of this process, my key executives and I have met with general officers in theater, and with the Army Material Command's leaders to understand their future workload and their requirements. We believe that we are seeing some positive effects from these efforts, as our level of involvement has increased in recent months.

Thirdly, with respect to contractor business systems, we are revising our process for evaluating contractor business systems in response to the concerns raised by the GAO. Our revised approach will result in increased transaction testing, while ensuring that deficiencies are reported on a real-time basis.

In January of this year, I directed my staff to resume the necessary business system audits of contingency contractors. Also, where contractors have asserted that they have addressed reported deficiencies, we are committed to evaluating their corrective actions in a timely manner.

Our last initiative is to increase our emphasis on economy and efficiency audits. During fiscal year 2010, we are on-track to incur over 12,000 hours performing audits in Iraq, Afghanistan, and Kuwait, which is about a 240 percent increase from our prior years.

We continue to find opportunities for improvement. For example, we recently reported in an audit requested by the Defense Contract Management Agency, that KBR could avoid approximately \$21 million in future costs by de-scoping excess labor and capacity under the core logistics support services maintenance function.

We also recently suspended about \$1 million where an audit revealed that KBR was slow to reduce personnel at several dining facilities, as directed by the contracting officer. We will continue to evaluate the effectiveness and efficiency of contractor operations during the drawdown.

Lastly, I will provide an update on DCAA's report that reviewed KBR's labor operations in Iraq in light of the military drawdown. The report concluded that KBR was ineffective in managing their staffing levels during the planned drawdown.

We estimated that a more effective management of KBR's workforce could potentially save the government approximately \$193 million. In response to our report, KBR briefed the Army and DCAA on its latest drawdown plan. The February 23rd plan calls for an overall staff reduction of about 38 percent through August 2010.

We have initiated a follow-up review of KBR's plan. Although we have not drawn any conclusions to date, we are evaluating the specific aspects of the plan to obtain a thorough understanding of the plan's assumptions and the basis for those assumptions. For example, KBR

proposes a supported head count of about 189,000 in August 2010, which is significantly higher than other government estimates of about 105,000.

Also, about 60 percent of KBR's planned staff reductions occur within the final month of the current period of performance, July 2010 to August 2010. We will issue our follow-up report as soon as we complete our audit.

In closing, I want to assure you that DCAA is committed to providing the necessary audit coverage of overseas contingency operations to protect the public's interest. Supporting this effort is my top priority.

I would also like to say I'm very proud of DCAA's highly skilled, hardworking, and dedicated auditors who support our critical mission day in and day out.

I appreciate the opportunity to testify before you today, and look forward to answering your questions.

Thank you.

SHAYS:

Thank you, Mr. Fitzgerald.

Mr. Loehrl, I said "Lore-ell" and it sounded kind of nice, but your name is "Laurel."

And you're on.

LOEHRL:

Chairman Thibault, Chairman Shays, and members of the commission, with your approval I will submit a short oral statement and ask that my written statement be entered into the record.

It is my privilege to be here representing the United States Army Materiel Command, as well as the service members and civilians supported by the Logistics Civil Augmentation Program, LOGCAP.

I thank you for the interest in LOGCAP and the attention you are paying to the services we provide. It is important to stress that LOGCAP is a critical, worldwide, Army augmentation program. The program has grown rapidly over the years from 2001 to the present, from a peace-time value of approximately \$55 million to an annual value of nearly \$6 billion.

Its mission is to provide critical logistics and life support services to our fighting forces, freeing them to focus on their core mission, combat. In mid-2004, the Army began developing a

contracting strategy to incorporate lessons learned during all previous LOGCAP contracts on enhancing our ability to support future efforts.

This strategy formed the preliminary objective—the primary objectives—of the new LOGCAP IV contract, which are to reduce program risk, increase capacity, and incentivize contract performance.

After extensive coordination with the Department of Defense, sister services, combatant command, and industry, the Army determined the best acquisition approach was to competitively award a single LOGCAP support contract and three LOGCAP performance contracts.

The LOGCAP support contract was awarded to Serco on February 16, 2007 to obtain support services such as planning, requirements generation, cost estimating, logistics management, and management analysis in support of the LOGCAP program in contracts and offices.

In addition, the Army awarded three indefinite delivery, indefinite quantity LOGCAP IV performance contracts to DynCorp International, Fluor Intercontinental, and KBR on June 27th, 2007. Performance on those contracts did not begin until April 17, 2008, after protests to the Government Accountability Office were resolved.

Twelve task orders have been awarded, including nine task orders for performance and three task orders for project-management offices. One-point-eight-billion dollars has been obligated under the LOGCAP IV contracts; seventy-six percent of the LOGCAP work has been competitively awarded under LOGCAP IV. Services are transitioned from LOGCAP III to LOGCAP IV as task orders are awarded.

In June, 2007, the Army developed its overarching transition strategy and established the order of transition by country, progressing from the relatively small scale operation in Kuwait, to what at the time was expected to be a relatively stable operation in Afghanistan, to the largest and most complex operation on Iraq.

The Army began its transition efforts as planned, conducting trial-opportunity competitions for the Kuwait LOGCAP requirements. We awarded all three of the Kuwait task orders by December 2008, but were delayed in moving to transition of the work by a series of protests.

The Government Accountability Office dismissed or denied all the protests, allowing the Army to proceed with transition activities. Transition was completed in June 2009.

While working to award the Kuwait task orders, we began planning our strategy for competing requirements in Afghanistan. The task proved larger and more complex than originally contemplated, due to the change in U.S. policy concerning the mission of the Armed Forces in Afghanistan.

The Afghanistan transition involved implementing forward operating-base banding, price matrix, and change-management mechanisms into our Afghanistan solicitation.

The Afghanistan north and south area of responsibility task orders were awarded on July 7, 2009. The actual physical transition of work from LOGCAP III to LOGCAP IV is now underway. In the north, 27 of 58 FOBs [Forward Operating Bases] have been successfully transitioned, and in the south, 15 of 31 FOBs have achieved that state.

Iraq presents the most complex environment for transition due to the planned drawdown of forces. As the force structure in Iraq changes, we continue to work closely with the theater commander to assure our contractor workforce is properly sized, and that our strategy for competing the Iraq requirements is consistent with the projected future state of operations in that country.

We awarded the first LOGCAP IV task order in Iraq on February 26, 2010 to provide logistic support services, theater transportation, and postal operations to KBR. We are analyzing task orders for Iraq basic life support to determine our best course of action given the drawdown of forces Iraq, while concurrently drawing down LOGCAP III in Iraq.

On January 31, 2009, General Odierno signed and issued a letter directing all contractors including LOGCAP to drawdown by five percent a quarter. LOGCAP III is currently ahead of that goal.

In conclusion, let me assure you that the Army General Command is committed to excellence in all contracting, including these very complex and critical LOGCAP contracts. We continue to collect lessons learned and make improvements and adjust along the way to ensure mission success in protection of the interests of the U.S. government and taxpayer. It is my honor to lead the contracting team in achievement of these goals.

Again, thank you for inviting me to speak with you today.

SHAYS:

Thank you, Mr. Loehrl.

We're going to begin. I'm going to go last and my co-chairman is going to go first. We're going to take eight minutes, maybe a little more each. And we'll do a second round, as well.

Mr. Thibault?

THIBAULT:

Great. Thank you, gentlemen, for coming up here and testifying in front of the commission. Much appreciated.

I want to get a couple of things out of the way early. I'm really focused on all of you, but I'm especially focused at the comments made by General Pillsbury.

The secretary and the Army—my perspective—are absolutely to be commended for addressing some of the short-term needs with what may be intermediate-term solutions. But nonetheless, the actions to address staffing and training of the eyes and ears on the ground—I want to get that out, on the record that the Secretary has identified staffing as a priority—no overnight solution in bringing qualified people, but that's very positive, and maybe we'll talk a little more about it.

General Pillsbury, out of those general officers that were approved about a year ago how many are on board?

PILLSBURY:

Sir, the ACC (Army Contracting Command) is still headed by Mr. Parsons, as you well, know. But the two subordinate commands are commanded by Army brigadier generals: so, two of the five right now, sir.

THIBAULT:

OK. I just want to make that point that it's been about a year. I could state, so I will state, that if the Army chief of staff had a very significant priority, absolutely priority—and I realize this isn't a combat mission, but this is 50 percent of the cost or more—I would recommend that that get a little pressure.

(PILLSBURY)

Certainly.

(THIBAULT)

That's an observation. Can we for the record—and staff will probably come up running to me afterwards saying, Well, we already gave that to you—but I'm very interested in the commission obtaining a copy of your EXHORT that you referenced. That seems like an excellent step.

PILLSBURY:

Absolutely, sir. And that was in November of '09.

THIBAULT:

Great. Great. Now, I'd like to talk. Lastly, before I move elsewhere. I think the actions you referenced in your statement about property—I'm on a tangent today of efficiency and economy because I think we're addressing a lot of the quality issues and the like, but I'm going to be talking about what kind of accountability and management of efficiency and economy.

And you mentioned property asset and equipment. Well, one of the areas that has started to come up in the last six, eight, ten months of testimony is labor and equipment utilization, not management of the property so much. Certainly a defense contract-management agency with expertise in property and equipment, they could probably look at efficiency and economy as well as accountability, taking an inventory, being sure that it's properly moved to where it's supposed to be moved, which is critical to the warfighter in Afghanistan and everywhere else.

But I'd really like to encourage, based on the inputs that this commission's heard from many, including Mr. Fitzgerald today, that the subject of labor and equipment utilization, really take a front seat. And I'd ask you for your consideration of that. In fact, for the record, I'd ask you for your consideration and feedback in the 15-day period on your reaction to that. And is that something that seems to make sense?

PILLSBURY:

Sir, if the numbers are true, which I don't doubt that they are, then they are very disturbing. Certainly we do not wish to have 90 percent of the contracted maintenance capability sitting idle.

THIBAULT:

Right. And you know, DCA may not be right, but they've pointed to in a fairly narrow period of time, I think it's seven months, but I could be wrong, from January to August \$193 million that they believe could be saved through better planning. So I just think that that's a triple-A (Army Audit Agency) priority. Mr. Loehrl, I'd like to switch to you and put a couple of things out there in a presentation and then I'm basically going to ask you: so what's going on?

LOEHRL:

OK.

THIBAULT:

I'm looking at what you call, the PEB, Performance Evaluation Board that is critical with all contractors in terms of how much are award fees. And contractors pay attention, as you know better than me, to award fee boards. We were just given the most recent one a couple of days ago, or whatever, but I'm looking at the one that I've had an opportunity to look at in some detail, which is the September 2009. And I'm looking at KBR and I'm looking at cost control because efficiency and economy, as I said, is sort of a singular focus for me.

And if you look at it, it's green, yellow, and red and the titles are very good, good, and adequate, and they have a red on cost control, which is average. Very good, not adequate, but average. And it's kind of interesting because I know DCA is getting criticism because in their reports, they go adequate, partially, and adequate, and inadequate and then they changed it and all that, but adequate's the best you could get. And then here, average is the worst you can get.

And I highlight that because it says here in your definition of it, "The criteria definition to a level that is minimally acceptable." Well, I propose, and I'm going to read a few of them to you, that your comments go beyond minimally successful to something below that, but that's the criteria. For example, under the area of cost, board feedback cost control, KBR not capturing de-scope ACOs [Administrative Contracting Officers] on financial reporting. Mr. Fitzgerald talks about de-scoping.

Cost data was not updated in a timely manner. That's a pretty big deal. Not proactive in improving maintenance utilization by reducing manpower. That's overstaffing. The under-run in cost management is weak. Serious improvement is needed to save government money. The labor under-run not reflective of actual amount that should be reflected: \$17 million versus \$100 million. And then you go on later on—and I'll read these couple of comments: "Due to KBR not properly following its own change-management process." So they've got a process. They didn't follow it.

KBR failed to capture de-scope ACOs which impact task order 159, which we know that's the multibillion dollar task order that's been ongoing. And they talk about KBR's failure to properly follow its own change of management process. And then, under variance analysis— that's an important area where you provide feedback—they say, "If the variance analysis reasonable and accurate, that's the one that management can use to find out what's going on. Do we make timely adjustments and all that?" And it says, "No, see everything I've just mentioned before."

Does the contractor provide sound analysis to justify sole source . . . on subcontracts? Subcontracts are huge cost drivers, you know? Billions of dollars in total. It says here, "The government ACO and theater does not have access to the contractor's information." So it's kind of, like, we don't know. "Does the contractor engage in continuous rebase lining, bottom-up reviews?" And it says, "Based on the answer to question one, the answer would have to be no.

Based on cost analysis, the contractor has not made any attempts on their own initiative." I could go on and on because it's actually a very good report. I kind of am lost a bit at why it's average, but it's average because that's the lowest you can go in the system.

But I'm very concerned. And then I'll build on Mr. Fitzgerald's comment because we're talking about staffing and his comment is, "Sixty percent of the assigned staffing are let's go home in the last month of the period." That seems to meet the objectives that have been set forward by the administration to the Department of Defense. That seems like all of a sudden the work's going to go away and we've heard about this gradual attrition of staff and all that.

So my question, Mr. Loehrl, is please, what's going on here?

LOEHRL:

OK. What that PEB is, that's a monthly assessment that the Defense Contracting Management Agency's ACOs perform with KBR in theater on a monthly basis to get the contractor feedback. And as you said, all of that then flows into the biannual award-fee process.

Some of what is in there very clearly, if what the ACO was reporting there was correct, KBR is not implementing ACL changes in getting those ACO changes incorporated into the baseline, then that is an issue and that's the proper way to be addressing them, is that that PEB forms so the KBR understands that that is then going to flow into their award fee valuation and affect their profitability.

And so that's what that process is going on. I believe that particular PEB was one on the core logistics mission which then calls into the same thing that Mr. Fitzgerald brought up with that DCAA audit report regarding that staffing of that logistic -- that logistics mission. So I think two of those all kind of . . .

THIBAUT:

OK. You know, I know the chairman was going to allow you all time at the end to wrap anything and if you have some additional, I'd put it in there, but I would say that you outlined yourself the current action that occurred in LOGCAP IV Logistics, which was to give this contractor the action based on competitive, technical and alike, multibillion dollar. And my sensitivity is if you don't have the kind of scorekeeping, sir, that you need in order to do your job, how are we going to get it?

And so Mr. Shays, I think, wanted to follow this. I've used my time, but, sir, please do.

SHAYS:

Thank you. Mr. Henke?

HENKE:

General Pillsbury, are you familiar with the DCAA audit report regarding KBR staffing from October of 2009?

PILLSBURY:

I have read that report. Yes, sir.

HENKE:

OK. My question for you: your statement says, quote, "AMC is implementing its comprehensive plans to draw down our contracts and contractors efficiently and effectively," end of the quote. This DCAA audit stated that if the KBR contractor would have reduced its staffing levels to what they considered adequate, that the government could save about \$193 million. One of the statements in this report is, I think, particularly noteworthy. So I'll quote it.

Quote, "We noted that KBR staffing levels had little correlation to the number of troops supported. In fact, staffing levels were slightly higher 20 months after the military significantly reduced troop levels subsequent to the troop surge in 2007 in spite of the fact that several bases closed or de-scoped," unquote. So KBR staffing levels were up and had continued to increase until April of 2009.

The audit report basically says that if KBR staffing was to be reduced by what the auditors considered to be overstaffing conditions, the government could save \$193 million. The point of departure for the audit was January 1, 2010, and General Odierno has issued a requirement that contractors come down five percent a quarter. That number on January 1st was roughly 15,000 for KBR; direct hires 15,900. DCAA would tell you that that's about 3,000 more than they think that KBR needs.

What I'm surprised at is that I don't believe that the Army or AMC has responded to the audit report. Is that your understanding as well?

Now, that's huge.

PILLSBURY:

Mr. Commissioner, the Army Material Command is and will always be in support of the warfighter. So if in fact the requirement is . . .

HENKE:

But sir, my question before we go on further is: has the Army or Army Material Command responded to this report? If someone would write me a report that says you could save \$193 million, I'd write them back and say I agree or disagree. So has the Army responded?

PILLSBURY:

I will take that for the record. I don't know if we responded exactly to it. I know that we're taking actions to draw down.

HENKE:

Yes. OK. So you don't know if you've responded to it? Mr. Fitzgerald, has the Army responded formally to this report?

FITZGERALD:

Sir, if you mean formally in writing . . .

HENKE:

Yes.

FITZGERALD:

No.

HENKE:

OK.

FITZGERALD:

We have had conversations and they have expressed some concern about certain aspects of the report, but they have not responded formally.

HENKE:

OK.

HENKE:

“They” is Army or Army Material Command?

FITZGERALD:

Yes, sir.

HENKE:

OK. General, since the Army hasn't responded to the audit, could you do that here?

PILLSBURY:

Again, sir, the drawdown in Iraq is apace. Given the DCA audit and the fact that General Odierno has said that we would draw down by five percent, the actions that I believe that are ongoing are prudent. Now, I am not an auditor. I am an operational logistician. And requirements in a flowing battlefield, in a flowing theater, especially one that is drawing down, are very, very difficult to put your arms around.

So I would say to you, sir that I will take this for record and get back to you with a written response from AMC on what our actions are for the audit. But I will tell you, sir, the situations on the ground are somewhat fluid as you well know.

HENKE:

I appreciate that entirely, but you're telling me that AMC has a comprehensive plan to draw down contracts and contractors? And the single biggest contractor in theater is KBR with 15,000 direct hires and 35,000 other people. I would think if an auditor would tell you there's a chance to save \$193 million . . .

PILLSBURY:

Right.

HENKE:

. . . that someone in the system—would feel compelled to respond. I'm disappointed that the Army has not. We had the LOGCAP Program manager up here before the commission in November, asked him his response, the report was just out. So this is not new material. In fact, the point of the audit is that the savings are going, going, gone. If the Army had acted, the savings could've been achieved, but since the Army or the DoD hasn't responded, the savings are effectively gone.

So my question to you, sir, is who is responsible for cost efficiency, for cost awareness of expensive contracts in theater?

PILLSBURY:

On the Material Command leadership as you well know, the contract oversight, we depend on our partners at DCMA and DCAA. We have, as I alluded to in my statement, contracting officer representatives. We have '06 deputy director for LOGCAP . . .

HENKE;

Right.

FITZGERALD:

. . . oversight in theater. Mr. Loehrl and his team are providing that reach-back support for them. And I believe, sir that we're on the path to gaining the efficiencies that you're talking about. Now, the \$193 million going, going, gone: sir, like I said, I will get back to you on record for what we're doing about that \$193 million.

HENKE:

Mr. Loehrl, would you care to comment on the findings?

LOEHRL:

Yes. Yes.

Yes. First of all, we are saying we have gone back and had verbal conversations with DCAA

regarding that audit. And we did have some, I want to say, issues. But we did have some discussions with them regarding the audit and the points made in the audit.

HENKE:

Could you put a sharper point on it though?

LOEHRL:

Sure.

HENKE:

You've had some disagreements . . .

LOEHRL:

At the time the audit was generated and there had been no basis on LOGCAP closed yet.

HENKE:

Right.

LOEHRL:

So while they were citing that point that we are not drawing down, they didn't cite the point that at that time of the numbers they were looking at, none of the bases that were managed by LOGCAP had been closed. LOGCAP only managed about two thirds of the bases in theater.

At the same time those numbers were being generated, we were also ramping up some of the other functions within LOGCAP to deal with some of the O and M [operations and maintenance] and some of the other things that were there. In addition, then as you look at the LOGCAP staffing, not all of that staffing is there generated and supports BLS [basic life support]. So it doesn't come down on the same time line as what the drawdown of the forces do. And so those were all conversations and points we had.

We then brought KBR in and had KBR generate a drawdown plan which they provided to us back in the December time frame. We provided that to DCAA in the January time frame. We also then brought KBR back in to generate another more refined plan on February 23rd . . .

HENKE:

Right.

LOEHRL:

. . . of this year and invited DCAA to come in, listen to that session, listen to the briefing. And then I asked DCAA to go back. And that's what Mr. Fitzgerald referenced in his opening statement.

HENKE:

Right.

LOEHRL:

To specifically audit and look at the assumptions, the facts, and the . . .

HENKE:

Right.

LOEHRL:

. . . drawdown that are in that plan.

HENKE:

Sir, can you tell me from the plan that KBR briefed to you on February 23rd, what's the time horizon on that plan? That's to be drawn down by . . .

LOEHRL:

That's to be drawn down by I believe it's the 30,000 that we referenced by the August of 2010 time frame.

HENKE:

Right.

LOEHRL:

And then to be drawn down totally by the December 11 time frame. But the drawdown plan we're really looking at is to get down to that 30,000 at the time the troops get down to the 50,000 level in that August of 2010 time frame.

HENKE:

Why would it be though that after the decisions are made to draw down in Iraq, and the drawdown in Iraq, and the time-line is set early in 2009, the contractor gives you a plan in February 2010 to drawn down by August of 2010? Why is that viewed as acceptable?

LOEHRL:

I'm trying to make sure I understand your question, sir.

HENKE:

It seems to me that the contractor's planning would have been consistent with the military's planning which took place probably the better part of a year or two years ago.

LOEHRL:

But I think that the military's planning is still in fact evolving.

HENKE:

Right.

LOEHRL:

Is still not totally laid out—while they've laid out that we're going to draw down to the 50,000. It's been a continual change as to what the final configuration is going to look like, what the final spokes and hubs are going to be. And exactly when bases are actually going to be shut down and closed. I mean, we still get individual notices that when particular bases—there are some—that while the military has their plan, their plan is not down to the finite. And it continues to be

refined. And as that plan gets refined, we're able to more refine, KBR is more able to refine their plan.

HENKE:

So there's obviously a dependency with the military's plan...

LOEHRL:

Very much so, sir. Very much so.

SHAYS:

Thank you. Commissioner Schinasi?

SCHINASI:

Thank you.

I'm going to go back to the performance evaluation board report that Mr. Thibault referenced earlier. But I want to touch on another point in here. One of the things that I think has disturbed me a little bit is what constitutes actionable direction on the part of the government. We all know that contracting is a rule-based process. But in this performance evaluation board report, one of the things that is in here that the government has said to KBR is, "You're not being proactive enough. You're not taking the initiative."

"We're in a period where we know we're drawing down, yet you need to do more to bring to the government's attention cost savings, cost-avoidance measures that you can take in partnering with the government." Do you consider that to be appropriate direction that should result in the contractors taking actions along those lines?

And I'll start with you, Mr. Loehrl?

LOEHRL:

First of all, I would say yes. If you go into the evaluation— work the evaluation criteria we have. One of the particular areas we have in there is program-ID and resolution. And so what we're specifically looking there for is just that: the contractor to be proactive. And if we have issues going on, I want them to bring them to the table to us to let us make proper decisions on

them. I don't want them to make those decisions for us. But I certainly want them to point them out to us and help us as our partner in this endeavor.

SCHINASI:

And what is the consequence if they don't do that?

LOEHRL:

The consequence of that is, once again, that's part of their award-fee evaluation criteria where they don't necessarily raise up to that high level of excellence. I mean, I would expect an excellent contractor to be doing just that for me.

SCHINASI:

And have you withheld award fees for that purpose, because they have not done that?

LOEHRL:

Yes. I think if you go back and look at the award-fee evaluations, you'll find that KBR—I don't think it has ever—very rarely gets 100 percent in that category. Yes.

SCHINASI:

Close to a hundred percent?

LOEHRL:

I think I'd have to get back to you for the record specifically. But they are generally in that high-very good, low-excellent range in that category.

SCHINASI:

I would appreciate it you could provide that information.

LOEHRL:

Sure.

SCHINASI:

Mr. Fitzgerald, do you consider that to be actionable direction from the government?

FITZGERALD:

I think our position is we believe that all contractors performing reimbursable work funded with taxpayer dollars, you know, have the obligation to conduct that in the most effective and efficient way. So the cost containment and cost control built into the award fee we think is very appropriate. And I think we have, with the core logistics-service support contract, there are some clauses in the task order that talks to the 'contractor shall perform optimized direct support maintenance and organizational maintenance services.'

So I think there are provisions in there talking about being proactive.

SCHINASI:

So if the contractor says, "We can't act without appropriate contract documentation," you would consider generally that the evaluation board in giving them the direction to take initiative would be appropriate documentation or something that they could act on?

FITZGERALD:

Yes, ma'am.

SCHINASI:

OK. I want to ask you just generally about government oversight into what the contractor's operations are. And General Pillsbury, let me ask you. One of the things that we have seen is that KBR is below its basis of estimate in terms of head-count in theater. And that can be the result of two things. One: because they are efficient in drawing down. Or two: because the basis of estimate was not appropriate to begin with. That it was high.

So let me just ask you what sort of insight do you have into the contractor's proposals?

PILLSBURY:

The requirements generation for contracts within the theater, I am not personally aware of on the KBR side. Non-KBR contracting for our organizations within AMC [Army Material Command] I am very familiar with. As an example, we have 3,609 contractors doing direct support for our life-cycle-management commands within theater right now outside of KBR, working primarily on weapons systems.

And the plan [is] to draw down to 677 by December of 2011. So we do have a plan. The requirements that KBR provides for our services to our soldiers primarily base life support is dependent upon General Odierno's drawdown plan. I can't get any more specific than that, ma'am.

SCHINASI:

Well, you raise this issue of requirements. Is it fair, or should we expect a contractor to be able to perform in an efficient manner if they don't understand what the government's requirements are?

PILLSBURY:

I would expect a contractor to perform responsibly at all times. But certainly if given the fluidity of the situation in Iraq that there would be some consternation on their part on the total true requirement. That's incumbent upon us, to be able to provide that to them. But at all times I would expect a contractor to perform responsibly.

SCHINASI:

I guess the definition of responsibly can vary. And what I'm looking for is sort of a recognition that cost should be a part of performance—that actually cost is a part of performance. You talk about supporting the warfighter, and I understand that's the primary goal. But if we can do it efficiently, that's more money for the warfighter.

PILLSBURY:

Yes, ma'am.

SCHINASI:

If we waste a lot of money, that becomes a performance issue in and of itself.

PILLSBURY:

I concur. Yes, ma'am.

SCHINASI:

Do you know how KBR maximizes its profits?

PILLSBURY:

No, ma'am.

SCHINASI:

Mr. Fitzgerald, do you know how KBR maximizes its profits?

FITZGERALD:

I don't.

SCHINASI:

Mr. Loehrl?

LOEHRL:

No.

SCHINASI:

OK. Thank you.

I think that's all.

SHAYS:

Mr. Ervin?

ERVIN:

Thank you, Mr. Chairman.

Thank you each of you for being here today.

I want to start with you, General Pillsbury. The original build up of contractors in Iraq—and for that matter Afghanistan, but we're focused on Iraq today—is, or was the result of a number of decisions taken over time by a number of different actors. And the same is true for the drawdown. And I think one of the fundamental issues, and I'd like your comment on this, is that there appears to be no one single entity within DoD that has authority to actually direct contractor draw down.

As I understand it, JCC-I/A [Joint Contracting Command Iraq/Afghanistan] monitors contract activity overall, but it has direction authority with regard to only 25 percent of the total of the actual contracts awarded locally. Is that right? And if so, isn't it a fundamental problem that there's no one entity that can actually direct as opposed to simply monitor contractor draw down?

PILLSBURY:

Yes, Mr. Commissioner, I think you're right. I think there is no single entity. It is incumbent upon those responsible for oversight of the contract to ensure that the contractor is scoped to the appropriate level for the population.

ERVIN:

Would it be your recommendation in light of that that there be henceforth a single entity within DoD that would be responsible for, and would have the authority to direct contractor draw down in the absence of responsible quote unquote, "contractor draw down?"

PILLSBURY:

Sir, I would hesitate to put another layer if you will. I would suspect that ultimately the responsibility falls upon the commander, be it four-star all the way down to the captain—company commander at a small FOB to scope that. And I would hesitate to put a single person or entity from say Washington D.C. to set 'here's the number' without having the operational feel for what's going on.

ERVIN:

I want to move on to a couple of other issues. A number of us, I certainly, will have I know some issues with KBR. You know, when KBR is before us. But it seems to me that they've got one fundamental fair point. And that is that to some degree—to a considerable degree—they have to have clear guidelines from DoD as to what the needs of the warfighter will be before they can draw down with any precision.

And as I understand it, a number of critical decisions are still pending, like, you know, there are these tenancy bases, as I understand it, that the United States government will have within Iraqi bases. And also that during the final phase of withdrawal from September 2010 to December 2011, that the level of support provided to our military personnel will be so-called, "the expeditionary level." Very Spartan conditions as opposed to the conditions that exist now. Which, of course, are Spartan to some degree also.

But as I understand it, neither of those decisions has been made. Why haven't fundamental decisions like that been made? Who will make those decisions? What's the timeline for making them?

PILLSBURY:

Sir, it's a fair question. And I would point back to General Odierno and his staff, the conditions post election. When will the government be seated? How will that affect the population? How will that affect the security arrangement?

All these things are playing out over time. And upon those actions, I would believe that General Odierno would make the decisions commensurate to drawing down. You talked about the tenancy. I think that was a smart thing to do, to give the Iraqis the responsibility while we're still there to take over mayorship if you will, of those FOBs, and yet inside those FOBs, still require services for our soldiers.

And the last point, sir, we are working very diligently and understand President Obama's requirements of August '10 and December of '11. Until those dates are right there, it is still very fluid. But the planning is for 50,000 by August '10 and zero by December of '11.

ERVIN:

You referenced the political uncertainty now, given the outcome of the election, the fact that former Prime Minister Allawi appears to be ahead, et cetera. There's increasing violence in Iraq. There's the possibility at least that the Iraqi government would ask us to stay beyond the time that we've committed to stay per the terms of the agreement.

What plans does AMC have to continue contractor support beyond the drop-dead deadline?

PILLSBURY:

Sir, as of right now, we are planning, like I said earlier, August '10 and December '11. Your question is fair. We do not have plans because of the uncertainty. However, we feel like the contracts that we have are flexible enough to be able to provide uninterrupted support, if necessary.

ERVIN:

One final question for you then I want to move on. Does AMC have a formal process to apply lessons learned—any lessons learned now and to be learned in the future as to the drawdown in Iraq to the eventual drawdown in Afghanistan?

PILLSBURY:

Yes, sir, absolutely. We've gone back to Desert Storm and looked, talked extensively with the leadership of Desert Storm's drawdown. As I said, General Dunwoody has put me in charge of the Responsible Reset Task Force that helps the ARCENT do its mission.

We have Army Sustainment Command embedded in both locations. We have our contracting command embedded in Kuwait so that the continuity of AMC in those areas will ensure that we have lessons, that we take the good lessons from Iraq into Afghanistan.

ERVIN:

Is there a process to develop a written report to that effect?

PILLSBURY:

Sir, we have the Center for Army Lessons Learned out of Fort Leavenworth, which is the writers of those reports. We have a lessons-learned cell within our current operation cell within AMC headquarters, so, yes, sir.

ERVIN:

OK.

Mr. Loehrl, I want to ask you a few questions about basis of estimate we've talked a little bit about beforehand. As I understand it—and you can correct me if I'm wrong—but Rock Island's

position is that as long as KBR is under its authorized workforce level, that no further reductions are necessary, even if further de-scoping—which in plain English means, you know, reduction in the amount of work that KBR is asked to do—could result in reducing the workforce because there's less work to be done.

It would seem to me logical that Rock Island would reduce the number of authorized positions to the fewest number that's needed to get the job done. Why isn't that done? And isn't that the logical thing to do?

LOEHRL:

Yes, I think that is the logical thing to do. And I think that is somewhat is what's going on, and that was some of the issues that were brought up in that PEB [Performance Evaluation Board] report that we talked about a few minutes ago.

You know, once we negotiate a baseline with KBR, then the way that baseline is changed is via generally administrative change letters, ACLs, that either adds work or takes away work. And so that issue that was brought up in that PEB was the ACL for that CLSS [Core Logistical Support Services] mission in September of '09 was questioning how fast KBR was, in fact, incorporating those downsizing ACLs into their baseline. And so that is the process that is there to do that.

And what we normally do is the ACLs are executed in theater by the ACOs [administrative contract officers] on the ground, and then we go in—my contracting officer—on a once-a-month basis goes in, fixes up those ACLs, and does what we call an ACL sweep, and then mods the contract to then reflect those changes.

ERVIN:

OK, I want to ask one final question of you. There's a letter that a number of us I'm sure will be talking about over the course of the day. It is a January 2010 letter to you from KBR that asks you to stand down, to advise DCMA and Team LOGCAP to stand down in discounting KBR's cost stewardship during performance evaluation boards. You're familiar with that letter, of course.

LOEHRL:

I believe so. Is that that 15 January letter?

ERVIN:

Yes, that's right.

LOEHRL:

OK, yes.

ERVIN:

Did you, in fact, do that?

LOEHRL:

No, sir, we did not.

ERVIN:

What is your view of having been asked to do that by KBR?

LOEHRL:

First of all, my view is that I am not going to stop doing that. I'm not going to stop evaluating cost as a part of the award-fee evaluation process.

Once again, I think all these issues go back to the same thing we've been kind of talking about here earlier. If KBR is under-running a baseline because an ACL change has been issued and the contract is legitimately then de-scoped, we need to de-scope that out of the contract and take it out of the baseline.

If KBR is under-running a baseline because of efficiencies that they brought into the operations and things that they have done in their under-running, then I shouldn't be taking that out of the baseline. I should be giving KBR the due credit for it in the award-fee board process.

And so I think that's what that letter was really all about was the issues of when do we de-scope versus when it is a true under-run by KBR? And then with KBR concluding, well, if you're going to de-scope all my savings, all my initiatives out of the process, maybe you shouldn't be evaluating cost, and that's not the right answer, and that's not what we're going to do.

ERVIN:

Thank you.

SHAYS:

Would the gentleman just yield a second?

ERVIN:

I'm done, in fact.

SHAYS:

Well, I'm unclear as to how you characterize basically a company that's telling you to back off. I mean, you're doing your job, and they're saying, "Back off." It struck me on the surface, at least, as extraordinarily arrogant and a poor reflection on your organization that they think they could say something like that. So walk me through a little bit more as to why I shouldn't feel that way.

LOEHRL:

OK.

SHAYS:

I'll tell you what, that's my observation. I'm going to come back to it. And I think we're going to Mr. Tiefer.

TIEFER:

Thank you. I want to begin by mentioning that I took two trips to Iraq, one with Commissioner Schinasi, specifically on today's subject, and that was at Mr. Thibault's gentle and sometimes not-so-gentle urging. And I want to say that however I responded when he suggested it, he was right to tell me to go there. This was the topic to go and look at.

I also want to note, Mr. Fitzgerald, I'm a professor at the University of Baltimore Law School, and you have a University of Baltimore tie, connection, also, don't you?

FITZGERALD:

Yes, sir. I graduated from the University of Baltimore about 30 years ago now.

TIEFER:

Well, I think you're an inspiration to my students at University of Baltimore. They, too, can hopefully attain positions of high responsibility, maybe not all of them, but some of them.

FITZGERALD:

Thank you.

TIEFER:

Mr. Fitzgerald, your statement discussed your March 26th audit of the four exhibits that are being made public here, and we had limited copies, so they've been distributed.

The first, which is exhibit one, is your March 26th audit which was newly issued, I understand Friday, and is being publicly addressed here for the first time. It tells KBR to make \$21 million in cost savings in the CLSS [Core Logistical Support Services] function of LOGCAP in Iraq, which includes repairs and maintenance, such as the motor pool.

What did you find about KBR's charging on underutilized labor in this area? Is it proper?

FITZGERALD:

We saw, based our analysis from January '09 through July '09—and I do want to add that the Defense Contract Management Agency requested that we look at this—that we saw an average utilization of the labor force providing that function of about 10.1 percent average utilization and never during that period of time did it ever exceed 15 percent.

Clearly, based on those percentages, we thought there were efficiencies to be had there, and our \$21 million is really based on looking forward having the Army and KBR work together to address this issue and projecting from May 2010 to the end of the calendar year. If this issue was addressed, we could potentially avoid \$21 million worth of cost.

TIEFER:

Thank you. As I understand from that audit report after you studied the first six months of 2009, to squeeze down what was going on—which is basically idleness for which the government is being charged—as I understand, a Defense Department goal would be 85 percent use, and instead, KBR is making 10 percent or at most 16 percent use, which sort of translates

into KBR is charging the government for a 12-hour day and its people are actually doing work that amounts to less than 2 hours in that day.

What you found was that, on page five of your audit, the government told KBR to come up with a proposal to reduce this bloated figure for what it was charging the supposed work by de-scoping. They came up with such a proposal and you say, and I quote, "The de-scope proposal"—that's KBR's—"was ineffective because most positions eliminated had not been filled by actual employees. KBR primarily eliminated positions that had not been filled by actual employees charging costs."

In the phrases I've come to hear, here and in Iraq, KBR was just eliminating spaces without faces, your bookkeeping entries. Is there a broader risk that as Iraq draws down, KBR—if it were to do this—would still have the government paying for labor that's not actually being done?

FITZGERALD:

Yes, Commissioner. I think if you look in our report, it shows, after the change letter was issued by the contracting officer, we did an analysis to look at what the utilization rates were subsequent to that change letter. And it showed that still, on average, it was about 16 percent, which gives merit and credibility to the fact that some of the spaces that were eliminated were not charging to begin with.

TIEFER:

OK. Now, when KBR says—I want to know what your response is—its basis of estimate, we've heard about this, this level set after the contract gives it no choice but these high idleness rates: this is a figure it negotiates with the government. It's saying that it has no choice but to maintain an overcapacity of idle employees. Do you accept that?

FITZGERALD:

Mr. Commissioner, I would say that there's probably some degree of capacity that they need to handle the fluidity of the situation, but clearly the percentages that we're talking about well exceed that.

TIEFER:

And let me ask you one other thing. The million-dollar reduction, the million dollars that your Form 1 is requesting be held back from KBR, a strong-position Form 1—it's the third exhibit —

this is what a Form 1 looks like. This is your Form 1 on this subject, which I understand you ordered on this subject on March 20th, so it also is sort of new and fresh at this hearing.

As I understand, this concerns the dining facilities, 17 of them that a contracting officer had directed KBR to, quote "immediately" unquote—that was his direction—cut the overly large workforce at these. You found that KBR was slow, was not, quote, "immediately," unquote, reducing these and you're charging it for a million.

Now, KBR has responded that they, quote—this is from KBR's response—"made a prudent decision to wait," because, quote, "to do otherwise could have compromised the continuity of service."

Do you agree with that? If a contractor officer directs them to do it quote, "Immediately," is it their discretion about whether to do it immediately or not?

FITZGERALD:

Sir, our position would be—and I believe the change order was issued in August—most of those disapproved costs were related to dining facilities where the result of the change order didn't become effective until 1 October. Our position is that—and given that they had the capability in their provisions to move urgently and responsibly—we believe that they didn't move quick enough to reduce the head counts in the dining facilities as required by the contracting officer.

TIEFER:

Thank you. As my time is limited, I'm simply going to help people find—this may be useful as the witnesses go through it, the second exhibit, which is the only I think colorful page in this, is the PEB we've been talking about, the Performance Evaluation Board. And the red line is for the average rating and cost control, the lowest possible rating that the KBR received. That's the red rating.

I have gone through many of these without seeing a red mark before. And finally the very last exhibit, exhibit four, which is the last two pages in this pamphlet are the letter that Mr. Loehrl received from Doug Horn, KBR official in charge of operations, who we will have on our second panel. And that's the letter which came with the statement that has been discussed by other commissioners—that KBR asks that you advise DCMA and Team LOGCAP (that's Mr. Loehrl's offices) and others that work with him to stand down in discounting KBR's cost stewardship during PEBs. .

Thank you, Mr. Chairman.

SHAYS:

Let me just start with that letter. And just read the last paragraph in full again. KBR is willing to discuss the management and cost efficiencies described in our briefing on December 8, 2009. And in this letter, during the upcoming discussions are contract-interpretation issues that have arisen from USG audit activities.

Pending those decisions, KBR asks that you advise DCMA and team LOGCAP to stand down in discounting KBR's cost stewardship during the PEBs—Performance Evaluation Boards. You know if KBR said it's eager to discuss this. It's "willing" was a striking word to me. And the fact that they basically asked you to tell them to stand down, to me is stunning.

Mr. Loehrl, tell me why I shouldn't be stunned by it?

LOEHRL:

I think it's just all a matter of perception and how you take that letter in its totality. Once again, when I read the letter and I took it from its totality of the points that were being made above and then I guess already recognizing that I wasn't going to stand down on the PEBs. And on that process I guess it just didn't have the same affect on me as it did with you.

SHAYS:

The challenge that the commission is dealing with is that we don't think that the inspector generals and DCAA are getting the respect from DoD that they need to. And, you know, that they're not responded to. And this seems to just kind of fit into that. Gentleman. . .

THIBAULT:

Well I wanted to ask General Pillsbury, you know, you have a long and distinguished career in the United States Army. If you give a command to a subordinate to stand down, you know, I'd take that to mean cease and desist. Is that correct?

PILLSBURY:

Yes, sir. That's what I would expect the person to do.

THIBAULT:

And I think reading the bio of the people that are going to give testimony they have very strong military careers. They know, Mr. Loehrl, what stand down is. It's the last sentence you put in a strong letter to be where you really want to go? I see it as a command. And so I'd like to support the co-chairman's position of concern.

SHAYS:

Thank you to the gentleman.

Let me just jump right into this issue of inspector general and the contracting for tactical-vehicle field maintenance at Joint Base Balad of Iraq. You know, in one sense you could say that \$5 million isn't a lot of money given we're talking tens of billions. But it is so striking that for a year, from September '08 to August '09, the use of the maintenance crew was a low of 3.97 and a high of 9.65 percent.

So I was going to ask the question, why shouldn't I think that this may be just an example of the kind of waste that we have throughout? Why would I think this is unique? So I'd like General Pillsbury and Mr. Loehrl to explain to me why I shouldn't think it's unique in light of the fact that DCAA comes in and does an audit of a larger complement of this: the art of labor-management relations to the core of logistic service support—CLSS operations Iraq, which is the maintenance of vehicles. And they determine that the use of the contractors never exceeded 15 percent, and averaged 10 percent?

And now we're talking the waste of \$21 million. So tell me why it's not something I should be hugely concerned with, General Pillsbury.

PILLSBURY:

Mr. Chairman, you should be concerned if those numbers are accurate. And again, I don't doubt that they are.

SHAYS:

So then it's just, not even ask if they're accurate. So why should I be concerned?

PILLSBURY:

Certainly we're paying for services that aren't needed. Now I will tell you though, sir that the maintenance posture for our equipment in Iraq is incredibly high. And it has to be. It has to be well above the normal standards. And the equipment is rode hard over there too. So the maintenance operation is a success now. Are we over staffed? Quite possibly, yes sir.

SHAYS:

No. No. Don't say, "Quite possibly." See that's where, General, I think there's disrespect for the people that are doing this work. You've got DCAA and inspector general. I think they deserve more respect. The word is "if" they determine it's a fact. Either you come back and prove to them it isn't. But it's going to be hard to prove it. Because we're not talking about a fine line between, you know, 75 and 85 percent.

Your contract says "85-percent performance." DCAA is saying, "Ten percent for seven months." Inspector general is saying, "Never went over 10 percent"—an average of less than that. I respect them more. And so, what I need to understand is, we will have the contractor say that they notified DoD about the under utilization, we have the report saying that there should be a requirement they notify. But they did provide some notification.

Why wasn't the notification acted on? So it happened. That's that. But what makes it worse is you have the contractor saying, "Hey, we're only at 10 percent utilization."

PILLSBURY:

Yes, sir.

At the time that you spoke about, I believe it was August 8 to September 8—or to September.

SHAYS:

Well we have two different reports. We have the September 1st '08 to August 31st '09.

That's where you were under the 10 percent. And then we have the DCAA that basically said for a seven-month period. And that was exactly when? January '09 to July '09?

PILLSBURY:

Yes.

SHAYS:

OK.

PILLSBURY:

My answer, sir, is that in May of '09 I believe—correction, March of '09— we had 151,000 contractors in Iraq according to SPOT [Synchronized Pre-deployment and Operational Tracker]. We now have 81,000 plus. So we have gone down by somewhere close to 46 percent. So perhaps we have acted on that, Mr. Chairman. I don't have the specifics on that . . .

SHAYS:

I don't like the word "perhaps." And I don't think you would like it from someone else saying it. You know, one of the things this commission has said is that we don't want to do is do cheap shots. 'Cause there are so many areas where the system is broken down. And you all are trying to catch up. And I look at you and think of incredible service that you've provided this country.

But what is clear to me from you, General, as well as Mr. Loehrl, is that there isn't the respect of the people doing the other side of the effort to make sure that we're efficient. I don't sense there's respect for what Mr. Fitzgerald and his team is doing. I just don't see it.

Mr. Loehrl, explain to me how we are at 10 percent when we have the contractor claiming they provide you information, but you know they're only operating at 10 percent?

LOEHRL:

First of all, let me start out by saying I have all the respect in the world for DCAA and what Mr. Fitzgerald and his staff do for us, and the services that they provide to us. The staffing levels that we're talking about here were negotiated into the contract at what I would call a level of effort. In other words, we negotiated in, and told KBR based on the request of the client here's how many people they felt they needed at each installation we were going to provide these services at, in order to provide the services they needed.

SHAYS:

You know, everybody can be wrong. And so you are not just a little wrong. And they weren't just a little wrong. You were really wrong. But that part I'm not criticizing.

LOEHRL:

I think where we were wrong was I think we should have been more forceful with our client in going back to our client and forcing them to relook the numbers of what they had requested we put into the contract.

SHAYS:

But let me ask you this, though. Don't we have CORS [contracting officer's representatives] and others? I mean, one of the things that I'm learning coming from Congress to this commission is that the military is slow to value the work that you both do as dealing with the contractors. And, you know, it's not generally the way to become a flag officer is go through contracting. You know, you want to be at the tip of the spear.

And yet half of our military effort our contractors feel, "We think that with the Gansler report and the previous secretary of the Army and the present one that they're beginning to value this. And your command is. But you've got a ways to go. But what I'm not sensing from you is that I would think you would have said to me there was a breakdown in our oversight.

Because whether the contractor is going to voluntarily come to you and say, "We're at 5 to 10 percent utilization for a whole year. We're wasting 90 to 95 percent of the dollars you're giving us." I would like to think that there's an oversight mechanism that would make it so evident. And your people would be running to you saying, "We've got a great way to save money. This is huge." And that you would then be able to deal with it. Why didn't that occur? And then I'll end my question.

Where was the breakdown? Where was the oversight of this?

LOEHRL:

Well the oversight was there. So, I mean there is a dedicated ACO [administrative contracting officer]. . .

SHAYS:

No. The oversight was not there.

LOEHRL:

The resources that do the oversight were there.

SHAYS:

Fair enough.

LOEHRL:

That was there.

SHAYS:

So this is where I'm going to end. 'Cause I don't think you have a good answer. I'm going to end by saying I would have liked you all, knowing that this report was available, to say, "Huge screw-up. We determined the screw-up occurred, because we had one COR got in late, and one left early," or something. Or that we somehow stupidly thought that we couldn't come back to the contractor and tell him that we needed to re-look at this contract that we've given you.

Let me end by saying don't you have a mechanism to reevaluate a contract in process and change it? Or did we write the contract so badly that we're stuck with the 95 percent waste whether we wanted it or not?

LOEHRL:

No sir. We could have redone . . .

SHAYS:

OK. OK.

Let me go back to Mr. Thibault.

THIBAULT:

Thank you, Mr. Co-Chair. Appreciate it. This is a real challenge on how to use my remaining time.

In my prior life, or one of my prior lives, my first life as a DCAA deputy director, I'm not sure if empathy was in my vocabulary. That's *my* issue. But I'm beginning, as I listen to this—and I'm directing this to you, Mr. Loehrl, maybe whether it's empathy, I know you don't want my empathy maybe, but you have a Herculean task. And I think that has to be recognized.

You have a Herculean task. If this contractor was your only contractor that you were working with, that would be one expectation. But it's your biggest one. It certainly isn't your only one. And I think that needs to be stated.

Mr. Fitzgerald, I commend you also for—it's in your statement somewhere. You didn't have time to say it, but you said part of it. You went from two years ago, a year ago completed—pretty current—900 hours looking at efficiency and economy. Which means you really weren't doing it. And then your predecessor pushed it up as a result maybe of her first appearance at

these hearings to about 3,500 or whatever you shared. And you've pushed it up now to about 12,000.

And knowing the difficulty in getting the right people to do the right jobs, that's very significant. So obviously, you're doing audits at more than this contractor. And I'd kind of like to keep it in the logistics mode, because that's where we're at, but I don't mind you pushing it into either of the two active theaters, and I don't want to read all the stuff I read before and all the stuff others have read, putting dollars and all that, knowing there's a multitude of issues formally documented by Mr. Loehrl's organization, by General Pillsbury's, and yours.

Do you have a list like that? I mean, should we be having those other two contractors up here now? I realize you maybe focused on them more recently, but I know, based on prior reviews or prior briefings, you've done a lot of work in this area already. Do you have those kinds of risk concerns at the same level?

FITZGERALD:

Mr. Chairman, do I have the same concerns? Yes. We are in the process of looking at other contractors in theater. The work is still in progress, and there's much work to be done. But as of today, we don't have the same findings that we've reported to you today.

THIBAUT:

Right. And I understand that, once you have a finding and your auditors have come to you and say they have to package this and put it in the right context of however you put it—a report and work with the company. But it's the findings that all of a sudden I think would get to your attention, and the fact that they don't is, to me, pretty interesting.

FITZGERALD:

I have not been made aware of findings . . .

THIBAUT:

OK. Now, these other contractors maybe didn't have the startup challenges that KBR did, and that's absolutely fair.

I want to go back to the efficiency, economy. And I want to give a simple example that we brought up in a hearing, but I think it's representative, and that is: in a trip I staffed to Iraq, but I didn't attend (I've been there a few times) they found through just wandering around or doing

perambulations, along with briefings, a cafeteria that looked great that had a major remodeling. I think it was Camp Delta.

And then down the road a couple miles, a brand-new project had started, I think, and people say, "Well, are you looking at old information?" I think it was completed. It was scheduled to be completed by KBR in the end of 2009, so it's very current. Maybe it's done; maybe it's almost done. KBR has a pretty good track record for finishing these projects on time.

And I make the observation, because my understanding of that—and it's the importance of oversight is that ARCENT—and, General, you mentioned ARCENT before—had sort of budgetary final approval, whatever, and they had approved the major maintenance project, and then this \$31 million request came in, and they approved that. And however they got the request, they had the pictures of the old cafeteria that was run down before it was remodeled.

And the point is—and they acknowledged it—they were straight upfront. They said, "We made a decision based on bad data," but it was all there. And a reason I say that is, I'm going to make a statement and see if you agree, Mr. Loehrl. It seems to me that people make mistakes. Organizations make mistakes. They miss things, and they go, "Dang, that's so obvious."

It seems to me in this discussion there are two primary cost-control functions. One we've talked about, which you're talking about bringing more people, better people, training them, better presence, oversight, and it's a challenge—and that's the government.

And then it seems to me the other half—there's two people, two organizations sign the contract. That's the contractor. And I think a large part of our discussion is, don't they have an equal contract oversight as a party to sign that contract to deliver goods and services in the best way to their customer, their primary customer, the United States government? Can you agree with that, Mr. Loehrl?

LOEHRL:

Absolutely.

THIBAULT:

OK. And that's what this is all about. And in this discussion, I'll just make a couple quick observations. I want to go back to the 60 percent that Mr. Fitzgerald has shared in one of his documents, that over the last month we're going to cut 60 percent.

Well, that's really good, and someone brought this up here. If the Iraq government comes in and says, Let's stretch this support out, we're not quite ready, because we've got all the people to

do it. But it leaves me lacking, since the discussions have been about we're doing—we're forced to do planning for August. It leaves me wanting.

The last thing and I address this to you, General. I'm singularly impressed by your comments on the maintenance posture and the fact that—and I wrote some numbers down, and we'll get together with your staff and talk about that area, because we're trying to get good examples to go with opportunities to ratchet up the process.

Where you say in critical mission, critical maintenance, you got it from 3609 in a plan through December to 677, something along those lines. I'm singularly impressed by that. And what I'm trying to say as sort of my summary in this is: I consider logistics critical mission.

It's not critical mission where the warfighters got an MRAP that runs right or a weapon or some electronics that are at the point of the spear, but it's critical mission in terms of giving them the life support that we commit to and at the most cost-effective way. And to me, that's the missing gap.

Do you have a comment on that, General Pillsbury?

PILLSBURY:

Sir, I break down logistics very similar that you do. We fix things, and we supply things, and services to our soldiers is one of the things that we supply best, and we have got to do a better job of getting that same level of supply of services in a more efficient manner, yes, sir.

THIBAULT:

Thank you. And I have one suggestion. In a lot of ways it can only have so many people testifying, but if Director Charlie Williams from DCMA was available, I'd really suggest—I don't want to say or infer that your staff left you holding half a bag in the prep but I might feel that way if I was you. I know staff is not going to want to hear me say that.

But I think a critical step you can take would be for you—and I just offer this up to bring Director Fitzgerald and Director Williams in again and say, "What the heck is going on with this?" Because I think you'd look up and you'd say, "All right, fine, I've got two things to manage, and I can take my actions as the man that counts." So I'd just make that observation.

PILLSBURY:

Thank you, sir.

SHAYS:

Thank you.

Mr. Henke?

HENKE:

I'd like to ask the panelists a question about transition from LOGCAP III to LOGCAP IV. And there's a chart up here which is a graphic that displays the timeline from acquisition strategy, 2006, to award of what you call the BLS contract in Iraq.

Now, the chart probably could be leftward by about two years because that's when the Army recognized the need or the desire to move from LOGCAP III, one vendor, to LOGCAP III, multiple vendors.

My question for you is on the issue of transitioning in Iraq. You have—and this is probably largely for General Pillsbury and Mr. Loehrl. You've transitioned in Kuwait. It's effectively complete, correct?

The transition in Afghanistan is ongoing, to say the least. And you've just awarded the CTP [contract for transportation and postal] part of the contract in Iraq under LOGCAP IV. You're considering whether to award the—I believe BLS [basic life support] is larger than, is that right, Mr. Loehrl—the basic life-support contract?

LOEHRL:

Yes, it's actually, I think, about the same.

HENKE:

About the same, OK. A multibillion-dollar contract?

LOEHRL:

I think once again, it depends on how long you go. I mean, even CTP is less when you only look at the current year and perhaps go out to the 2011. The \$2.3 billion number had capability to go beyond that.

HENKE:

OK. On this BLS effort, the request for proposals was put out in January. You are thinking about awarding it in May of 2010 with a conclusion of the transition in, I believe, February 2011, is that correct, General Pillsbury?

PILLSBURY:

I believe the transition's to February of '11, sir?

HENKE:

Yes.

PILLSBURY:

Sir, we're not looking at anything after—I'm sorry. Yes, sir, you're right. You're right. I had my ears messed up. You are correct.

HENKE:

So my question is, I understand the Army is doing in concert with CENTCOM and ARCENT, no doubt, this business case analysis, looking at whether it makes sense for a whole bunch of reasons to transition to LOGCAP IV in Iraq. One of the dominating factors might be that Mr. Loehrl would tell us that LOGCAP IV is generally cheaper than LOGCAP III. Is that generally a true statement?

LOEHRL:

I think yes.

HENKE:

So my question to you is, this business case analysis that's going on, General Pillsbury, can you tell us what are the factors that are being considered as the Army decides whether or not to shift this major effort in February 2011 to BLS?

PILLSBURY:

Sir, the BCA [business case analysis] was recently received in AMC headquarters. We are taking a look both from a cost-benefit analysis . . .

HENKE:

Right.

PILLSBURY:

. . . and we're also taking a look at it operationally. What impact operationally would this shift have?

HENKE:

General, who did the BCA?

PILLSBURY:

ARCENT, sir.

HENKE:

ARCENT did it. So they've come up with a product that says, we think this is what the analysis shows, and they gave it to AMC.

PILLSBURY:

Yes. Actually, sir gave it to General Odierno, also, who commented on it and has just recently arrived in our headquarters.

HENKE:

OK. What's the basic thrust of the business case analysis from ARCENT?

PILLSBURY:

Sir, the basic thrust is that, as you said, going to a LOGCAP IV, multiple contractors would be more efficient. However, operationally, it may not work because of the transition at the same time that we're doing the drawdown. So that's the struggle that the staff is working on—to provide recommendations to General Dunwoody and myself as it goes forward to the building.

HENKE:

But who's going to make that decision on whether to transition or not?

PILLSBURY:

Sir, it's going to be made in concert with the Department of the Army staff and ASALT [Army Secretary of Acquisition, Logistics, and Technology].

HENKE:

But who's going to decide? Is that your decision?

PILLSBURY:

No, sir, it is not.

HENKE:

Whose decision?

PILLSBURY:

I believe it's the ASALT. Yes, it's Dr. O'Neal.

HENKE:

The acquisition executive?

PILLSBURY:

Yes, sir.

HENKE:

OK. So he's got to decide. He's got to take all these factors into consideration. If the decision is based on cost, one would hope that the decision would be to transition if there's less cost.

PILLSBURY:

Right.

HENKE:

Can you discuss, what is the view of senior commanders in Iraq regarding whether to transition to LOGCAP IV?

PILLSBURY:

Sir, the view of the senior commanders in Iraq is to not transition because of the turmoil that it would cause as we're doing this drawdown.

HENKE:

OK. Given that, can you quantify for us what the dollar savings—are there dollar savings in transitioning? Is that what the business case shows?

PILLSBURY:

I have not seen the business case, but I would assume so.

Jim, can you comment on that?

LOEHRL:

There are both dollar savings to be achieved via the competition . . .

HENKE:

Right.

LOEHRL:

. . . and then there's also a cost to transition.

HENKE:

Right.

LOEHRL:

And those things are taken into effect as they come in the BCA.

HENKE:

Could you tell us, what's the cost to transition? Do you know that now?

LOEHRL:

Do I know the cost to transition?

HENKE:

Yes.

LOEHRL:

I know what the estimates are in the BCA.

HENKE:

What are they?

LOEHRL:

I believe it was \$72 million.

HENKE:

And what is the savings expected from transitioning?

LOEHRL:

The BCA utilized 9 percent savings, and then the amount of savings achieved depends upon what assumptions you make about when we would actually get the transition completed, so it varies, and there's various scenarios in the BCA.

HENKE:

What is the latest date by which it would conclude transition?

LOEHRL:

I'll have to get that for you. I don't specifically recall exactly what the latest date was.

HENKE:

OK.

So, General Pillsbury, it sounds like you and AMC have a large task ahead of you to get through the business case, consider the operational—how do you put together, on the one hand, costs pluses and minuses, net out to be something—maybe they're savings, with operational needs of the supported commander?

In your testimony, a couple of times you say you are in direct support of the—and I know that's a term of art in military culture. Could you just walk us through in a couple of minutes the decision-making process and the factors that senior commanders like yourself are going to weigh as this goes forward?

PILLSBURY:

Sir, the first and foremost mission of AMC is supporting the soldier. And anything that we can do to help that soldier maintain his safety and security, along with his quality of life, is paramount. We listened to General Odierno and General Webster and General Hunzeker over there, and when they recommend something, we have to have an awfully strong case to overturn their recommendations.

HENKE:

So I think what I'm hearing here is, the default position would be, whatever the savings are, listen to the operational command?

PILLSBURY:

Not necessarily.

HENKE:

OK.

PILLSBURY:

It has to be strong. If it's a hundreds of millions of dollars savings, certainly we'd be open to recommending approval to AAE [Army Acquisition Executive]. However, sir, like I said, the staff is working the BCA.

HENKE:

When will you have a decision—well, when will you have an Army Materiel Command position?

PILLSBURY:

Sir, I would say in the next couple of weeks we'll get it up to the department.

HENKE:

OK.

Mr. Loehrl, is it hundreds of millions of dollars in savings?

LOEHRL:

I was being . . .

HENKE:

I understand.

LOEHRL:

. . . but I want to clarify that it's not.

LOEHRL:

No, it is not. And actually, in some cases it may cost us money.

HENKE:

To transition?

LOEHRL:

Yes.

HENKE:

OK. So that's makes your decision a little bit different and a little easier.

What are the downsides of transitioning, very briefly?

LOEHRL:

The downsides of transitioning would be the swap out of contractors in a critical time, such as the drawdown. If in fact a contractor X comes in after contractor Y had been doing this property-accountability piece, and contractor X got trained up and gets going, so it's just the turmoil.

HENKE:

OK, thank you very much.

SHAYS:

Thank you.

Commissioner Schinasi?

SCHINASI:

Thank you.

I wanted to start just by saying, Mr. Loehrl, I was happy to hear you say that maybe one of the things that you should have done differently is to go back and question the requirements. And I hope to see that as we go forward.

Supporting the warfighters' needs is clearly something that we all want to do. But there is oftentimes a difference between needs and wants of the warfighter, and sometimes that delta is what we don't question enough.

The operational, I guess, requirements for BLS [basic life support] are different than those for the CTP [transportation and postal] contract? Can I assume that because the CTP went forward under the LOGCAP IV? And I guess General Pillsbury . . .

PILLSBURY:

Yes, ma'am.

SCHINASI:

. . . I'll ask you that. So for the BLS, if you had gong into the field and asked the commanders a year ago, do you expect you would have gotten a different answer from them in terms of the difficulties in transitioning?

PILLSBURY:

I would suspect we would have had a similar answer, but certainly not up against the timeline that we were up against right now.

SCHINASI:

OK.

PILLSBURY:

So I would assume it would be a little bit different, yes, ma'am.

SCHINASI:

OK. So the problem really is that we've gotten to a place where there are no options, or there are no good options. And the chart I think that we have up here talks about the fact that it's been four years since the acquisition strategy was approved.

So we've obviously made mistakes here, in that we came up with a new strategy that was supposed to be good for the warfighter and good for the taxpayer, and somehow we're not going to be able to execute that strategy, it sounds like. Not to predetermine your decision on this.

But so, Mr. Loehrl, can I start with you? Can you talk about the mistakes that we've made that have put us in this position where we really seem to have no good options?

LOEHRL:

Yes. First of all, I think we underestimated the complexity of doing these task-order competitions, particularly with the change in law that came that made them all subject to protest.

So when the strategy was crafted it was before all the fair-opportunity competitions. Still had to do a fair-opportunity competition, but the ability to have them protested I think changed the dynamics and complexity of having to execute those competitions. So we underestimated that.

And by that, I mean not only the protests themselves, but making sure that I have a robust enough acquisition process, clear enough RFPs, clear enough evaluation criteria, robust enough evaluation process.

Even having to go back and get DCAA audits as a part of these fair-opportunity competitions were not anticipated as we originally laid out and crafted this strategy, that that was going to be there. So that's one place we underestimated the complexity.

SCHINASI:

Do you think—let me just interrupt. Do you think you've solved that problem now?

LOEHRL:

I think we solved it, or tried to solve it, in the way we modified the acquisition, the process, particularly with going forward and trying to lay out the FOBs by bands.

SCHINASI:

Yes.

LOEHRL:

. . . and getting those matrixes in there and trying to simplify somewhat that process and make the acquisitions as simple as I can. But at the same time, getting a contract baseline that is competitively established that really does reflect the work that is going to be anticipated.

In addition also, then being able to utilize that in a changed management process as work is added or subtracted, added on. So I think we've tried to solve that in there. I don't think I'll ever solve the robustness that needs to be in there.

I think we were also very successful in the CTP award process, where one of the things we did is we sat down with Mr. Fitzgerald's people at DCAA before we issued that RFP, and very clearly laid out in the RFP exactly what we wanted the three contractors to submit to us in their packages, in their proposals, so that we could get those DCAA audits turned on and executed as quickly as possible, without DCAA having to come back and say we don't have the information we need, or we don't have that.

I think that was particularly successful. But it still took, my words, Herculean efforts, I think, to get those things accomplished in those timeframes in there. So that's one of the places we've made mistakes as we've gone down this process.

SCHINASI:

Yes.

General Pillsbury, would you like to add to that?

PILLSBURY:

Ma'am, the transition I believe the strategy was to go to Kuwait first, obviously, because it was not in the shooting, if you will. And then of course, after that proved to be successful, albeit protests aside, that is still very worrisome to myself and to the commanders on the ground.

And to be able to put LOGCAP III to IV into Afghanistan with relative ease, and I applaud LOGCAP for that, it indicates to me that: yes, that is smart strategy. Now, why we didn't go as full-bore into Iraq, it was probably a mistake on our part to not start this earlier.

SCHINASI:

I want to ask you, General, about something you said earlier during the last round of questions. You said that were really can't be planning, because of uncertainty. And you were talking about planning for contractors, and planning for the contractor drawdown.

My knowledge of the military side of planning is that we plan for everything, and every uncertainty, and every contingency. Is it not a good assumption for us to make on this commission that that kind of attention to planning for the military side of our operations can't be put over to the contractor-supported side of our operations?

PILLSBURY:

And I apologize, Madam Commissioner, if I left you the impression that we don't do branches and sequels of planning, obviously, on the military side. And we've got to do the same on the contractor side.

I believe the context of my statement was, having to do with post-December 2011, if we are to remain, and literally we are planning to be out by December 2011. But, that being said, our planners, our operational planners do realize the flexibility that are under contracts right now that will allow us to continue to support if the decision is made for us to stay.

SCHINASI:

So we would likely see either an extension if we decide not to go to LOGCAP for it, that would be an extension of LOGCAP III then?

PILLSBURY:

Yes, ma'am, that would. But depending on how long we'd have to stay, perhaps we'd revisit going back to the BLS LOGCAP III to IV.

SCHINASI:

Yes. And I would assume that that is an assumption also under your business case analysis, that there may be some reason to look at a different timeline than the one's that's currently on the books, just for planning?

PILLSBURY:

I think the BCA just goes to December 2011, though, ma'am.

SCHINASI:

So it does not then look at excursions that would perhaps take into consideration . . .

PILLSBURY:

It does not, no, ma'am.

SCHINASI:

. . . perhaps take into consideration other eventualities? OK.

Mr. Fitzgerald, let me ask you, you talk in your statement about additional resources that you put in theater. And I think in some cases doubling your resources, which I'm happy to hear. But that also is a measure of the risk that you think is involved. And as Chairman Shays said, we have several contractors there.

What is it that you are most worried about in terms of the government's ability to appropriately manage these contractors? And are there a couple of things that you would maybe change to let you sleep better at night?

FITZGERALD:

Well, one of the things, one of the main reasons for increasing the resources we're spending there is I'm kind of looking at that we have 20 months to go. And we need to get our work done in a very timely manner, so that we can get the information back to these officials, so that they can take action.

And we think that there is risk, because of the changing requirements, how dynamic that environment is, that we need to be vigilant in looking at those areas, and making sure that we get in there properly staff it, and get the work done, so that we can get the information back, because time is of the essence as we go through this drawdown.

SCHINASI:

And is the uploading of this recent Form I that you have submitted, has that been an effective tool, from your perspective, as how we can kind of make the contractors also pay more attention to how they perform in this last uncertain period?

FITZGERALD:

Ye, ma'am. Very certainly. And that was integrated with the administrative contracting officer to do that. So yes.

SCHINASI:

OK, thank you.

KENNEDY:

Thank you.

SHAYS:

Mr. Ervin?

ERVIN:

Thank you, Mr. Chairman.

I want to start with you, General, and Mr. Loehrl.

You know, I applaud your candor in admitting candidly that some huge mistakes were made in not moving more quickly on the transition from LOGCAP III to IV such that savings could be realized.

And again, as Commissioner Schinasi said, a decision has not been made yet, but it sounds that the likely conclusion will be that there will not be a transition.

And I have to say on behalf of American taxpayers, that I think if they watch this hearing today, if they read the transcript of it, if they see the news commentary, that they have a right, particularly in these tight budgetary times, to be appalled by the fact that it took us a couple of years—we invaded Iraq in 2003—to figure out that we would likely have some savings if we competed the contract.

We began the process of transition in 2005, one can argue, with an industry day, but it wasn't until February 2010 that a task order was awarded in Iraq. And a likely conclusion, as I say, will be that there won't be any full transition from one to the other.

Now, I want to give due credit for the fact, as you both mentioned, that there were protests here. And that's something over which at the end of the day you had no control, I understand. But there were a couple of inflection points during the process where there was control over the process.

You know it took one year—just look at the timeline here—if this industry day, as I understand it, took place in 2005, the acquisition strategy was approved in August of 2006. It was a year from the industry day until the acquisition strategy was approved.

And then another year, from August of 2006 until June, 2007, for the LOGCAP IV basic contract to be awarded. What was the reason for this two-year delay in the process?

PILLSBURY:

Mr. Commissioner, the delay was we were going into some uncharted waters. Certainly LOGCAP III was easy, if you will, for commanders to deal with in theater. One person, one belly button. Now, we had to go to a competitive bid for each task order, and we wanted to make sure that commanders were comfortable with that process.

Now, could it have been faster? Sir, I would submit to you, yes. Why wasn't it done faster? I don't know. But at the same time, again, going into Kuwait and getting the bugs out of the system I believe was the right thing to do. But again, sir, we could have gone faster in Iraq.

ERVIN:

Isn't the answer, really the bottom-line answer as to why it wasn't done faster, that cost savings were a tertiary-level concern at best? What other answer could there possibly be as to why it wasn't done faster?

PILLSBURY:

Sir, I would submit to you that the cost is very important to the war fight, but the commander's ability to maintain safety and security and life support is paramount.

ERVIN:

Mr. Loehrl, what's your comment about this?

LOEHRL:

I would go back and say that, first of all, these were ultimately \$150 billion potential acquisitions, \$50 billion with each of the three awards we made. So the staffing and the approval process and making sure that we had everybody lined up, from the commanders who were going

to be supported, all the way up into OSD, that's what part of that process was. And once again, like I say, we had \$150 billion acquisitions.

Then that other year you referred to was the year it took us to actually compete LOGCAP IV, which was basically, once again, a potential \$50 billion competition. We had robust competition. We had people we eliminated from the competitive range to that process. We had multiple rounds of discussions to go through.

And ultimately, we still ended up with a protest that we had to deal with.

So it goes back to, once again, the complexity of these efforts and the things that we were doing.

ERVIN:

Now, I'm concerned also that the transition, once it happens, if it happens fully from LOGCAP III to LOGCAP IV, might not provide the savings that we think that it might, that we're in effect creating three mini-LOGCAP IIIs in this process, because, as I understand it, once a task order is awarded under LOGCAP IV, that any new work is simply added to that existing task order.

By way of contrast, as I understand it, under AFCAP [Air Force Contract Augmentation Program], if there's substantial work, then there is a full, additional round of competition.

Should we be concerned that there won't be the full benefits, even if there is a transition to LOGCAP IV?

LOEHRL:

Well, should we be concerned? I think we always need to be concerned and be vigilant as we move forward to make sure that we are doing the right thing for the taxpayers.

What we've built into the process is twofold. Number one, that's where this banding and matrix process that we've tried to establish within the competitions, particularly for BLS, where we can take the advantages of the competitions forward into any new work that is added in there, so that if I add new work, I can go back to the basic competition where the contract was awarded under the competitive environment. And that's what I put on the contracts. We're taking advantage of that.

We have also put into the process a disciplined process to make sure we are prudent as we exercise options. So, if the contractor is not performing, if we're not getting the cost control and the things we would like and desire, we have the ability to not exercise an option and go ahead and go to a competition.

THIBAULT:

Commissioner, can I add something here? Commissioner Ervin, your point is excellent about how long. I might highlight, because I was actually involved in a couple of hearings in a prior life where the Army came in 2004. And so, there's an extra year in there.

And in the statement they say—this is Mr. Loehrl's statement. In mid-2004, they acknowledge it. The Army Sustainment Command began development of a strategy to put in place a contracting approach, and then they go on into LOGCAP IV. So, they had an extra year in there to boot.

You know, and it almost gets like your buddy Strom Thurmond used to say, a million here, a million there, a year here, a year there—pretty quick, it's not as meaningful.

SHAYS:

Was that Dirksen or Strom Thurmond?

THIBAULT:

I thought it was Strom.

SHAYS:

Because Dirksen was my buddy.

THIBAULT:

Oh, OK. Sorry about that.

SHAYS:

I'm going to, before recognizing Mr. Tiefer, to just say, I'm going to ask you all what are some of the lessons learned. I didn't want to kind of blind-side you. So, if you'd just kind of be thinking about that.

What are some of the lessons we're learning from this experience?

Mr. Tiefer, you have the floor.

TIEFER:

Thank you.

Mr. Fitzgerald, I want to go back briefly to what we're talking about before about the drawdown and KBR.

Your people have reviewed the February 23rd plan, which is KBR's latest and the first time they've ever detailed their plans. And you're still evaluating it, but I understand you have, from your statement, some observations on it. And I want to check that I understand your observations.

To take two of them, you figure that KBR would only reduce its staff 15 percent through July 2010, though the Army is going to cut somewhere much nearer 50 percent of its troops. And in line with this, you say that over 60 percent of KBR's planned staff reductions occur within the final months from July 2010 to August 2010.

Now, visually, I think what you're suggesting is that KBR's plan is to avoid a steady-state glide path, a straight glide path, that would keep down the government's costs, and instead is doing what we call a waterfall in the last months, and which reduces little until that point, maximizes both the taxpayer's cost and KBR's profit.

Do your observations indicate that that's what they're going to do, something like a waterfall in the last month?

FITZGERALD:

Mr. Commissioner, the plan as it's stated today achieves a 38 percent reduction. And we talked about a 34 percent reduction in our October 26th report. But as you articulated, 60 percent of that is done in the last month.

So what we're trying to do right now is trying to evaluate the assumptions that that waterfall reduction is based on, and to try to take those assumptions back to the operational requirements to make sure if they make sense.

TIEFER:

Let me take that further, because my time's limited.

I'm going to ask you—I'm going to give you a predicate, and then I'm going to ask you whether you still stand by your October report, the one that said that—I'm not asking whether you stand by the specific numbers, but so people know what we're talking about, it's the one that

said that there'd be—that KBR could and should make 19 percent savings, which was \$193 million.

Consider the following. Your operations audits that show underutilization in CLSS, wherein just that limited function which is under 10 percent, there'd be \$21 million in savings, the waterfall we just talked about, and that KBR's proposed end state, you said in your statement it's about 189,000 supported people, which is an incredibly high figure of three-and-three-fifths contractors, if they're the non-soldiers, contractors for every soldier.

Taking all that you've seen, not these individual points but looking generally, do you stand by your October audit report?

FITZGERALD:

Yes, Commissioner. You know, when we made that report, we did not have a plan to evaluate. So, we did make some assumptions based on deriving that \$193 million. But I would say that the Corps Logistics Support Service contract adds credibility that efficiencies were there to be had.

And also, if you look at the report that we're evaluating today, the end state that the contractor is working to is within a couple hundred of the end state that is in our October 26th report.

TIEFER:

Thank you.

General Pillsbury, I have a quick question for you. We've already discussed the business case analysis, and I want to know, if some commissioners and a staff team wanted, could they review that analysis at Fort Belvoir?

PILLSBURY:

Sir, the quick answer is yes but I will confirm that there's no problem with that, and I will get back to you.

TIEFER:

Thank you. Thank you very much for that.

And Mr. Loehrl, since we're hearing for the first time ever that the competition now in progress for the remaining work in Iraq on LOGCAP might be stopped, I want to check.

Wouldn't there still be alternatives in going ahead with that competition, such as, KBR, which won the previous competition, the CTP contract for work in Iraq, might offer a bargain? And therefore, it might win this contract by giving us savings, and with minimal turmoil continue its work in Iraq?

Number two, don't we have the default of not awarding, if after the award is made it doesn't look like a good idea?

And three, if the transition were to be going poorly couldn't we terminate for convenience at any point?

Finally, I want to ask about this. When we were in Iraq last month, Commissioner Schinasi and I talked to General Odierno's chief of staff. And he said, and I'm quoting him, that "I love competition."

And he explained—and I'm not being sarcastic, this was his sincere feeling—that he said the solution to the problems of transition, what you people are calling "turmoil," was to do it in a quote "smart way." Otherwise, KBR tends to get quote "slack" unquote in competition.

Wouldn't this make a competition useful? Don't these things at least make it more useful than it would be if none of these were available?

LOEHRL:

I think what we need to do is follow the process of the BCA, along with the operational impacts we've got from the senior leaders in theater, and make the prudent decision based on that.

TIEFER:

Thank you. My time has expired.

SHAYS:

So, we're closing up. And I will end by allowing each of you to respond to any question you wish we had asked, but didn't, that you were prepared to answer, and any comment that you have based on what you've heard being asked of you or others that you'd like to just make sure it's on the record.

Basically, what I am seeing and hearing is that we kind of have this trifecta, where we have KBR, the contractor, oversight of its workforce. We have, I think, the failure of Rock Island, the failure of government, to review the estimate and to detect the overutilization.

And then we have DCMA—and frankly, others,—that failed to have the kind of government oversight, as it related to the issue of the contract for tactical-vehicle field maintenance that's joint-based in Balad, and then the Core Logistical Support Services, CLSS. It's somewhat stunning that both the inspector general and DCAA came to the same conclusion.

The fear that we have on the commission is that this would be an example of something that's typical, not atypical, that we're dealing with. It's kind of like, you know, people couldn't understand how much it cost to build the wing of an airplane, but they knew that a \$600 hammer to build the airplane was probably a little off base. And if they used that basis for the hammer, what are they deciding on the wing and the other part of the aircraft?

So, I would like, and it would be helpful to us in the commission, if we could come back, General Pillsbury and Mr. Loehrl, and if you would be able to come back to us and say, “how did this happen,” not did it happen.

When you get to, just accept it frankly. And in the process of accepting you find that it didn't happen, then that's fine. But go under the assumption it happened, that you had only a 10 percent utilization.

How did it happen? Was the contractor just way off base? Did you provide the contractor information that made it way off base? Do you have the ability to respond? Are we nimble enough?

Because I found myself, General Pillsbury, when you were talking about, well, the situation on the ground is fluid that can be an excuse. But it really is a requirement, then, because it is fluid, that we be nimble enough to constantly re-evaluate our contracts.

So, how did the overutilization get into the contract? Why didn't we catch it? And there may have been good reasons. Why, once it was in contract, why didn't we have the oversight to change it?

And so, we're looking at what is the solution. This would help us in the commission do our work, because we're trying to decide how we do a better job in contingency contracting in the future.

One of our big concerns is that, in the process of just worrying about the warfighter, which we had to do in the beginning, but not realizing it would be eight years, we've institutionalized high costs, and, we think, gotten contractors used to high costs, and gotten DoD used to too much waste.

So, if that could be done, General, tell me how long you think it would take? Would three or four weeks be enough time?

PILLSBURY:

Sir, that would be sufficient. It sure would, sir.

SHAYS:

And we're going to just trust that it's going to come, that you'll work with the general on this, as well. Thank you, all of you.

OK. I wrestle with the fact that DOD still doesn't value, in my judgment, those within DoD that do contracting work. And therefore, we don't see the value of that like we'd like to.

But I'm also wrestling with the fact that, if half of our military effort is contractors or almost half—I mean, we have the smart power, hard, military, soft power, State, and the rebuilding and so on of these countries—I wrestle with the fact that somehow there doesn't seem to be an ability to trust contractors with the latest data that would help them anticipate what they need to do.

In other words, I kind of get the feeling that, in the work we're doing, that they're the last to know. And yet, they're an integral part of the war effort. I would love you, as well, if you would be able to get back to us and tell us what you think the solution is on that. How do we incorporate the contractors sooner in this process because I think that leads to huge waste? But certainly if we're not going to incorporate them sooner, we've got to be able to constantly reevaluate what we've asked them to do.

I know my co-chair wanted to ask you a question.

THIBAULT:

Thank you. I really don't have a question to ask as much as a statement.

I thank you, Commissioner Tiefer. I'm so focused on what I was focused on that I didn't pick up as clearly and as quickly as I should have. I'll just tell you I couldn't support, and I realize, General, you offered to provide us the BCA and a discussion and we'll come at you right away for that, but it's my understanding the proposals are due, which means they've got them all done. They don't do them the last minute. They're reviewed by management in two weeks or April 15th or something like that.

We're talking about life support, you know. Professor Tiefer may be right. It may be the incumbent that is the lowest cost, highest quality, you know. There have been 11 or 12 electrocutions. That's life support. Eleven or 12 electrocutions is life support. To me, it's just impossible. And I apologize for not teeing this up earlier because I was so busy.

SHAYS:

But what can't you support?

THIBAULT:

I can't support just suddenly having a decision on the side without looking at these proposals and doing a comparative award on LOGCAP IV in saying, well, mission essentials dictate this. We really would like to look at those mission essentials in a very short period of time because it's not the way we were told it was going to happen and there must be one heck of a compelling reason in light of the fact we haven't heard too much about the performance of these other two contractors. And I'll just lay that out now and we'll do the follow-up work. Thanks.

SHAYS:

Thank you. Any closing comments? We'll start with you, Mr. Loehrl.

LOEHRL:

No, sir. I'm good.

SHAYS:

Mr. Fitzgerald?

FITZGERALD:

Mr. Chairman, just briefly, we believe that even with the dynamic situation, that our 26 October report did elicit a plan and now we think we're in a much better position to evaluate that plan and obviously monitor it and get explanations for variances and this provides a tool for us to help go down the road in evaluating the Iraq drawdowns.

So we had a lot of conversation about the \$193 million and we had to make some assumptions because we did not have a plan at that point in time. Now, we have a plan with assumptions that we can evaluate and then monitor that as we go through the process. I think it will be helpful as we move forward.

SHAYS:

Thank you. General?

PILLSBURY:

Sir, thank you for the opportunity, I appreciate it. One of the lessons learned that I'm taking is I'm going to get to DCAA and DCMA and figure it out. I appreciate that, Chairman Thibault. But I would also like to clarify for you, Mr. Chairman, that while my words might not have said it, I do respect DCAA and DCMA and this is a team sport as we go forward in contract oversight. I appreciate the opportunity.

SHAYS:

Thank you. Because my time was limited, I didn't get to the lessons learned and I'm not going to do it now because we have to get on. Could I just ask you to give us three or four examples of lessons learned? I think it will relate to the actual question I had. And this is not an effort I'm asking you to make that will just go into a file. This will be very helpful to me and I think to some of the other staff and the commissioners.

We thank you all for your service. We know that this is an immense job we're asking and we realize that you are under resourced and you're playing catch-up frankly. And we're in new territory, but we've got to get it right. So we thank you. We're going to have a five-minute break and then we will start maybe six minutes, but not much longer with our final panel. Thank you very much.

(RECESS)

SHAYS:

I'd like the record to note that we've invited our witness to testify. We're giving him 15 minutes. I asked him to leave out the first page and a half, two pages of the statement, and he says he wants to read it and that's his privilege. It's about his background. And where I had requested he start his testimony is, "In my testimony today I will focus on some of the specific transition-related issues of the commission." That's what we're interested in. But Mr. Horn, you have 15 minutes. You can use it any way you want. I was trying to give you helpful advice. I'm sorry you're not taking it.

HORN:

Thank you, Mr. Commissioner. Thank you distinguished members of the commission. My name is Douglas Horn. I am the vice president for operations at Kellogg, Brown and Root. And

in this capacity, I direct the management in support of KBR's government contracts within the operations, maintenance, and logistics-product service line for the Departments of Defense, State, Energy, and Homeland Security.

This includes overseeing project management and the provisional support in our functional areas. I joined KBR in June 2004 as a deputy program manager for operations for KBR's LOGCAP III Program in the Middle East and Southwest Asia. I oversaw all operations, maintenance, logistics, construction, engineering, security, and training for KBR's LOGCAP operations in eight countries for one year and then returned to be a leader in my product service line.

I have spent my adult life serving this country and having spent the entirety of my career before joining KBR in the military. I am a retired colonel in the U.S. Army Corps of Engineers. During my 29 and-a-half years of active duty I had numerous deployments which included the Gulf War, multiple rotations in Bosnia, Herzegovina and Haiti. I hold a bachelor of science degree in industrial technology from Texas A&M, a master's of science in civil engineering from the University of Colorado and I'm a graduate of the U.S. Army Engineer Officer Courses, the Army of the General Staff College and the National Defense University's Industrial College of the Armed Forces.

To my right, I am joined by Guy Laboa. Guy became the principal program manager for LOGCAP III Middle East, Central Asia in December 2008. He originally joined LOGCAP III in March 2006 and had previously been the program manager and deputy program manager for operations until July 2007. Guy also spent the vast majority of his career in the military serving this country. He served for 35 years in the U.S. Army culminating with assignments as commanding general of the First U.S. Army and the Fourth Infantry Division.

SHAYS:

Mr. Horn, this has never happened to me before, but in my disappointment that you weren't taking our advice, I forgot to swear both of you in. The only person in 21 years I didn't swear in was Senator Byrd. I need you to stand up. I'm sorry. I need both of you to stand up to swear you in. And that's my mistake. I apologize.

Raising your right hand, do you solemnly swear or affirm that the testimony you will give today will be the truth, the whole truth and nothing but the truth?

HORN:

I do.

LABOA:

I do.

SHAYS:

Note for the record both our witnesses have responded in the affirmative. And I apologize for interrupting you.

HORN:

We welcome the opportunity to appear here today to support the commission in fulfilling its mandate of examining contingency contracting and identifying ways to improve the current expeditionary contracting system. KBR looks forward to helping the commission identify lessons learned that can be applied to current operations as well as focused, actionable recommendations that will enable positive change of the contingency contracting process.

KBR has worked with the commission from the outset, providing it with requested information, providing testimony in past hearings, and participating in meetings and briefings domestically and in Afghanistan, Iraq, and Kuwait. KBR recently welcomed the commission staff to our Houston offices for three days of detailed briefings, tours of our facilities, and questions and answers.

KBR's been proud to serve the government and the military since World War II. Our service and support mission has taken us around the world to numerous hostile and austere environments. KBR is one of many contractors providing support to the U.S. and coalition forces, diplomats and civilians in Iraq, Afghanistan and elsewhere across the globe.

In my testimony today I will focus on some of the specific transition-related issues identified by the commission. Specifically I will describe KBR's efforts leading up to the transition and the current footprint in Iraq, describe some of the operational challenges we have encountered, discuss workforce sizing, discuss KBR's procedures, practices, and requirements for assessment of its own performance from contract matters related to increased efficiency and economy, discuss ongoing issues related to the transition from the LOGCAP III to IV contract, and provide recommendations for improving contract support and contract management processes and procedures.

Before addressing these specific topics it is important to discuss the unique operational challenges inherent in a war zone, as well as the challenges imposed by competing government priorities inherent in a contingency contracting environment.

In KBR's experience the stability inherent in normal contracting process and execution is not possible in a war zone. It is certainly an issue that KBR, the government, and the commission should agree on. The structure and discipline of the contracting system is often at odds with the reality of the war-zone operational environment, specifically the military's constant changing needs and requirements.

As we discuss the transition and drawdown in this unique context, it is important to make clear that contractors cannot receive actionable direction or guidance until the military has finalized its plans and until the government translates the impact of those plans on contracted services. This lack of predictability of logistical needs in a war zone is simply a fact of life.

Another challenge we face is balancing the often competing priorities of the military on the one hand and the contractual oversight organizations on the other. Due to changing plans and conditions typical of military operations we have to react with speed and decisiveness to meet mission requirements and fulfill expectations. On the other hand we are obligated to abide by and comply with contractual requirements including the statement of work in contractual terms and conditions.

In contingency contracting the contractor often finds himself in the middle of these competing priorities. Both the government and the contractor live by structured and disciplined contracting policies, procedures, and systems to ensure compliance with contractual requirements, but at times greater flexibility would better serve the service members by facilitating our ability to react. With this being the case, improving the process calls for lockstep coordination among the military, contracting officers, contract management, and the contractor.

It is also important to keep in mind that although KBR's the only contractor here today it is but one of many contractors facing these very same challenges. First I would like to set the stage for our transitional efforts by describing the history that brought us to this point and by providing an overview of the KBR footprint.

Before we began the transition activities for the LOGCAP IV contract in 2009, KBR supported the military's area of operation with a permanent presence in Iraq at 61 locations and base life support operations as needed in 105 locations. In Afghanistan we had a permanent presence at 63 locations and provided rotational base life support at 34 locations. In Kuwait we had a permanent presence at eight locations. Since that time we have successfully transitioned the support work in Kuwait and are currently transitioning successfully the work in Afghanistan.

Next it is important to address some of the challenges we have encountered. During the transition we have experienced challenges due to the changing operational environment. We have been challenged to produce a precise execution plan during a period in which the military is developing and adjusting its own plan.

Our plan needs to be consistent with the military's plan in order for our services to be provided when and where they are needed. In order for us to implement an execution plan we must receive written contractual direction from the contracting officer. Without properly issued contract documentation we are unable to proceed.

Based on KBR's experience in closing and transitioning bases throughout the LOGCAP III area of operation, we know that closures and transitions are very fluid in nature. We appreciate that we are in a complex and often indefinite planning environment.

To prepare meaningful plans to the precision expected for contractual accountability we require definitive planning guidance from the government on the location, infrastructure, level of service, and supported population. Lacking these details KBR must make its own assumptions to continue its internal planning. However, KBR cannot finalize a supporting plan until we have a finite plan with the specifics of the government's requirements.

During the Iraq drawdown KBR has three simultaneous and overlapping lines of operation: Continuing services-base closures and transition to other performance contractors falling under a variety of contracting vehicles, including LOGCAP IV, the Air Force Contract Augmentation Program, AFCAP, and the Joint Contracting Command-Iraq, JCC-I contracts.

As resources must match the mission throughout the drawdown, a synchronized plan with the government is critical to successful provision of services. We continue to engage closely with the government in coordination of our planning efforts.

It is important to address how KBR manages its workforce sizing in Iraq, and the manner in which this is affected by changing operational requirements and military force reductions. KBR has managed its support of the drawdown in its workforce requirements through a detailed, organized, process-driven system. Our first priority was and remains to ensure we provide high-quality logistics support during the entirety of the drawdown process.

It is helpful to provide some historical context so that the commission can properly appreciate how KBR has handled the sizing of its workforce. On February 26, 2009 KBR received contracting-officer direction to freeze hiring and staffing of all personnel in Iraq, including subcontract workers.

This direction required KBR to freeze hiring and staffing of Task Orders 159 and 151 at the existing basis of estimate levels, and to fill all open, valid personnel requisitions by first reutilizing personnel displaced by base closures, then through use of entered theater-job postings and lastly via recruitment and mobilization. KBR has followed this directive.

There are reports released to the public that seem to indicate that there should be a one-to-one relationship between the drawdown of U.S. forces and the drawdown of KBR logistical support

personnel. In other words, for every soldier who leaves an equal number of KBR personnel should also leave. These reports are simply wrong, and I would like to explain why.

At the beginning of 2009, the government utilized approximately 400 locations in Iraq of which only 55 had a LOGCAP III presence. When the U.S. military reported it had reduced the number of sites in Iraq by more than 200, only 16 of these 200-plus bases closed were sites which had been supported by KBR.

Many of the military personnel stationed at smaller, more austere sites were consolidated at larger KBR supported bases, resulting in an increase in basic life support and other KBR-provided logistical requirements. In fact, logistical support requirements at some KBR-supported sites have actually increased as military forces consolidate from smaller, non-KBR-supported sites to larger, KBR-supported sites.

In summary, while there ultimately will be a total drawdown of KBR personnel, KBR is required to continue to support those service members who remain. With regard to measures of performance related to the drawdown, KBR measures its performance based on a compliance with contractual requirements, and tracks a long list of metrics and actions to ensure we meet expectations and commitments. To date all base closures have been completed on time.

With regard to performance against the contract, the government convenes a performance evaluation board every month to evaluate KBR's performance. With regard to KBR's self-assessment, KBR has a quality-control plan against which it executes its work. The government approved the plan and audits KBR according to this plan.

For each year of LOGCAP III, KBR has, per the contract, updated and resubmitted the plan to incorporate lessons learned from the prior year. The continuing challenge for KBR is coordinating communications between various agencies and groups within the government.

The drawdown effort as it pertains to the LOGCAP III contract requires input, coordination, and cooperation from many different government organizations, including the military leadership in theater, the Defense Contract Management Agency (both in the U.S. and in theater), the LOGCAP III program office, and the contracting officials. To keep pace with the rotations of government personnel, we re-coordinate when key personnel rotate.

Finally, KBR appreciates the opportunity to be here today and to provide recommendations intended to improve the contingency contracting system going forward. While KBR has provided a number of such recommendations in connection with past commission hearings, and has also provided recommendations in meetings and briefings with the commission staff, we think it is important to focus on one specific recommendation today, and that government speak with one voice, particularly with regard to contract procurement practices and procedures, contract administration practices and procedures, and contract audit practices and procedures.

KBR is currently supporting numerous agencies and often experiences duplicative and at times competing direction as various agencies attempt to perform their respective roles to provide contract oversight without any interagency coordination of their efforts. As KBR has noted in the past, and as the commission noted in its interim report, it is critical that the government speak with one voice. While the commission's interim report focuses on the DCAA and DCMA speaking with one voice, it is critical to include all government entities at all points of a program or process impacting the theater of operations.

KBR remains proud of its work it performs in Iraq and around the world, and of its support to the brave men and women we serve. Our employees perform their jobs in austere, unpredictable conditions, a great sacrifice to themselves and their families.

We appreciate the opportunity to be here today, and to provide the commission with our perspective on how the contingency contracting system may be improved going forward. We look forward to answering your questions.

SHAYS:

Thank you for your statement, Mr. Horn. Let me just say for the record, we have had I think very acceptable cooperation from KBR. We have had some challenges on some information that we wanted, but I think we've worked that out.

But I don't want you to think we haven't gotten extraordinary cooperation from the other contractors throughout that we dealt with. And so there has been nothing unique about KBR working with us that we haven't received from the other contractors as well.

And with that let me have Mr. Thibault start the questioning.

THIBAULT:

Thank you, Commissioner Shays. Actually I'd written down also sort of the same thing; that KBR has been very cooperative—and I'm going to read what I wrote—in meeting with commission and staff, with the one exception that's been addressed by both of us. I'm not even ready to go into that because it's not resolved.

Either one of you, but Mr. Horn, speak with one voice. That's your last page with your primary singular recommendation. How do you see organizationally, or do you see? Do you have a recommendation other than the fact that you feel like you're inundated, or at least that's the sense I have here, with a multitude of direction? Who that one voice would be? And what the government might do to affect that?

HORN:

Well, sir, as a contractor from a government contract, as you well know the one voice that we have to listen to is the contracting officer who is our client. But there are many government agencies, as I stated in my opening comments, there are many government agencies where we get interaction and direction. And so our position is it would be very helpful for increased synchronization and coordination among those agencies when you're interacting on any specific contract.

THIBAUT:

OK. I think we sort of heard an agreement on that this morning also.

I'd like to just go over what I pulled out earlier of your statement, and then ask the question: what's your reaction. But you identified things, like you've been challenged to provide precise plans when the military's busy adjusting their own.

You've said that you need the government to translate the impact of their plan before you can do your job in terms of a plan. You need lockstep plan coordination. Again you state in there you can't finalize the plan until there's a finite plan, and I put in parenthesis by the Army, and so on.

Is that a criticism of Army planners?

HORN:

No.

THIBAUT:

Can you talk about that a little bit?

HORN:

It's not a criticism. It's pointing out the reality of the complex coordination and planning that's required for this type of an operation. We have been working our plan in concert with the military's plan in Iraq, the Multi-National Force. It has had many revisions. So our plan has many revisions. There have been changes due to the military situation, changes to the political situation, changes for whatever reason we're not privy to, but that has caused us to make adjustments continually.

There are several phases to this operation. We have had to build inside our plan all the logistical adjustments that have to happen within a phase. There are many camps within the phases that have things happening to them. An example would be for the camps that were to become tenant camps and we would have to make logistical-support adjustments to the tenant camps. Back in the December timeframe, the plan was roughly estimating a small number of those camps. As of a few weeks ago, that plan adjustments has taken that number and multiplied it by a factor of four.

And so there are many adjustments going on. We understand that. While we would benefit from more information in the military plan, we recognize their role in protecting the troops and appreciate the realities of the war and that much of that information cannot be privy to us. And we feel that when we absolutely need to get that information, we will get it, but it does impact our ability to finalize a complex and comprehensive plan.

THIBAULT:

There was considerable testimony by the panel before you relative to ongoing either completed or soon to be completed with some comments by the company on the DCAA, efficiency, economy, staffing-type reports, can you provide the company's perspective on where you're at on that now?

HORN:

On response to the DCAA report or. . .

THIBAULT:

Well, the specifics that were discussed this morning relative to staffing, relative to their recommendations of \$193 million situation of the 10 percent versus the 85 percent that the company's been involved with and working and all that. And what I'd like to do is—I'm pretty familiar with what they've said and I've read your response, but I'd like to give you an opportunity to share that in whatever way, shape or form what your reaction was to the testimony this morning.

HORN:

I heard the testimony this morning. I understand what was said. We believe that our process is working and it is in concert with the military's process and any specific detailed information that you would ask for this, I would be glad to provide it to you later.

THIBAULT:

Is it factually correct that the plan you gave or that DCA referenced that says that the current staffing target shows a 60 percent reduction in the last month? I think that's August. One, is it reasonably accurate? And two, if it's accurate, why?

HORN:

It's reasonably accurate and the reason is because in the current military plan, that is when the majority of the camps close and we have to provide services to the camps until the camps close. The waterfall is not a waterfall of KBR personnel leaving. The waterfall is a waterfall of when the camps all go to closure.

THIBAULT:

So in my comment this morning when I said everybody goes home, that's really a military decision about everybody goes home and then you're in that position, what you just stated?

HORN:

It's a military decision of which camps close in which phase and what conditions are the end states of the camps. And when all of that is laid out, there are periods of time during the timeframe you were referencing when we were simultaneously closing as many as 12 to 15 camps.

THIBAULT:

All right. I'm good for now.

SHAYS:

Thank you. Mr. Henke?

HENKE:

Mr. Horn and Mr. LaBoa, you're both military officers, right? Both retired?

HORN:

Correct.

HENKE:

And your background operationally required you to deal with a lot of uncertainty? In fact, you were probably trained at some level to handle and deal with uncertainty; is that a fair statement?

HORN:

That's a fair statement.

HENKE:

And you as a commander you have operational experience? Desert Storm? Haiti? Other places, right, Mr. Horn?

HORN:

Correct.

HENKE:

And you dealt with vagaries, uncertainty, fog of war, you might call it?

HORN:

Yes, sir.

HENKE:

If you have a 30-plus year career, how long were you in the service, sir? Twenty-nine years?

HORN:

Twenty-nine and a half.

HENKE:

Twenty-nine and a half? You sir?

LABOA:

I was 35.

HENKE:

Thirty-five years? Why would you then expect there to be absolute clarity when you're a contractor working for the government? You have been in the wartime environment in Iraq now for eight or nine years or seven or eight years I would imagine. Why do you now as a contractor expect the government to have all their T's crossed and their I's dotted then to come with you an exactly right detailed plan before you can take action?

LABOA:

I'll answer that. Mr. Commissioner, I don't think we want an absolute plan or at least from the operational level at which I work at with the military there. I think Mr. Shays said it best when he ended up: why can't the contractor be brought into this process sooner so we can do a better job in preparing, in conjunction with the military, the plan. Now, the military in Iraq has not kept us totally at bay; however, up until a period of time over there we did not understand what their real plan was. We have since found that out.

I mean, they brought it to our attention. We participated in exercises with them in coordination. We have briefed the plan that you now have to them and there is concurrence with what we have briefed.

HENKE:

Why is that? Why after working with government customer in Iraq why would they not bring you in closer to their planning loops? Where's the breakdown?

LABOA:

Yes, sir. There are a couple of problems and it's called LOGCAP IV. And because as a contractor, and KBR would have an opportunity to bid on LOGCAP IV, there is the concern that

somehow we would gain some kind of insider information that could subsequently cause problems in the actual letting of the contract. So there was this kind of firewall that had to be maintained at some point in time. We have discussed this with the military and with ASC [Army Sustainment Command] specifically about how we might go around that in order to allow us to move forward.

All of our liaison officers were taken out all of the headquarters in order to protect that process. We understood that and we have worked through it.

HENKE:

So are you saying that to the extent that you may have been a bidder on LOGCAP IV work you were actively withheld from planning details; is that a fair statement?

LABOA:

No, well, I wouldn't say it that way, sir. What I would say is, if and when a discussion would somehow begin on LOGCAP IV, if we were present it was expected that we excuse ourselves. Our people were trained to do that. We coached the military when we got into these conferences or discussions. If there's any discussion on LOGCAP IV, we leave and we would ask you to prompt us in case we don't understand that.

So LOGCAP IV was part of the reason that initially there was some difficulty in gaining all the information we want from my perspective. And I'd appreciate that if I were on the other side as a commander and now on the other side as a contractor.

HENKE:

That's interesting. Mr. Horn, you want to comment on that?

HORN:

Mr. Commissioner, Mr. LaBoa is right on target. We've had several dynamics, not the least of which is that the conditions of the camps or their end state have constantly been evolving. And so, you know, you could say, Well, go ahead and make a plan and worst-case ever camp. That concept doesn't work because these are massive camps. And for completely closing a camp, it takes massive amounts of line-haul transportation, packaging, sorting, prepping for shipment of the sea-land containers. It takes a huge level of effort to take a camp completely down.

So when the Army says, our plan says hypothetically 10 camps go completely down, then yes, you can plan for that. If they come back and say, well, we're going to add five more to that, then

your whole level of efforts increase by another 50 percent. And so as we've gone through this process, we've seen very regular occurrences of what's going to happen if the camps change and what level of effort is required for the camps to change. And so what we have been doing is continually adjusting not only our operational plan, but all the logistics that are embedded within that to make it work.

This is not unreasonable for this to happen. This is the way things are in the war zone. And our frustration has been that other government elements have wanted a completed plan way before this type of decision information has been made available for us to finalize it.

HENKE:

I have a question for you on this issue related to Joint Base Balad.

HORN:

Right.

HENKE:

Underutilization or excess capacity: as a commander, you might want to have something in reserve, but how do you explain to a layman having between three and 10, maybe seven percent on average.

HORN:

Right.

HENKE:

. . . utilization in a camp . . . you know? Tell me. How do you justify having, say 5 percent use and 95 percent waste.

LABOA:

Right. Mr. Commissioner, I think that what's important here to understand is, and you may know this, we have a statement of work in relation to CLSS and the maintenance operation there, a statement of work, which delineated the number of people that we had to have at each site throughout Iraq, JBB [Joint Base Balad] being one, and the hours that they had to be available.

So as a part of that, that was the first contributing factor that was there, the statement of work which told us this is what we want to do. This is what we want you to do and the capability we want on hand. OK?

I think the other thing here is that to make those adjustments, the military, or the customer in this case, has to come back to the contracting officer, the ACO, or back to himself and say: Look. I don't need all that capability. Now, as you know, and as Jim [James Loehrl] said during the previous hearing, we did notify the government more than one time, as many as four times that we were concerned about the utilization of our mechanics and the fact that it was extremely low. We were concerned about that.

Now, we in addition asked to sit down and have a meeting to discuss that very issue in January. It's easy to look at it that way, but if you look at it from the commander's side, I did not know, nor did we know what future combat operations were going to occur or what capability may need to be there that we were not made aware of. And so I don't second guess them on that aspect.

HENKE:

“Them” the . . .

LABOA:

The military: for retaining the capability that we have there. So we think we did the right thing by stepping forward more than one time saying there is a problem, we need your attention. Why the military chose not to do that once again is—I don't know the operational issues that went with that. So I don't point fingers there.

HENKE:

OK. My time is expired. Thank you.

LABOA:

Yes, sir.

SHAYS:

Ms. Schinasi?

SCHINASI:

Thank you. I think in a contingency environment we can all agree that the highest level of efficiency is not always the only factor that needs to be taken into account for decision making or even the deciding factor in many cases. And at some level, we all agree that it's important to be good stewards of the taxpayer's money.

But at some level the interest of the participants may diverge and a private company, KBR, and the other private company, has to be concerned about its profitability. If it can't stay profitable it has to go out of business, and at some level these decisions have to do with maintaining profitability or being efficient.

I note that in the response that KBR provided to the government's direction to start cutting down the workforce, one of the arguments that was made was that you were busy working on lots of change orders. And I realize again those are par for the course in a contingency environment, and also new awards.

So my question to you is, is there an incentive for you or—well I will ask you if you have a choice to be working on new awards that bring in additional revenue or to be working on actions that will decrease the revenue to your company is there any—is there any incentive for you to take the actions that would result in decreased revenues?

LABOA:

Madam Commissioner, I will tell you in the almost 30 months that I have worked for KBR no one in any leadership position has ever mentioned the bottom line to me. And I realize some of the actions I have taken there in the personnel reductions are in fact hitting that bottom line.

So I would just be up front with you by saying that has never, ever been discussed by any of the bosses I've had. Never has. And I don't make my decisions on what gets done based on that at all. I base my decisions on what is to be done on the priorities that the military aligned for me and say I want this first, I need this immediately. Or you tell me what the priority should be and we do that.

And we have a number of forums that bring that to focus. At the site level the joint planning board meets every week, and where the mayor for that camp or that station sits down with us and the other military customers that make up that site, and they prioritize the work. We provide the input about our ability to accomplish that. So what we do when we do is normally usually always directed by the mayors and by the client to customer.

SCHINASI:

And you are working in a cost environment then in which case the client determines what's needed and pays you whatever it cost to deliver that.

LABOA:

That is in the change letter that comes to us. And that is a process. I will take a few minutes if you would like to know the process.

SCHINASI:

No, I understand the process.

LABOA:

OK. Then if you understand the process, when we are issued the new work then we have to prepare an estimate. That estimate is then reviewed with the government that says it's too high, it's too low, we disagree with the number of people you've got, we don't agree with the dollar and cents. And sometimes we go back and redo those estimates to meet it. And as a result of that, once that's done that's accepted by the government. That's accepted by them.

SCHINASI:

And I accept that you've not been told to look at the bottom line, but that doesn't challenge the underlying premise that a private company needs to maintain profitability in order . . .

LABOA:

That's above me, ma'am. I just don't worry with that.

SCHINASI:

OK.

Mr. Horn, in your statement you talked several times about the need for properly issued documentation that needs to precede any action that you would take as the contractor. And I'd like to come back to a discussion that we had with our previous panel on the performance evaluation board on the CLSS [Core Logistical Support Services], and in that there were several times both in looking at the performance of KBR under this contract.

But also looking ahead to what the government asked you to pay attention to, there was quite a bit of emphasis on the need to step forward, display initiative, look for ways that you could bring to the government various ways to become more efficient and either avoid cost or save cost. Is that a reasonable expectation for the government to have? And would you consider that to be proper contract documentation?

HORN:

Commissioner, the performance evaluation boards were held at every camp every month. And they're held with a board consisting of the camp mayor, the administrative contracting officer for that camp, and representatives of the troop units.

And in the particular one you were referencing, there were issues addressed that were read this morning that particularly got to that ACO's at that camp's opinion on some of the financial cost management issues of the contract. And that goes on all the time. That goes on at every camp every month, a lot of discussion, a lot of opinions, a lot of facts, and sometimes they're not right.

As was pointed out this morning, one of you all read off that one of the individuals felt that the change-order information was not being updated into the cost report when in fact that's not done at the field level. That's not done in theater. That's done between KBR and Rock Island on a monthly basis. And so there is a lag between when they give an ACO at a site location and when they at that location will see the definitization of that change order and it actually hit the cost report.

And that is a common occurrence for them to remark that they haven't seen in a cost report their own efforts hit the book yet because of the magnitude of the change orders—they are swept once a month. We average about 200 change orders a month, and they are swept once a month and they are negotiated and definitized with the PCO [Project & Contracting Office] at Rock Island. So I understood what you were talking about this morning, but for me you were discussing issues that normally occur at the camp levels.

SCHINASI:

I guess I'm not asking so much about the merits of this, or the disagreement about this specific as to whether or not that sort of direction is what you would consider as you say in your statement—you know proper contract documentation. I mean is the expectation that is said in these evaluation boards sufficient for you to act . . .

LABOA:

Yes.

SCHINASI:

. . . in a way that . . .

LABOA:

Yes, ma'am. And I deal with this every month. We analyze every one of the performance evaluation boards. We look at all the negative comments, all the positive comments, the trending of those comments, why those comments occurred, what action do we need to do to respond to the direction or the comments being made? So that's done.

I would just like to add to the record here. This particular PEB was the only evaluation that CLSS has ever got a good. If you go look at the totality of CLSS last year and this year, they are all very good except one time. That specific average was the first time that that specific grade had been given.

SCHINASI:

My time is expired.

THIBAUT:

Can I inject something?

SHAYS:

He's asking her to yield.

THIBAUT:

Would you yield your overdue time? Thank you.

There's just two things here. I accept you said one camp and they do every camp every month. And yet on that particular PEB they list 22 FOBs, all the big ones.

LABOA:

Yes, sir.

THIBAUT:

Well, that doesn't sound like one camp to me.

LABOA:

CLSS has presence at 22 forward operating bases.

THIBAUT:

So it's not one ACO at one camp because it doesn't say that. It's a consensus opinion, isn't it?

LABOA:

I don't know that specific case, Mr. Commissioner. What I will say is . . .

THIBAUT:

OK.

HORN:

. . . that the senior administrative contracting officer at Balad is responsible for putting together the rating that DCMA is going to . . .

THIBAUT:

Or 22 forward operating . . .

LABOA:

Yes, sir.

THIBAUT:

OK. That's just the point I want to make is that it's not that isolated.

SHAYS:

OK. Thank you.

Mr. Ervin?

ERVIN:

Thank you, Mr. Chairman.

You know listening to the testimony today, reading the record, it appears to be the case that KBR does not dispute the statement in DCAA's testimony that from January 2009 to July 2009 the average utilization rate for labor across all sites in Iraq was less than 11 percent. About 10 percent is the figure we've been using, whereas the guideline, the goal that the Army calls for is 85 to 90 percent.

And then when KBR submitted a de-scope proposal at the government's request that took effect in August of 2009, you got it up to at most a 16 percent utilization rate. So it doesn't sound like there's any dispute of what the utilization rate was on KBR's part, right? The issue in your mind is whether it's proper and justifiable, right?

LABOA:

To answer your question, there is varying degrees of what the actual rate was. You read the initial report by DoD-IG. They specifically said we think KBR is underreporting. There were some issues associated to the actual computation. But in general, sir, based on what has been presented we were less than 85 percent, period. We did not meet the Army's standard, and if that is what was found then that is what it is.

ERVIN:

Well, you were way less than 85 percent though is the point, right?

LABOA:

I understand that.

ERVIN:

I mean you were somewhere between 11 percent and 16 percent, right? But the threshold question is whether you dispute the facts. And then we can talk about the justification for it.

LABOA:

Yes, sir. First, I have not seen that audit. We just saw it when we walked in the door. So the specific audit from January to July is one we have not . . .

ERVIN:

You haven't seen that until . . .

LABOA:

No, sir. No, sir.

ERVIN:

You, Mr. Horn, have you seen it?

HORN:

No. Are you talking about the audit that was released last Friday night?

ERVIN:

No. I'm talking about the January 2009 to July 2009.

LABOA:

But this was in the current DCAA audit that was released Friday. Is that correct?

SHAYS:

Will the gentleman yield?

Didn't you have an exit audit with them?

LABOA:

We have not seen . . .

SHAYS:

Did you not see a draft report? You gentlemen are under oath. And I . . .

LABOA:

Yes. I know.

SHAYS:

. . . I'm not trying to trick you.

LABOA:

Yes.

SHAYS:

But it is a practice to have you given an opportunity. Were you not given an opportunity?

LABOA:

I do not know that, Mr. Shays. I do not know that. I do not know.

SHAYS:

Would you ask someone before this hearing tell us if you were? Because the implication is you were blindsided when you walked in. And that would be potentially very unfair.

LABOA:

Sir, I think we need to get back with you.

SHAYS:

No, no. I would like you to instruct one of the people behind you to find out if you were given an exit. And I want it part of the record today.

LABOA:

Fine. Can we find out?

HENKE:

I'd like to point out in the audit report, if I may -- will the gentleman yield?

SHAYS:

Please. Sure.

HENKE:

On page seven begins the section, Contractor's Reaction. And it's in a different font, so apparently it's cut-and-paste and dropped in there. And your contractor's reaction is on page seven, all of page eight, all of page nine, all of page 10, all of page 11.

LABOA:

Right.

HENKE:

And half of page 12. So you provided copious responses to the audit.

LABOA:

OK. Sir, I just hadn't seen the report.

ERVIN:

In the date of this that I'm looking at from DCAA to KBR, Attention: Bob Burton, it's November 14, 2009. And then there is a November 20, 2009 response to this from KBR. And it was signed by Todd Bishop, your director of government compliance.

LABOA:

All right.

ERVIN:

So, this is what I'm talking about. So are you saying you've never seen this? Neither of you've seen this? Is this what you're saying you're unaware of? This is the first time you've heard about this is now today?

LABOA:

Sir, I had not seen the report. That doesn't mean that other members of the staff had and it was not brought to my attention. I mean I just haven't seen the analysis of that report.

ERVIN:

How about you, Mr. Horn?

HORN:

I have not seen that particular audit report.

SHAYS:

Before the gentleman drops this, I would like to make sure that you are being clear. And if you want to consult your attorney you can. It would be stunning to me if you both as leaders are saying that somehow this didn't rise to your attention, given we're talking about a 10 percent utilization.

I want to make sure from each of you under your testimony whether or not you were told about the underutilization both at the one maintenance facility and told about what DCAA was doing.

LABOA:

Yes.

SHAYS:

Were you told?

LABOA:

JBB, I know, JBB [Joint Base Balad]. I was involved in the JBB DoD IG audit. I say "involved," I knew about the audit. I knew about the exit brief. I knew about the facts. I knew about the data there.

ERVIN:

Thank you.

Mr. Horn?

HORN:

Yes, I am aware of the Joint Base Balad percent-utilization rates.

ERVIN:

Yes, we are talking about different things. I'm talking about what I just said, this November 14 letter audit from DCAA to KBR, and then your November 20 response to it. And it's in this November 14, 2009 audit where it's pointed out that on average across all sites in Iraq, the average contract-labor utilization rate was less than 11 percent.

Are you saying that you neither of you had heard of that before today?

HORN:

No, I am aware of the issue and I have seen the preliminary information on it. I have not had a chance to see the final report which came out on Friday—I understand came out on Friday.

ERVIN:

Have you seen the November 14 audit, which is the audit in which this issue of 10 percent utilization from 2009, January 2009 to July 2009, of less than 11 percent. Have you seen that audit?

HORN:

Yes, I have seen that. Yes.

ERVIN:

Have you seen it, Mr. LaBoa?

LABOA:

I have not seen the final. I saw the preliminary.

ERVIN:

You know, I actually was going to try to help you out a little bit because I thought that there was not any dispute on KBR's part as to what the labor utilization rates were for this period.

LABOA:

Right.

ERVIN:

Is there no dispute on that? Do you agree that it was less than 11 percent?

HORN:

Our response from Mr. Bishop is an accurate position of the company.

ERVIN:

Right. OK, now, so the only disagreement, then, as I understand it on KBR's part, is not what the average was during this period, but instead what the justification for it was. Is that correct?

HORN:

That's correct.

ERVIN:

Right. And as I understand it, your justification for it is that because of the exigencies of war, that there needs to be a little bit of flexibility under 85 percent. Is that right, basically?

HORN:

Well, Mr. Commissioner, much of that type of maintenance work is on-call-be-prepared work. And so there were instances, particularly at the Balad location where we were required to have on-call teams consisting of specific make-ups to prepare combat vehicles, if and when they were damaged, so that they could quickly be put back onto the line. Whether that occurred or not had not the bearing on our requirement which was to be prepared to do it if it occurred.

Now, the data for what happened shows up in some formats inside the Army SAMS [Standard Army Maintenance System] system, because the SAMS system asks you to input particular work items, not all of them, but particular work items. You do get data.

ERVIN:

Thank you.

I want to ask you now about this letter that you wrote, Mr. Horn, January 15th, 2010 to Mr. Loehrl, that we have talked about earlier today. If I understand this letter correctly, you're complaining essentially in this letter to Rock Island that you are voluntarily, KBR is voluntarily leaving some authorized positions unfilled, and yet you're being criticized for it. Right? I mean, that's essentially what you are saying.

HORN:

That is not the essence of the letter. I was not complaining when I wrote that letter.

ERVIN:

All right. Let's not use the word "complaining." You were saying in the letter, you were expressing the view in the letter that you were being criticized for the fact that you're voluntarily leaving some authorized positions unfilled. Is that an accurate characterization?

HORN:

Still not accurate.

ERVIN:

All right. What is your characterization of it?

HORN:

Mr. Commissioner, there are certain contracting officials within the theater who are evaluating our cost reports and seeing sub-elements of the cost report, in particular labor, that is under-running the budget. And they are directing us in a change-order letter to prepare an estimate and submit it to eliminate that under-run as a de-scope.

And so the essence of the letter is that's an improper direction. It is an improper utilization of government direction for a sub-element cost code. A de-scope is eliminating an element of work, a scope of work. And there is labor, material, equipment and ODC—other direct costs—tied to any scope of work.

And so there are elements that are incorrectly directing us. And so we have elevated that to the contracting officer's level, and our position was that during the determination period of the contracting officer to determine what is the correct application of de-scope, and his providing that information back down to the ACOs, we should not be given negative evaluations on the monthly boards of performance evaluation because we are refusing to submit those estimates which we believe are improper. That is the essence of the letter.

ERVIN:

Is KBR in possession of any documentation from any element of the United States government requesting or directing that KBR de-scope under the contract? That term, "de-scope"—that is how you are characterizing it. Is the term used . . .

HORN:

The term is used in the change-order request, Mr. Commissioner. The term "de-scope" is used, and we believe it is incorrectly applied.

ERVIN:

Thank you.

SHAYS:

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman. We've gone back and forth over the CLSS, but what I want to know is to see if you have alternative figures. I know that you're willing to say that your figure is under 85 percent and so forth. I'm going to remind you of the DCAA's figures. Mr. Fitzgerald's testimony was that over 1.1 million hours have been charged to the government, yet only 116,000 hours were documented repair work. I know you may disagree with his definitions and the categories. He says that's less than 11 percent, and that three months later, the figure was a mere 16 percent.

What figures would you substitute for those figures? Or do you simply have a verbal argument that these things are formulated the wrong way?

HORN:

Mr. Commissioner, we believe it is an oranges and apples comparison.

TIEFER:

OK. No figures.

I do note that although your response today does not have any figures about KBR numbers on this subject and your six-page-letter response had one set of employee figures, which was—and I'm quoting from page six of the letter—it is not one of the exhibits. If that's a problem, let me know. But the quote is simply, of 304 de-scoped CLSS positions, 109 were actual maintenance personnel, not unfilled positions.

So I think what you were saying is only a third of those were what we call "spaces without faces" and two-thirds of them were actual people. Was that what you were trying to say, that

only a third of them were bookkeeping entries that were gotten rid of, but two-thirds of them were real people?

HORN:

I'm not sure, Mr. Commissioner. I don't have that letter.

LABOA:

I've read the letter. I've read that specific case there. The statement is as it is correct, but when you do a de-scope, when you do a de-scope of a function, in this case we were doing de-scopes, you not only take away those people that are currently there, but you must take away those positions that are not filled as a part of a de-scope.

And so that's what that means, Mr. Tiefer.

TIEFER:

OK. I think that supports the auditors' position, and those are the only figures on employee numbers that you provided at any point on this particular subject.

Let me ask for another. The auditors make a comparison in Mr. Fitzgerald's statement that the comparison would be that where the DCAA asked you to make in its October report, \$193 million of savings. The corresponding KBR plan makes only \$27 million. I can give you the periods if you need them. I just want to know—that's in Mr. Fitzgerald's statement—if that also is a correct comparison as far as the period of time. They wanted—DCAA, the auditors—wanted \$193 million in savings. You would make \$27 million.

HORN:

Mr. Commissioner, we don't have Mr. Fitzgerald's statement and I'd be glad to get the documents and meet with you, either privately or at a later date to be determined, to clarify that issue. I just don't have the context of the specifics of what he's talking about.

TIEFER:

You don't know that . . .

HORN:

Well, I'd be glad to, I would definitely be glad to.

TIEFER:

Page 14 of his statement, and what he says is that your figures in your plan were: KBR's projected labor draw-down plan will achieve a reduction in labor costs—that's your plan—of approximately \$27 million over the same period, January 2010 through August 2010. You wouldn't know whether that's the scale of what you're going to save?

LABOA:

OK. I have a better perspective. I will still hung up on the CLSS and the \$27 million didn't compute in this whole thing. So now I understand. This goes back to the original audit that was done in August and October of last year, 2009, where they made the statement that there could be a cost savings of \$193 million. That particular . . .

TIEFER:

No, I'm not asking about their figure. I know you don't accept their figure.

LABOA:

Yes.

TIEFER:

Was your figure for this period just \$27 million?

LABOA:

I do not know the answer.

TIEFER:

OK. Here's a question you shouldn't mind that much. And that's that you heard testimony that there's a business case analysis that would stop cold the competition for LOGCAP IV, base life services in Iraq that's going on now. I'm going to ask you a two-prong question.

Number one, you must have your proposal in the works, and I just want to hear if you think you have a very good and attractive proposal, considering that you recently in Iraq won the CTP competition.

And two, if your proposal won because it was attractive to the government, do you think there would be that much turmoil in transitioning you to you, transitioning KBR under LOGCAP III and LOGCAP IV, keeping in mind that you are doing that right now under CTP?

HORN:

First off, I always believe we have a winning proposal or I wouldn't submit it. That's just the way it is. We work very hard on our proposals and we try to win work.

The problem with this proposal from your perspective, Mr. Commissioner, is that the solicitation states that the country will be split in half, north and south, and that there will be two different companies on base life support. So regardless of how it turns out, we are either going to transition half the country to somebody else or we're going to transition all the country to somebody else.

And so the current plan that we are preparing for tells us that that's going to happen and we will have to do it while we are cascading down and closing camps.

TIEFER:

I follow you. My time is quite limited. Let me ask one other thing. I believe your drawdown plan says, as DCAA says about it, that what you envision as a final head-count in August of supported people in August—this is where the troops want to come down to 50,000. There would be 50,000 troops, and including them, there would be about 189,000 people supported. That's your view of the final state in August, yes?

HORN:

No, Commissioner. The planning factors in our plan for the end-state population to be supported are planning numbers that we have received from the multinational force.

TIEFER:

OK.

HORN:

We're working with the Army's estimates. Those are not our numbers we pulled out of the . . .

TIEFER:

Oh, you're working with 189,000 is what you're saying.

HORN:

Right. Right.

TIEFER:

OK. Thank you. My time is up.

SHAYS:

Thank you.

Mr. Horn, and Mr. LaBoa, I don't know why I feel inclined to say this. But I sense you've got a real chip on your shoulder, Mr. Horn. And I just want to explain something to you. In this commission, I have never seen an inch, a fraction, of partisanship. I have a rough time remembering who is a Republican or Democrat.

On this commission we have a former comptroller of DoD. We have an inspector general for both state and Homeland Security, former number two at DCAA, assistant secretary of VA (Veterans Affairs] who was the chief financial officer, and also the deputy comptroller at DOD. We have—I'm sorry—one member of Congress. We have a high ranking GAO official who was a project manager and part of the senior executive corps.

We have another member who was at DoD national security, and the number-three at State Department. And we have a contract-law professor. We take our job very sincerely. We have not ever seen any partisanship. And I want to say that your company in the end finds a way to cooperate with us. But sometimes we feel like we take you kicking and dragging to the altar. That's just our opinion. We rarely have to deal with an attorney in another office, but we have to more often than not deal with an attorney in your operation—that's the only way we can communicate with you.

You have been very helpful and cooperative in having our people come down, and we appreciate that. But on a scale of one to 10, you're somewhere in the middle of the cooperation compared to some of the other contractors. My point in asking you to start on the third page of

your document is we wanted to get into the meat of your point. I fully, and the commission fully respects your 29-1/2 years of service to the military, and Mr. LaBoa, your 35 years. I traveled to Iraq more times than I can count, 'cause I got addicted to being in the presence of people like you. There are members on this commission, and I am one of them that have continually—we all point out that contractors are an essential part of this operation. We couldn't do without them.

And that a lot of them were former service people. I was at a public hearing when you had Blackwater totally criticized. And to provide some balance, I asked how many people have they ever lost. And they lost none of the people they were protecting. I said, "How many of your people did you lose?" They said, "Thirty." Every one of them was former Navy, former Air Force, former Army, former Marines. They were all military people. They just happen to work for a private company.

So you don't have an enemy on this side. But we start to react when we think that you should know things that you don't know. And I just want to put it in perspective. And the perspective I'm trying to have you understand is: you got an incredibly low mark not just from DCAA, but from the inspector general as it related to one part of your operation. It was a low mark, like at 10 percent and less.

It would strike me, given that you knew that DCAA was going to come here, that you would be prepared to answer. The fact is, your people should have reviewed and told you what they had submitted and the dialog. They fact they didn't is telling to me. And if they did, and your kind of pointing out, well this is the first time you've heard about it, it was just happening. That strikes me as—I become suspicious candidly.

So I just want to say to you does it matter, and should it matter to you that on that part there was such a low utilization of 10 percent. And I'm talking specifically about the CLSS. And I'm talking about the maintenance facility at Balad. Does it matter to you, Mr. Horn?

HORN:

Mr. Commissioner, it matters very much to us what our contractual requirements are and what our delivery of those requirements are. It matters to us whether we're meeting our internal standards, and whether we're meeting Army standards. The element I tried to point out was this data was collected from one data-collection element, the SAMS system, which is not the total encompassing system of all the work that's done. But more particularly this work, and much of this work, was be-prepared-type work. Where you are on standby, on call with the capability to be prepared, which is different than evaluating. Normally if you have maintenance units, they're in the motor pool. And they're working from eight in the morning till whenever they close, and you're . . .

SHAYS:

Mr. Horn, I'm going to yield my time if I need to pursue this. So we're going to cover it, because you deserve to, and the commission does. I would have found it more healthy and reassuring if you say, "We're not perfect. We made some mistakes. This is an area we made a mistake, and we're on top of it." But instead, you want to almost get us into a dialog as to whether both DCAA and the inspector general were wrong.

SHAYS:

And I don't know why you would want to go in that direction. The bottom line is, it wasn't 86 and 65. It was 85 and 10: ten-percent utilization. There's too much of a margin for, it seems to me, to have you want this to be where you're going to have your line of battle. Had you just simply said to us it's underutilized and this is why it happened, and this is why we think it shouldn't happen, I would think that would be a more healthy response. You choose not to go that way. I'm dumbfounded by it.

Explain to me why 10 percent is acceptable.

HORN:

Mr. Commissioner . . .

SHAYS:

And I'll have Mr. LaBoa jump in. OK?

LABOA:

Mr. Commissioner, I'm a taxpayer too, you know. And, you know, it was not acceptable to us. And that's why we went to the military and said, "Look guys. We're concerned. We got all these people here. We don't have work. Here is the data." We went in July of 2008, and said, "Here is the data." Then we went back in either August or September, and said, "Here is more data. We're still concerned."

SHAYS:

So your testimony is you were aware of it, and not a surprise. And you went to the government to say you got a problem. What was their reaction?

LABOA:

Sir, their reaction to my knowledge was, "We got it. We understand, and we are studying it," as far as I know. I personally wasn't involved in the communications because I wasn't there then. But in January we did the same thing again. We went back to the government and said, "Look. It's underutilized." And not only are we concerned about it, but we want to sit down and talk about a better way to utilize this work force. You know, we had a contractual obligation to provide it. And we are just as concerned as you were that we were not using that capability.

And as I've said before, I don't know, and I don't want to second-guess what the military knew that we didn't about future operations, about capability they wanted to retain, and whether or not they specifically accepted the excess or not.

SHAYS:

Mr. Horn, would you disagree with what Mr. LaBoa said to us?

HORN:

I agree with what Mr. LaBoa has said. The position I was taking was try to clarify the nature of what's being measured. You can go down that same road if you try to evaluate firemen. If firemen are not fighting a fire, their utilization rates don't look good. But they have to be there, and they have they have to be on straight . . .

SHAYS:

It's a different story.

HORN:

It's—no.

SHAYS:

It's . . .

HORN:

It's in essence the same thing.

SHAYS:

Mr. Horn, you're almost arguing against your own argument on Mr. LaBoa. Mr. LaBoa told DdD that there was a problem here. There's underutilizing. And you're coming back and saying, "We need that utilization." If DoD says that they want 85 percent utilization, why would you make an argument to them that 10 percent is acceptable?

HORN:

No. I did not say it was acceptable.

SHAYS:

Well, it sounds like it.

HORN:

What I said, Mr. Commissioner, was the basis of what you're measuring needs to take into account that part of our work was to be on call, much in the way that firemen are on call.

SHAYS:

Well, I'm hearing two messages from both of you. I'm hearing Mr. Laboa take the position that I think is the valid one: That we were totally underutilized. We didn't meet the 85 percent. We told DoD. I'm comfortable accepting that. And now I'm hearing you make an argument that basically says, "We were underutilized, but like firemen we need to be able to meet whatever need is in place." And yet the contract was clear. You needed 85 percent.

And well let me just quickly give you the opportunity to explain the last paragraph in your KBR letter. "KBR is willing to discuss the management and cost efficiencies described in our briefing on December 8, 2009. And in this letter during the upcoming discussion of contract interpretation issues that have arisen from USG audit activities. Pending these discussions KBR asks that you advise DCMA and Team LOGCAP to stand down in discounting KBR's cost stewardship during PEBs, the Performance Evaluation Boards."

Tell me about that. That last paragraph, it sounds to me . . .

HORN:

The last paragraph, Mr. Commissioner, was referencing the fact that KBR believes that in certain locations we are being given incorrect direction to de-scope elements of work, rather than de-scoping work itself. And during the period of time of that letter where I elevated the issue to the contracting officer, we would not respond down at the lower level with cost estimates to de-scope what we believed were incorrect procedures.

SHAYS:

Do you think it's proper for you to ask the Army contracting command to tell DCMA and team LOGCAP to stand down? Do you think that's proper for you as a contractor to do that?

HORN:

I was asking, Mr. Commissioner, I was asking the government to direct those particular ACOs to not hold against us in a negative way the evaluation of our performance while we were seeking clarification. Their performance is based on timeliness of response of information.

SHAYS:

See, I think I read it differently. I read that you were basically saying that they needed to stop and desist period. Case closed.

Mr. Thibault, you have the floor?

THIBAULT:

Thank you, Mr. Shays. For fear of beating a dead horse—maybe the little horse is going to get pulverized—I'll tell you what I want to go back to, Mr. LaBoa. I think you said it well, because I understood it. In this discussion about what to do, you said—when asked, what's your responsibility—you said, "The statement of work delineates the number of people at each site first major consideration." You said, "The second one is you need communication from the military to the ACO—some form of direction. You don't need the capability." And then we went on. And this is where I'm beating that poor horse. To say that four times, and then you clarified it. You gave communications.

And you said, "To my knowledge, because"—and I didn't understand that qualifier. But for the record, can you please provide all four of those notifications, the nature of them, and who gave them. If they're emails, great, then just a note. If it was verbal, say, "Verbal by so and so to so and so." Because I realize notification can take a lot of forms.

I have that request.

SHAYS:

Could the gentleman just yield on that one point? Just . . .

THIBAUT:

Of course.

SHAYS:

I was just struck by—given that you knew that this would be an issue at the hearing, that you wouldn't just be able to hand it to us all right now. I'm just . . .

LABOA:

Sir, I didn't know that that was the right thing to do. I mean, I . . .

SHAYS:

No. Just to be prepared, to be able to do that...

LABOA:

You know, I know what the date is. I'm sorry.

SHAYS:

Thank you.

LABOA:

We'll be prepared—we will do that.

THIBAUT:

OK. Building on that, Mr. LaBoa, you know, we've got tens of thousands of KBR contractor employees at—you went through it—a couple of hundred locations, maybe more. I can't believe

it that this is the only case out there. I don't believe it. I believe that this isn't a shooting star. If it is, I'd like you to tell me, "Oh, this is just an anomaly that someone just happened upon when they looked at it."

So I guess I'm interested for the record and because I think it's really important. And I know you said you don't want to make a big deal out of it with the customer on what he did. I kind of do. Because your point throughout this has been, "My hands are tired, sometimes." And that's what I'm hearing. And I could go back and spend a long—let me finish my question. What I would like from you, and if you don't have it on the top, you've got, in terms of communication, a really effective organization. I've seen it demonstrated.

I'd like some kind of statement, you know, we've been able to locate 26 other cases where we've timely notified the government that we had situations that warranted their attention.

Because that's really critical, because you also in the collective statement, Mr. Horn's statement, say you know, we've got to work together. Couldn't support that more. And so to me, that's really important, because you heard me this morning say that the company, I believe, has the equal obligation as the signatory to do these types of things.

LABOA:

Yes, sir.

THIBAULT:

And it's like I told the Army, they're making grounds on what they're trying to do, and if we can see evidence where the company is making grounds on what it's trying to do, then at that point you might be able to stand back for a brief period—which is kind of what we've done in the world of CORs, and their training, because you've got to give them time to do it, you know?

But I'm going to this efficiency, personally, just because to me it's quality control. And I'll say for the record, every time I've gone out we ask, of course we ask, you're the biggest company. And say, how's the quality control? Your military customer, you know, forget the electrocutions, and you can't. But in terms of move that aside, has been very, very positive.

LABOA:

Yes, sir.

THIBAULT:

But, the cost control, that's all we've spent our time on, the efficiency, the economy, and all that. So that's where I think, if you've offered, give us an education.

Plus one, where if you want to come back to us and say all right, we'd like to educate you both on where we're at, and the kinds of —and that's Mr. Shays' point—is he'd like to see the documentation, the evidence, coming forward. But that shows, you know, it's the old story about you going to watch your feet, versus your words? Well, the words are there, let's see where your feet have gone?

LABOA:

Yes, sir.

THIBAULT:

And that'd just be very helpful.

LABOA:

Yes, sir.

THIBAULT:

And can I ask that and can we get together again?

LABOA:

Yes, sir, I'd be happy to do that. And part of that documentation on the meetings was in the DoD IG report. But we will pull that out, and provide it, as you have requested.

THIBAULT:

All right. And we'll get a group out there, and I will personally—I realize that these days you live in theatre?

LABOA:

Oh, yes. Sir, I live in the theater, yes sir.

THIBAUT:

Maybe sometime when you're coming home to brief your management . . .

LABOA:

OK.

THIBAUT:

. . . we can all get together.

LABOA:

OK, sir. I look forward to that opportunity.

THIBAUT:

And I thank you both. No one said this was going to be easy, and it wasn't. So I'll yield the rest of my time. What time?

SHAYS:

Thank you.

Mr. Henke?

HENKE:

I'll pass.

SHAYS:

Ms. Schinasi?

SCHINASI:

We talked before about the uncertainty associated with the drawdown and the military doesn't really have a final idea of what the end stage is going to look like, or when. It seems to me that's always the case in contingencies, but in this contingency we also saw that twice.

We saw it first in the initial invasion into Iraq, and then we saw it again with the surge where there was uncertainty about what was going to happen, what kind of support the services were going to need, military departments. You know, how quickly you needed to get there.

Is there any way that you approached this drawdown differently with respect to uncertainty? I mean, obviously one is ramping up, one is ramping down. But in both cases, it seems to me are operating under the same kinds of conditions, not knowing what the end stage is going to be?

HORN:

Madam Commissioner, this is very different. This time we have a specific specified task, which is to conduct logistic support to the drawdown. Much like before, we had a specified task to conduct logistic support to the surge.

What's different this time is that we also are having to develop inside that plan the ability to transition this contract across to other companies, while it's all ongoing. And so, not having had any other direction, we have had to fold that into this. And it has made it very complex.

SCHINASI:

OK, thank you. So I will just say then what you're saying is you are prepared to transition, because that's been . . .

HORN:

I have . . .

SCHINASI:

. . . part of what you're planning to do?

HORN:

Madam Commissioner, we have successfully transitioned every element of LOGCAP IV to date.

SCHINASI:

Mr. Horn, the last time we talked, Mr. Tiefer and I were in theater and you were back early in the morning in your KBR offices. And at that time, we had just become aware, and I think you had just personally become aware, recently aware, of 7,100 people at the subcontractor level in Iraq that you had not previously been aware of. And you asked us for some time to figure out what exactly had happened.

So I'm going to put the question to you now, I think some five weeks later. Can you tell us a little bit about how that condition came to be? And I'd like particularly to know how it was raised to your attention?

HORN:

Yes, Commissioner. Throughout the contract we have provided contract deliverable reports, which we abbreviatedly call CDRILLS. We give a daily personnel report to the government on the status of our personnel strengths across all sites and all locations. We've been doing that since the beginning of the contract.

The CDRILL asked for people doing work, and that's what we've been doing. When we started analyzing the camps for drawdown, and we got into the life support areas of our subcontractors and analyzed their camp makeup and their camp components for drawdown, we realized that the subcontractors have their own overhead elements residual within their camps, taking care of their internal business. They are not taking care of the specific deliverables of our work and those bodies had not been shown up on our CDRILLS.

As soon as we realized that discrepancy, we brought it up to the government and we said OK, here is a group of people inside each of the subcontractors' populations in the theater, that are in fact in essence their overhead, and we have not been aware of their population strengths.

We immediately had a discussion with the government about it. We determined the right thing to do is pick up control and accountability of those people. That number has driven down from what we roughly guessed initially was 7,000. That number has gone down to right at 4,000 now as of this week.

And so, that is what happened. I believe we were proactive in bringing it to the Army's attention when we discovered it, and we are tracking it as a CDRILL report item from now on.

SCHINASI:

Is that 4,000 because 3,000 people have left, or the original . . .

HORN:

Part of it is for some contractor work that has left, but the majority of it was getting really clear head counts of who was who and where was where. The initial 7,000 number was inaccurate.

SCHINASI:

OK. And you have to put it on your CDRILL. Did you have to recommend to the government that you do that? Did they have to direct you to do that?

HORN:

We told them we thought the right thing to do was account for these people, because you conduct a drawdown we've got to make sure they get out of the theater. The government agreed. And we've inculcated it into our report.

SCHINASI:

Is that a practice that you would expect to be a good business practice going forward?

HORN:

We believe it's the right thing to do.

SCHINASI:

OK.

HORN:

And I just want to point out it's not a cost impact to the government.

SCHINASI:

Right, I understand that. You know one of the things that we're trying to understand is what sort of visibility is possible and what sort of visibility do you need? And you've heard about the SPOT database and . . .

HORN:

Right.

SCHINASI:

. . . trying to understand how many contractors are working for the U.S. government. There are implications other than cost implications. But I take your point.

Thank you. My time is up.

SHAYS:

Mr. Ervin.

ERVIN:

Thank you. I just have a couple of questions.

Mr. Horn—we'll start with you, to this November 20, 2009 letter from KBR from your Todd Bishop to DCAA—and you referenced it, I think both of you did, in the last round of questioning—that you brought, KBR brought, to the government, specifically DCMA's attention, the underutilization in CLSS, and that there were numerous communications to the government to that effect. And you said you'd provide all that to us.

But essentially, did you get a response from DCMA to it? And what was its response?

HORN:

I do not know that we got a response.

ERVIN:

Oh.

Mr. LaBoa?

LABOA:

Mr. Ervin, there were discussions. I do not, in looking back over all the data, see a formal response. And we, to my knowledge, did not make a formal written letter. These were briefings that were taken to the 3rd Expeditionary Support Command and discussed.

ERVIN:

So it was discussed at a lower level, is what you're saying?

LABOA:

Yes.

ERVIN:

It was never elevated to the attention of higher authorities?

LABOA:

It was discussed at the right level, because the 3rd ESC, the Expeditionary Support Command, is the group that makes the decision or provides the data to other personnel to ASC on exactly what they need to do their mission. So it was at the right level. The discussion was at the right level. As I explained to Mr. Shays, I believe, there were four opportunities where these discussions occurred.

ERVIN:

And it's your legal position that, irrespective of whether there was ever a response to your bringing this to the government's attention, that you didn't have the legal unilateral right to de-
scope? Is that your legal position?

LABOA:

I don't know if that's a legal position. I think it is, from our understanding of our contract and our ability to do what we got to do we must have the direction from the government, OK, to take those off, to take it off.

ERVIN:

Now, bringing cost savings to the government's attention is a criterion in award-fee determinations?

LABOA:

It is, sir.

ERVIN:

And how much in the way of award fee has KBR gotten over the course of LOGCAP III on the basis of that criterion, cost savings, approximately?

LABOA:

Sir, I don't know that. At my level, I don't see that.

ERVIN:

Do you know, Mr. Horn?

HORN:

For the life of the contract?

ERVIN:

Yes.

HORN:

I'll have to get you that information.

ERVIN:

I mean, just approximately, ball-park. Do you have a ball-park figure?

HORN:

Sir, I'd hazard to guess.

ERVIN:

Have you gotten any?

HORN:

Oh, yes, sir.

ERVIN:

Can you hazard a guess?

HORN:

Sir, I prefer to not hazard a guess, but I will be happy to get you the exact details and forward them to you.

ERVIN:

I'd like you to hazard a guess. Could I press you on that?

HORN:

No.

ERVIN:

How much money . . .

HORN:

Sir, I'm not going to make a guess, because I'll be held accountable for that guess till the cows come home. I'm not going to make it.

ERVIN:

All right. How much has KBR been awarded under this LOGCAP III contract over the course of the contract's life?

HORN:

Once again, I'll get you the specific numbers, sir.

ERVIN:

Do you have a ball-park figure for that?

HORN:

I'd be glad to get it for you.

ERVIN:

Do you have a ball park-figure for that off the top of your head?

HORN:

No sir.

THIBAULT:

Thank you.

Commissioner Shays, I just want to seek clarification on, again, what I think I heard.

We asked for those four examples. Are we talking apples and apples? You've now said that they were probably done at the local level, informally?

HORN:

The four examples . . .

ERVIN:

No, you said you'd gone back, communicated four times . . .

HORN:

Right.

ERVIN:

. . . how you'd notified them. And you're now clarifying that was it the same conversation that you're clarifying at the lower levels and you don't know what—you know, lower level to me—the request still stands, tell us each . . .

HORN:

Sir, we'd be happy to . . .

ERVIN:

And if it was informal, tell us it's . . .

LABOA:

Yes.

THIBAUT:

. . . informal, because that way we're not going to leave what was to me a notification. You know, we all talk about communication between the government and the company. A notification is at a minimum an email or some kind of an attachment to a report.

If it's just someone saying, “oh, by the way” . . .

LABOA:

No, sir that is not the case.

THIBAULT:

OK.

LABOA:

That is not the case. Just let me explain the structure that went over it.

THIBAULT:

Fair enough. Fair enough.

LABOA:

At the site level you have a site manager and a deputy project manager. I know that two of these were the deputy project manager for support who went to the 3rd ESC, in some cases to the support ops officer and other personnel in that organization. The people that were notified were the proper people to be notified, other than the commander.

THIBAULT:

Yeah, that's all we need laid out. What was said, who was notified.

LABOA:

Yes, sir.

THIBAULT:

Thank you, sir. But it's your testimony that there was not a directive from management of your company to the higher-ups in DoD that . . .

HORN:

Not to my knowledge.

SHAYS:

Do you have a question? OK.

Mr. Tiefer?

TIEFER:

Thank you.

First of all, to go back to a subject which I think gives you no pain, no pain at all. Which is assuming you do win, as you hope to, the basic life support for half of Iraq under the LOGCAP IV, if I reframe my previous question, do you expect a lot of turmoil in the half of Iraq you would win if you were transitioning to yourself? You wouldn't expect a lot of turmoil on that, would you?

LABOA:

No, sir.

HORN:

Mr. Commissioner, we would not expect a lot of turmoil. We would have to follow the same process . . .

TIEFER:

I understand. I know. There's property and so forth.

By the way, I understand the Project on Government Oversight is sending a letter to the Department of Defense on this issue of the potential canceling of competition for LOGCAP IV.

Earlier, there was a mention of protests, as if that was a big problem in what's strung out the length of LOGCAP IV going ahead. Am I correct that in the competitions that are occurring in LOGCAP IV there were no protests in Kuwait, there were no protests in Afghanistan, and on the CTP part of LOGCAP IV in Iraq there was a protest but it's been withdrawn?

So in the task-order competitions there have been no sustained continued protests, have there?

HORN:

Mr. Commissioner, that is correct. There have been no sustained protests.

TIEFER:

No continued ones, yes.

Earlier you were discussing with respect to CLSS where there was an 11 percent underutilization figure, you discussed whether you had raised it, whether you had an opportunity to deal with the underutilization. And there's a lengthy discussion between you and DCAA on the statement-of-condition report, which closely parallels the audit. So that's what commissioners were reading from earlier.

And if I understand the dialog between you and DCAA, after they had their three-month—excuse me, after they had their six-month figure for the 11 percent underutilization—they, the government, the DCMA, asked you to put forth a proposal for dealing with underutilization and you de-scoped, as they instructed you, and it didn't have much effect on the underutilization.

SHAYS:

Could I just correct the gentleman? It's 89 percent underutilization, 11 percent utilization.

TIEFER:

Thanks. I'm sorry I'm not being clear on that. It's correct, 84 percent underutilization, which is Latin. In English we call it idleness, charging while no work is being done.

And the response that DCAA says, and I'd like you to comment on it, is, "While the contractor maintains that it took the initiative"—that's the July 2008 step you took—"our audit determined that the contractor could have been more proactive. Based on discussions with DCMA and the 3rd Expeditionary Sustainment Command, the contractor's lack of transparency and initiative resulted in missed opportunities for cost savings."

Then there's some more discussion of that, and finally we get to, "In addition, it could, KBR could, have proposed cost savings initiatives as soon as it became apparent that so much idle time was being charged to the government."

This audit is forward looking, and the contractor now has the opportunity to achieve significant savings by working with the government to right-size the CLSS function.

Wasn't it within your power in August of 2009 not only to put forth a proposal that matched what the government asked you to, but to put forward a proposal for larger savings? And now that you have the statement-of-condition report, which you've had for some time, will you make a proposal that would substantially cut the level of underutilization, and when would you hope to do so by?

LABOA:

First, Mr. Commissioner, in May of that year the 3rd ESC was developing a change to the method of operation for its maintenance support teams. That proposal was provided us, I believe in June, where we began then, based on their change to the organization and the low utilization, in an effort to get higher utilization, and this process was called maintenance support teams. And these maintenance support teams reduced, as you pointed out earlier, a certain number of mechanics and positions that were there.

That operation went into effect in July of 2009, and that is the system we're working under.

But to the larger question, if that system or that reorganization as they directed is not working and we continued to see underutilization, then, yes, we will.

TIEFER:

I want to follow up.

Commissioner Schinasi brought back—and I appreciate her doing so—that when she and I were in Iraq there was this dialog between Mr. Horn and us about the 7,100 people who hadn't been counted.

In your description, Mr. Horn, you left out today that this was originally brought to your attention. It wasn't self-discovered, it was brought to your attention by the Defense Contract Audit Agency. And I see by going back to our written notes that you did yourself know that, you brought it up at the time.

And I just want to check with you. As I understand it, you didn't put the 7,100 in your reports before the DCAA caught you, but after that you were willing to put them in, which reminds me of the old story about the man who said that, "Yes, it's true, I was speeding before the officer caught me, but I am certainly willing to stop speeding now."

Would you comment as to whether it is the case that the DCAA caught—found this—before you did?

LABOA:

Sir, may I answer the question?

TIEFER:

Sure.

LABOA:

OK.

On the day that this happened, my deputy program manager for support, we prepare a report every Saturday; we basically do the work on Friday, Saturday. And then on Sunday we finalize and we present it to the government on, I think it's Monday at 9:00.

I don't know if it was Saturday or Sunday, he brought into me, and he said, basically, we've got a problem. I said, "OK, what's the problem?"

In looking at a camp that was closing, we saw that the number of people that we were counting for as they support the contract functions—OK, I don't want to get too deep into this—and that there was an additional number that was there that we hadn't seen before, which in essence was the subcontractor's administrative people that provide him the overhead to run his camps.

So the decision was to me. "What do you want to do?" I said, "Have we worked the numbers, have we looked at the numbers? Do we know this is accurate?" And the bottom line was, on that day, at that time, I said report it because that's the proper thing to do.

Now, in hindsight, I didn't have the time or didn't go back and do the detailed analysis that I should have done. OK? And so that's how the 7,100 . . .

TIEFER:

Excuse me. I still haven't figured out, did the DCAA . . .

LABOA:

No.

TIEFER:

. . . communicate to you or not?

LABOA:

No.

TIEFER:

Mr. Horn, did you tell us the DCAA had?

HORN:

I don't believe I did.

TIEFER:

OK. Well, my notes of what you said to us and what the DCAA told us must both be wrong. But we'll leave this. It's a small point. Thank you.

SHAYS:

Thank you. I won't use, I think, my full time.

I thought it was a trifecta. I thought it was the contractor oversized its workforce—and this is not a criticism, because it's going to lead to the issue that I am most interested in, which is how do we deal with it.

I thought the second thing was the failure of the government to accurately analyze and negotiate the contractor workforce and then the failure of the government to oversee it. But it really starts before that. So I guess it's a superfecta.

First off, the government comes to you, correct, Mr. Horn, and says, "This is what we would like, a service we would like you to provide," I'm talking about the maintenance facility—I mean, Mr. LaBoa, I can go with you—and then my understanding is you then work up what you think those needs are. Then DoD, the Army, is going to then the third part, is going to look at your work and say, "Fine, go with it." And then four is, OK, now you're operating, and is there proper oversight.

Do I have those four points pretty accurate?

LABOA:

Yes, sir.

SHAYS:

OK. So my question is when we, and I'm going to say "we" because the government got it wrong, too, the underutilization—you know, basically working around 10 to 15 percent of utilization instead of 85 percent—what is the mechanism, and if the mechanism isn't there, what should the mechanism be to deal with it?

Because I'm struck that it shouldn't be you all contacting the folks just in the field. It seems to me your folks should say, "Hey, boss, we aren't being used well at all. This is a waste of our time and the government's money."

So what would you be suggesting that we as a commission add our voice to in trying to deal with this issue?

LABOA:

Mr. Shays, the mechanism was there. It was not functioning.

SHAYS:

OK.

LABOA:

There were two things that were wrong, from my perspective.

SHAYS:

Yes, tell me what the mechanism is there . . .

LABOA:

The mechanism is the DCAA oversight for the administration of the contract.

SHAYS:

Right.

LABOA:

And the second thing is, of course, the CORs that you talked about earlier, whether the CORs were there, I don't know.

SHAYS:

So let's just say they saw the underutilization pretty early. Would they be coming back to you and saying we need to renegotiate the contract, or is there a mechanism within the existing contract just simply to say you need half the people or two-thirds, one-third the folks.

LABOA:

Yes, sir.

SHAYS:

What is it?

LABOA:

Could I just . . .

SHAYS:

Sure. I want you say whatever you want.

LABOA:

Yes, sir.

There was another issue with this whole process, where there was not specific requirements to report to the customer the utilization rate, and it was going to DCMA. And it was going in one case to the Marine expeditionary force in Al Asad.

So the customer, who should have been watching this, probably didn't know it. And as a result of that, I'm unsure how DCMA was working with it. I don't know whether they were telling the customer or not telling. I don't know that.

So the statement of work as we had it was imprecise as it relates to, "tell me about what you're doing, KBR, and here is the data I wish to see every month, or every week, by the functional areas that you're doing."

SHAYS:

So it's your statement basically that nothing new needs to happen, they just need to do a better job of doing it.

LABOA:

Yes.

SHAYS:

Now, tell me, would it make sense, it would strike me that it would, wouldn't it make sense for there to be a requirement when you—let me just make sure this one point, first off.

When you know what the services that you need to provide, you're being asked basically to determine at close to the 85 percent utilization rate. Is that in the contract or is that just a goal that's not in the contract?

LABOA:

Sir, to my knowledge it's not in the contract. What it is in, though, is the Department of Army goal that is written in the contract.

SHAYS:

So you know what the goal is, but it's not . . .

LABOA:

Yes, sir, it's 85 percent. It says, "In this kind of an operation, we would expect ideally to see a usage rate of 85 percent."

SHAYS:

And so when you do this, you're mentally saying let's figure this number at an 85 percent utilization rate. When you are being told . . .

LABOA:

Oh, yes, sir. Oh, yes, sir.

SHAYS:

I am using the time that I didn't think I'd have to use.

Let me just ask both of you to answer any question you wish was asked and make any comment you wish to make about whatever has taken place at this hearing.

And, Mr. Horn, we can start with you if you'd like.

HORN:

We want to thank the commission for asking us to come here today. A couple of key points I want to stress. First is the unpredictability of the nature of the war, and it leads to a lot of uncertainty for the contractors that you have on the battlefield. There is difficulty in applying a standard government contracting approach in a war zone because of the inherent lack of predictability in the day-to-day operations.

We strongly believe speaking with one voice within the government is important. We think it assists in the efficient operations of these types of contracts. And while we have stated in today's hearing that we need better oversight—I mean, better insight and more details to the military's plans for the drawdown, we fully understand why we have not gotten that level of detail to this date, and we do feel that when we absolutely need the information, we will get the information.

And that's really the main points I would like to summarize with Guy [LaBoa].

SHAYS:

OK.

Mr. LaBoa?

LABOA:

Yes, sir.

Sir, could I just correct? I just got reminded I said DCAA. DCMA has the oversight.

SHAYS:

Correct. Right.

LABOA:

I apologize.

SHAYS:

You earned your keep.

LABOA:

Just so you know that my approach to what I am trying to do out there and what I am doing is to improve the efficiency and effectiveness of LOGCAP III operation. It's tough. It's a big operation. It's been there a while.

And we have done a number of things to improve our quality program and to begin a new beginning, which is helping us do what you're asking us to do. We have proposed to the Army, and you will see in the briefings, I think, that you've already been given, a number of proposals that we think they should consider as a part of the drawdown process that we can begin now to cut back.

We can reduce the number of DFACs [dining facilities] that are currently there, and we've made those proposals. We can reduce other areas, which we have put forward to the Army. And I must say they are embracing a good number of these. They are in the process of looking at all of that in an effort to reduce the cost of this contract to the American taxpayer.

I am driven by getting it done as efficiently and as effectively as we can. I instituted the personnel reduction and realignment program, which you know as PRR, in an effort to take a look at the layering and the number of people we have on the contract and apply some efficiency factors to look at reducing the size of this contract.

So in all of this discussion, we haven't had a chance to really get into those things within reasons of the time. But what I want you to know is KBR is in fact doing the work to improve the efficiency of our operation and, as you ask us to do, come back and tell me . . .

I'm sorry, Mr. Thibault, you did. Are there other areas that I need to be looking at?

And we are doing that with the government right now, Mr. Shays.

THIBAULT:

Thank you. I think that's really important. And if you, when you put that documentation package together, those areas that you have provided to your customer then, and who that is, then we'll come over and sit down and be sure we understand it.

LABOA:

Yes, sir.

THIBAULT:

All right.

SHAYS:

I just thank you both for coming. I think the commission knows that it's impossible to be perfect. We tend to be more receptive to the folks who realize when they are perfect, when they make mistakes and how they are adjusting to the mistakes. You can win a lot of friends when you go in that direction.

Thank you both, very, very much. This hearing is adjourned.