

SUBCONTRACTING: WHO'S MINDING THE STORE?

MONDAY, JULY 26, 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. Christopher Shays, Co-Chairman of the Commission, presiding.

Present: Commissioners Thibault, Green, Schinasi, Tiefer, Zakheim.

SHAYS:

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

We are a commission created by Congress to examine federal agency and military use of contracting. We will issue a major report with proposals for statutory and administrative changes in December, followed by our final report to Congress in July of next year.

This opening statement is made on behalf of Co-chairman Michael Thibault, our fellow commissioners and myself. The other commissioners at the dais are Grant Green, Katherine Schinasi, Charles Tiefer, and Dov Zackheim. Dov will be here in just a little bit. Commissioners Clark Kent Ervin and Robert Henke could not be with us today.

This hearing concerns subcontracting in war zones. For most people the topic conjures up about as much excitement as a talk on oral hygiene. True, it involves obscure points of contract law, arcane passages in the Federal Acquisition Regulation [FAR], and often baffling layers of business agreements. But as we have delved into the byways and back alleys of contracting, it has become clear that subcontracting also involves, for good or ill, big money, vital tasks, the safety of Americans in war zones, and U.S. policy objectives.

Let me make it clear at the outset that we are not here to condemn subcontracting. It is a common and necessary business practice and there are good reasons for using subcontractors. Business economists tell us that subcontracting can help businesses tap into specialized skills, configure their organization to meet changing needs, and adjust to shifts in demand.

If your renovating project includes a mural in the dining room or custom windows for an office, you may find that your contractor has subcontracted the job rather than keep an artist or window maker on payroll full-time. That makes sense. But what makes sense for a renovation project in Connecticut or Maryland can create some unique risks when the contractor is hiring subcontractors in a combat zone halfway around the world.

Our co-workers on the commission's legal staff have trained us to understand that the federal government lacks privity of contract with subcontractors. In other words, the government's contractual relationship is with the prime contractor, not with subcontractors. So the government has limited visibility into subcontractor affairs and limited ability to influence their actions. This fact presents a challenge to transparency and accountability for the use of taxpayers' dollars.

From an abstract point of view, the lack of privity of contract is not a big issue. After all, federal law makes prime contractors responsible for their subcontractors. The law also gives government officials authority to make primes accountable for managing their subcontractors so that the primes' contractual agreements, requirements, are met in a timely and cost-effective manner.

Depending on circumstances, federal officials may have power of consent on subcontracting-approval authority over primes' subcontracting plans, the right to require certain clauses in subcontracts, and the ability to look into contracts for unreasonable, unsupported, or fraudulent costs that could be passed through the prime to the government.

From a practical point of view, however, this neat description often leads to disappointment. Contractors with inadequate business systems, for example, may not be purchasing goods or services from their subcontractors at fair and reasonable prices. In fact, two of the three prime contractors for the Army's multi-billion-dollar LOGCAP IV logistics contract are operating with purchasing systems not approved by the Defense Contract Management Agency, DCMA.

Contractors' ability to manage subcontracting can also be complicated by mandates such as small-business preferences and hearts-and-wallets initiatives like the Afghan First program for hiring host-country labor. Excessive tiering or layering of subcontractors can result in costs being passed upward to the prime with a markup at each hand-off, leading to excessive charges to the government.

And some subcontractors have been involved in schemes that involve inflated charges and fake invoices. And I use the word "some."

Weaknesses, mistakes, or misconduct in subcontracting relationships can be aggravated by weaknesses in the federal machinery for contract management and oversight. This commission has documented and repeatedly warned, as have others, about inadequate numbers and training of civilian and military contracting officers, contracting officers' representatives, subject-matter experts, and auditors.

We have learned that poor requirements-definition and loose statements of work by this government have weakened accountability and led to waste and abuse. We have noted that the Department of Defense contract management has been on the Government Accountability Office's high-risk-program lists since, believe it or not, 1992.

And we demonstrated at a previous hearing that DCMA contract managers and Defense Contract Audit Agency (DCAA) overseers often disagree on assessments of contractor business systems, but had no systematic procedure for resolving the disagreements. We think this is changing.

All these problems within government flow into problems of subcontracting. These problems on both the government and the prime contractor side of the relationship are even more troubling when contracting must provide vital support for contingency operations such as those in Iraq and Afghanistan.

Besides the risks of a changing wartime environment, there can be issues with the use of low-skilled and often illiterate workers, human rights abuses and human trafficking, a culture where bribes and kickbacks are commonplace and where subcontractors may be improperly hiring private security companies whose armed employees may get involved in violent incidents that reflect badly upon the United States.

These are serious concerns, and they are not hypothetical. For example, the special inspector general for Afghanistan reconstruction has reported that delays in subcontractor mobilization and poor subcontractor performance were factors in budget overruns and construction delays of a power plant in Kabul. The prime contractor may be responsible for the subcontractors, but the U.S. taxpayers are on the hook for over 300 million in costs.

In July 2009, the owner of the Houston food-export company pleaded guilty to conspiring to defraud the government by making and concealing overcharges to a prime contractor supplying billions of dollars worth of food to U.S. personnel in Iraq.

In September 2009, the husband and wife owners of a Texas security contractor pleaded guilty to conspiracy and fraud that involve submitting fictitious invoices to the prime contractor on a USAID reconstruction program in Afghanistan. The wrongdoers agreed to forfeit millions of dollars in unlawful proceeds.

In January 2010, an Oklahoma man, who had worked for the prime contractor on another USAID contract in Afghanistan, pleaded guilty to aiding solicitation of kickbacks in return for favorable consideration of security contracts.

Concerns about the subcontracting process, however, are not simply about money. Poorly conceived, poorly structured, poorly conducted, and poorly monitored subcontracting can lead to poor choices in security measures and damage to U.S. foreign policy objectives, among other problems.

This hearing will explore whether, especially in a high-risk contingency environment, the government needs additional controls over or more visibility into subcontractor performance and costs to ensure the prime contractor is adequately managing its subcontractors.

For example, does the government need broader authority to access subcontractor records, even if the sub is working on a fixed-price basis? Limitations on oversight increase the challenge of deterring, detecting, and dealing with misconduct.

Let me add that this hearing has a positive side. We recognize that many, in fact most prime contractors and subcontractors have provided our military and other personnel in Southwest Asia with outstanding service in a dangerous setting that has brought death and wounds to thousands of them.

We also recognize that these subcontractors can offer useful observations and suggestions for improving the government's contracting systems. We look to them, as we have in the past, as well as to our government witnesses, for information and advice to consider as we continue our work.

Now we have three panels of witnesses today, so it will be a slightly longer hearing, which we'll try to manage a little better than if we had fewer panels. These panels represent the government, prime contractors, and subcontractors. All of them hold prominent positions in the organizations. We appreciate their service to their country, to their businesses and their cooperation in this hearing, which may be unique in focusing on subcontracting.

Panel one, the government panel, consists of Edward Harrington, deputy assistant secretary of the army for procurement; Patrick Fitzgerald, director, Defense Contract Audit Agency, DCAA; Cathy Read, director, Acquisition Management, Department of State; and Drew Luten, acting assistant administrator for management, United States Agency for International Development.

Panel two, the prime contractors panel, consists of Cheryl Ritondale, global director, procurement and supply management, KBR; Norm Powell, vice president and government business acquisition executive, Fluor Corporation; John Supina, senior vice president, business administration, DynCorp International; Chris Taylor, chief executive officer, Mission Essential Personnel.

Panel three, the subcontractors panel, consists of Fred Brune, president, Government Facilities Infrastructure, CH2M Hill, subcontractor, DynCorp; Perry Dalby, manager and ethics committee director, Tamimi Global Limited, subcontractor, KBR; Paul Hinks, CEO, Symbion Power Services, subcontractor to Louis Berger/Black & Veatch; Mark Kleckner, chief operating officer, McNeil Technologies, subcontractor to DynCorp; and Mark Krens, chief financial officer, The Diplomatic Group, subcontractor to Fluor; Jerry Torres, president and CEO, Torres Advance Enterprise Solutions, subcontractor to MEP.

Witnesses will offer brief summaries of their testimony. The full text of the written statements will be entered into the hearing record and posted on the commission's Web site. We ask that our witnesses submit, within 15 business days, responses to any questions for the record and any additional information they may want to provide.

So on behalf of the commission, we thank all of our witnesses today for participating in what we believe will be a very important hearing. I would ask our four witnesses for panel one to stand and I'll swear you in.

Raising your right hand, do you solemnly swear or affirm that the testimony that you will give before this commission is the truth, the whole truth, and nothing but the truth?

Note for the record that all four of our witnesses have responded in the affirmative.

And, Mr. Harrington, we'll start with you, and we'll go right down the line there. If you go over five minutes, we're not going to stop you right at five, but if you could stop around six if you go over five, that would be great. And if you need two more seconds, just let me know.

HARRINGTON:

Yes, sir. Thank you. Co-chairman Thibault, Co-chairman Shays and distinguished members of the Commission on Wartime Contracting, thank you for this opportunity to appear before you to discuss subcontracting.

I am pleased to represent Army leadership, members of the Army acquisition and contracting workforce, and our soldiers, who rely upon Army contracting to provide contractors and subcontractors to support our troops in expeditionary operations in a timely and efficient manner.

As you are aware, today more than ever the all-volunteer Army relies upon service contractors in order to utilize every soldier as a critical component of the mobilized force. Service contractors and subcontractors in Iraq and Afghanistan are escorting supply convoys, preparing meals, doing laundry, providing engineering and operations support, and freeing our soldiers and civilians to conduct tasks which must be performed by government employees and military personnel.

In a challenging and evolving wartime environment, the Army acquisition workforce has done a tremendous job evolving and identifying better ways to improve contractor selection processes and to ensure that contractors and their subcontractors meet all contract requirements. To track the deployment of contractors on subcontractor personnel in Iraq and Afghanistan, DoD uses the Synchronized Pre-Deployment and Operational Tracker system called SPOT.

After a contracting officer enters a contract into SPOT, the contractor enters and maintains data on their employees and the employees of their subcontractors operating in theater. The use of SPOT is mandatory. It provides visibility into the location and numbers of contractor and subcontractor personnel in theater.

Recently, the director of defense procurement and acquisition policy renewed the theater business-contract-administration delegation process, which requires that all DoD contracts for

performance or delivery in Iraq, which will include Kuwait and Afghanistan as of FY 2011, be approved by the CENTCOM Contracting Command prior to both solicitation and award. It allows CENTCOM Contracting Command to exercise control over the assignment of contract administration.

The theater business-clearance process, as well as enhanced training of contracting officers' representatives, are additional actions the Army has taken to improve the quality of contractor oversight in theater. Good contractor oversight by the government helps to ensure that contractors perform oversight of their subcontractors.

The Army has also taken actions to leverage our contracting resources, particularly as they relate to contingency contracting. I reorganized my staff to combine the current contingency-contracting oversight group with my contingency-policy planning organization.

For example, a robust contingency contracting after-action reporting process is now in review. This will allow military and civilians to readily report problems they encounter, local solutions, and success stories. As a result of an ongoing investigation by the U.S. Senate Armed Services Committee, which has identified problems with contracting and subcontracting for private security contractors in Afghanistan, I convened a working group to validate the scope of the problem and to propose contracting process changes as well as Army-wide solutions.

Our goal is to develop solutions that will withstand a variety of circumstances of future contingency operations. For example, we must look at risk assessment, not just dollar value, when we award our service contracts. Contracting is an art, not a science, and the U.S. Army recognizes the risks of contracting in a contingency operation.

We must ensure that America's integrity is not harmed by the actions of our contractors or our subcontractors. To that end, the U.S. Army remains committed to excellence in all contracting activities. Thank you. And I look forward to your questions.

SHAYS:

Thank you, Mr. Harrington.

Mr. Fitzgerald?

FITZGERALD:

Chairman Thibault, Chairman Shays, and fellow commissioners, thank you for inviting me to appear before you today. As requested, I will highlight the work the Defense Contract Audit Agency [DCAA] has done related to the oversight of subcontracts in a contingency environment.

I assumed the duties as the director of the Defense Contract Audit Agency in November 2009. Previously, I'd served as the auditor-general of the Army. Soon after being appointed, I communicated to our workforce and the acquisition community that supporting overseas contingency operations is a top priority of our agency. I've directed my executive team to work closely with the acquisition community to ensure we have adequate audit coverage for this high-risk environment.

Dating back to May 2003, we have supported contingency operations with approximately 250 auditors, who have volunteered to serve six-month tours in Iraq, Kuwait, and Afghanistan. In the last year we have nearly doubled our presence in theater. We have also increased our support to contingency operations at multiple agency field offices in the United States.

Through June 2010 we have issued more than 3,300 reports in support of in-theater contracts, reporting total exceptions of \$21 billion. As requested, I will briefly discuss the agency's audit results related to contingency operations and the subcontracts associated with those.

First, and probably most importantly, is that the Federal Acquisition Regulation clearly states it is the responsibility of the prime contractor to manage its subcontractors. Prime contractors generally do this through the operational effectiveness of their business systems.

As noted in the commission's interim report, adequate contractor business systems are the first line of defense against fraud, waste, and abuse. And I believe we need to hold prime contractors accountable for maintaining adequate systems. The bottom line is the government is at risk in cases where the contractor's business systems do not provide for ensuring subcontractors' costs are fair and reasonable.

For example, with respect to the three LOGCAP performance contractors, we reported their purchasing systems to be inadequate. One of the major weaknesses relates to the contractor not performing adequate cost and pricing analysis to ensure fair and reasonable subcontract prices. The lack of adequate cost and pricing analysis of subcontracts can adversely impact the prime contractor's cost proposals. Two recent agency proposal-audits illustrate this point.

In a May 2010 audit of KBR's LOGCAP III Task Order 151, we identified over 48 million of unsupported subcontractor costs. KBR had failed to obtain subcontractor proposals and conduct the required price or cost analysis.

Similarly, earlier this month we completed an audit of Fluor's re-baselining proposal under LOGCAP IV Task Order 2 that incorporated the impact of numerous change orders to the total task-order price. The change orders included proposed subcontract costs of about 35 million. We reported over 40 percent of the proposed subcontract costs as unsupported, because the prime contractor lacked sufficient supporting documentation. The majority of the proposed subcontract costs that we reported as unsupported were from subcontractors located outside the United States.

In addition, during our incurred cost and billing audits, we have identified situations where the prime contractor's business systems have not ensured that subcontractors' costs were allowable and reasonable prior to passing those costs on to the government.

For example, we suspended approximately 6 million of costs billed by DynCorp's business segment, Global Linguists Solutions, related to one of its foreign subcontracts. Our review of the billing disclosed unsupported billings from Al-Shora International General Trading and Contracting Company. Our audit showed the subcontract to be a cost-type contract, which required the subcontractor to provide actual cost data to support its invoices. To date, the subcontractor has not provided us with the cost data; therefore we have issued an access-to-records letter and suspended the billed cost.

Lastly, I want to emphasize that we take the issue of subcontract costs very seriously. It is a significant portion of the cost the government is paying for overseas contingency operations. And our experience has shown that it is a high-risk area.

As part of my testimony, I have included several recommendations for the commission to consider that I believe will mitigate some of the risks we have observed. In addition, as a measure of our concern, we have dedicated a significant share of our in-theater economy-and-efficiency audit to reviewing the prime contractor's monitoring of its subcontractors.

In closing I would like to say that I am very proud of the agency's highly skilled, hard-working, and dedicated auditors that support our important mission every day. In particular I would like to personally acknowledge the dedication of our auditors on the ground with our troops in Iraq, Afghanistan, and Kuwait. I would also like to acknowledge our auditors here in the States supporting this important overseas contingency work that continues to provide real value to the department and the taxpayer.

I appreciate the opportunity to testify before you today and would be glad to respond to your questions. Thank you.

SHAYS:

Thank you, Mr. Fitzgerald.

Ms. Read?

You're doing what I did, and that's to forget to turn my mike on.

READ:

Does that work?

SHAYS:

That works great. And you're an old pro. You know better.

READ:

I really do. It was the red button and the green button.

SHAYS:

OK.

READ:

Good morning, Chairman Thibault.

SHAYS:

Good morning.

READ:

Chairman Shays and commission members, thank you for your invitation to appear before you today.

I'm the director of the Office of Acquisition Management of the Department of State. I'm responsible for providing global acquisitions and logistics support for America's diplomacy. My office is responsible for 98 percent of the acquisition dollars of the department. This is comprised of mostly overseas construction, security services including Iraq and Afghanistan security programs, IT equipment and services, weapons abatement programs, and civilian justice and police training programs.

My office has about 240 acquisition professionals in Washington, D.C. and we have regional procurement centers in Frankfurt, Germany, and Fort Lauderdale, Florida. Generally, our largest and most-complex contracts are issued through my office and are monitored by our CORs [contracting officers' representatives] and program offices on the ground.

The subject of today's hearing, "Who Is Minding the Store," is very important to the Department of State as we ensure our fiduciary responsibility to the taxpayer and further

Secretary Clinton's diplomatic goals of a stable and secure Iraq and Afghanistan in this critical year.

In recent years, the unprecedented uptick in diplomatic activities, often in extremely difficult environments and increased security situations, has also resulted in a tremendous increase in our contracting activity. Our contracting activity has grown under my watch from 1.8 billion in 2001 to over 6 billion in 2009. Most of these additional dollars went into Iraq and Afghanistan.

The department has stepped up to meet this workload under difficult circumstances and at this time we have 12 significant service or construction contracts in Iraq and Afghanistan with approximately 102 subs. Subcontracted services include food, maintenance and repair, janitorial services, medical support, and logistics.

Our CO [contracting officer] takes seriously the oversight of prime contracting subs and generally requires the prime contractors to obtain the CO's written consent to subcontract prior to the award of any subcontract. As noted before, we have no privity with subs, so we rely on that prime contract to manage its subs under FAR [Federal Acquisition Regulation] Part 42, and we state it's the prime contractor's responsibility to manage all of the subs.

FAR Part 42 lists a number of considerations to be made in any award, but the principal consideration, in our opinion, when consenting to a sub, is whether the proposed sub is appropriate for the risk involved and, more importantly, consistent with current policy and sound business judgment.

The FAR also requires our flow-down of specific clauses to subcontractors, including those for audit, inspection, trafficking in persons, and socioeconomic requirements. We require that vendors include provisions for changes, termination, government property, in all their subs as well. In any event, the prime is responsible for performance in accordance with the terms of the FAR, whether or not part of that contract performance has been subcontracted and whether or not applicable FAR contract clauses have flowed down.

I want to give you just a couple of examples, if I may, of our subcontract management for Iraq and Afghanistan. For our OBO bureau, Bureau of Overseas Buildings and Operations, we have significant scrutiny of subs and employees on the ground. Contractors for the construction of the new office buildings must name their subs at the time of proposal and we have them as part of the proposal evaluation.

When we construct buildings, foreign firms receive local checks for adverse information. Contractor and subs going onto the site must have name and other records performed by the State Department's regional security officer in advance and in consultation with local officials. Each construction locale has specific processes.

For Kabul, for example, there is no equivalent to a police check and no country criminal database. The U.S. is working to build said database. Therefore, for our Afghan local workers, we collect the biometric info—fingerprints, photos, retinal scans, and biographical information using handheld interagency identity-detection equipment. Of course, we have an acronym for that, HIDE.

We transmit that data electronically back to D.C., where it's matched to DoD, FBI, State, DHS, and other databases. Results are received within a week. There is a similar process for third-country nationals, but we also send a records check request from the RSO [regional security officer] in Afghanistan to the RSO in the native country.

Our goal is to ensure the contractor and sub employees are not a risk to the public trust. Each approved construction contractor and subcontractor receives a badge then, and that is turned in daily and they undergo the retinal scan ID at the high-threat sites for entry.

Well, I want to thank you for allowing me to speak to you today, and I know I have 30 seconds left. I want to say our large accomplishment is putting about \$2.6 million, transferring money to DCAA to assist with prime contract audits at this time. We're very proud of that fact, and I would like it to go into the record. Thank you.

SHAYS:

That it will. Thank you, Ms. Read.

Mr. Luten?

LUTEN:

Co-chair Shays, Co-chair Thibault, commissioners, thank you for the opportunity to be with you today on this panel.

As the acting head of USAID's Management Bureau, I supervise central management systems and services, including acquisition and assistance. My bureau helps manage many of the operational challenges inherent in conducting U.S. development programs around the world.

USAID's in-country presence allows us to engage in in-country coordination and oversight for our development programs. These programs are designed to support the people of Iraq and Afghanistan by strengthening systems, strengthening institutions and local capacity, expanding economic opportunity, extending critical services, and supporting short-term stabilization activities.

Our activities in both countries are monitored by teams of USAID professionals. We have contracting officers and financial management officers in country. Our technical experts,

whether they be engineers or in education, health, agriculture, serve as contracting-officer technical representatives or contracting officer representatives or activity managers. Our oversight teams work under the leadership of senior managers, who ensure that we align our programs through broader U.S. priorities and goals.

Whether a program is implemented by a contractor grant, we monitor program performance closely to be sure that we're moving towards intended program results, that known program challenges are identified and resolved, and that financial reports are carefully reviewed and costs verified as reasonable and allowable.

In both countries our management includes regular reporting on program performance, including activity under sub awards, updates on financial status, weekly or even daily interactions with contractors and grantees, site visits when possible in light of security conditions, using other means of collecting information when site visits by contract managers are problematic. Midyear and annual assessments are also part of our oversight approach in each country.

If we become aware of a delay or a new challenge to a program, we work to address it directly with the prime contractor or grantee. In cases of waste, fraud, or abuse, our staff immediately contact our inspector-general staff in country. We demand answers while also pursuing corrective actions.

We also actively welcome audits and assessments from our agency's inspector general, from the inspector generals established for each country, and the General Accountability Office. We can say that indeed their work has helped us improve our operations and oversight in both countries.

With regard to subcontracts, we understand the commission's concerns. The challenges and risks that we face, that we see, working in contingency environments, can permeate to any level of an award to any level of program performance. Like our fellow agencies at this table, USAID follows applicable U.S. government regulations for the award and administration of federal contracts and grants and for granting consent for sub awards.

We do our best to ensure that we oversee our direct awards actively and effectively with the expectation that prime awardees have the responsibility for managing their sub-awards, and we do our best to protect the interests of the United States government.

For subcontract, primes are required to obtain USAID contracting officer written consent before making the subcontract award. The requested subcontract may be part of the initial proposal so that it's considered as part of the original award to the prime, or it may be presented later when the need is identified. The relevant FAR criteria that Ms. Read mentioned are followed by our contracting officers.

We hold each of our prime contractors and grantees responsible for program performance. We actively work with our primes to be sure that relevant issues determining the success or failure of our programs, and those issues that may involve performance of sub awards are identified and actively managed.

We take very seriously our responsibility to manage our programs. We work in Iraq and Afghanistan to be sure that the programs we fund are worth it to the American taxpayer. It has been a difficult job. It certainly will continue to be a difficult job. Even under challenging conditions, we can do better.

We've taken a number of steps towards doing better: increased staffing—both contracting officers and contracting officer representatives—increased training, a more-organized project management approach in many cases. All of this has helped tremendously. We will continue to work on strengthening our systems and actively manage each of our programs.

In both countries we're proud to work alongside our military and civilian colleagues to carefully safeguard U.S. interests as we move forward to transitioning to more Iraqi-led and Afghan-led development.

Thank you again for the opportunity to be here.

SHAYS:

Thank you.

Thank you all.

Thank you, Mr. Luten.

And thank all four of you. We're going to start out with my co- chair, Mike Thibault, and then Katherine Schinasi, then Dov Zakheim, Grant Green, Charles Tiefer, and then myself. And we have eight minutes the first round, but no new line of questions at seven-and-a-half minutes. We want to try to keep it at eight or some . . .

THIBAULT:

Cheez.

SHAYS:

Cheez.

THIBAULT:

Thank you, Commissioner.

SHAYS:

OK.

THIBAULT:

I want to make a quick comment about the Commissioner's statement that I thought of, Commissioner Shays, my co-chair, as he was making it.

Probably the one thing that was missing is in one of the pages he has three cases of convictions, guilty pleas, for companies and individuals. I was thinking that we've used in the past poster boards, and it would have been—I'm a real believer that that's excellent work that results in deterrence for other individuals. And we, the commission, in that statement kind of handled it in a soft way.

My sense is we should have had their pictures on boards. We should have had their names, we should have had their companies, and we should have had their hometown. So and I know that everybody flies from a discussion of the word "crook," but that's what it is, whether you're invading someone's house or invading a U.S. government contract and taking advantage of it.

So maybe next time we'll put some pictures in, because that's the greatest deterrent in my perspective is to publicize the great work done by investigators and by inspectors general.

I only have one quick comment for you, Ms. Read, and that is I also am pleased by your \$2.6 million comment about audit because, as you know, a couple of years ago the commission had a concern, but what the commission said that was it was one case where we said we would back off and let the State Department do the right thing by ratcheting up your contract oversight. And that's an excellent direction of doing the right thing, so thank you.

I want to do some old business or process some old business first, and then I'll get on.

Mr. Harrington, you've been up in front of us before and done an excellent job, been an excellent witness.

By the way, thank you, all of you, for appearing here today.

We had quite a lengthy discussion with you and Mr. Motsek at a prior hearing a couple of months ago about past performance. And at that hearing we walked through a situation where

one of our companies that's going to be testifying, Torres, we were concerned that past performance did not appear at all to have been considered. And we requested at that hearing feedback on the facts.

And when we were in theater, we requested a point paper from the commander of Joint Contracting Command, or if it's Joint Theater Support Command now, you know, it's changed, and a new organization that this commission also thinks makes sense, and we asked for that. And we haven't received it.

And when we were in theater, we asked for it. We said, "Give us a point paper, because what we were told is for task orders, and everything's a task order. Past performance wasn't considered." And we've been hanging out there now for a couple of months. We've got trips coming up in the very near term, and it's critical. That was security, security contracts left and right.

Can you tell me the status of that and whether you have seen this analysis that we ask for?

HARRINGTON:

Sir, I'll get the status for you. I have not seen the analysis, so we owe you a response and a point paper. And I'll review the point paper on its way to you.

THIBAULT:

OK. And this isn't the question for the record of this hearing. This is a question for the record of the last hearing. So don't think of it as we have a new due date. There is no new due date, you know. You've been excellent in appearing in front of us, but this is not acceptable.

We were told when we were in theater that and I refreshed my notes and talked to other individuals; I don't know why I have an echo, but I'm doing the best to get rid of it—we were told that that would be forthcoming shortly. And it's really important, because contracts are being awarded constantly. And that's just unacceptable on the part of Joint Contracting Command to not be responsive.

I want to talk a little bit, since you're the Army, Mr. Harrington. You can represent the Army, and in this case INSCOM [U.S. Army and Intelligence Security Command], that has a very large interpreter contract in Afghanistan with Mission Essential Personnel, another organization that's going to be appearing before us today.

And we were concerned, because to use data that we have been provided, it's a great American success story. In 2006 they were a \$70 million company, auditable-volume sole government. By 2008 they were a \$250 million company of actual costs subject to audit. That's pretty good

growth. And this year it's estimated that it will be 430 million. And they were just awarded a 1.5 billion contract.

Now, that's a great American success story. What we did, and it's the reason why this contract oversight business is so critical from the planning and the execution viewpoint, that's a great success. But so the question is with that kind of growth, history shows small businesses—and they were a small veteran-owned business—have a real challenge in their business systems keeping pace.

So we said that's really important and subcontractor-purchasing system review, the benchmark with Defense Contract Management Agency. We asked the Army INSCOM, "OK, with all that growth, and you just awarded the contract, and it was sole-source 1.5 billion. OK, have you done this contractor purchasing-system review?" And we got a note back that said, "We have not requested a risk analysis from DCAA or a CPSR [Contractor Purchasing System Review]." That's their words.

That's inexcusable. We asked, "Are you the ACO [administrative contract officer] on the contract or has it been delegated?" ACOs keep track of everything that's going on in that kind of growth. And the answer we got back is, "We are the PCO [principal contracting officer], and this contract has not been delegated." I guess that means they're just going to do it all themselves, but they didn't say that.

Now, my point is we're here talking about subcontracts today. We've got a \$1.5 billion new award, five-year award. We've got a great success story for a company and I'm worried about whether there's audit coverage.

Now, Mr. Fitzgerald, I spent time with you, and I want to say I am duly impressed by the work of DCAA. I want to be on the record for that. But I know, based on coordination with you and your staff, that this was a miss, that the contractor actually provided three of their submissions, I believe, and two of them they haven't, but one of them is scheduled. That's the arcane part of auditing. But the bottom line as of a week ago is none of these audits have been completed. That's correct, right?

FITZGERALD:

Yes, sir.

THIBAUT:

And my point is, is for all the great work of focusing on established companies, we're starting to run into examples of these great American success stories that are out there, and suddenly

they've gone from 17 million to well over \$1 billion in accumulated costs that have never been audited. No one's looked at their systems of management and the like.

To me the question really is—and I'm going to ask you this but I want to make two more points. The question is—and I'll save the question; you can be thinking about it—audit planning, what kind of actions you're taking for completeness of audit planning, and on my next pass I'll cover there.

But the point I really wanted to make throughout this process Mr. Fitzgerald, and I tip my hat to you, is in your statement you outline—and for me that's the centerpiece of this entire hearing—you outline that there are \$93.2 billion of costs, contract costs, that have been awarded in theater, Iraq and Afghanistan, and that DCAA, your auditors, you know, understaffed and in a really challenged environment, have taken exceptions to \$21 billion: 93 billion in contracts, 21 billion in exceptions.

If you think about that, that's quite a bit of money. If you think about the relationship between 93 billion and 21 billion, what's going on here? We're not talking about a few million here and a few million there that someone could say, that's the price of doing that much work.

So I'd like you to think about all that, because I'm going to explore that with you. And I commend you for your work, but I'm going to explore how can we be sure that we've got them all in terms of audit oversight and coverage. And I also want to commend the Department of Defense for starting to give you staff. But that doesn't remove us from the point of we need this coverage. Thanks.

SHAYS:

Thank you.

Ms. Schinasi?

SCHINASI:

Thank you.

Good morning, and thanks for being here today. And I'm going to maybe put some questions on to my colleague's statements here.

I'd like to start with you, Mr. Fitzgerald, to say you come to us with a good-news story and a bad-news story. So the good-news story is that you are on the case and that you are reviewing these contracts. The bad-news story is, of course, what you're finding.

And I find it very disturbing that all three LOGCAP IV contractors have been found—you've determined that their estimating systems are not adequate and also that it's been determined that their purchasing systems are not adequate.

These are three pretty large, apparently sophisticated companies, and I just don't understand how companies can run their businesses without understanding, you know, what their cost structure is and how they purchase goods and services, and let alone how they pick their subcontractors, and can assure the government that those subcontractors are performing the functions that we're paying them to do.

So I guess I turn to Ms. Read and say I understand the State Department is also considering using the LOGCAP contract. Are you aware of these findings from DCAA and DCMA?

READ:

Yes, we are.

SCHINASI:

And would you use those findings in your consideration of awarding contracts under LOGCAP?

READ:

Yes, we will. Now, for LOGCAP my . . .

SHAYS:

I'd ask you to bring your mike just a little closer.

READ:

I'm sorry. Is that better?

SHAYS:

Yes.

READ:

OK. As our LOGCAP contractors go, RCOs [regional contracting offices] do not award. We MIPR [Military Interdepartmental Purchase Request] the money, in fact, to DoD, who makes the final determination whether additional money should be placed on LOGCAP or not.

SCHINASI:

For those contracts that you award directly, are you aware of contractors . . .

READ:

Yes, we are. DCAA shares everything with us.

SCHINASI:

And do you bring them in on every contract—are all the contractors you used reviewed by DCAA and DCMA?

READ:

As much as possible, and our major contracts definitely are. We are encouraged with DCAA assistance these days. We've brought them in for our major contracts. It's been a big turnaround for the department.

SCHINASI:

All major contracts in Iraq and Afghanistan?

READ:

What we consider major, yes, for us. We have many small ones as well, but on our larger contracts, definitely. Security services and our civilian police contracts, yes.

SCHINASI:

OK.

Mr. Fitzgerald, in your statement where you talk about unsupported costs, you make reference to the fact that you are sometimes refused data that you feel you need to do your work. And you go through a series of steps when an offeror refuses to provide you data, the steps that you can

take. One of those is to record that in a past-performance system. Do you do that directly? Are you aware of whether or not that has been done? And do you do that directly?

FITZGERALD:

Commissioner, we do not do that directly. That would be the contracting officer to reflect that the information wasn't forthcoming and putting that in the record so it could be considered as we move forward, if that had to be awarded anyway.

What we can do, though, is if we don't find good supporting documentation for the invoice cost on the back end of the contract, we can suspend those costs until we get additional documentation to support that those invoices are fair and reasonable.

SCHINASI:

I guess what I'm interested in is contractors who are not providing the services that we are paying them for. Are those contractors continuing to get new contracts? So it seems to me the knowledge that you have as you do your work would be appropriately and beneficially shared throughout the government, not just throughout the Department of Defense. So are you aware of whether or not contracting officers are putting that information into a past-performance database?

FITZGERALD:

Commissioner, I'd have to get back to you on that. I don't know for sure. I know we make sure that the ACOs are aware of the issues that we have, but I'm not positive. I don't know that we have checked to make sure that the ACOs are reflecting that in the past-performance database.

SCHINASI:

OK. And . . .

FITZGERALD:

In all cases.

SCHINASI:

Mr. Harrington, I would just make that comment to you. I think it's really important that the work that DCAA does is put into a database. If it's not there, it can't be used. Of course, using it is another problem and whether or not contracting officers actually use that when awarding contracts.

Mr. Thibault gave you one example of not being able to find past performance when we went and looked, and that's not the first time that we've looked and not been able to find. I think that's something we will probably keep pursuing, and you can expect more questions on that.

Mr. Luten, our understanding is that the contracting officers in USAID rely on their own experience. We're aware of the decentralized nature of contract management in AID and that, really, it's about what the people in the field and what they know about companies that determines whether or not those companies continue to get contracts. Is that a correct statement?

LUTEN:

I think that's part of the information that they use, but they also check past-performance information centrally as well, I believe. There are also, you know, audit information and so on that's available. But that they do rely on both their own information as well as . . .

SHAYS:

I'm going to ask all our witnesses to put their mikes just a little closer. We can hear you, but it would be nice to hear you better.

LUTEN:

So it's beyond just localized knowledge.

SCHINASI:

And what databases do they use?

LUTEN:

There's the government-wide past-performance database. But those are, I agree with, you those are an issue because they are often incomplete.

SCHINASI:

Incomplete in part because they're not populated by the people who understand what the . . .

LUTEN:

Right. It's a crosscutting issue. It's not just for Iraq and Afghanistan. This actually is an area that I think all of the contracting community and contracting agencies need to get pushed on more.

SCHINASI:

Is there anything in the training that you do for your contracting officer representatives or the technical representatives of the contracting officers themselves that highlight the need to do this and the importance of using it?

LUTEN:

There is, but again, the challenge is getting it actually done, I believe. So that the training and the people are aware of the rules, are aware of the policy and the requirement to do it, but the consistency in actually implementing those policies I think is inconsistent.

SCHINASI:

Any ideas on how to get more consistency on that?

LUTEN:

Repeating the message, more training, improving systems, I think. But as to specific proposals, we could offer some of those.

SCHINASI:

Yes, lots of times when the incentives don't work, then enforcement and penalties seem to have a better shot of . . .

LUTEN:

Yes.

SCHINASI:

. . . of getting cooperation. I think particularly one of our witnesses in later panels has talked about, you know, a dozen, as many as a dozen contracting officers over the course of a project. And it seems to me that that's kind of difficult to get continuity of knowledge when we have that kind of a turnover. And I know that's true not just for USAID projects, but across the board.

One of the things, if I turn back to you, Mr. Fitzgerald, for a minute, one of the things that determines whether or not you can get into books and records of contractors is whether or not a contract is competitively awarded. My understanding right now is that a contract can be deemed competitively awarded when there's only one bid. And do you accept that definition of competition?

FITZGERALD:

Yes, Commissioner. I mean, the existing guidance that's out there right now says if only one bid comes in—more have been requested, but if only one bid comes in—the existing guidance says that that is deemed a competitive environment.

One of my recommendations is for us to look at that very closely as we move forward, because we feel like there should be some questions being asked if we sent a request for proposal out to five responsible, qualified vendors, why did we only get one back—and to ask some follow-on questions there.

SCHINASI:

Guidance is one thing, but I don't think you'd find any economist who would say that one bid constitutes any kind of economic competition. And that's where we expect to get the discipline in the market to substitute for the oversight into a company's books and records.

Thank you. My time is up.

FITZGERALD:

I couldn't agree with you more.

SHAYS:

Dr. Zakheim?

ZAKHEIM:

Good morning, lady and gentlemen.

Let me start with you, Mr. Fitzgerald. We hear from a number of the primes that firm-fixed-price contracts for subs are a good thing for the U.S. government. Do you think so?

FITZGERALD:

Mr. Commissioner, if they are competitively awarded in an environment that allows true competition, I think that they make sense in that regard.

ZAKHEIM:

But you just said that you could competitively award to one contractor with nobody else bidding. I mean, to my simple mind it's hard to understand the competition. Is that a good thing for the U.S. government?

FITZGERALD:

No. That is where we have sort of took an issue and questioned these costs when we've only got one bid coming in. We have, you know, really questioned whether are we really operating in a true competitive environment in that point. And if we're not, we think we'd be better served by doing some cost and pricing analysis and getting some cost data to really evaluate whether we're getting fair and reasonable prices.

ZAKHEIM:

And what's preventing you from doing that?

FITZGERALD:

Well, at the back end we use suspending those costs to work as a stick to get that additional information so that we can make a determination whether the costs are fair and reasonable.

ZAKHEIM:

How successful have you been . . .

FITZGERALD:

Usually, when we suspend costs, we were able to get additional data.

ZAKHEIM:

And how often is that?

FITZGERALD:

We have done it fairly frequently, Mr. Commissioner.

ZAKHEIM:

Can you give me a sense—a hundred, a thousand? I mean, there's lots and lots of subcontracts out there.

FITZGERALD:

I'll . . .

ZAKHEIM:

What percent of the time, would you say you've done that, 10, 50, 70?

FITZGERALD:

Mr. Commissioner, I'd have to . . .

ZAKHEIM:

Could you get that back to me for the record, please?

FITZGERALD:

. . . get that back to you. Yes, sir.

ZAKHEIM:

OK. Thank you.

Ms. Read, you say in your testimony that the largest and most-complex contracts are issued from your office and monitored by CORs on the ground. So how many CORs do you have in Afghanistan right now?

READ:

Exact numbers we would have to get back to you on.

ZAKHEIM:

Within 10?

READ:

For each major program there is one, so we have 12 major contracts that we would have 12 to 15.

ZAKHEIM:

So that's both Iraq and Afghanistan, correct?

READ:

Mostly, yes. We also have government technical monitors. So we only have one bellybutton from a core perspective, and then we have layers and layers of oversight at different levels.

ZAKHEIM:

And let me ask you this. Could you talk to me a little bit about the process for getting a better handle on what subcontractors are doing? Your testimony really didn't talk too much about that.

READ:

I express in the testimony the construction part of it, but in the INL [Bureau of International Narcotics and Law Enforcement Affairs] world with CIVPOL [International Civilian Police], our CORs on the ground supervises—not necessarily supervises, but watches over all subcontractors. But they also approve every subcontractor that the prime contractor puts out for us to look at.

So they have a handle on who's in country, who's not in country. They know which subcontractor is there. If there is a subcontractor that's been proposed by the prime that we have past-performance records on or that in the past, because it's a very narrow margin for CIVPOL, who actually goes in theater and who has experience, then we will tell the prime we do not approve of that sub.

ZAKHEIM:

But that assumes that you have past-performance information. Mr. Luten just said that you don't always have it, so in fact how often would you say you have it and how often are you simply going by seat-of-the-pants?

READ:

I think in our world 85 percent of it is based on past performance for a civilian police entity. It's the subs that are used over and over again under the primes that we utilize. But the COR on the ground, we talk to him daily. He talks to his CORs on the ground back here in Washington daily. I mean, that's the strength of State.

You all are so much larger than we are. I talked to the RSO in Afghanistan on Friday. I said, "Tell me your process. Tell me what you do with OBO [Bureau of Overseas Building Operations]. What's going on with DS [Bureau of Diplomatic Security]? Can you touch everybody in theater?"

ZAKHEIM:

OK.

Mr. Luten, I guess I'm a little surprised State seems to be able to come up with past performance, but you're having more difficulty. Let me ask you this. You say in your testimony your activities in Iraq and Afghanistan are monitored by teams of AID experts. Do these folks leave Kabul?

LUTEN:

Yes.

ZAKHEIM:

OK. And so you have people in the field monitoring all the contracts outside of Kabul all around Afghanistan and Iraq, correct?

LUTEN:

We rely on both our staff in Kabul as well as staff that's deployed to the field to provide information. The challenge, I think, is for the specific contract managers to get out of the capital to the field.

ZAKHEIM:

So, well, do they? I mean, how many of them go out there? Can you give me a sense of that? Again, just a percentage, if you can't give me a hard number—10 percent, 50 percent? How many people are actually out in the field?

LUTEN:

I don't have the number right . . .

ZAKHEIM:

No, I told you I don't want a number. I want a percentage. You can give me a rough percentage. You ought to have a handle on that.

LUTEN:

I think our contract managers will visit their sites once a month.

ZAKHEIM:

That's the frequency of the visit, but how many of them are out there? What percentage of the people are out there?

LUTEN:

I'd have to come back to you with that.

ZAKHEIM:

OK. I'd like that for the record, please, because I get the sense that your folks are not out there as much as perhaps they should be.

What's your sense of firm-fixed-price subcontracts? Does that make your life easier or harder?

LUTEN:

I think it very much depends on what the purpose of the subcontractor is. I think that in the short run we probably need to put ourselves in a position to do the cost and price analysis better. We have relied too much over the years on cost-reimbursement contracts, so that is something that we've been working towards.

I think for certain types of activities, it would be better.

ZAKHEIM:

You think it would be better. Are you aware of the fraudulent actions of the USPI [US Protection and Investigations] subcontractor to Louis Berger under the Rehabilitation of Economic Facilities Program?

LUTEN:

This is the firm where the principals were suspended?

ZAKHEIM:

Yes.

LUTEN:

Yes.

ZAKHEIM:

OK.

LUTEN:

I mean, generally aware of it. I don't . . .

ZAKHEIM:

Did you review Louis Berger's purchasing systems? And Berger's been doing this business, I know, in Afghanistan since late 2001. Did you review their business systems?

LUTEN:

I don't know if there was a review of the purchasing system. There should have been a specific request to approve the subcontract and approval of the subcontract by the contracting officer.

ZAKHEIM:

What's your assessment of their business systems right now?

LUTEN:

I don't have that system assessment.

ZAKHEIM:

You don't have an assessment of a prime contractor that's been working for you for nine years?

LUTEN:

I would have to check with my staff and . . .

ZAKHEIM:

That's an awful long time. I mean, if somebody was working on my house for nine years and I didn't have any assessment of them, somebody would confine me somewhere. I'd like something on the record, please.

LUTEN:

OK.

ZAKHEIM:

Thank you very much.

Thank you.

SHAYS:

Mr. Green?

GREEN:

Thank you.

Ms. Read, does State today have adequate personnel both in quality and experience to oversee the contracts and subcontracts that you have in place?

READ:

No.

GREEN:

OK. Thank you. You know, oversight of contractors is one of the cornerstones of what this commission is all about. And we've even had hearings on— it, the shortage of people, and so forth. Today we're looking at a subset of that, and that is the oversight and the control of subcontractors.

In your testimony you talked about subcontractors, but I heard very little about your concerns and the difficulties that you face. That being said, I'd like you to focus on an issue that I think is terribly important, a subject of a recent special report that was put out by this commission. And that is the transition in Iraq.

As you know as well as anybody in that building, this is a huge undertaking for the State Department. And with the increase in contractors and subcontractors that you will no doubt have to engage, I think there are opportunities for many difficulties, and I use that word kindly. I would like you to talk about what the department's plans are to support this huge increase, which will occur in a very, very short time.

Even if the requests to the Department of Defense are partially approved, how will you provide that kind of oversight to contractors and subcontractors, plans for how you would deploy

this people. Are they going to continue to work out of Washington and Frankfurt? What are you going to do to provide. How will you recruit them? How will you train them? And will you use contractors to oversee contractors?

Now, that's a complicated question with a lot of potential answers, but I'd like to give you my remaining five minutes to talk for as long as you can about that, because I think the opportunities for problems are huge.

READ:

Thank you, Commissioner Green. It is an unprecedented challenge for the department in the transition talks. And as everyone is aware in the room, we're meeting constantly at the highest levels of the department and DoD, talking daily about the transition from DoD to a more-civilian workload and how we're going to accomplish that.

From the contracting side, we are all involved at various levels with our program offices—diplomatic security, INL, OBO, and the massive LOGCAP contract. What happens to all the property? How is that accounted for? How would that move from DoD books back to the Department of State? What's valued as appropriate to move? What is still in workforce? And then the millions of contractors that reside with DoD on their roles and what work is needed to continue.

That being said, each program office we're relying on, just like we stood up the mission in Iraq many years ago—let's take a look at what DoD has. Let's take a look at what is needed, figure out how we're going to do oversight, and then let's put it in play. The NEA [Near Eastern Affairs] bureau has dedicated resources on transition. Under Secretary Kennedy it's also actively involved in discussions with DoD.

That being said, Mr. Green, it is a huge undertaking. I do not have adequate personnel to take it on right now. Because we've moved to a fee-for-service organization, there's some extra dollars there to speak of that we can hire some retired annuitants, perhaps, and put them on the ground. But we believe it will be essential to have adequate people both in theater and back here not only to monitor the transition, but to move forward.

In the talks they're having now, DoD is possibly looking at moving someone into our office on a temporary basis, which would be very helpful. The other thing we've done in Afghanistan, which isn't part of the transition but Iraq, Ambassador Todd is now in Afghanistan, the former U.S. Department of State OIG. He's looking at a taskforce there for oversight in theater. It is feasible that some of that could possibly be moved on to Iraq. We just don't know.

But it's quite an undertaking that we're taking very seriously, and we're not quite sure of how to come up with the resources to manage it.

GREEN:

Yes, I would agree with you. I think, you know, the clock is moving.

And if you're going to have to go out and recruit folks, even annuitants, and then give them the adequate training and then decide where are we going to put these people, how are they going to oversee the literally hundreds of contracts that will be put into place, not to mention the difficulty in monitoring subcontractors, which there are probably thousands, I just don't know how you're going to get it done.

And I would think that there would be a lot of thought today about how many people you need, how many contracts are there. I realize some of these things are unresolved with respect to LOGCAP and what's going to happen with that.

And the support out of Defense Logistics Agency is a possibility, but even so, you're going to have to have, even if it's a LOGCAP contract, you're going to have to have a lot of people on the ground. And I would hope that the thinking is in-country, and I understand the models that State uses in overseeing contracts, and I think under normal circumstances it's probably fine, but not when you have hundreds and hundreds of contracts in country. You can't do it out of here.

READ:

I agree.

GREEN:

That's all.

THIBAULT:

Thank you, Commissioner Green.

Commissioner Tiefer, please, sir?

TIEFER:

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

Normally, I'm the teacher, I'm at the University of Baltimore School, but on the subject of subcontracting, with your 30 years of experience, I am the pupil and you are the teacher. So let

me start. I found your statement, Mr. Fitzgerald, very helpful. I want to try to pull some of the things in it and look for some nuances in them.

Your statement cites \$21 billion, and Mr. Thibault noted that as well, in DCAA exceptions for in-theater contracts. You have a technical term for it. I would call it contractor waste or potential waste. I know you have more technical words. And you also point out that LOGCAP has 30 to 50 percent in subcontractors.

Now, if I were permitted—and I am permitted to do the math this way, because I'm not under the auditing standards you are—but even the lower end of that range would be that today we are talking about \$6 billion in what DCAA has found in subcontractor-related waste. Can you give us some sense of what the scale of subcontractor-related issues is in money terms?

FITZGERALD:

Well, Mr. Commissioner, on the one instance we talk about in my written testimony with respect to the DynCorp proposal, when you look at that, it was a proposal of about \$800 million. Our audit showed that about 500 of that, 500 million of that 800 million were costs associated with subcontractors.

TIEFER:

Only 500 million?

FITZGERALD:

Five hundred of the . . .

TIEFER:

Five-hundred million.

FITZGERALD:

Five-hundred of the 800 million, yes.

TIEFER:

OK. All right. Well that's half. You're halfway to real money at that point. Let's take that as the first instance. I was looking through your statement for when foreign subcontractors, which are a

particular interest of mine, perhaps of ours, the one you just mentioned is the first one, the foreign subcontractors of DynCorp.

And I'm going to tick the rest of them off and then see whether we have a big enough problem to require new authority. You mentioned that KBR has, this is on page 7, that KBR has \$48 million in unsupported costs for what I believe are many, if not most, foreign subcontractors. That's two down.

Your testimony page 12 talks about \$6 million suspended. You mentioned that earlier. I found in a Form 1, and check me if I'm wrong that in that instance/ the subcontractor, Al-Shora, was quoted as saying, "Al-Shora has denied the auditors access to its records. Al-Shora stated it previously never had to provide data for audit, nor is it required to, per Kuwaiti law." So that seems to be the background we're facing.

Let me finish off the last two and then ask you what we need here. One was Fluor for change orders. You mentioned that. Subcontractors didn't give the needed data. And the last was Supreme Foods. And the DCAA had suspended payments of Fluor's. I understand that to be Supreme Foods.

Do we have a big problem with getting access to the records of foreign subcontractors? And if we do, what do we need in order to tackle the problem?

FITZGERALD:

Mr. Commissioner, when the prime contractor doesn't do the cost and pricing analysis that's needed to be done, and that breaks down, it puts us in a very tough position to try to get access to determine what is the fair and reasonable price associated with those subcontract costs.

We use it at the back end when we're looking at the billings and the invoices. If we still don't have the documentation or support that those costs are reasonable, fair and reasonable then we use the suspended-cost tool to try to bring that information to the table.

So I guess what I would say is we'd like the system to work as designed and have the prime contractors do what they need to do to make sure the subcontractors' costs are fair and reasonable. But when that does break down, we could benefit by having some access to some contractors' cost data.

TIEFER:

Direct access to the subcontractors' cost data.

FITZGERALD:

To try to determine what is fair and reasonable at that point.

TIEFER:

Good. There are two matters which I want to see. We'll be talking with panels two and panels three about this, the primes and the subs, and I want to make sure they're still being looked into by DCAA. And I'll put them both to you and then ask.

One is referred, has gotten the nickname "the tainted-subcontractor problem." It's an instance in which Tamini's purchasing supervisor, Mohammed Shabbir Khan, was convicted of kickbacks. So were the KBR people on the other side of the transaction.

And I believe it's been noted that DCAA is looking at the other subcontracts of those purchasing managers to see whether, besides the very small number involved in the prosecution, there is as much as \$300 million out there of challengeable costs. And I think you're still looking at that.

The other one I want to ask about is that you did a survey, or you had KBR do a survey, of unallowable security costs, that is, security subcontractors whose charges have been passed up the chain and should not have. I'm not going to get into the details, the merits of that. That's not at all what interests me.

What interests me is the access to records, that you asked KBR to survey its subcontractors and that what came back from the subcontractors was quite inadequate. A billion dollars worth of subcontractors didn't even answer. Another hundreds of millions of dollars of subcontractors, including Tamimi, gave back something like a quarter of 1 percent on the dollar. Are those still open matters at DCAA, those two?

FITZGERALD:

Commissioner, to your first point, you know, our concern was one, your terminology, the tainted contracts, is that we wanted to look at, we wanted an analysis to be done of every contract that those folks were involved in, not just the ones that were specific to the issue.

And so, yes, we're still working that. We're providing investigative support on the tainted contracts, and we're still working the security costs.

TIEFER:

I only have 30 seconds, Mr. Chairman, so OK.

Mr. Harrington, I don't want you to feel left out. And I consider you a very straight shooter, and I'm always glad to catch up with facts with you.

(LAUGHTER)

Sorry. Our notes show that two of the three LOGCAP contractors will be primes on our second panel. DynCorp and Fluor have both had their purchasing systems effectively disapproved by DCMA, which is under your jurisdiction. And I would normally consider this a major step. The purchasing systems—my understanding is that they're the front line of defense against the subcontractor issues we're looking at today.

Now, suppose DynCorp and Fluor were to make light of this as not very serious, it has not been done for very serious issues, they're on the way to compliance, indeed they feel they've already complied—is that your sense? Have they already complied and so we shouldn't be beating a dead horse by asking them questions on this?

HARRINGTON:

Sir, that's not my sense. We meet with the CEO, COO, program managers on a quarterly basis. We've not done it this most recent quarter, but we intend to by the end of August, early September, again with, for instance, Mr. Fitzgerald and some of his staff, with the Department of Defense staff on this, with the Army Contracting Command, the LOGCAP program office, to review the corrective actions being taken on these business-system deficiencies.

So it's a serious matter with the Army, as it is with DCAA, DCMA, who participates in these reviews with us also, as we address them with the CEO, COO, program managers, CFOs that come to these meetings with us. So our intent is to continue these reviews at a senior level to confirm that these deficiencies have been corrected.

TIEFER:

And so I get it your meeting with the very top officials in these companies, and they are still not in compliance. They may be trying, but they're not in compliance yet.

HARRINGTON:

Yes, sir, exactly. It's a matter of progress through the corrective actions necessary.

TIEFER:

Thank you, Mr. Chair.

SHAYS:

Thank you, Mr. Thibault.

There is a view that if the government gets involved in a dispute with a sub, between a sub and the prime, that the government owns it. Do you hold that view, Mr. Harrington?

HARRINGTON:

Sir, in some regards, yes.

SHAYS:

You are about to say something else. I was . . .

HARRINGTON:

Yes, it depends on the circumstances, sir, but typically, we do not become involved in those disputes unless they are germane to the prime's performance and how the prime executes its responsibilities to the subcontractors.

SHAYS:

Would any of the three panelists disagree with that or have any addition to it?

So I'll assume that your answers are the same as Mr. Harrington's.

Mr. Fitzgerald, I'd like to get a little bit of a better sense. We talked about \$93 billion worth of contracts. This includes contracts not just to DoD, but to State and to USAID. You made reference to 93.

FITZGERALD:

In my written testimony, we had 93 million of contract . . .

SHAYS:

Billion.

FITZGERALD:

Billion. I'm sorry, 77 billion has been awarded to date in theater, based on our audit work.

SHAYS:

It's been obligated, but the question is that we're not just talking DoD. We're talking State and USAID, correct?

FITZGERALD:

I believe so. Yes, sir.

SHAYS:

I saw in your statement 19 billion and the reference to 21 that you took exception to. Is it 19 or 21 again? Just tell me what that . . .

FITZGERALD:

Chairman, it's 21.

SHAYS:

And of the 21, ultimately, you had initial disputes, but you concurred ultimately that most were valid, or what?

FITZGERALD:

Well, we . . .

SHAYS:

How much is outstanding of the 21?

FITZGERALD:

Technically, we categorize it in two ways. One is unsupported costs and one is questioned costs. The unsupported is usually where we don't have enough documentation to know whether it's right or wrong. It's sort of like a disclaimer.

SHAYS:

Yes.

FITZGERALD:

On the questioned costs, we do have documentation, and we believe that that cost is not valid, so that's the . . .

SHAYS:

And how much are the questioned costs? You know, we get numb, you know, when you're talking about billions and billions and billions. But how much would be the . . .

FITZGERALD:

1.1 billion . . .

SHAYS:

OK.

FITZGERALD:

. . . to date in FY '10 was questioned costs.

SHAYS:

So I just wanted to . . .

THIBAUT:

Might I ask another clarification to see if you agree with this, that the difference, the unsupported costs, are just a royal waste of everyone's time then, because by not properly

supporting a claim or a proposal, you're going back and forth, and communication that's sometimes distorted, and they're going back and forth, and communication that's sometimes distorted, and if they get this down right the first time, the procurement process will be a whole lot more efficient? Do you agree with that statement?

FITZGERALD:

Commissioner Thibault, that unsupported causes us a lot of re-work back and forth, yes. I agree with your statement.

THIBAULT:

That's why you're spending—it's a big reason why you're spending so much having to add so many staff, because what you're getting the first time doesn't work always.

SHAYS:

Mr. Luten, I'll start with you and go down. Of all USAID contracts, how much are we talking about total? And how much do you believe are subcontractors versus the prime?

LUTEN:

I regret that I don't have that information. I think that for Iraq and Afghanistan, I think that the construction activities are largely subbed. I think that the other activities, I'm not sure I can give you good estimate, sir.

SHAYS:

You know, this is a hearing on subcontracting, and we would like to get a handle somehow on are we talking generally with each of your agencies, departments? Are we talking 30 percent, 50 percent, 80 percent? It is of interest to this commission.

Ms. Read? Ms. Read?

READ:

Sir, for Iraq and Afghanistan, we have 12 significant service or construction with 102 subcontractors there is approximately there. It could be off one or two. If you're asking for what

I've obligated last year as far as numbers, I can get you those. And subs, I do not have that with me.

SHAYS:

Well, I just want a sense of the universe we're talking about. How many billions are we talking about? And how much do you think ends up going to subs?

READ:

We did 6 billion in fiscal year 2009, roughly.

SHAYS:

And how much . . .

READ:

I'll have to get back to you on sub numbers. I just don't know that.

SHAYS:

OK.

Mr. Fitzgerald?

FITZGERALD:

Chairman, we have, you know, done extensive work in the LOGCAP area, and in my written testimony we talk about 30 to 50 percent.

SHAYS:

OK. I'm just surprised by the 30 to 50 percent. You know, if you had said, like, between 30 and 32 percent, then I wouldn't be surprised. But it's, like, who gives a damn? So maybe it's not an important question. But why wouldn't we be able to know?

FITZGERALD:

Well, the way we came up with the 30 to 50 percent was to look at the three LOGCAP contractors and over the time, saying one is at a low of using 30 percent of their dollars to subcontract costs, and the high is 50 percent. We've obligated about 44 billion to the LOGCAP program.

SHAYS:

We do have the legal right to know how much a sub is getting paid, correct?

Do we?

SHAYS:

Yes. I mean . . .

Mr. Harrington?

HARRINGTON:

Yes, sir, we do.

SHAYS:

Right.

HARRINGTON:

Absolutely.

SHAYS:

And so, what do you think? What do you think the sub's getting paid when they talk about DoD contracts?

HARRINGTON:

Sir, let me take that for the record and get specifics back to you.

SHAYS:

OK.

The fact that none of you know tells me that you don't care, and it may be that you shouldn't. But I'm struck by the fact that we should. And I can't tell you more why we should. It just seems like, you know, so much goes to the prime, so much goes to the sub, and if we know how much goes to the sub, it tells us the universe of dollars we're talking about. And if it's a variable contract, we're going to be able to get a lot of that information. But if it's not variable, we don't know.

And it just seems to me we should know. It seems to me we should know, because when they go out to bid later on, we would have a better sense of true costs. You know, I mean, for all we know the subs are making a lot of money, and they shouldn't be. And it would seem to me we would want to know that.

Mr. Fitzgerald, would you respond to what I just said?

FITZGERALD:

Well, Chairman Shays, I think, you know, we believe from our work from the audit perspective that there is significant dollars, based on if you just look at LOGCAP, significant billions of dollars are going to subcontractors.

It's an important area, and there's significant and material dollars going that way. I mean, if you took the 30 to 50 percent, you're somewhere between just 12 and 22 billion just on the LOGCAP program.

SHAYS:

OK. Let me ask this question, these questions, for a purpose that will become clear.

Mr. Luten, are you satisfied that the government is paying a fair price for subcontractors?

LUTEN:

The . . .

SHAYS:

Let me ask Ms. Read.

SHAYS:

Because you really answered my question.

No, and the fact is we don't know. That's the bottom line. We don't know.

Mr. Harrington, are you comfortable that subcontractors on contingency contracting can be trusted to be good representatives of the U.S.?

HARRINGTON:

No, sir, I'm not. That's a matter of a daily oversight responsibility on our part.

SHAYS:

Right.

HARRINGTON:

We oversee them every day as diligently as we possibly can.

SHAYS:

Do you have the tools you need to be able to do that kind of oversight?

HARRINGTON:

Sir, we do right now. We need to improve them as we go along.

SHAYS:

Well, we're going to be making what I call a major report in December with statutory, regulatory agency changes. Would you be able, would you please just tell me now anything that comes to mind that would—you know, my time is up. I would like you to—I'll pursue it in my next line of questioning.

HARRINGTON:

Yes, sir.

SHAYS:

The bottom line is I would like to know what this panel would suggest would make your job easier to have better oversight of contractors.

HARRINGTON:

Yes, sir.

SHAYS:

Thank you. Thank you.

So we'll go to you, Mr. Thibault

THIBAULT:

Thank you, Commissioner Shays.

Mr. Fitzgerald, I said I'd get back to you and let you talk a little bit about what's going on with MEP [Mission Essential Personnel] from an audit oversight viewpoint and what you're doing about it.

FITZGERALD:

Well, Chairman Thibault, when I came on board, I have increased the resources we put in theater. That is one way, hopefully, that we would see contractors growing and being able to get apprised that we're seeing a contractor grow quickly, because it is a high-risk factor to see . . .

THIBAULT:

Total agreement, and I stated that before. I really commend those actions. Let's stay with MEP.

FITZGERALD:

MEP: as we have seen them become a major in 2008, we are putting more resources there to look at the risk factors. We have seen—not MEP-specific, because we're still in process of doing those audits—but our experience has shown that when contractors grow that fast, the procedures, processes, and systems have trouble keeping up with that growth, increases the risk to the U.S. government.

So we're there. Are we behind the curve? Yes. We should have been in there quicker. We need to work harder to try to identify contractors that are growing quickly, especially in the overseas contingency operations, so that we can be there closer to when they get . . .

THIBAULT:

Well, you know, and I am trying to pin you down, but I'm trying to do it in a way where I'd like, for the record, you to go back and think about and talk specifically about MEP and what kind of actions, because I think it's very commendable what you've done with the established contractors, but I think MEP is a great example of, I said it, an American success story, but one that isn't getting oversight. And history, as you have said, shows that they struggle with business systems and the like. And we'll explore that with the CEO of that company.

But I think it's a case where you've got to change something, because—and I want to give you all the credit in the world; you walked into this job in, was it December?

FITZGERALD:

November, sir.

THIBAULT:

November. The fiscal year was started. The planning was in process. And this minimal, the nonexistent audit coverage was in place. So I mean, you know, I'd ask you to reflect on that and what you can do for the record, if you would.

FITZGERALD:

I would. And if I could just say, we did, even as early as last week, send one of our veteran auditors, who had worked on one of our major OCO contractors, brought him up to Columbus, Ohio, to start getting our folks started on what they need to do with respect to that contractor.

THIBAULT:

Well, you know, and that's an appropriate action, because over \$1 billion of unaudited workload, you've got to plan it first, and maybe that's where this auditor comes in. But I'm going to be exploring how the company is going to handle hordes of auditors coming in, because you've got a lot of catch-up.

And that's what we here from companies is, "Oh, my goodness. I wish they'd have come three years ago." And fine. We'll do that.

Fixed-price level-of-effort, Mr. Harrington, are you using that a lot for your prime contracts?

HARRINGTON:

Sir, it's one of the contract types we're using.

THIBAULT:

No, I know it's one of the contract types, but I haven't heard any primes being used. But can you give me a couple of examples in the Army that are using that contract, fixed-price level-of-effort in the war zone?

HARRINGTON:

Sir, I will take that for the record.

THIBAULT:

Have you heard of any?

HARRINGTON:

I have not, sir.

THIBAULT:

I haven't either.

Ms. Read, do you use fixed-price level-of-effort in your work?

READ:

I'll have to get back to you, but not in theater that I'm aware of.

THIBAULT:

Well, I haven't heard any either.

Mr. Luten, are you aware of any?

LUTEN:

No, to no significant extent. No, sir.

THIBAUT:

OK.

Pat, are you—other than the one contract that's kind of in debate that you have in your statement—are you doing any other audits that have come to your attention about fixed-price level-of-effort?

FITZGERALD:

Chairman, I'm not aware of one right off the top of my head.

THIBAUT:

OK. The reason is that I want to spark up. I'm going to be asking about it. I'm old enough to have walked through and been briefed-up a hundred years ago on a very famous fixed-price level-of-effort where the government and the contractor got all intertwined in a big court case that spun up a lot of confusion. And I'm going to be exploring how the heck a fixed-price level of effort contract makes sense in this environment.

Mr. Fitzgerald, you mentioned in your statement you had 14 efficiency-and-economy reviews, operations audits spun up and in process right now, and you gave three examples, which I think again, since you've come in, you're focusing where you ought to focus.

When might we start to hear some of the results of those audits? In other words, you got a list of 14 audits. You gave us three examples. It's been a number of months. Do you have a sense for when we're going to start hearing the results of that?

FITZGERALD:

Yes, Chairman. With respect to some of the operation audits, I know we have a few that are going to be completed at the end of August. And those are nearing completion. And then we

have the ones that are looking at the monitoring, the prime monitoring their subcontracts. We're shooting to have those done by the end of the calendar year.

THIBAULT:

Thank you. We'll show a real attention to that.

And then the last thing, I just want to make a statement here. I didn't have anything for USAID, but I have, Mr. Luten, been writing down some of your comments. And I'd like to share them. "I can't give you a good estimate." "I regret I don't have that info." "Well, maybe." "Well, maybe it should have been." "I believe." "Well, maybe we need to do more training."

I propose to you that the collective weight of that is maybe you ought to do more training about procurement, you know. And it may sound harsh, but to send someone up to deliver the United States Agency for International Development message and to have all these qualifiers, I don't even know why you're up here. That's just an observation.

Thank you.

SHAYS:

Ms. Schinasi?

SCHINASI:

Thank you.

I just have a couple of questions this round, but I'd like to pick up on something that Chairman Shays said. He asked the question about the government getting involved between a prime and a subcontractor, and you all were pretty emphatic in your agreement that that is something that the government cannot do.

My question is does that extend to the government's knowledge of subcontractors. Does that extend to, you know, figuring out, understanding what's going on?

Mr. Harrington?

HARRINGTON:

No, ma'am, it doesn't. Our obligation is to assess the prime contractor's performance as it flows through each and every subcontractor, so in those instances where subcontractor performance is physically separated from the prime-contractor location, we have to oversee and

we have to get information regarding their performance to be able to evaluate the prime contractor.

SCHINASI:

So it's appropriate to have CORs on site with subcontractor operations? It's appropriate to have them report for purposes of award-fee pools on their performance?

HARRINGTON:

Yes, ma'am.

SCHINASI:

It's appropriate.

Ms. Read?

READ:

Yes, wholeheartedly agree. If we have a request from a sub—and we get letters from subs all the time, not being paid on time, issues on different things—we go right back to the prime and ask them, "We have a letter here. Is this accurate? What's going on?" So we're involved indirectly, and nothing goes unanswered.

SCHINASI:

Do you do your independent data gathering in a situation like that?

READ:

Our CORs definitely do, and my COs [contracting officers] do as well. And if there is something in theater that comes up, my CORs have told me on a man camp for a sub, they will go look at it just to make sure everyone's OK.

SCHINASI:

Thank you.

Mr. Luten?

LUTEN:

Yes, the same approach is taken that if a sub raises questions, we will take them and refer them to the prime. We will do some investigation on our own.

SCHINASI:

OK.

LUTEN:

It's ultimately up to the prime and the sub to work it out. If it endangers or if it puts at risk contract performance, we will push very hard on that. Part of our project-management approach is to understand what subs are doing in support of the prime awards. We're primarily interested in prime contract management, prime grant management, but overall performance will depend on subs, and we do have visibility as to what they're doing and are very interested in their performance.

SCHINASI:

OK.

As you know, at least as I read in the IG report, that is not always the case with the USAID personnel being willing to at least entertain a discussion, but I'm happier to hear each of you say that at least you think it needs to be done.

Mr. Harrington, in the Task Force 2010 that DoD has set up under the leadership of Admiral Dussault, she's got a couple of lines of effort that strike me as going straight to the heart of what we're talking about here. One is to increase transparency and accountability of the contracting process by requiring primes to submit the names of all subcontractors. Am I to understand that that does not happen now?

HARRINGTON:

Ma'am, it hasn't happened in the past. It's a matter of a steady forward effort to make sure that that does happen.

SCHINASI:

And, Ms. Read, what is the case with the State Department primes and subs?

READ:

With the 12 we've mentioned in my testimony, I have a list of subs for all of them, and the COs have approved up front.

SCHINASI:

OK. Because you did the consent to subcontract up front, and you don't always have that responsibility.

Mr. Luten?

LUTEN:

That information is kept at the contract level. Our issue with subcontracting and my inability to answer with larger data in response to earlier questions is that we don't have central visibility of all subcontracting agency-wide or countrywide, but certainly within contract files we know exactly what's being subcontracted because, provided the procedures for consent are followed either at the time of award or later, if a need arises, generally those procedures are followed very actively, and our contracting officers manage those very closely. Sometimes it may be missed, but . . .

SCHINASI:

And are we to assume—I know AID has significant grants and cooperative agreements. Is it the same situation with grantees? Are you aware of all of the grantees that are working?

LUTEN:

It's the same approach, yes.

SCHINASI:

OK.

One of the other lines of effort that the taskforce has is to work within DoD, other government agencies and international agencies to properly vet and, when appropriate, restrict companies. Are you aware of any subcontractors that have been disbarred or suspended? So again, this is an ongoing effort, or is this something that you're about to start doing?

HARRINGTON:

It's an ongoing effort, ma'am. I'm not aware, to specifically answer your question, of disbarred or suspended subcontractors, but our responsibility upon receipt of a proposal and then prior to award, is to access the excluded-parties-list system for the prime contractor any subcontractors raise to us to determine whether or not they are debarred or suspended.

SCHINASI:

Again, if someone has put information into that system.

HARRINGTON:

Yes.

SCHINASI:

And specifically for the trafficking-in-persons clause that flows down to subcontracts, do you know if any companies have been suspended or debarred for that cause in particular?

HARRINGTON:

I don't know, ma'am, but I can get, I'll ask for that information for you.

SCHINASI:

OK.

Ms. Read, I'll ask you the same thing about suspended or debarred subcontractors, and particularly for the trafficking in humans.

READ:

We definitely check the excluded-parties list that was alluded to for all the subs that are submitted as part of the award. And I did personally check on several of my CORs in theater on the trafficking issue. If anything comes to their knowledge—and it will, being on the ground—it immediately comes back to the contracting officer, and we refer all of those to the OIG.

SCHINASI:

And Mr. Luten, particularly for the trafficking in persons?

LUTEN:

I would have to check on the trafficking, but we do expect that to be enforced at the contract level. And there have been other subs, particularly the security subs that were mentioned, USBI and a couple of others have been suspended as a result of their misdeeds.

SCHINASI:

Would you get me the information on trafficking in persons particularly?

LUTEN:

Yes. Yes.

SCHINASI:

Thank you very much.

My time is up.

SHAYS:

Thank you.

Dr. Zakheim?

ZAKHEIM:

Thank you.

A quick question, Ms. Read. You've referred to your 12 majors. And how much money is involved in your minors?

READ:

Well, the majors we pulled for the commission today with anything that was what we considered service or construction with subs. Now, I can pull all those numbers for you, sir.

ZAKHEIM:

You don't have a sense of how much money the State Department is spending on all its contracts other than those 12 big ones?

READ:

Well, I can tell you what we did last year as a group, and then we're able to break it down . . .

ZAKHEIM:

OK.

READ:

. . . per theater for . . .

ZAKHEIM:

Well, if you give me the group, and then you give me the value of the 12, I can do the math, the arithmetic.

READ:

I know, but I didn't pull the value of the 12 today.

ZAKHEIM:

Oh. I'd like that for the record.

READ:

Yes, sir. Absolutely.

ZAKHEIM:

Mr. Fitzgerald, would you say that the biggest headache with respect to subcontractors involves foreign subcontractors?

FITZGERALD:

I think that foreign subcontractors pose us some real challenges in the fact that many of them have not done business under the FAR, have not done business with the U.S. government, so trying to communicate what the expectations are for them has been a challenge for us. So they have posed some special challenges for us as we tried to get access to some of that work.

ZAKHEIM:

Could you talk to me a little more specifically about the special challenges? I called challenges problems, but that's fine. You're on that side of the table. Can you talk to me a little bit about those special challenges?

FITZGERALD:

Well, specifically, the one I mentioned in my testimony. . .

ZAKHEIM:

The one about the Kuwaiti government?

FITZGERALD:

The Al-Shora Trading . . .

ZAKHEIM:

Yes.

FITZGERALD:

Yes, sir.

ZAKHEIM:

Have you had that frequently, where government essentially says, "We're protecting our company, and mind your own business?"

FITZGERALD:

I don't think that that's an accurate characterization. The company came back to us and told us, one, that they had never had to do what we're asking them to do, that they don't have the records we're asking for, and that they report to the Kuwaiti government and not to us. So that's kind of been their . . .

ZAKHEIM:

So what kind of remedy would you propose? I mean, should we insist that any contract that's signed with foreign subcontractors explicitly state that they are responsible for giving the information to DCAA, which we do?

FITZGERALD:

Well, Commissioner, on this contract specifically, it is a cost-type contract, and we do have an audit clause in this contract that the prime slowed down to the sub.

ZAKHEIM:

So even with the audit clause, you got nowhere is what you're saying?

FITZGERALD:

Well, have suspended those costs, so they . . .

ZAKHEIM:

OK.

FITZGERALD:

. . . they haven't gotten paid. So we're in the process of . . .

ZAKHEIM:

All right, but what else should we do? Should we do the same thing with a firm-fixed-price [FFP] contract? And more generally, should we give you—you've said you want more access on FFPs. Should we have something explicit with respect to foreign subs, essentially telling foreign subs if they want to do business with the United States, they've got to play by our rules?

FITZGERALD:

Well, I think that's how it's constructed today, that they have to play by our . . .

ZAKHEIM:

Well, they evidently aren't, are they?

FITZGERALD:

Well, we're working that, and we have ran into some problems. And I think we have done the prudent thing in suspending the cost, because crimping the cash flow will bring the information . . .

ZAKHEIM:

Well, it seems to me we need to do more if, after nine years in Afghanistan and about seven in Iraq, you're still running into trouble.

Mr. Harrington, can you tell me how much money is involved with foreign subcontractors? How much money does the Army spend on, you know, via primes on foreign subs? Do you have any idea?

HARRINGTON:

Sir, I don't right now, but I'll get that information for you.

ZAKHEIM:

Do you can have a rough order of magnitude? Are you talking about a million dollars or tens or hundreds? I mean, what's the size of the problem, as far as you see it?

HARRINGTON:

Sir, I think it's likely in the lower-billions of dollars, but I . . .

ZAKHEIM:

Lower-billions of dollars to foreign subcontractors who are giving DCAA a very hard time.
OK.

Ms. Read, how much does the State Department spend on foreign subcontractors?

READ:

I don't know that answer.

ZAKHEIM:

I'd like it for the record, please.

READ:

Yes, sir.

ZAKHEIM:

Mr. Luten?

LUTEN:

I don't know the answer either. We face an additional challenge is that we're trying to encourage the use of foreign firms and foreign NGOs both as prime awardees and subcontractors as part of our development strategy, so the size of the problem potentially could increase over time.

The issue, as has been mentioned, and I think it's in all of our program managers' and contracting officers' concerns, is the issues are capacity, the issues are understanding of local business norms, and then enforceability. Putting the rules in the contract is a first step, but the ability to enforce an agreement against a foreign firm in their host country is, I think, is challenging for us or for a prime that engages a sub.

ZAKHEIM:

Well, one way to enforce it, of course, is to withhold the money, right?

LUTEN:

Yes, of course. But if there's a problem that, with respect to lack of performance and money already paid, then that's yes—prospectively, yes, of course.

ZAKHEIM:

OK. Because it does seem to me that if we're talking billions of dollars on the Army side alone and God knows how much more in State and AID, it just seems to me that if foreign companies want to work with this country, they ought to play by our rules, and if not, be penalized. It's just as simple as that.

And it's all very nice to say let's give the business to the locals, but that doesn't mean you give it to Pancho Villa if you were doing it in Mexico, would you? And so it's the same thing. You don't just give it to anybody. You give it to responsible locals. And if the locals behave irresponsibly, you don't give them the business.

This is deeply troubling, and I look forward to getting your numbers. Thank you.

SHAYS:

Thank you.

Mr. Green?

GREEN:

Thank you.

Quick question to hopefully make up some time here:

Ms. Read, I don't want to appear to be picking on you, but as an alumnus of both organizations, State and Defense, I care very much about the cooperation between the two departments and that during the transition we not set ourselves up for failure.

We kind of skated over a little bit the use of contractors in the acquisition business. Do you have any plans right now to engage contractors to oversee other contractors or to perform COR-like missions?

READ:

No, we do not.

GREEN:

OK. OK. I realize, and I don't know how complete it is, but I realize that the baton list between the two departments has been talked about for some time, and certain at least tentative decisions have been made about which functions State would take over, which functions we might try to get the Iraqi government to take over, which ones might not be necessary in the future.

Have you looked at the totality of the requirements out there that are facing you? And have you looked at how many oversight personnel, contracting officers, CORs, and the like, would be required to oversee those contracts?

READ:

We have looked at what is currently out there to the ability that we can. I have my senior division director, John Stever. He's been in theater several times. He's also meeting on an ongoing basis with our procurement executive and DoD. So we are coming up with the list. But it is huge, as you can well imagine, and we're not sure everything is on that list.

GREEN:

Have you looked at the time it would take, you and the director general? Have you looked at the time it would take to recruit and train the necessary oversight personnel to look at these huge, growing lists of contracts and subcontracts?

READ:

We have not.

GREEN:

Well, you've got about a year left to do it, and these people aren't growing on trees, not to mention the fact that what would their deployability be and would they agree to be deployed.

READ:

It's a very good question, Commissioner.

GREEN:

I don't have any more.

SHAYS:

Thank you.

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman.

I want to ask you the fact that Fluor and DynCorp's purchasing system had been disapproved, not merely challenged by the DCAA, but disapproved, effectively, by DCMA, to me is appalling, given the amount of responsibility we put on them. Particularly, they're the ones who had the logistics in Afghanistan.

So I'm going to ask, and I want to ask about two measures. I want to ask whether you would be in favor of two measures that could make them not pass off their lack of compliance as just a temporary technical thing.

One is whether, besides past performance, this could be considered for a logistics-type contract, when you have such a disapproved purchasing system, a technical factor during future procurements, not merely something that happened in the past, past performance, but a technical factor, given that they're going to be doing that now, and the technical that shows apparently they can't do it, they can't do their job as a subcontractor.

And the other is whether we could require a formal review, when there's a purchasing-system disapproval, of an option year. Right now we just do those as casual acts, and for that matter for

KBR, which was challenged a great deal, it got 10 option renewals in a row. So I'm asking about that.

I'll start with you, Mr. Lutten. Would you accept as a proposal for the future consideration of the tactical factor and consideration in a formal option review, formal review during a formal option process review?

LUTTEN:

For the . . .

TIEFER:

. . . disapproval of purchasing system.

LUTTEN:

Yes.

TIEFER:

OK.

Ms. Read?

READ:

Yes, sir.

TIEFER:

Mr. Harrington?

HARRINGTON:

Yes, sir.

TIEFER:

That's good.

Commissioner Schinasi raised, and I appreciate that she did, the question of human trafficking. And we all saw recently a news article that says the buck is being passed around here. And that is, the IG said, "It's somebody else," and the criminal people say, "It's not ours," and the program managers say, "It's not ours."

And I wonder whether we could favor, whether you would favor formalizing the responsibilities so that a program manager has to follow up any allegation, program manager or contracting officer has to follow up, is obliged to follow up, any allegations of human trafficking and cannot simply say, "I've delegated that to somebody else."

Mr. Luten?

LUTEN:

Absolutely.

TIEFER:

Ms. Read?

READ:

Yes, I'll agree to that.

TIEFER:

Mr. Harrington?

HARRINGTON:

Yes, sir.

TIEFER:

I'm going to quit while I'm ahead.

SHAYS:

Mr. Fitzgerald, in your statement you said prime contractors—I'm on page 14—prime contractors have the responsibility to manage their subcontractors and also have a fiduciary responsibility to monitor subcontractor performance and control costs to ensure the U.S. taxpayer resources are used wisely and appropriately. Since the beginning of the contingency in Iraq and Afghanistan, we have found that prime contractors have not consistently monitored subcontractor performance and subcontractor billings submitted to the prime contractor for inclusion in the prime contractor's billing to the government.

So I'm not going to ask you if you agree with that statement, because you wrote it.

Mr. Harrington, do you disagree with anything in that statement?

HARRINGTON:

No, sir, I don't.

SHAYS:

Ms. Read?

READ:

No, sir.

SHAYS:

Mr. Luten?

LUTEN:

No.

SHAYS:

OK.

So let me ask you, Mr. Fitzgerald, what do we do about it? Give me one or two, you know, concise ways to deal with it.

FITZGERALD:

Sir, Chairman, I've got four recommendations in my statement.

SHAYS:

OK. Great.

FITZGERALD:

And so I could go quickly through those.

SHAYS:

Yes.

FITZGERALD:

One is to support what DoD is doing in our changing to DFAR [Defense Acquisition Regulations] rules, putting more emphasis on business systems. They are the first line of defense, making sure we got those right.

SHAYS:

OK. That's one.

FITZGERALD:

Second one is to get the—right now what you had quoted is guidance—but get that into the contracts that the primes are responsible for the subcontractor's performance and the cost and have that in the contract. We think that would strengthen our case as we do these audits.

SHAYS:

OK.

FITZGERALD:

Third one is to re-look where we say we have adequate competition. That's where we question a lot whether that has really in fact happened.

SHAYS:

Right.

FITZGERALD:

We think we'd be better off, in those cases where there's question of whether we have adequate competition, to get cost and pricing data and do that analysis . . .

SHAYS:

OK. And that . . .

FITZGERALD:

. . . better protect the government's interest.

SHAYS:

And don't lose your train of thought, but that's one area where some of the commission members have said, why haven't we started that? But any rate, what's your fourth one?

FITZGERALD:

And the final one is: where right now, when a prime contractor just gets one bid that comes in, the general guidance right now accepts that, and it's very hard for us to question that. We do question it, but the general guidance accepts that.

We think that that guidance should be changed to ask the question if we sent these RFPs out to responsible bidders, why only one bid came in? And does that really constitute adequate competition?

SHAYS:

Do any of you disagree with what Mr. Fitzgerald said?

Any caveat to it, Ms. Read?

READ:

I agree with one, two, and four. I would like to have an active discussion on number three, whether one bid constitutes competition or not.

SHAYS:

OK.

READ:

Everything else, totally agree with.

SHAYS:

Mr. Luten?

LUTEN:

I agree with all four of them.

SHAYS:

Mr. Harrington?

HARRINGTON:

I agree, sir, along with Ms. Read's comments, when there is a single bid, to make a determination as to whether or not to go forth.

SHAYS:

OK.

Would any of you add to that list some suggestions that—remember I was going to ask you what you might recommend to this commission in general terms on how we deal with

subcontracting, whether we need to change the law, administrative policy, encourage a change in administrative policy, and so on.

Mr. Harrington?

HARRINGTON:

Sir, we're working in the Army to codify evaluation of subcontracting plans and evaluation of subcontractors and subcontractor businesses in our acquisition-strategy development, and then flow that into what we call our acquisition-and services-strategy panels to be able to reinforce the evaluation criteria, for instance, that's published in the solicitation that your business system as a contractor is going to be part of the evaluation schema.

So that would be the substance of a recommendation I would make to strengthen that requirement further.

SHAYS:

OK. Great.

Any other change?

Ms. Read?

READ:

I would just note that we're doing active training, both for the CO and the COR function, exactly what to look for when proposals come in for subcontractors, when you're on the ground how to manage subcontractors. We believe you can never have enough training in these areas. And everything else I agree with.

SHAYS:

OK.

Mr. Luten, anything to add?

LUTEN:

I would add that I think that our specific approach, in addition to what's being said, is that that training needs to include looking at past-performance information through multiple sources. It is

a challenge, but there are sources available, and the sources may vary depending on where the subcontractors from.

So I'd say a specific emphasis on training and inclusion in plans of better past-performance information.

SHAYS:

Mr. Thibault is going to just follow up on this line, and then we're going to get to our next panel.

THIBAULT:

Thank you, Mr. Commissioner.

Mr. Fitzgerald, you said that DCAA intends to recommend a review to the director of defense procurement and acquisition policy of the feasibility of specific contract clauses that would implement the basic FAR provision on management of subcontractors.

Would you negotiate a word in there instead of "implement," which, you know, we've talked about the importance of doing it and all that, "strengthen?" I mean, does that seem to be a — stronger word, a better word?

FITZGERALD:

I can accept that, sir. Yes, sir.

THIBAULT:

Well, my point is I couldn't agree with you more than with the wisdom of putting that added word in.

FITZGERALD:

OK.

THIBAULT:

And the point we wanted to make here is we're looking at statutory recommendations at the end of this year, and it's a very important out-product of this commission. And so I would

encourage you strongly to on the business systems DPAP, Defense Procurement Acquisition Policy, was very responsive to get something out there. It's very controversial now, but they got it out there, and the debate has begun.

We can support that. Same thing with this. I strongly encourage that you take back the message to Mr. Assad that if he doesn't do it right away, we're going to have some statutory wording, and he can do it the way the law ends up. And I'd much rather have a regulatory process, but that's what I wanted to share.

SHAYS:

Did you want a request for something?

THIBAUT:

Oh, yes.

And one other thing: You all agreed, and I might have stated it for the record right, we asked for any examples of primes you have with fixed-price level-of-effort contracts that you've either awarded or reviewed. So if you all would take that. If the answer's zero, great, but if there's some that come up, great.

SHAYS:

And if it is zero, let us know, because we would like a response from all four of you.

So I'd like to thank you, Mr. Harrington, for your service to our country.

Mr. Fitzgerald, for your service as well.

Ms. Read, as well for your service.

And, Mr. Luten, thank you for your service.

Thank you all for being here.

And we're going to get on to our next panel right now. There'll be no break.

So we have Mr. Norm Powell, Ms. Cheryl Ritondale, Mr. John Supina and Mr. Chris Taylor. And I'm going to swear you in as soon as you get up, so don't bother sitting down.

If you'd raise your right hand, thank you. Do you solemnly swear or affirm that the testimony you will give before this commission will be the truth, the whole truth and nothing but the truth?

Note for the record all of our witnesses have responded in the affirmative.

And we'd like to thank you for being here. This is going to be helpful for us. Please have a seat. I'm sorry. We'd like to thank you for being here. We'd like to thank you for your service indirectly, but maybe almost directly to our country. And thank you for helping us understand how primes and subs interact with each other.

Mr. Powell, we'll start with you. And we'd like it to be five minutes—let you roll over a little bit. I'll hold the gavel up if you get too long and try not to embarrass you. OK, Mr. Powell? Thank you.

POWELL:

Co-chairman Shays and Co-chairman Thibault and members of the Commission on Wartime Contracting in Iraq and Afghanistan: My name is Norm Powell, and I serve as the acquisition executive for Fluor Corporation's Government Business Unit.

Fluor Corporation is one of the world's largest publicly traded engineering, procurement, construction, maintenance, and project management companies, with a network of offices in over 25 countries on six continents. For more than a century, Fluor, through its operating subsidiaries, has become a trusted global leader in providing exceptional services and technical knowledge. We have had continuous operations in the Middle East for over 50 years.

Fluor is a Fortune 500 company with over 50,000 employees serving five business segments. Our total revenue last year was \$22 billion. In 2009, Fluor's largest business segment was energy and chemicals with 54 percent of our revenue. By comparison, our government business had 9 percent of our revenue with work performed for the Departments of Energy, State, Homeland Security and Defense.

Our global footprint has required Fluor to have a robust and active ethics and compliance organization. Fluor helped found and continues to lead the World Economic Forum's Partnering Against Corruption Initiative, PACI. Led by Fluor chairman and CEO Alan Beckman, PACI is the only global business-driven, multi-industry, anti-corruption initiative. PACI businesses committed to adopting zero-tolerance policies toward bribery and corruption and maintaining programs that guide the behavior of employees, agents, suppliers, contractors, and joint venture partners.

Fluor's management and board of directors are committed to ensuring the company has an effective compliance and ethics program. The audit committee of the board of directors oversees this program. Fluor employees worldwide have completed our code-of-business-conduct and ethics training. The company's live interactive program includes ethics training in the areas of

procurement integrity, conflicts of interest, accuracy of information reports, time charging, unallowable costs, and hiring of former government officials.

Additionally, the program includes anti-corruption training for sales and marketing, project management, field operations, procurement, subcontracts, and legal personnel, fair-disclosure training for spokespersons and executive management, and export control and anti-boycott training for procurement and logistics personnel. All employees are required to review the code and certify their acceptance every year.

Fluor is compliant with the new contractor-compliance and business-conduct program requirements for federal contractors and subcontractors and has developed a supplier ethics brochure outlining Fluor's expectation of subcontractor ethics and conduct.

Fluor's ongoing projects in Iraq and Afghanistan consist of task orders for SETAC 2 [Systems Engineering and Technical Assistance Contract] and LOGCAP IV contracts. Our operational success is due to extensive planning and training, our global reach, and decades of project and logistical experience working in this region.

Fluor direct-hires personnel for major activities, including project management, planning, quality assurance, compliance, estimating, quality control, engineering management, purchasing, materials management, government property control, contracting, and safety. Other scopes of work may be subcontracted, and the contracting strategy becomes a part of the project execution plan.

Fluor executes its scope of work using a project-taskforce approach. A project director with the required experience is responsible for execution of the project scope. Functional organizations are responsible for training and oversight of their personnel, are responsible for the general policies and procedures utilized by their personnel on the projects.

To monitor subcontractor performance post-award, Fluor uses multiple sources of information. As quantified in our acquisition manual, these include status reports and schedules, contractor daily reports, subcontractor daily timesheets, and our inspection deficiency reports, depending on the contract type.

Direction is given to subcontractors by operations personnel called contract technical representatives. They monitor the day-to-day work of the subcontractors, collect daily reports, and advise the contract administrators of any concern with subcontractor performance. Subcontract administrators are all U.S. expatriates. The use of sub-tier contractors is discouraged to control excessive pass-through costs.

Working in a rapidly changing wartime battlefield has presented some challenges to us. The FAR contemplates that there is sufficient time to develop supplier resources, prepare RFPs, and receive quotes from multiple sources. Fluor has a vast database of potential subcontractors, but

many are not able to execute in a contingency environment, and this has led to the award of contracts using market research.

Another challenge is the ability to house personnel in secure locations and within the limits of trafficking-in-persons [TIP] requirements. With the surge in military personnel, real estate in the forward operating bases is often not sufficient to meet minimum TIP standards. Additionally, the extensive training and education needed for the local workforce to meet the Afghan First requirements under our LOGCAP IV contract has at times presented issues relating to culture, language, and knowledge of U.S. standards not commonly understood in Iraq or Afghanistan.

While these issues have presented challenges at various times and locations, we're continually working together with our client to overcome them. Thank you.

SHAYS:

Thank you, Mr. Powell.

Ms. Ritondale?

RITONDALE:

Thank you, distinguished members of the commission. My name is Cheryl Ritondale and I'm the global director of procurement and supply management for KBR.

Under the LOGCAP III contract, KBR employees and subcontractors have served more than one-billion meals, logged more than 700-million miles transporting military supplies and equipment, washed 78-million bundles of laundry, and literally built functioning cities in the desert sands, all in an effort to support the U.S. troops as they carry out their important mission.

Under the LOGCAP III contract alone, KBR has managed roughly 1,700 subcontractors and approximately 11,000 subcontract awards. Although there will always be intense challenges in a war zone, it is important to mention at the outset that on the whole KBR subcontractors have done a remarkable job.

There have been significant challenges, particularly in the early days of the Iraq war, as there were virtually no operating subcontractors in Iraq and only a handful of subcontractors with experience supporting U.S. government contracts throughout the region. Additionally, conditions on the ground included the absence of an existing banking infrastructure, basic business technology, and a functioning labor market.

In this environment KBR has implemented and refined details of contracting processes and procedures that govern how we select, manage, and seek to ensure quality and performance.

When provided with a logistical requirement, KBR makes the decision to self-perform or to utilize subcontractors.

If a determination is made to subcontract, we conduct research for companies with the ability and capacity to successfully support the requirement. As a part of the subcontractor evaluation process, KBR analyzes multiple factors and makes an award decision in much the same way as the government does. Then we submit the proposed award to the government for consent to contract when required in accordance with our prime contract.

At this point subcontractors begin to carry out their subcontract, and KBR monitors and manages the performance and compliance of its subcontractors with respect to the technical mission support and our contractual requirements. Regarding performance and quality of mission support, KBR uses cross-functional teams to inspect and verify that the subcontractors are meeting the warfighters' needs and KBR's contractual obligations.

This process begins at the field level through direct supervision and interaction with our subcontractors. If performance concerns are identified, they can be elevated to site procurement and program management. And if additional steps need to be taken, KBR's senior subcontracting personnel will provide the subcontractor a written, detailed description of the problem and require remedial action be undertaken.

Finally, if we're unable to mitigate performance issues with subcontractors, such contracts may be terminated if necessary.

KBR utilizes a detailed, real-time payment verification system. This three-way verification process involves an independent review of detailed supporting documentation, subcontract terms, and the invoices. This process implements tremendous controls and oversight, allowing KBR to verify subcontractor bills in as close to a real-time process as possible.

The Iraqi First program is an example how even the successful implementation of a government priority brings with it a set of challenges. As of April of this year, KBR has trained and employed roughly 4,000 Iraqi personnel and, including local purchases of goods, has returned roughly \$526 million to the local economy.

However, here, as always, the lack of a consistent, theater-wide vetting and badging system has a direct impact. All local nationals must be badged to gain access to the jobsites on various bases. The badging process includes vetting, physical-security searches, and the use of biometrics. Unfortunately, as there is no uniformity, and the requirements vary from camp to camp due to mission requirements, this process routinely results in significant delays.

During the current drawdown, it would be useful to have the flexibility to better move subcontract workers between camps in order to utilize the existing workforce most efficiently. It is very difficult to do so, given the individual requirements for each base.

An additional badging challenge concerns foreign national workers working at multiple sites, who have been badged at each camp they support, as the badging process currently takes about 20 days. As KBR has recommended in the past, and as the commission has stated in their interim report, it's critical that the government speak with one voice throughout the full contracting and audit process.

KBR remains proud of the work we perform in Iraq and around the world and of its support to the brave women and men that we serve. Our employees perform our jobs in austere and unpredictable conditions at great sacrifice to themselves and their families. I would be remiss if I did not make note of the dangers faced and the tremendous sacrifices of our subcontractors and their families as well.

I appreciate the opportunity to be here today and to provide the commission with KBR's perspective on how subcontracting may be improved forward. And I look forward to your questions.

TIEFER:

Thank you, Ms. Ritondale.

And Mr. Supina?

SUPINA:

Chairman Shays, Chairman Thibault and members of the commission, thank you for the opportunity to participate in this hearing on subcontracting.

Today's subcontractors are a significant part of the team supporting the warfighter in Iraq and Afghanistan and as we discuss ways to improve the process, we should also acknowledge subcontractors' many contributions and sacrifices.

As we have previously testified before the commission, at DynCorp International our mission is to stand up high-performance teams anywhere around the world in support of U.S. foreign policy and national-security objectives. Our goal is superior performance, compliance, and conduct based on our core values. We serve, we care, we empower, we perform, and we do the right thing.

DynCorp International has been supporting the Department of State and the Department of Defense in Afghanistan since 2001, in Iraq since 2003. We have experienced many of the challenges associated with contingency contracting in war zones to include vetting, obtaining cost or pricing information, management, and oversight to ensure subcontractor performance.

Among other factors the process is further complicated when dealing with subcontractors that do not have U.S. government-recognized business systems or small businesses that are not required by the DFAR to have approved estimating systems.

In order to mitigate the risk associated with dealing with firms not having recognized business systems, we used competitively awarded, firm-fixed-price or fixed-unit-price contract in almost all cases. These types of contracts reduce price risk, lower cost and complexity of monitoring and auditing subcontracts, and take into account the typical unavailability of certifiable cost and pricing data, as well as the short lead time for placing essential subcontracts.

Methodologies are developed and incorporated into the fixed-unit-price subcontracts to verify quantities actually delivered. We also have very strict approval requirements for all subcontracts, limiting who may approve subcontracts prior to issuance through requiring pre-approval of further subcontracting by our subcontractors.

We have learned that the proper management of subcontractors begins with training our personnel to ensure consistency in the process in compliance with FAR requirements. In conjunction with the Federal Market Group, we have developed and implemented a subcontract-management training program covering all aspects of subcontracting under federal government contracts.

All of our contract managers, subcontract managers, and procurement personnel are required to attend this training. In fact, we've invited DCAA and DCMA to attend the training and received favorable comments. In addition to this formal training, we have an online course that specifically instructs our personnel in the company processes and procedures.

The commission has asked for recommendations on how to improve the subcontracting in a contingency environment. We offer the following recommendations.

First, consideration should be given to streamline contingency version of the FAR to more precisely identify those provisions of the FAR applicable to subcontracting, recognizing that much subcontracting in areas of contingency operations will be with firms without recognized business systems, especially non-U.S. firms.

A streamlined FAR for contingency operations would recognize the need for speed on the part of the prime contractor and their teams. Many subcontractors lack the sophistication to implement the typical requirements of a subcontract under a U.S. government prime contract. Only the highest-priority compliance requirements should be imposed on foreign subcontractors performing contingency operations.

We also recommend the commission examine the small-business subcontracting requirements included in contracts performed overseas. We fully support the government's goal to provide opportunity for small businesses to participate in the federal contracting process, and we are

proud of our record. Last fiscal year, 64 percent of all of our subcontracts issued to U.S. firms were to small businesses.

However, many contracts are issued today requiring small business goals as a total percentage of the contract value rather than just subcontract dollars. This requirement forces a contractor to subcontract in order to be compliant with contract terms, even if it would not otherwise need to subcontract. This increases the burden to the contractor and unnecessarily increases the cost to the government and the taxpayer.

In closing, we take our role as a prime contractor seriously. Superior performance, compliance, and conduct is our standard. We will continue to improve our policies and procedures to include when recommendations are made by DCAA and DCMA. I appreciate the opportunity to work with the commission in understanding subcontracting in contingency environments, and I'm pleased to answer your questions and assist in any way I can.

SHAYS:

Thank you, Mr. Supina.

Mr. Taylor?

TAYLOR:

Chairman Shays, Chairman Thibault, distinguished members of the commission, I am honored to have the opportunity to represent Mission Essential Personnel before you today.

Our entire company appreciates the commission's hard work in reviewing U.S. government contracting in Iraq and Afghanistan, and I look forward to today's specific discussion about subcontracting.

While MEP is best known for language services, we also provide training and technical services, intelligence support services, and specialized human-capital support services. Across all our services, our central goal remains this one—to deliver certainty to all of our customers.

Over the past six years, the company has grown from a handful of employees to over 6,000 professionals around the world who play a critical role in U.S. government operational support. Within 12 months of the award of the Operation Enduring Freedom Afghanistan language services contract, MEP was able to achieve a 97 percent fill-rate of the government's requirement for linguists. Previous contractors never exceeded 43 percent.

MEP provides quality service to its customers on the ground, in the air, on the sea, and even underwater. Our professionals are on every forward operating base and every combat outpost in every province in Afghanistan and in other military and humanitarian missions around the globe.

Because of the nature of their work, most of our linguists are side by side with Marines and soldiers, patrolling villages, exposed to the same risks, and all too often make the ultimate sacrifice in the service of that mission. To date, 200 MEP professionals have been injured, and 50 have been killed. Just last week, five members of our family were lost to a mortar attack in Kandahar City.

Our linguists have been repeatedly commended for their work and their heroism. This includes commendations for linguists who have provided instrumental translation services in the tracking and locating of Al Qaeda operatives and linguists who have literally sacrificed themselves, stepping in front of bullets to protect the service people with whom they serve.

But it's not just in Afghanistan where our brave professionals are adding tremendous value and performing above and beyond the call of duty. For example, when Somali pirates hijacked the vessel Maersk Alabama last April and took the ship's captain and crew hostage, it was an MEP interpreter, Mohammoud Abdi, who was serving alongside the U.S. Navy Seal rescue team. Abdi was the prime negotiator with the pirates during the entire crisis, and he demonstrated incredible composure throughout, easing tensions and earning the pirates' trust.

On the fourth and final day of negotiations, Abdi convinced the pirates to allow their boat to be towed behind the U.S.S. Bainbridge and then continued to translate negotiations with them, placing himself at risk and maintaining the rapport is built with those pirates. Ultimately, the pirates resisted, and the Seal snipers were able to bring that crisis to an end.

Abdi, like many of our linguists every day, contributed to that mission in an immeasurable and unheralded way. It is not an overstatement to say that the mission could not have been accomplished successfully without him. That is true every day of an MEP linguist somewhere around the world.

Like Abdi on that day last spring, everyone on the MEP team shares the same goal, to support the U.S. government's mission to the best of our ability. Our subcontractors are an important part of that support.

MEP takes seriously its responsibility to oversee its subcontractors. For example, we review and individually validate each and every invoice received from our subcontractor partners to verify costs. Where we cannot, we do not make payment.

While contingency contracting necessarily includes a number of challenges, both to contractors and to the U.S. government, MEP strongly believes first and foremost that this is a partnership. Whether those challenges concern contract management generally or subcontractor management specifically, MEP stands ready to continue to work with the U.S. government and this commission to contribute to effective solutions.

On behalf of the 6,000 MEP men and women around the world, many in harm's way as we hold this hearing today, thank you again for the opportunity to participate in this process. MEP is committed to enabling and supporting the U.S. government wherever and whenever it's asked to do so. Thank you for your time today, and I welcome all of your questions.

SHAYS:

Thank you.

Mr. Taylor, we spent a good amount of time talking about the service of your employees, and I know that all four of you could do the same thing. And the commission clearly has been on record continually, but we know that the men and women who serve in your companies as prime workers or as subcontractors risk their lives in the service of performing their jobs. And we are profoundly grateful to them for that. And frankly, having visited, as we all have here, both Iraq and Afghanistan, we're in awe of what these men and women do.

And with that, we will go to you, Mr. Thibault.

THIBAULT:

Thank you, Commissioner.

Ditto on what Commissioner Shays said. He took the words, give or take, that I was going to say. That's part of our work, too, is the recognition of the military and of the contractors that support them. And I realize you all reinforce it, and you all could have said it the same way as Mr. Taylor. Mr. Taylor said it very well.

I have a couple of questions, and then I have sort of a centerpiece question, because I've sort of, not sort of, I have decided to change what I was going to do. But I have two things I'd like to get on the record, one a question and one a statement.

The question, Mr. Taylor, and then I'll go into a format that I'd like each of you to respond to, and I'll kind of lay the groundwork out, and I'll forego my gazillion examples I was going to have, because there's two ways to do hearings.

We can get in a dialogue, and I think the framework was laid in the last panel, or we can go through a list of whatever you want to call them—situations that you probably wish didn't occur, but you don't believe are representative. Sometimes they are the motivation for change, and that's why we go through them.

But, Mr. Taylor, you were here for the first panel?

TAYLOR:

Yes, Mr. Chairman, I was.

THIBAULT:

OK. I'm going to ask you in the end, are you concerned or are you going to stay up at night, but I'm going to tell you how I'd feel, because I would stay up at night. I used your company as an example that if there isn't an active audit presence, that the government's at risk. But the company and their shareholders are at risk also, and I'll restate it.

Most of you know that if you haven't been audited for four or five years, the first thing a good auditor does if they find something in the first year they're looking at say, 2005—and it may be lower dollars, as it is in your case—they're going to say, oh, has this occurred in 2006, 2007, 2008, 2009, 2010? And so you get an exponential sometimes, because as your business base grows, the incidence of a legitimate mistake, but a non-compliance with the Federal Acquisition Regulation could compound.

So it was established here that you really haven't had the audit presence that DCAA would normally provide and DCMA. Are you concerned about that?

TAYLOR:

Mr. Chairman, certainly, I am. I can tell you that we have asked for from DCMA a CPSR [Contractor's Purchasing System Review] audit. We asked for that last February 2010, and we currently have DCAA auditors on our property in Columbus, Ohio, working through any number of audit issues.

We are current on our 2008 and 2009 incurred-cost submissions. I believe, certainly, as a result of you bringing it to everyone's attention in your opening statements, that we'll probably have a lot more DCAA auditors in our building very soon. But we welcome it.

SHAYS:

You may have people invest in your company as well, with the phenomenal growth you've had.

TAYLOR:

Well, thank you, Mr. Chairman.

And so we welcome that.

THIBAULT:

OK.

TAYLOR:

I'd like to point out, if I may, Mr. Thibault. . .

THIBAULT:

Sure.

TAYLOR:

. . . it's absolutely true that the company has experienced significant growth. I took over as CEO on September 15th, 2009. On September 16th, I directed what has turned out to be our largest capital expense to date, about \$3.5 million worth of upgrade to our business systems to get ahead of the curve. And that continues to go on today. We continue to upgrade our systems . . .

THIBAULT:

All right. All right. All those points are good, and I commend you for it. But, you know, I just want to say what's in my head is, you ain't seen nothing yet, and you ought to be cautious where the actions you've taken are good and I jokingly referred to—as industry sometimes calls it—hordes of auditors. They call it having to train auditors because of turnover, but in reality their own people turn over, and I give that short shrift.

But for a company that's growing and suddenly the government wakes up and says we got to really give you a lot of oversight, I commend you, because I'd be sitting up at night saying, "What's going to happen?" And I'm not looking for feedback on that. You know, your point about trying to get ahead of the power curve, couldn't support that more.

Ms. Ritondale, it's just a request for you to take back to my friend, Doug Horn, who's your vice president of operations. We got, did you see Mr. Horn's July 23rd letter to us?

RITONDALE:

Yes, sir, I did.

THIBAUT:

And it outlined all the actions that KBR is taking related to attaining efficiencies and economies on the LOGCAP program, a very detailed, informative letter. Obviously, we haven't spent any time with it to go back and say, "Hey, let's sit down." And we know that offer's there and we'll do that.

But I've got to ask you, you know, he's honest in it. He says, "We've reviewed these questions contained in your April 20 letter." Now, here we are in July. The letter was due in May. We asked—early May, May 4th—and we said, "Where's the letter?" And so we get it the day before the hearing, a business day before the hearing, and it's not of a lot of utility.

And I want to just talk about the closing paragraph. It's very traditionally KBR. "As the commission is well aware, KBR has had and looks forward to continuing an active, open, and cooperative relationship with the commission." Frankly, when we do sit down with KBR and we go through things, we get really good explanations of why and what things happened. But it ain't timely. And if you take back to him, don'—you know, in Muhammad Ali's days in Africa, they called it the rope-a-dope is the strategy, you know, put 'em off, put 'em off, put 'em off, and then they fall.

Well, we're not going to fall. So please take back to him, "Cut it out." And that's my comment. I know you sort of inherited that.

I looked at the wrong clock. At five minutes I'm going to ask you, and you can sort of think about it, each one of you, and that's going to be—I'm getting away from this individualism here in questions.

The Pat Fitzgerald comment about prime contractors have the responsibility to manage their subs, and he quoted the FAR Part 42, and the fiduciary responsibility to monitor subcontractor performance—that statement in his testimony—and then he made a statement, "We have found that prime contractors have not consistently monitored subcontractor performance and subcontractor billings submitted to the prime contractor for inclusion in the prime contractor's billings to the government."

I've obscured here, but it was on a card—my co-chair sometimes takes my information and hides it to make me look awkward—but I'll read that to you.

SHAYS:

Well, those are my best questions, the ones that I hide from him.

THIBAULT:

Here we go. He made four recommendations, and then Kathy Read, Ms. Read, added another one for better training for the CORs and the ACOs for their work with subs and coordination, you know, strengthen the business-system oversight, strengthen and clarify the FAR provisions of the prime management of subs, increase use of subcontractor cost and pricing data wherever possible, one-bid competition should be reevaluated and clarified under the current FAR wording, because he wasn't that supportive of it.

What I'm going to ask you in my next period of time is do you agree with what Mr. Fitzgerald has said. And whether you agree or disagree, those for particular recommendations that he may .

..

And, Mr. Supina, you made some recommendations that I've written down that aren't the same; they're all good, and so I'm going to take them away.

But we'll get in a dialogue. I'd like to hear it. And I'm going to leave my incidental examples that I've got a pile of paper here, because after the commissioner brought that out, I was compelled that that's the dialogue that I'd like to hear from you all later on.

Thank you, sir.

SHAYS:

Thank you very much.

Ms. Schinasi?

SCHINASI:

Thank you.

First, I'd like to echo the chairman's thanks about being here today. We greatly appreciate your taking the time to come in and help us understand why you do business the way you do. A couple of you in your statements have made a point that contracting in a contingency wartime environment is not the same as peacetime operations. And I think there is pretty common agreement on that. The question is what to do about it.

And so, I guess, Mr. Supina, you made the most direct recommendations about things that exist in the FAR that perhaps don't work in a wartime contingency environment. I think that's something that we would like to consider.

But the question I have is, if we are willing to take more risks upfront by setting aside some of the provisions of the FAR, what does the government get in return to make sure that those risks are mitigated or, you know, that we can come back later, if it proves to be like putting those aside, you know, the government was not getting what it was paying for?

So I guess I'll start with you, Mr. Supina. Any ideas on that? What would you be willing to accept if we put aside some of the FAR provisions that you raised?

SUPINA:

Well, Commissioner, I think there needs to be a group to sit down and really take a look at it. The issue with the contingency contracting versus contracting in a normal peacetime environment is time. In a peacetime environment, you could take months or several weeks to conduct subcontract procurements. In a contingency environment, we often have a matter of days in order to do a subcontract.

And so the issue comes down to the level of analysis that may be done on the subcontractor's proposed price, as we indicated in our statement, our preference is firm-fixed-price or fixed-unit-price contracts to overcome the issue of being able to gather appropriate cost or pricing information from subcontractor, particularly foreign subcontract firms. Their accounting systems generally do not meet U.S. government requirements.

SCHINASI:

Are you saying that the time to get the consent to subcontract is too long? It takes too long for you to get consent of . . .

SUPINA:

And often cases that is the case.

SCHINASI:

How long? Can you give me some data on how long it takes?

SUPINA:

I don't have specific historical information with me. We could provide that data, but it could take anywhere from five days to several weeks to obtain subcontracting consent approval.

SCHINASI:

And do you understand what takes a longer period of time? I mean, is it transparent to you what the criteria are and . . .

SUPINA:

Ma'am, no, I don't believe that there's an issue with the transparency of the data. And I can't speak for the government and their internal process when it comes to the review. Oftentimes as a result of not obtaining the consent to subcontract in a timely manner, we're forced to operate at risk to meet the mission and support the warfighter and take the risk, put the subcontractor to work prior to obtaining that.

Obviously, we are unable to charge those costs or invoice them to the government until such time as we may receive the appropriate consent.

SCHINASI:

And I correct in my understanding that the requirement to get a consent to subcontract depends on how your company is set up and how your systems are set up to be able to manage those subcontractors, so the better you are at demonstrating you can manage the subcontractors, the less government oversight you have in selecting them? Is that correct?

SUPINA:

That varies by contract, ma'am. On the LOGCAP IV contract, regardless of your system status, you are required to obtain ACO consent to subcontract on all subcontracts over \$550,000.

SCHINASI:

OK.

Mr. Powell, let me turn to you next, because you also seemed to imply that there were things in the regular FAR that didn't apply as neatly in a contingency environment.

POWELL:

One of the difficulties, of course, is being able to respond to the troops on the ground and get the subcontracts in place in a timely manner.

The experience that we had, especially in our Task Order 2 work in Afghanistan, is there wasn't sufficient number of subcontractors available to us to get competitive pricing, and so we had to do market research to award those contracts. In those situations, though, in order to protect the government when you use market research, you should then follow up immediately with a price competition so that you can ensure that you're getting the best price.

SCHINASI:

And what if in fact—and speed is something that we've heard a lot about, and urgencies sometimes more urgent than other times. After nine years I would probably argue personally that urgency doesn't mean the same thing now as it did nine years ago.

But would you be willing to change the fee structure that you operate under? Would you be willing to put more money into award-fee pools, for example? I mean, is there something for you to act without government approval more quickly? Is there something on the other side of that that would help mitigate the risks that might, you know, that the government might incur in that situation?

POWELL:

Well, my area of responsibility is subcontracting, so I can't really speak to the contract structure from the perspective of the fee. But if you don't meet all of the pricing requirements, if you're not able to demonstrate with the necessary support, as Mr. Fitzgerald has already shared with you, the DCAA does have the ability to issue a Form 1 to withhold costs on our contracts.

SCHINASI:

OK.

So, Ms. Ritondale, would fines, increased fines and penalties, be something that might work on the other side of putting aside some of the FAR requirements?

RITONDALE:

I think, as Mr. Powell just mentioned also, the Form 1 process and the ability to withhold money and then be able to have a discussion about that, I think, is a proper process. I'm not an advocate personally within KBR and our lessons learned into streamlining the process to next to nothing.

I think as we've been in theater over the years, we have found ways to handle the procurement process with those lessons learned, to be able to follow the FAR as close as possible in a lot of instances. There are some where it is still a challenge even today.

SCHINASI:

And so I guess the new policy that's out there about withholds on business systems is something that would be an incentive to get better visibility into costs for purchasing systems for subcontractors anyway.

POWELL:

Yes.

SCHINASI:

Mr. Taylor, do you have anything to add on this?

TAYLOR:

Commissioner Schinasi, we're structured a little differently. I have a little more-narrow focus, and our subcontractors in country we recruit ourselves, so I don't have to go outside, for particularly foreign subcontractors, to do that. And we push all of our vetting as far upstream as we possibly can so that we have a considered pool of qualified people, should a requirement from the government come up that we did not anticipate.

SCHINASI:

And my understanding—you make a comment in your statement about having access to past-performance data that the government has—my understanding is that that is possible, particularly the EPLS [Excluded Parties List System] system.

And I guess, Mr. Supina, you offered that you do use that data when you look at subcontractors.

SUPINA:

Yes, ma'am. That is just one part of our vetting process.

SCHINASI:

Yes, yes. OK.

My time is up. Thank you.

SHAYS:

Thank you.

Dr. Zakheim?

ZAKHEIM:

Yes, if you were here earlier, you probably heard that I'm deeply concerned about the whole process of how we hire and evaluate foreign subs. And I'm glad some of you have talked about that.

By the way, I want to reiterate what everyone else said that contractors are also losing their lives and putting their lives at stake. And we do appreciate that.

Mr. Supina, you had a suggestion that the commission may want to recommend the establishment of a consolidated approved-disallowed foreign subcontractor database. I think it's a good idea. Do you have an internal one for yourself right now?

SUPINA:

Well, we have a vendor database that we maintain. It's of the various vendors that we deal with so that we're able to go check that database to determine past performance. If we've had problems with subcontractors in the past, we won't utilize them, and we make that information known to all of our procurement folks.

ZAKHEIM:

And you've disallowed subcontractors in the past?

SUPINA:

When you say disallowed subcontractors, yes, sir.

ZAKHEIM:

You have. Could you give me a sense of how often that occurs? Is it 10 percent of the time or particularly the foreign ones?

SUPINA:

I don't have the specific data with me, but if I was to venture an approximation, I'd probably say 10 percent.

ZAKHEIM:

Ten percent. OK.

Mr. Powell, do you have some kind of database like the kind Mr. Supina talked about?

POWELL:

Yes, we do.

ZAKHEIM:

And again, what percent of your foreign subs have you found you really didn't want to do business with again and terminated subcontracts?

POWELL:

I haven't tracked that data, so I can't give you an appropriate answer.

ZAKHEIM:

Does somebody track that data?

POWELL:

We have it in our systems.

ZAKHEIM:

You do.

POWELL:

We know every contractor who bids on the projects, and we eliminate them at the front end. There are certain contractors that we do not send our fees out too, because we know that they're problem contractors.

ZAKHEIM:

OK. So could you, since you have it in your systems, could you send to the commission again the percentage of those contractors that you had to terminate, foreign ones?

POWELL:

Terminate versus never selected?

ZAKHEIM:

Yes.

POWELL:

Because we—OK.

ZAKHEIM:

Actually, both. That would be good.

POWELL:

All right.

ZAKHEIM:

I mean, give us both.

POWELL:

OK.

ZAKHEIM:

Give us the ones you don't ever select, the past performance, and the ones that you decide you don't want at all.

Ms. Ritondale, how about you guys? Same thing?

RITONDALE:

Yes, sir, we do. We have a process of tracking performance and, like Mr. Powell, if we're having performance issues, typically we will not solicit that vendor again. We have done terminations in the past, and we keep track of that, those at the project level where the solicitations are being issued.

We also track any sort of concerns or cure notices or anything along those lines that we've had to issue to contractors, even if they have improved performance.

ZAKHEIM:

OK. So you'll be able to give us the same kind of information I've asked from your colleagues.

And, Mr. Taylor, same with you.

SHAYS:

Could all our witnesses put the mike a little closer? We can hear you, but it's sometimes a struggle. Just pull them over to you a little bit or something. OK. Thank you.

I'm sorry.

TAYLOR:

Commissioner Zakheim, I'm a little smaller than my colleagues at the table.

ZAKHEIM:

Listen, in six months you'll be bigger, the way you're going.

TAYLOR:

We've really had a total of maybe three or four foreign subs. Two or three of them were supporting our work in Iraq, but we no longer have that work, so I just have one right now that we continue to work with out of Bahrain.

ZAKHEIM:

OK. Can I—I'm actually curious, you know. The government is telling contractors to hire local, and you're growing like hotcakes, and you're not hiring local. How do you get around that one? Can you explain that to me?

TAYLOR:

Dr. Zakheim, in fact, we are hiring locals—4,300 of my linguists in Afghanistan are local nationals.

ZAKHEIM:

But they're not foreign subcontractors?

TAYLOR:

No, we do it directly.

ZAKHEIM:

OK. So you hire them yourselves.

TAYLOR:

Yes, we do.

ZAKHEIM:

Thank you.

SHAYS:

Could the gentleman just yield a second?

ZAKHEIM:

Absolutely.

SHAYS:

Are they in the United States hiring them, or were they actually living in Afghanistan and you hired them?

TAYLOR:

Chairman Shays, we have both. I have linguists who are U.S. hires, who Afghan Americans, who are living in the United States, who go over. Though 4,300 that I was referring to our local nationalists, who . . .

SHAYS:

I want to clarify that. Thank you. It's very impressive.

THIBAULT:

Could I . . .

ZAKHEIM:

Go right ahead, sir.

THIBAULT:

Dov is teeing us up here. Each of you has a listing of—you're all in the logistical-support business. In fact, you are the logistical support business, you know, period, with a couple of exceptions about AFCAP [Air Force Civil Augmentation Program]. And each of you has a list. What kind of communication do you have—do the three of you know each other beforehand? And do you talk about, "Hey, you know, I've got six subcontractors I don't know thing about. They're doing this, this and this." Do you all get together the three of you, and you're the top players, and periodically say, "Let's really tighten this down?"

OK.

SHAYS:

No. For the record there was shaking of heads by all the witnesses.

THIBAUT:

And that's your recommendation, but you want the government to do it, Mr. Supina, right? And I'm not against that. I'm just saying that you recommended that whatever you called it, a subcontractor-disapproval database.

ZAKHEIM:

Well, when the government does it, it's OK, but when they do it, it's proprietary. I think that's what's . . .

THIBAUT:

Well, I was compelled by the fact that the three of you are doing what you should be doing.

ZAKHEIM:

Yes.

THIBAUT:

And yet competition says, "I ain't sharing it with you."

ZAKHEIM:

That's why the government needs to do it.

THIBAUT:

Yes.

ZAKHEIM:

And we, I would hope, will urge the government to do that.

Let me ask you, Ms. Ritondale, you used a term that caught my attention. You said you've implemented a database with tremendous controls. You have it in your testimony. You've repeated it. That's pretty cool, tremendous. When did this system come up? I mean, when was it online and running?

RITONDALE:

I believe the system I'm referring to was in 2006 and really into 2007.

ZAKHEIM:

OK. Could you tell me a little bit more about the system itself and what's special about it and what it's remedied and also what further remedies you've made through the system, because for the last four years KBR has had a few hiccups—as certainly Mr. Tiefer will no doubt point out—on occasion.

RITONDALE:

Right. This is referring to how we verify billings and the documentation to support the billings. Previously, it had been done at the time the vendor submitted their invoices. The process now is we are reviewing that data on a real-time basis and verifying it in the field. So we're not waiting for the invoices to be received in 30, 45 days.

The cross-functional team I mentioned is looking at that data on a daily, weekly basis, making approvals and verifications. When the invoice shows up later, everyone's able to reconcile it. And I think it has been an improvement to the system.

ZAKHEIM:

Thanks.

One of the points that was made was that if you go with the fixed-price contract, then you don't really have to worry about getting into the details of how the sub has put his numbers together, because you've got the bid, and that's that. The problem, of course, is exactly that you don't know how those numbers were put together, and there's been case after case that DCAA has identified where it would have been better if we had visibility into the subs.

Now, some of you seem to be geared more toward cost-plus contracts, some of you more to the fixed price. I'd like to hear each of you saying which you prefer and why for the record so

that we can understand the nuanced differences, because we're not hearing, at least I don't think we are, a uniform answer on this one. So I'm just going to go across.

Let me start with you, Mr. Taylor.

TAYLOR:

Commissioner Zakheim, we work on a cost-plus contract. We're very familiar with that. We understand the risks and how to run those down, so we're very comfortable with that. The firm-fixed-price that we've used has only been with our very small foreign subs, and we actually knew their numbers, I think, better than they did, so it was very easy for us to ensure that the government was getting the best bang for the buck.

ZAKHEIM:

So what you're telling me is that in general you think the government will do better if you use the cost-plus. That's what you just said, right?

TAYLOR:

In general that's how we do better with the government right now, Dr. Zakheim, not . . .

ZAKHEIM:

OK.

TAYLOR:

I certainly can't speak for everyone else.

ZAKHEIM:

OK. Fair enough.

Mr. Supina?

SUPINA:

I presume, Commissioner, you're referring to the prime-contract level?

ZAKHEIM:

Prime to sub, yes.

SUPINA:

As prime contract, we would much rather prefer firm-fixed-price contracts . . .

ZAKHEIM:

With the subs.

SUPINA:

With the subs we certainly prefer . . .

ZAKHEIM:

That's what I meant, your contracts with the subs.

SUPINA:

Yes, sir. Firm-fixed-price or fixed-unit-price, and for a lot of the issues that were brought up by Mr. Fitzgerald this morning—inadequate systems of the subcontractors, and in some respects with foreign firms, nonexistent systems.

ZAKHEIM:

Yes, but let me ask you. I mean, on the one hand, yes, it's easier, because, after all is said and done, you don't have to worry about that stuff, but aren't you worried if they don't have systems and you don't have ways of really checking into their numbers? And you, of course, in a sense are responsible—not in a sense, you are responsible for your subs. Doesn't it worry you how those numbers are being generated?

SUPINA:

With subcontracts being procured under a competitive process . . .

ZAKHEIM:

Yes, but that could be in only one, too, so that one doesn't, you know, affect me much.

SUPINA:

In the case of receiving only one bid from a responsible bidder, it's incumbent then to perform a detailed price analysis. And price can still be determined reasonable by looking at past performance, other work done on other programs, looking at what it may cost us normally to perform it.

So if there is a detailed price analysis performed on, in that case, a single bid received, there still can be a determination made as to whether the price is reasonable. Obviously, if we don't feel it's reasonable, we're going to go back to the subcontractor and negotiate the price down.

ZAKHEIM:

And you do that every time there's a single bid?

SUPINA:

Yes, sir.

ZAKHEIM:

OK. Thanks.

Ms. Ritondale, where are you on this one?

RITONDALE:

I am also with Mr. Supina. I would prefer fixed-price subcontracts between ourselves and our subcontractors. Again, most of the subcontractors that have been utilized or have been in the market in a war zone do not have the approved or adequate systems to track cost.

As it relates to pricing and fixed-price, the pricing structure is normally based on price alone and not costs. And it's going to depend on your competition and the level of detail that you ask from a pricing standpoint. We also use different price-analyses techniques as well to be able to drill down into that as well.

ZAKHEIM:

And Mr. Powell?

POWELL:

As demonstrated on our current Task Order 5 work in Afghanistan, 90 percent of our contracts are fixed-unit-rate contracts, and eight percent of those contracts are firm-fixed-price contracts. So that's our preference.

ZAKHEIM:

The other way around.

SHAYS:

Thank you very much.

Mr. Green?

GREEN:

Thank you.

SHAYS:

Interesting.

GREEN:

Prime contractors are paid to provide oversight over their subs. I think all of you agree with that.

Everybody nods. Let the record reflect that.

We heard earlier from Mr. Fitzgerald that—and these are my words—that he didn't think that primes in general were doing a very good job of overseeing their subs. In a line of questioning that continues on with what Commissioner Schinasi started earlier, a FAR clause related to trafficking in persons must be incorporated into all contracts at all tiers.

For Ms. Ritondale, how does your company, how does KBR monitor whether primes are ensuring that their subs are complying with the trafficking clauses?

RITONDALE:

Yes, sir. Thank you, Mr. Green. We do have a very robust program to monitor the trafficking-of-persons flowed-down requirement to our subcontractors. Again, we utilize a cross-functional team of safety professionals, quality professionals, subcontracting professionals, and environmental professionals to do the inspections of the man camps, to track performance at various levels, very detailed checklist.

All of that information is provided back to program management on site and in headquarters, so we can identify any problems, document them, work for mitigation plans with the subcontractors.

GREEN:

Well, I'm not talking about performance. I'm talking about trafficking. You say you have a robust plan. Let me read a couple of examples here to you, if I might.

There's a company called Moonlight Consulting, a Nepalese company. Moonlight took a large fee from a number of Nepalese men and transferred them to a company called Morningstar, a Jordanian job-brokerage company. Morningstar in turn transferred the men to a KBR subcontractor, Daoud & Partners, for a substantial profit.

The men relinquished their passports. While they waited for work, Daoud treated these men as inventory, not employees. They were held in a dark, windowless room. During the time the men were also informed that they would be getting about three-quarters of the pay that had been promised to them. When they finally were sent to Iraq, they traveled in an unprotected caravan on a highway from Amman to Baghdad.

From here the story of the Nepalese men departs from the norm. The caravan was hijacked, and 12 of the Nepalese man were kidnapped by a Sunni insurgent group and publicly executed. That's number one.

Let me give you another one. KBR subcontractor First Kuwaiti General Trading and Contracting Company handed a group of Indian men plane tickets that said Dubai and promptly flew them to Iraq. Another group of Nepalese men brought to Jordan were transferred to a KBR subcontractor, the same one, and driven to Iraq. Their passports were taken, and the burden of a large recruiting fee hanging over their heads, they had little or no choice other than to go.

The last one, and I've got more if you want to hear them, a group of Sri Lankan men brought to Kuwait protested and refused to travel to Iraq. Their employer, First Kuwaiti, gave them an ultimatum: agree to travel to Iraq and get more food and water, refuse and get nothing, be put out on the street in Kuwait City and find your way home. Their response: we could not go back; we didn't have a ticket, a passport or money.

Would you comment on those?

RITONDALE:

Sir, I'm not familiar with the specifics on all of those cases, but I will tell you that as part of the trafficking-in-persons inspections today and even into the past, monitoring that the fact that those employees are each holding their passport and that those passports are not being withheld from those employees is an important element of the inspections that we do and as is tracked every single time we . . .

GREEN:

These must have been just exceptions, then, I gather.

RITONDALE:

I believe these may be older instances, but I can check and get that information back to the commission.

GREEN:

I wish you would.

RITONDALE:

I will do that.

ZAKHEIM:

Grant, could you yield for a sec, please?

GREEN:

Sure.

ZAKHEIM:

These companies that Commissioner Green just mentioned, are you still doing business with any of them?

RITONDALE:

I'm not sure about the First Kuwaiti. I do not believe so. And the other one that was referenced, Daoud & Partners, I will have to check. I think we still have a few contracts with them.

ZAKHEIM:

And if you do, I'd like an explanation as to why they haven't been terminated in light of what Commissioner Green just highlighted for the record for both—for all of us. Thank you.

GREEN:

To me, I don't think you have a robust plan. But we can talk about that later. Obviously, if you did, things like this wouldn't be happening. I think this whole area is one where oversight is extremely weak. You know, DCAA and DCMA, they get into business systems and so forth. But who's looking at this? Any of you know? Who looks at this? Who looks at trafficking, other than the robust system that you have in place?

POWELL:

From Fluor it's Human Resources keeps track of that for us.

RITONDALE:

Mr. Green, from our standpoint it is procurement leading this, my subcontracting team, with involvement from multiple functional areas within the company.

GREEN:

OK.

SHAYS:

Could the other gentleman respond as well?

SUPINA:

Yes, Mr. Green. Within DynCorp International it's our managers in the field that are monitoring the subcontractors in compliance with them.

THIBAUT:

OK, Grant, can I try one, then?

GREEN:

Sure.

SHAYS:

Mister . . .

THIBAUT:

Oh, OK. You always looked at yourself as a one-off, but, please, go for it.

TAYLOR:

Chairman Shays and Commissioner Green, we have a little bit different model. All of our subcontractors are embedded into our own chain of accountability and responsibility, so no matter what they do, they're under MEP management and MEP leadership.

GREEN:

Well, I think what you see here is an example only, and there are probably dozens of others that are very similar. When you have subs who are dealing with subs who are dealing with subs, the ability to track what they are doing is very, very difficult. And you've got to have in place ways to do that, because obviously a lot of folks are slipping through the cracks.

THIBAULT:

Commissioner, can I take one last stab on that? And that is who in the government—the three of you there, the LOGCAP contractors—who in the government does an oversight review of your compliance and the effectiveness of your trafficking-compliance program?

What organization in the government comes in and says, "I'm going to evaluate your subcontractor compliance program?" I haven't seen that as a step in the CPSR [Contracting Purchasing System Review] so, you know, maybe it's handled by some other aspect.

Mr. Powell?

POWELL:

It's not a step in the CPSR and I don't know who from the government reviews that.

THIBAULT:

Ms. Ritondale?

RITONDALE:

I will agree it's not a part of the CPSR, but I would have to check. I do believe there are occasions when the government will accompany us, the quality inspectors on the government's behalf. I'm not sure if it's every man camp.

THIBAULT:

You're talking about evaluating the man camps.

RITONDALE:

Or evaluating our oversight process.

THIBAULT:

But all the examples were sort of above that, the level which was getting them in the country.

Mr. Supina?

SUPINA:

In answer to the question, I'm not certain who on the government side is ensuring compliance.

THIBAULT:

OK.

SHAYS:

You have the floor, Mr. Green.

GREEN:

OK.

Mr. Powell, you've got a company, DFS, as a sub. They provide aircraft. They don't own any. And they don't employ mechanics and pilots. What do you pay them?

POWELL:

They pay them on a per-seat basis for the fixed-wing flights. For the rotary-wing flights, we pay them \$5,000 per flight hour.

GREEN:

What does it cost them?

POWELL:

I don't know, sir. It's a fixed-unit-rate-price contract.

GREEN:

How many aircraft do they have?

POWELL:

I believe it's eight rotary wing, but I may be wrong on that number.

GREEN:

Eight rotary wing. Any fixed wing?

POWELL:

Not that I'm aware of, sir.

GREEN:

Why does Fluor subcontract this?

POWELL:

We subcontract it, because we don't have the expertise nor the personnel on board to fly aircraft. We don't own an inventory of aircraft, so we went out for a competitive bid.

GREEN:

They don't fly them either. Go on.

POWELL:

OK. They have a sub-tier contractor, who does fly the aircraft.

GREEN:

Right. Why have this broker that is providing, from what I can see by what has been provided us, very limited support?

POWELL:

The reason . . .

GREEN:

I'll tell you I've been in and associated with aviation units for most of my, all of my military career. And this ain't rocket science. How many employees does Fluor have?

POWELL:

Seventeen-thousand five-hundred total.

GREEN:

And you can't come up with anybody to run an operation like this to control eight aircraft.

POWELL:

We use our air operations personnel that are in theater, stationed in Bagram, to manage the overall operation as far as the cargo, the numbers of people, et cetera.

GREEN:

To me this looks just like a pass-through. You ain't getting much for it.

POWELL:

Would you like me to go ahead and explain, sir, the reason behind?

GREEN:

Sure.

POWELL:

The reason we don't use it is because we don't have the personnel within our own company. I said we had 17,500. That's referring to the number of personnel including subcontractor personnel in theater. We have 50,000 in the corporation. We do not make this part of our business; therefore, we subcontract.

And the reason we selected DFS in particular was because of their CARB [Commercial Airlift Review Board] certification. There were the only contractor who responded to our RFPs who had CARB certification and provided the most safety for our employees.

GREEN:

How many personnel do they have assigned to this subcontract?

POWELL:

I don't know that, sir.

GREEN:

OK.

That's all.

SHAYS:

Thank you.

I think we are now going to Charles, Charles Tiefer.

TIEFER:

Thank you.

Ms. Ritondale, despite the slurs that have been put upon me that I'm not 100 percent in favor of KBR, I think you'll find my questions more concerned with laying a basis for the third panel than dealing with KBR on this panel.

And what I particularly want is to understand about obtaining subcontractor documents, books, and records in two areas. There's been a controversy, and we've referred to it already here today, called the tainted subcontractors, which, besides the subcontracts between KBR and contractors like Tamimi, which were mentioned in indictments, which is a very, very small number, but the larger universe considered to be as up to 300 million of other subcontracts handled by the convicted people.

My understanding is that DCAA, which said it was still pursuing the matter, asked you. You gave them what files you had on the purchases from Tamimi, and then you in turn fulfilled your duty to ask Tamimi for its books and records. Am I right in understanding that sequence and that the problem here for DCAA is that Tamimi has not forwarded the records?

RITONDALE:

You are correct, sir. We did have records on hand based on an independent audit that was done by a third party. That audit report and the data that we had . . .

TIEFER:

Right.

RITONDALE:

. . . was turned over to the . . .

TIEFER:

It's Tamimi where the problem is.

RITONDALE:

Yes. And then we asked Tamimi.

TIEFER:

Let me move on. Our time is short. Similarly, there's a controversy over security subcontractors. I know you're involved in controversial issues on that. I'm hoping to get around the controversial issues.

At one point KBR conducted a survey of its subcontractors, asking them to say how much their billings had been security subcontracts and that at least a billion worth of subcontractors, that much being the billings, didn't answer your survey at all. And then of those who did answer, one of which was Tamimi, the rate was something like for Tamimi one-quarter of 1 percent for security, which was most unlikely.

At this point DCAA doesn't have the authority to go directly to those subcontractors. Would it take a weight off KBR if it could?

RITONDALE:

I think the principal discussion point here is based on the contract type. What type of data would some of these contractors be able to provide?

TIEFER:

This is an unallowable cost. I don't even believe fixed-price subcontractors are allowed to pass along a certainly unallowable cost.

RITONDALE:

I understand that in this particular case.

TIEFER:

OK. So we should be able to go to, DCAA should be able to go directly to the subcontracts and have them refuse DCAA, if they're going to refuse. OK.

One last thing: we asked you and you provided from an index of your internal audits the three we asked for, and I appreciate that. I want to know whether if we ask DynCorp and Fluor, who said at a hearing—the three of you were there at a hearing and said yes to what I'm about to say—if we asked you for an index of your relevant—not the ones all over the company; the ones relevant to Iraq and Afghanistan—relevant internal audits, and from this index we select a limited number like three, would you provide us those?

Mr. Powell?

POWELL:

Yes, we would.

TIEFER:

Mr. Supina?

SUPINA:

Yes, we would.

TIEFER:

Good. Thanks. OK. Moving on and you can take it easy, Ms. Ritondale; I'm really just even-handed—both Dyn and Fluor have had purchasing systems not approved, disapproved in fact, by DCMA. And one of these issues that caused it to disapprove it has been the large number of purchases from sole sources, subcontracted sole sources without the necessary justification on a pricing basis that the costs, that the prices involved, were reasonable.

Have you, Mr. Powell, was your response when asked by DCMA that you accepted their findings on the subject of sole sourcing by you without your files containing documentation of reasonableness of price?

POWELL:

We did accept their findings.

TIEFER:

Did you accept them?

POWELL:

Yes, we did.

TIEFER:

Yes, OK.

And Dyn also accepted—it's a term of art—accepted the findings of DCMA in this CPSR, yes, Mr. Supina?

SUPINA:

Yes, we did.

TIEFER:

OK. Now, suppose DCMA wanted to go beyond merely asking you to do a manual and asking you to do training, wanted to go with what the auditors called testing to see whether there are things gone, no longer there, like sole sourcing without pricing justification, reasonableness of pricing justification in the file, would you oppose testing by the agency, Mr. Supina?

SUPINA:

No, we would not.

TIEFER:

Mr. Powell?

POWELL:

We would not oppose that.

TIEFER:

Good. OK. Easy day. I want to understand whether the problems here that we're dealing with are just Iraq problems or whether they've gone to Afghanistan as well.

And so, let me ask you, Mr. Powell. The DCAA statement on pages 7-8 noted problems with Fluor proposals for change orders in its Afghan task order and said that 40 percent of these, mostly from foreign subcontractors, were considered unsupported in the file. I might note that change orders—although the obtaining of a task order is competitive, a change order is not competitive, because no one else can beat you. You're just taking the money yourselves, the payment.

Do you dispute the DCAA's position that it found 40 percent of those costs to be unsupported?

POWELL:

I would dispute that they were unsupported, but I do not dispute the fact that on Task Order 2 all of our contracts issued on that task order were done on a sole-source basis, so they cannot determine competitive pricing. That has since been changed from after the DCMA review. If you look at Task Order 5, 94 . . .

TIEFER:

No, I don't want to go on. I want to stay with that.

POWELL:

OK.

TIEFER:

Do you disagree with their—let's see, you know, let's see what they said. You think that those were supported. OK.

Page 7 of the statement by DCAA "In May 2010, DCAA issued its report on the LOGCAP III task-order extension proposal. We identified over \$48 million in unsupported subcontract costs. Similarly, earlier this month we completed an audit of Fluor's re-baselining proposal. DCAA reported over 40 percent of the proposed subcontract costs as unsupported."

You challenge that.

POWELL:

I do challenge that. Yes, sir.

TIEFER:

You think we could have from you and the last from DCAA your explanations as to why you challenge that?

POWELL:

Well, we challenge it, because we've gone back and we did a market research analysis on every one of those contracts that were sole source, and that is justifiable under the FAR.

TIEFER:

But you didn't have that documentation in your file. This is a post hoc after-the-fact search. Is that what you're saying?

POWELL:

No, sir. We had the documentation in our files, so that's why we dispute the finding of the DCAA.

TIEFER:

On the basis of pre-audit files, you were supported. You're saying your charges were supported, your cost was supported—pre-audit files.

POWELL:

I don't know what the term of 'our pre-audit files' means.

TIEFER:

Extant before you had the dispute between you and DCAA.

POWELL:

No, we've been going back and closing at all of our Task Order 2 files, and part of that closeout process, prior to even submitting the estimate for the change orders on Task Order 2, is ensuring we have all the documentation in our files.

TIEFER:

So it was existing documentations in the files in the files is what you're saying.

POWELL:

That is my belief. Yes, sir.

TIEFER:

Time's expired.

SHAYS:

Thank you.

Mr. Taylor, you caught my attention when you said you are more comfortable with a cost-plus audit, I mean, excuse me, a cost-plus contract. And why shouldn't I be surprised with that? In other words you're cost-plus, correct? You're also not having to compete for the contract, correct?

TAYLOR:

I'm sorry. I don't understand the second part of the question.

SHAYS:

Well, you have been given contracts by INSCOM [Intelligence and Security Command] that are set-asides. You get the contract, correct?

TAYLOR:

In the course of our contract, INSCOM can issue a delivery order, an additional delivery order requirement within the confines of our large contract.

SHAYS:

So the answer is yes.

TAYLOR:

Yes.

SHAYS:

Yes. And then you've had really no audits, really, up to this point. So I'm just curious. How does the government know we're getting our money's worth? You don't have to compete for it, and you, whatever your costs are, you get something plus, and you haven't had any audits. I mean, that got my attention. Are you surprised that that would?

TAYLOR:

Absolutely not, Mr. Chairman.

SHAYS:

I want to say, you know, I read the background of all of you. I said to the other commission members, all of you are very impressive—30 years here, 30 years, 32, 33, 10 years, being a

Marine for 14 years, getting a degree, then getting a graduate degree and running a very successful company.

I'm not questioning the services provided. I'm just questioning why the government would feel that they needed to do what they did and how they could look me straight in the face and say, "Well, we know we're getting value for the dollar." I mean, it's a little alarming, frankly.

There was testimony from the first panel that the primes are not properly auditing, excuse me, overseeing. I meant overseeing their subs. Tell me where you would agree with that statement and where you wouldn't.

And I'll start with you, Mr. Powell. First off, do you agree with the statement?

POWELL:

At the startup of the Afghanistan work on Task Order 2 and 4, we didn't have sufficient personnel, so I would have to partly agree with that statement. At this time, we have 150 subcontract personnel performing oversight of our contractors. We also have a compliance organization, who now looks set every subcontract as it's issued, and we have our project controls and operational folks on the ground to ensure that the scope of work is performed and that the billings are correct.

SHAYS:

OK. So and I didn't mishear you. You didn't say you have subs looking at subs.

POWELL:

No.

SHAYS:

OK. So your folks are doing a much better job, you feel, of overseeing your subs.

POWELL:

I absolutely believe that.

SHAYS:

Yes.

Ms. Ritondale?

RITONDALE:

I would agree with Mr. Powell. In the very beginning of our efforts in Iraq, the oversight probably wasn't as good due to the number of personnel we were able to get into theater. I think that we have enhanced that with internal controls and additional oversight both at the site level with the subs and as transactions are awarded and the decisions are made.

SHAYS:

Mr. Supina?

SUPINA:

We have operational managers on the ground. They're working side by side with subcontractors every day to observe their performance, ensure compliance with the requirements. We have had issues in the past with regards to the reviewing of subcontractor invoices, but we've strengthened those processes and procedures from here on out.

SHAYS:

Mr. Taylor, I'm thinking I'm not grasping fully, and I want you to make sure that I do. My sense is you don't feel you have subs. You hire them outright. Or do you feel you have subs?

TAYLOR:

Mr. Chairman, we do have subs. Once we engage in a subcontract, they provide us discrete and unique people that we verify through our systems. And then those people move into our accountability . . .

SHAYS:

So you hire a sub to locate and find employees, and then you hire them, and they become part of your team.

TAYLOR:

We don't hire them, but they're still employees of . . .

SHAYS:

So is each individual an individual contractor?

TAYLOR:

No. I'm sorry. U.S. hires are all employees. The 4,300 local nationals are not employees of the company.

SHAYS:

OK. And they're hired by one company.

TAYLOR:

They're hired by us.

SHAYS:

No, I'm sorry, the 4,300 . . .

TAYLOR:

Yes.

SHAYS:

. . . are hired by you, paid directly by you. Each individual gets paid by you.

TAYLOR:

Every single one of them.

SHAYS:

OK. So they are employees of yours.

TAYLOR:

They're not. They're technically independent contractors, but . . .

SHAYS:

So the answer to my question, I think, should have been so each one of the 43 is an independent contractor hired by you.

TAYLOR:

Each local national, yes.

SHAYS:

Yes. OK. When you hire a sub from a G-20 country, I would imagine you're hiring one type of quality employer. When you're hiring a non-G-20—I was going to say third world, but say, non-European, non-established-economy country; it is, say, employees from Africa, Nepal, and so on—you might end up with a different contractor to deal with. When you hire local nationals, I would think it's different.

So I'm dividing it into the three. If you choose to divide it into more, let me know, but basically, the local national, the G-20, the established-country economy, and the countries in between. Tell me what the difference is in terms of interacting with that sub in terms of oversight. I think the most extreme would be a G-20 country versus the local. Do you have the same ability of oversight in all of those three different groups that I mentioned?

And I'll start with you, Mr. Taylor.

TAYLOR:

Thank you, Mr. Chairman. In our case a company that we would have a subcontract with, say, in Bahrain . . .

SHAYS:

Right.

TAYLOR:

. . . is responsible for people who work only from Bahrain. We don't move them into Afghanistan. We support a number of missions that would not require them to be in Afghanistan at the time, so I don't have the same experience I think that you're alluding to.

SHAYS:

Right.

Mr. Supina?

SUPINA:

Subcontractor oversight is the same, whether it is a G-20 country or a non-G-20 country.

SHAYS:

Even a local national? I mean, I can't even believe that.

SUPINA:

Well . . .

SHAYS:

I can't believe that hiring a local company in Iraq or Afghanistan that you have the same ability for oversight, the same ability to discipline the employee. If that's your record, I'll accept it, but I'd like you to think about it again before you answer.

SUPINA:

The presumption was you were referring to oversight of subcontractor performance.

SHAYS:

Right. The subcontractor is, say, an Afghan subcontractor. He hires Afghan employees. Do you have the ability—as a prime, you should have the ability to do anything you want, basically, to oversee that sub. The government can't, but you can. We have to work through you. Is your testimony that, basically, no difference?

SUPINA:

If there's a problem with the local subcontractor, we retain the right in our contracts to require the immediate removal of employees that we feel are causing problems.

SHAYS:

Do you have any resistance from the local government in terms of how you treat and how you respond to that subcontractor, given that he is a local national?

SUPINA:

We haven't experienced any issues with local governments.

SHAYS:

OK.

Ms. Ritondale?

RITONDALE:

Thank you, sir. I would say we have the ability to oversight all three types. What has been our experience early on in our support to that war and now that we're using more local Iraqi companies is you're going to have to spend more time oversighting and educating them to your expectations and then performing the work either from a technical standpoint, health and safety requirements that are inherently known to us.

You're going to have to spend the additional time and the documentation requirements. And part of it is that education process to grow those businesses so they know what your expectations are.

SHAYS:

My time has ended here, so Mr. Powell, do you have a short answer for that one?

POWELL:

We provide the same level of oversight to the Afghan contractors as well as the G-20. And the reason for that is because APS is our contractor of record for the Afghan First employees, and they're a U.S.-based company.

SHAYS:

OK. I have to tell you I'm surprised by that last answer, so I'm going to think about it and maybe not use my full five minutes. But I'd like to come back to this. Thank you.

THIBAUT:

Thank you, Commissioner Shays. Well, you brought it up. I wasn't going to, but I'll do it this way. I'll start here and go down to Fluor.

Mr. Taylor, do you use any fixed-price level-of-effort contracts in your business?

TAYLOR:

We do.

THIBAUT:

Where?

TAYLOR:

We've used it on our very small foreign subs, of which we have one left.

THIBAUT:

For what?

TAYLOR:

Providing specific linguists to work in a specific area on a specific platform.

THIBAUT:

You couldn't do it fixed-price?

TAYLOR:

I'm sorry—we do fixed-price for that.

THIBAULT:

Well, fixed-price level-of-effort is an art form which says that you negotiate \$10 million, and when they get to the top of the 10 mill, they tell you, and you either—you know, in other words, it's not a fixed-price contract with conditions that you have to have certain deliverables. The level of effort means something different.

TAYLOR:

Then I don't have that experience, Mr. Thibault.

THIBAULT:

How about you, Mr. Supina? Do you use level-of-effort contracts?

SUPINA:

Very infrequently.

THIBAULT:

Can you give me an example where you have?

SUPINA:

We have one subcontract under the GLS [Global Linguist Solutions] program, the GLS joint venture with Al-Shora. That's a fixed-price level-of-effort contract.

THIBAULT:

You're the one. That's right. So APS is a different issue. OK.

Do you use fixed-price level-of-effort, Ms. Ritondale?

RITONDALE:

No, sir. We do not.

THIBAULT:

Then I stand corrected, Fluor. I have an interest in APS, but it's not for that. Do you use fixed-price level-of-effort?

POWELL:

Level-of-effort the way I define appears to be different from the way you define it. Level-of-effort to us means if you're on a fixed-unit rate, it's based upon the number of hours that are provided, the number of flights that are provided, those types of things. So that is being reimbursed on a level-of-effort supply-side contract.

THIBAULT:

Up to a ceiling.

POWELL:

Up to the maximum amount of the contract . . .

THIBAULT:

Of the fixed-price ceiling.

POWELL:

. . . but we don't have a fixed-price ceiling, so we don't have that type of . . .

THIBAULT:

To the maximum top of the contract. Well . . .

POWELL:

Correct.

THIBAULT:

So APS: I've got a note here from your people that it was determined to be fair and reasonable, because it was a competitively bid contractor—no issue, the contractor's fixed-unit rate not across-contract. Now, would you call that level of effort?

POWELL:

I call it level of effort from the perspective of we pay them by the hour. The fixed-unit rate for each hour they provide, we determined the level of service . . .

THIBAULT:

And they give you the documentation for the number of hours.

POWELL:

They give us the documentation that we sign off on for the number of hours that they've provided.

THIBAULT:

But you do sign off on. My understanding based on a prior briefing is you sign off on individual timesheets.

POWELL:

That is correct.

THIBAULT:

And the initial contract was not to exceed \$50 million.

POWELL:

Correct.

THIBAULT:

And my understanding now, and I don't know if that's 80.0000 or rounded to 80.0, is that the current subcontract is 80.0.

POWELL:

It's growing beyond that, sir.

THIBAULT:

And why is that?

POWELL:

Because they are the labor broker, and as we continue to provide received labor services from them, and we are re-competing those particular contracts.

THIBAULT:

So just as I sit here and think about this with you, the only risk would be if they had an accounting system that handled labor card, timekeeping, and billing. Do you agree with that statement?

POWELL:

I agree.

THIBAULT:

OK. Who verifies, does the audit of the accounting system—typically, accounting-system survey or accounting system or call it what you want—as well as their billing system. I'm not talking about adding up what's on the invoice, but I'm talking about the system, the business system that APS has. Who's done that audit?

POWELL:

No one has done that audit, because they are a fixed unit-rate contractor, and further terminology in the FAR, no audit is required.

THIBAULT:

No audit's required, but how do you have insurance that they're putting it together properly, that their labor-accounting system is good? You don't.

POWELL:

We have assurance that the hours that are being billed to us are correct, because we sign off on all those timecards at the point of entry, and then that becomes part of the billing to us.

THIBAULT:

OK, stay with me. So you're talking about you have—a wrong word, but it's the one in my head—intimate knowledge of the time that people are spending for a specific project, and you're able to sign off and verify that the labor hours are correct, and you've already negotiated a rate.

POWELL:

That is correct.

THIBAULT:

All right. I'm good. Thank you.

– What I wanted to go back to, and I may not get to what I said I'd get to, but you all get five minutes at the end, or whatever you want at the end, to comment. That's the way we do it.

But since Commissioner Green brought up aircraft, I thought I'd bring up aircraft and just kind of explore this. But I'm not going to do Fluor. I'm going to do Dyn, Mr. Supina.

Looking at your price-analysis table, it's factually correct I assume—it's your document—that you paid \$800 an hour or so more per-unit power for helicopter service from your aviation helicopter subcontractor, McNeil.

SUPINA:

I don't have the same data you're looking at immediately in front of me. I'm familiar with it. The \$800 an hour, if I recall, is the difference between McNeil's price and the lowest bidder in that procurement.

THIBAULT:

No, the McNeil price is SkyLink 49.50 and McNeil 57.33. So I'm down to the two that were downsized.

SUPINA:

Yes.

THIBAULT:

SkyLink and McNeil—that's right at 800 bucks.

SUPINA:

But . . .

THIBAULT:

I'm going to walk through this thing now. You disqualified SkyLink, because you didn't think they had a good drug testing or a drug-testing employee program. I've read this with some attention.

But you said cost wasn't that critical, so \$800 an hour more. But here's where I'm coming from, and it's where we talked about past performance. Now, I'd asked this question before, so I know the answer, but I'm going to ask it anyway. Does McNeil have any prior helicopter-subcontractor service record to evaluate either in a contingency operation or anywhere else? Is it the line of business you can get off their Web page?

SUPINA:

McNeil has a background and prior experience in providing these types of aviation services. It's not on their Web page.

THIBAULT:

Well, when we asked, I was told when we met. So you're telling me they have a line of business that does this?

SUPINA:

Yes, sir.

THIBAULT:

OK. That's fine, because you said when you gave them past-performance, you said safety and performance based on past experience working for DynCorp, and you said it was OK. Had they flown for you?

SUPINA:

You're referring to the second procurement we did with McNeil. The first procurement with McNeil I don't believe that was the past-performance references there.

THIBAULT:

All right. Well, I got you where I kind of want you, and we'll do some additional backup.

Last thing, QFR, can each of you LOGCAP contractors provide, please, the subcontract-disapproval database structure? In other words how do you go through that process? What is a formal feedback, you know, what the constructs are, just so that we'll understand it. It'll be for comparative purposes as well as this issue about should there be a global?

And if you have any questions, you can come back at us. Your staff can come back at us afterwards. Thank you.

SHAYS:

Thank you.

Dr. Zakheim?

ZAKHEIM:

Well, let me . . .

SHAYS:

Is your mike on?

ZAKHEIM:

No.

I was intrigued by this dialogue you just had, Mr. Supina, with my colleague here to the right. What exactly is your relationship, or DynCorp's relationship, with McNeil?

SUPINA:

DynCorp is a partner with McNeil in the GLS joint venture Global Linguist Solutions LLC.

ZAKHEIM:

Well, to my naive eyes that doesn't look like an arm's-length relationship, so you're competing—somebody that you've got a business tie with—you're then competing against others and disqualifying the others. And then they wind up subbing to you. How do you explain that? You know, to me that's a little puzzling.

SUPINA:

Commissioner, the procurement in both instances was done in competition. The first instance we sought proposals from six different firms. The second is that we sought proposals from seven different firms.

Our subject-matter experts evaluated the technical capabilities of each one of the companies and their proposals. In the instance the requirement to get the aircraft in country was to meet scheduled mission requirements, was one of the primary drivers.

Price was an important consideration, but schedule was the primary driver in this election of the ultimate contractor. In both cases the McNeil was able to provide the aircraft in country within less than a week.

ZAKHEIM:

And the fact that you have a business relationship with them, that they are joint-venture partners, neither here nor there in your view.

SUPINA:

Yes.

ZAKHEIM:

OK.

Mr. Powell, in your testimony on page 6, you—and you talked a little bit about this also with Commissioner Green—you said there's a challenge about housing personnel in secure locations within the limits of the TIP [Trafficking in Persons] requirements. So what exactly have you done about it? I mean, you've got these people. You don't have the space for them. You've got the TIP requirements. What have you done?

POWELL:

Well, what we've done is asked the military to give us more real estate so that there is sufficient square footage, if you will, for each employee.

ZAKHEIM:

So you've kicked it over to the military, but in the meantime you've got the employees, and they're living in impossible conditions. Is that what you're telling me?

POWELL:

Well, we're living in the same conditions—unfortunately—the military is having to live in, which is in clamshell tents in many cases. But what we have done as a corporation is we've gone in and we've built a relocatable building structure that will house 168 additional personnel. And that's what we've done.

And we consider it to be an issue for us, because it's inappropriate, we believe, to house people in 23 square feet per person, which is about the size of a mattress that you would have in a clamshell 10.

ZAKHEIM:

OK. Let me ask each of you this, and this will be my final question. I think it was Ms. Ritondale who said that it wasn't a bad idea to give DCAA the ability to look at the subcontractors' accounts.

If it wasn't you, I apologize.

But I'd like to get each of your opinions. On an FFP [firm-fixed price] after the fact, which is what DCAA does, do you think it's a good idea to give DCAA the access that it doesn't have right now?

Mr. Powell?

Sorry. Did you hear me? I'll do it again. The question was you think it makes sense to give DCAA the access to subcontractor accounts, even if it's a firm-fixed-price contract?

Yes, each of you.

POWELL:

OK. I'll go first. I have no problem with that. The DCAA provides an important oversight role for the contractors and gives us good advice on what we need to look out for on the contracts.

ZAKHEIM:

And do you think it would be helpful to you?

POWELL:

I think it would be helpful, yes.

ZAKHEIM:

Ms. Ritondale?

RITONDALE:

On firm-fixed-price contracts, again, I want to reiterate these are based on price at the time of award. In the after-the-event looking at the records and going into looking at costs—that could be a challenge. Also was the challenge of the adequacy of the subcontractor systems.

So I would prefer to keep continuing looking at the price, looking at the price analysis, which was done. But we can request our subcontractors to provide access in the event that it's needed.

ZAKHEIM:

So is that a way of saying you'd rather DCAA not look into it?

RITONDALE:

Well, it's not so much whether I believe that DCAA should or shouldn't look into it. I think it is a fact of what was the decision and the contract type at the time, which is based on price, and that's what the contractors would be able to support if we would . . .

ZAKHEIM:

I'll take that as a no.

Mr. Supina?

SUPINA:

Commissioner, I don't believe it's necessary that DCAA have access to subcontractor books on firm-fixed-price contracts.

ZAKHEIM:

Thank you.

Mr. Taylor?

TAYLOR:

In our current circumstance, it's fine with us, but we would reserve the right to revisit it, given our growth going forward.

ZAKHEIM:

Thank you.

My time is up. They've grown since I started questioning.

SHAYS:

Mr. Tiefer? Professor Tiefer?

TIEFER:

Thank you.

To pick up on the excellent question that Commissioner Zakheim just asked, there is a dispute now over just what fixed-price is. DCAA's position, I understand, is that when we're dealing with fixed-rate contracts, where the risks involved are really put on the government, not taken by the contractor, fixed rate, DCAA says it will audit under the types of principles that it uses for cost.

And the audits of your companies that DCAA has conducted have treated fixed-rate this way, not that your subs have to be set up as a cost-based system, but rather that you have to be able to justify what you're doing with a fixed-rate sub. Am I right that while I've heard some opposition from contractor circles, I have not seen resistance to DCAA audits using these.

Ms. Ritondale, do you resist DCAA audits treating fixed-rate as akin to cost-plus?

RITONDALE:

There's two elements of an audit on fixed-rate. There is a price that you're paying for the fixed unit, and there is the auditing of the variable which is . . .

TIEFER:

Can you start with a yes or no, and then we'll get onto this, please.

RITONDALE:

I forgot your question, sir.

TIEFER:

Fixed rate—do you insist to DCAA that it be treated like fixed-price or do you accept DCAA's position when it's doing audits they be treated as cost-plus?

RITONDALE:

Again, sir, I'd have to caveat. It's two different product types.

TIEFER:

Say yes or no, and then caveat. I understand.

RITONDALE:

No, sir, I would not, treating it as a cost-plus.

TIEFER:

You would not,

RITONDALE:

No, sir.

TIEFER:

You continue to oppose fixed rate, even though the risk is on the government. OK. All right.

Mr. Supina, is your position relatively similar to that?

SUPINA:

Yes, sir.

TIEFER:

OK. We have nos even on an ambiguous question that's current practice by the auditing agency.

Mr. Taylor, you've been left alone, but all good things come to an end. And my understanding you have about 4,000 or 5,000 translators, which you treat as independent contractors.

TAYLOR:

Forty-three, forty-four hundred, yes.

TIEFER:

Yes. And you said earlier that you have asked for a review, a review of your purchasing system, your systems, like DCMA. Well, they're very busy. Would you invite a review by the Defense Contract Audit Agency of those systems?

TAYLOR:

Yes.

TIEFER:

Fine.

Now, you are seeking, and some think you have a very good chance of getting onto the WPS [Worldwide Protective Services], the successor of WPSS [Worldwide Protective Personal Services], the State Department's security IDIQ. You know what I'm talking about, WPS?

TAYLOR:

Yes, sir, but we have no interest in that contract.

TIEFER:

You're not?

TAYLOR:

I am not seeking any position on that contract.

TIEFER:

Oh. Goes over there.

I don't think that the happiness will continue on. In the third panel we're going to hear from Mr. Torres. He may say—I don't like to predict these things; it could be different—that you pay him, say, to take one of the categories of linguists, say, a Pashtun linguist. He said for finding and vetting and all that that you pay them \$30,000, and you charge INSCOM up to 150,000. What would you respond to a statement like that?

TAYLOR:

Commissioner, I don't have that figure in front of me, but I would have to say that INSCOM has complete visibility to our costs and scrubs them vehemently with our contract shop. As a matter of fact, we pay all our linguists the same amount of money.

TIEFER:

Yes.

TAYLOR:

. . . so I'm confused as to how that could be possible.

TIEFER:

Which end of it, that you pay him 30,000 or that you charge INSCOM 150,000?

TAYLOR:

I think in this case either end, Commissioner Tiefer, because the cost is the same for every linguist across . . .

TIEFER:

I understand that. I'm asking yes or no on the proposition I'm giving, not the one you want to be asked: 30,000, 150,000 impossible?

TAYLOR:

I don't think it's possible right now.

TIEFER:

All right. All right. We'll hear from him or we won't.

Am I right you have about 50 managers for your 4,300 translators, and we're getting—that's about 90 to 100 for each manager. Is that right?

TAYLOR:

I don't know if that's the exact number.

TIEFER:

Between 80 and 100 then.

TAYLOR:

But we have roughly 50 to 60 managers in country.

TIEFER:

And does that mean that compared to your 4,300 linguists that you have something like 80 or 90 linguists for each manager?

TAYLOR:

For administrative control, yes.

TIEFER:

OK.

My time is up.

SHAYS:

In my first round I just reminded you all that the previous panel to a person said they did not feel that primes were adequately supervising their subs.

And, Mr. Taylor, we put you off this question.

But, Mr. Powell, Ms. Ritondale, and Mr. Supina, you basically implied, said that in the beginning when we first started out, we didn't do the oversight we should have, but now we think it's pretty good.

In my second question, I asked kind of not as clear as I should, was there unique challenges dealing with subcontractors from a host country versus non-host country. And I didn't mean in

terms of their education and so on. I meant in disciplining them and overseeing them and holding them accountable.

And to a person, all four of you said no. I want to make sure that you're comfortable with that, and this isn't, like, a conversation we're having. You're all under oath. You're all having to be very certain that there's no difference. So there's no information in your files about uniqueness of dealing with it, no information about potential payoffs to the subs unique to the country.

That's kind of where I want your head to be, because I don't want to be putting you in a situation where you were too cavalier on that answer. So I'm giving a second pass.

Mr. Powell, any difference between dealing with a host-country sub versus a non-host country sub.

POWELL:

From that perspective, now that you've clarified it, the difference or difficulty we have is oftentimes in the culture. From the perspective of safety, we have to do significant amount of safety training for the Afghan First employees, for example. Ethics training is new to them, but as a corporation we require that of all of our subcontractors, including those personnel coming from the local-national population.

SHAYS:

Any challenges in terms of discipline, that the host country just doesn't want you to treat them the way you would want to treat a sub who wasn't performing?

POWELL:

Not that I'm aware of, sir.

SHAYS:

Ms. Ritondale?

RITONDALE:

I'm not aware of any issues where the host nation is not allowing us to treat the subcontractors as we would through our contract terms.

SHAYS:

OK.

Mr. Supina?

SUPINA:

Processes are the same, regardless. There are challenges dealing with the local firms . . .

SHAYS:

Right.

SUPINA:

. . . with regards to that, but we have not experienced, to my knowledge, any issues where the host-nation government or local government has interfered with our ability to.....

SHAYS:

Mr. Taylor?

TAYLOR:

I don't have foreign subs in Afghanistan, and the one that I do have been Bahrain. It's very easy to keep track of these things.

SHAYS:

Well, see, I think you have 430 foreign subs.

TAYLOR:

Forty-three—I'm sorry?

SHAYS:

Forty-three-hundred foreign subs.

TAYLOR:

In that case if that's your perspective, Mr. Chairman, we have our own training. I won't tell you where in country for safety reasons, but we have our own training that lasts between two and four weeks in which we put all of our local nationals through all of this sort of training.

SHAYS:

Right. Well, I mean the testimony is the testimony and it's different than what I expected, but it's the testimony, and that basically what you're saying to this commission and on the record is that you have no oversight problems with a host-country sub that you would have with a non-host-country sub. And that's surprising to me, but I often have hearings were I'm surprised. So that's not a bad thing. It's a good thing, frankly.

Mr. Fitzgerald made four recommendations on how we could improve the process. He said DFAR's business system revision to withhold payments in terms, and I'd want to know what you think of that. He said DPAP [Defense Procurement and Acquisition Policy] review contract clauses applicable to management subcontracts. Number three was when one bid received, the non-competition require cost data. And the fourth was when limited competition require cost data.

And I'd ask on one in addition, and that was one that in the auditor fixed unit-price subcontracts, I mean the point was, Ms. Ritondale, you were making the point that the only thing that you would audit is the number of hours, but shouldn't we audit them? And so do you disagree with any of Mr. Fitzgerald's recommendations?

And we'll start with you, Mr. Taylor.

TAYLOR:

I agree with all of them with the caveat that, number one, particularly with companies who are experiencing a lot of growth and you are trying to keep ahead of the power curve particularly with their business systems that it takes a certain amount of time to get caught up.

And so if there are no incidents that would contribute to a negative incident, that it would be—you're almost penalizing a good company who's trying to stay ahead of the power curve and do the right thing going forward.

THIBAULT:

And would you agree, then, if it said a plan for those new companies acceptable to the contracting officer, so that if there are six or eight key business systems that drive your work that you really need to nail in terms of accurate and complete data, that as long as you could provide some kind of a plan that would say how you're going to vet and approve those?

TAYLOR:

Certainly. And if that plan had the benefit of DCAA input so that we could get it right the first time, I think that would be fantastic.

SHAYS:

Mr. Supina?

SUPINA:

We certainly would agree that if a contractor fails to address any issues identified in their systems, that some set of withholding would incentivize a contractor to be much more responsive. We do believe if the contractor is responsive in addressing the concerns, that the current process of Form 1s or whatnot is sufficient.

With regards to the increased audit of competitively awarded fixed-price contracts, the focus should be on the adequacy of the price analysis done. It doesn't necessarily mean DCAA would need to get in and review the actual costs, but really look at the adequacy of the price analysis done in a competitive environment.

THIBAULT:

Who would look at the variable costs?

SUPINA:

Variable costs . . .

THIBAULT:

Ms. Ritondale, in other words, if we've got a negotiated rate subject to fixed units, which happens to be hours or days or whatever the criteria is, who would be responsible for auditing that?

RITONDALE:

Variable units like the hours? Obviously, the contractor or in this case KBR would, because that would impact the billings. And currently, DCAA is looking at our documentation of the units that have been received.

THIBAULT:

So you would buy into contractor primary, and DCAA has access to your audit of those variable units.

RITONDALE:

Yes . . .

THIBAULT:

Do you agree to that, Mr. Supina?

SUPINA:

Yes, sir.

THIBAULT:

Mr. Powell?

POWELL:

I do.

THIBAULT:

Well, then, we're down the same path, then.

SHAYS:

So I can conclude you disagree with anything that Mr. Fitzgerald recommended.

Mr. Powell?

POWELL:

I am concerned that the FAR sets up a set of principles that the contracting community adheres to, and as we go through and make changes to those, potentially, that the contracting community be given the opportunity to respond.

SHAYS:

I'm happy you didn't say until DoD could audit their books, and you're willing to have the books audited. Thank you.

You all have an opportunity to put something on the record that you would like to put on the record before we get to our next panel. Is there anything that you would like to say?

And, Mr. Powell, any comments?

POWELL:

Well, to the members of the commission, I appreciate the opportunity to be here today to share with you my thoughts on subcontracting in Iraq and Afghanistan. We face challenges in the execution of the scope of work allotted to Fluor, but we continue to improve our work processes to meet the expectation of our clients.

We have robust ethics and compliance programs in place to help us achieve forward progress in our execution of our subcontracts, and we have dedicated subcontract administrators and a dedicated operations team, who understands the need to follow our policies and procedures to achieve and maintain compliance systems.

We look forward to continuing to serve our warfighters in theater so that they might achieve their mission objectives.

SHAYS:

Thank you, Mr. Powell.

Ms. Ritondale?

RITONDALE:

I would also like to thank the commission for the invitation today to present to you all and the questions that you've asked. Just a couple of things I would like to suggest as recommendations.

As Mr. Powell mentioned, a lot of regulatory changes might be a result of what comes out of these commissions and some of the things that DoD is doing. The contractors as well as our subcontractors do have a lot of lessons learned of what has worked well and what maybe not has worked well.

And again, I would ask that maybe we could all be part of some of those council or counsel or discussion so that you're getting some of the good lessons learned that we have and that we can actually share the lessons learned amongst ourselves.

SHAYS:

You know, I think the commission would agree with that, and we'll find a way in the fall to make that happen.

RITONDALE:

Thank you.

SHAYS:

Mr. Supina?

SUPINA:

I want to thank you for the opportunity to participate in this hearing today. Iraq and Afghanistan is a tough place to operate and our subcontractors working alongside of us in supporting the warfighter. I'd like to just mention several of the subcontractors we have and the excellent work they're doing.

Two well-drilling firms, Boart and Layne Christensen from Utah and Colorado, have completed 13 wells in Afghanistan, providing over a million gallons of water a day, with a capacity to provide two-and-a-half million gallons a day. They've been able to drill wells where no one else has been able to. They've done excellent work, and this will be a lasting legacy for the Afghan people.

CH2M Hill, our construction management subcontractors, the premier construction company in our mind in the world, doing excellent work. Our onsite Occupational Health and Safety

Incorporated of Indiana—they provide medical services and personnel to include emergency support and medevac operations at our bases and FOBs in Afghanistan and Kuwait.

And then also Centerscope of Virginia, our mentor-protégé firm under the LOGCAP contract, who we have a formal mentor-protégé agreement in place to try to help them grow and develop their business.

Together with our subcontractors, we're proud of the work we've been doing in Afghanistan and Iraq, and we look forward to continuing the privilege.

SHAYS:

Thank you, Mr. Supina.

Mr. Taylor?

TAYLOR:

Thank you, Mr. Chairman. Just simply on behalf of the 6,000 men and women of MEP all over the world, thanks for the opportunity to be here today. You have our promise, our collective promise that we will continue to invest in our business systems and our compliance to ensure that we provide the U.S. government and the American people the best-quality service we possibly can.

SHAYS:

Thank you very much to all four of you for your services to your country and your companies' service to our country as well. And we thank you for being such cooperative witnesses. Thank you very much.

We're going to get right to our next panel. We'll swear them in and . . .

Thank you. Mr. Torres, you can stay standing, because we're going to swear everyone in, and so please, thank you, everyone, if you'd stand. We're swearing you in as we swear in all our witnesses.

If you'd raise your right hand, do solemnly swear or affirm that the testimony you will give to this commission is the truth, the whole truth and nothing but the truth?

Note for the record all our witnesses have responded in the affirmative either by saying yes or nodding in their head.

Gentlemen, I know it's been a long day, and you've had to wait. You've had the advantage of hearing what others have said, and that'll help us out as well. And we thank all of you for being here. We're going to ask you to give your testimonies.

And we will start with you, Mr. Brune. Is that how to say it?

BRUNE:

Brune, yes, sir.

SHAYS:

Thank you, sir.

BRUNE:

Chairman Thibault, Chairman Shays, distinguished members of the commission, my name is Fred Brune. I am the president of the Government Facilities and Infrastructure Business Group of CH2M Hill.

On behalf of the 23,000 men and women of our company, I'm pleased to participate in the discussion of wartime contracting in Iraq and Afghanistan. I know that it's been a very long day for all of you, so I will keep my remarks very short and asked that my written statement be submitted for the record.

First, I'd like to say that it was our pleasure to host both co-chairs of the commission, along with the commission staff, in our corporate office in Denver last month. I'm sorry that I was not able to personally be there, but I understand the meeting went very well, and I look forward to building upon that discussion today.

CH2M Hill has a long history of service to the United States government and today works on behalf of the Army, Navy, Air Force, EPA, FEMA, the Department of Energy, and other agencies. Since 2004 CH2M Hill has been providing support to the U.S. military, first in Iraq and subsequently now Afghanistan.

This support embodies our corporate commitment to follow our DoD clients in both peace and war. Although approximately one-third of CH2M Hill's revenue is in support of the federal government, our work in Afghanistan and Iraq represented less than four percent of the total company revenue in 2009.

While CH2M Hill has served numerous clients and has provided a range of engineering and construction services in Iraq and Afghanistan, the majority of our work results from three large contracts.

First, CH2M Hill held an Army Corps transatlantic program-center IDIQ contract from January 2004 until January 2009, when it expired. Secondly, from April 2006 to the present, CH2M Hill has also held an Air Force heavy-engineering repair and construction contract. And lastly, since July 2009, we have been a subcontractor to DynCorp for the southern Afghanistan task order under LOGCAP IV.

I'm especially proud of our work there as it relates to the construction of life-support facilities and water-well drilling, which provides capacity for up to 2.5 millions of gallons of water each day and takes hundreds of trucks off the dangerous Afghanistan roads daily.

A week ago I returned home from a 10-day trip to Afghanistan and Kuwait, where I was able to visit five different project sites where CH2M Hill is the prime contractor. During my trip I had an opportunity to visit with numerous officials from the U.S. Army Corps of Engineers, including the new commanders for both Afghanistan engineering districts, as well as with officials from the Air Force.

Finally, I spent time at the main LOGCAP IV contractor support office in Kandahar, where CH2M Hill is serving with DynCorp in support of the Army and the Marine Corps in southern Afghanistan. These on-the-ground reviews are an important part of the way we ensure sound management oversight of our projects for the U.S. military in theater.

CH2M Hill appreciates the work that this commission has done to ensure that our troops in Iraq and Afghanistan receive the support they need and that our taxpayer dollars are spent wisely. CH2M Hill is committed to serving the facility-infrastructure and logistics needs of the Department of Defense in the wartime contingency environment.

We are dedicated to serving the men and women who so bravely fight to protect our national security interests. With that, Mr. Chairman, I'd be pleased to answer any question the commission may have.

SHAYS:

Thank you very much.

Mr. Dalby? Am I pronouncing your name correctly, sir?

DALBY:

Yes, you are.

Good afternoon, Commissioners. I am Perry Dalby. I'm Tamimi's general manager and ethics director. I'm responsible for Tamimi's life-support and food-service contracts for the United States Armed Forces in both Kuwait and Iraq.

Tamimi is part of the Tamimi Group. We have 37 companies and a 57-year-old corporation based in Saudi Arabia. We employ over 24,000 men and women of more than 28 different nationalities. We operate in Iraq, Saudi Arabia, Bahrain, Qatar, Kuwait, and the United Arab Emirates.

We have a 19-year history of partnership with the United States Armed Forces. We have provided more than 600-million meals for the United States in theater. We have served United States troops during more than seven major military operations in the Middle East.

Tamimi is fully qualified to support the United States military's mobilization. We are regionally located. We have the capability, capacity, and the experience to rapidly provide life-support services on a large scale.

In 1991 we set up fully functional food service operations for United States troops in the field with only a 72-hours notice. More recently, during the height of Operations Iraqi Freedom, Tamimi was able to provide the United States military with more than one-million meals per day.

These mass mobilizations of meals would not have been possible without Tamimi's regional logistic capability, experience in the field of catering, life support, and our financial commitment, and last of all, our dedicated and hard-working employees.

Today Tamimi operates many dining facilities in Iraq and Kuwait. We have both worked as a subcontractor under LOGCAP III and a prime contractor for the Army. Our military contracts are competitive. They are bid, and they are fixed-price.

We have reliably supported the United States mission even in the face of adversity. We were the contractor who provided meal support to United States troops in Fallujah when other contractors would not. Seven of our employees have lost their lives in Iraq. We have nine other employees who suffered extensive injuries in the field.

Our commitment to providing the United States with quality service is matched by our commitment to our employees. When I do walk through our DFACs [dining facilities], I see employees who have worked for the company for decades. They continue to work for this company because we treat them fairly, we provide them the opportunity to learn a marketable skill, and we value their contribution.

Tamimi is committed to ethics and compliance. We have a hotline for all of our employees to report possible violations and an ongoing compliance training and education program to support. In my written testimony I made several recommendations. Let me address some.

First, the area of communication: In a contingency environment, as you well know, conditions may vary, and they are very difficult at times for communications. The lack of accessibility of the prime to the sub is an issue, and this needs to be rectified.

Second, security is also key to providing logistical support in the contingency environment. Without root security, security of our facilities, security of our FOBs, the risk to subcontractors would be too great.

Third, all contractors or subcontractors deserve, obviously, to be paid once the period of performance has ended.

Fourth, standardized pre-qualifications of subcontracts is a necessity. Pre-qualification is the government's assurance that companies that win the work can actually perform the work.

I am proud to be part of this company, and I welcome the opportunity to appear before you today and assist you with your important mission. I believe we provide the best professional food service in theater, and I invite you all back at any opportunity you can.

SHAYS:

Thank you, Mr. Dalby.

Mr. Hinks?

HINKS:

My name's Paul Hinks. I am the chief executive officer of Symbion Power LLC, a U.S. power engineering and construction firm that was formed in 2005 specifically to undertake electrical reconstruction work in Iraq and Afghanistan.

I'm grateful for your invitation to appear before this distinguished commission, and I'm here to share with you my experience and views as both a prime contractor and as a subcontractor, having managed to different companies in Iraq and Afghanistan since 2003. I'm not here to advertise my company.

I've spent my life as a contractor. I studied and trained in the United Kingdom for the national power utility. In the early '80s I lived and worked in Africa, where I was responsible for the construction of an array of projects that included power plants, transmission lines, distribution lines, and substations.

For the past 29 years, I've carried out work in developing countries, some of which have been conflict zones. Although many of these are now stable and secure, they included Zimbabwe in the early '80s, Mozambique, Angola, and Uganda.

There was a time 20 years ago when building a project in Mozambique was akin to working in Iraq. I was in Uganda during the civil war there, once hiding under a bed as gun battles raged outside the house. I lived in East Africa for 10 years, during which I traveled to work in other African countries. In those days the African National Congress, the ANC of South Africa, built large camps in Tanzania and Zambia for thousands of their exiled supporters. I installed the power systems there. Today, decades later, the ANC is the government of South Africa.

In Iraq I executed five subcontracts between 2003 and 2004. And from 2005 onwards, I've been responsible for nine prime contracts for the Department of Defense. The value of those prime contracts amounted to \$260 million.

For subcontracting work, the model that each prime contractor utilized was to have us, the subcontractor, accept the contract-execution risk and to deliver each project to them. Their contracts were cost-plus. This cost-plus model of contracting was alien to me before my experience in Iraq.

All my life as a contractor, I've worked under pressure to meet tight budgets that are based upon competitive estimates. When we saved money through efficiencies and good performance we made good profits. When we made mistakes, we paid for them dearly, and our profits were eroded.

With cost-plus as the overall level of expenditure escalates, the contractor earns more money, because the margins and fees are based upon percentages. Thus, the dollar amounts that the percentage represents become larger as costs increase. Where is the incentive to save money? It's like giving your children whatever money they ask for. Just like your children, the cost-plus contractor loses any appreciation for the value of money.

I founded Symbion Power in 2005 with the specific intent of executing power projects in Iraq. Many of the large U.S. prime contractors were pulling back at that time, and the number of important electricity projects had not been started, because they were extremely hostile locations.

I have a formula to get the work done. I joined forces with a security company and then partnered with indigenous Iraqis. We were awarded with nine Department of Defense prime contracts in some of the most conflicted parts of the country. Seven are complete, and the other two will be shortly.

In Afghanistan Symbion was engaged as a subcontractor by Louis Berger and Black & Veatch for the construction of a 100-megawatt power plant, a power plant you all know a lot about. The subcontract wound up in a dispute and is now in arbitration proceedings.

Unfortunately, because of the confidentially order, which I opposed, I am prohibited from discussing details that relate to the dispute. If the arbitration is made public in the future, I am

happy to return to testify about it, and I would welcome a discussion before you with Louis Burger and Black & Veatch.

I believe that my experiences, both good and bad, have made me appreciate some of the pros and cons of wartime contracting, and I would like to provide you with the full observations and some recommendations.

One, in my view cost-plus construction contracts in the contingency environment are not essential, nor are they in the public interest. That has already been proved in Iraq. Government agencies in Afghanistan should move away from large cost-plus contracts to firm-fixed-price lump-sum or firm-fixed-price ratable contracts.

Two, the government should employ experienced engineering firms to manage the administration of the contracts and provide independent third-party oversight. The prime contractor cannot be left alone to manage itself. The Millennium Challenge Corporation, the U.S. government agency, has created a contracting structure that I believe is the best model for U.S. government contracts, even in a contingency environment.

Three, forms of contract should be amended to ensure that legitimate claims for additional costs for out-of-scope work and events that are outside the control of the contractor are recoverable much faster than is possible today. In Iraq many legitimate claims are taking years to resolve, leaving contractors, particularly small ones, in a financial bind until they get paid. Many contractors, Symbion included, cannot afford to wait two years for money that they have spent to support projects.

Four, the commission should examine and reform the use of the pay-when-paid clause. The prime contractor is using their subcontracts. When a subcontractor signs a contract that says he will be paid after 14 days, this is what he expects. Paying him after 60 days because the prime contractor hasn't been paid because of other reasons disables his ability to perform, and it can crush small companies.

Five, government agencies and their oversight firms should require contractors to employ staff at every level of management who have been properly screened and vetted to assure they have the experience and the qualifications required for the job. Anyone who has worked in Iraq or Afghanistan will tell you that some companies hire personnel with inadequate skills or insufficient management experience and place them in positions where they're over their heads. You simply cannot take someone who's a foreman in the U.S. and convert him into a project manager on the plane to Afghanistan or Iraq.

Six, when a cost-plus contract exists, there should be a high level of supervision of the subcontracting process by the government itself to ensure it has the same level of integrity as a government bid.

I'm lucky and I'm proud to have been a first-hand witness to the incredible efforts the United States government has made in Iraq and Afghanistan. Many excellent construction companies have done their utmost to deliver projects in unimaginably difficult circumstances.

SHAYS:

Let me just ask you—I'm really enjoying your statement. How much longer is it? OK.

HINKS:

I witnessed the bravery and the determination of the men and women of the United States military forces who have worked hand in hand with me and other contractors who tried to rebuild these two nations. Thank you.

SHAYS:

Thank you. I find your statement very helpful with your list, and I think the other members did as well.

Mr. Kleckner?

KLECKNER:

Chairman Thibault, Chairman Shays and distinguished members of the commission, thank you for allowing me the opportunity to represent McNeil Technologies and present testimony to the Commission on Wartime Contracting.

By way of introduction, I am Mark Kleckner, chief operating officer of McNeil, and in this role I'm responsible for and direct the day-to-day operations of the company. On behalf of McNeil, I appreciate this opportunity to support the commission in its invaluable work to oversee and improve the visibility into and the performance of contingency prime and subcontracting practices in Iraq and Afghanistan.

McNeil Technologies is the premier provider of intelligence and language services, enterprise information technology support, and global mission solutions exclusively to the federal government. Our organization is made up of over 1,800 dedicated professionals working at the forefront of U.S. national security and domestic policy priorities.

McNeil has been in business for over 25 years, and we have grown to over 290 million in annual revenue with over 85 percent of that revenue derived from prime contracts. As an organization our purpose is to provide innovative world-class solutions in support of our

customers' mission needs and to deliver these services and solutions with integrity, efficiency, and value.

In conjunction with the gracious invitation the Commission on Wartime Contracting extended to McNeil, I will provide our responses to the commission's stated areas of interest and discussion points. For fiscal year 2010, McNeil projects to generate 92 million of revenue that is associated with contracts principally located in Iraq and Afghanistan, making up 32 percent of our business base.

Over its 25-year history, McNeil has supported and continues to operate in contingency environments, where we utilize subcontractors, and we have developed mature business systems and associated processes to successfully and compliantly support these efforts.

Our established integrated business-system environment contains a centralized database of information, including all the tools, processes, and procedures that are accessed by our personnel to assure their conduct of business as it relates to contracting is performed in a manner that is both timely and consistent, while maintaining full compliance with the Federal Acquisition Regulations.

We avoid and discourage the use of lower-tier subcontractors for reasons of efficiency and control. Because of our prime-contracting experience, we understand what a prime needs from a subcontractor, so it is straightforward for this to provide the responsive services and deliverables to meet a prime's business-system requirements when we are in a subcontracting role.

As with our government customers, we have found that establishing ongoing direct lines of communication with full and appropriate visibility into our operations maximizes our probability for success and helps to address challenges tied to changing requirements and differing business practices.

McNeil's operations are founded on an absolute compliance with the FAR and all federal policies, including those associated with human trafficking and the Foreign Corrupt Practices Act. All of our employees are in-briefed, trained, and certified on an annual basis that they are in full compliance with these federal regulations, as well as thoroughly understanding and complying with our own extensive internal ethics policies.

McNeil possesses a state-of-the-practice ethics training and certification program that leverages Web-based training, seminars, and role-playing and testing to ensure ongoing compliance. Our program has been specifically tailored for employees preparing to deploy to contingency environments, and this training and certification is conducted prior to their transition through the CONUS Replacement Center at Fort Benning, Georgia.

We also conduct in-theater refresher and annual recertification training to meet the unique staffing requirements on specific contracts. We maintain a zero-tolerance policy for

noncompliance of both federal and company rules and regulations. Notification and remediation is immediate and comprehensive to a prime contractor or to the federal customer, depending on the circumstances.

Related to our hiring practices for contingency environments, McNeil employees know third-country nationals. We do recruit and hire local nationals in Afghanistan and Iraq. For those cases, the personal information of a prospective local national is collected by McNeil and passed to our U.S. Army counterparts for counterintelligence screening and vetting. Once we receive authorization from U.S. Army personnel, we are then able to employ the candidate.

Going forward and in the context of this hearing, some of the principal challenges facing subcontractors in a contingency include hiring personnel in a very competitive employment environment. Qualified, cleared personnel are at a premium, and subcontractors must often work with rate structures that are a disadvantage to a prime contractor when attempting to hire these sought-after resources.

In addition, prime contractors often force down their own operating parameters to a subcontractor in minor issues such as different accounting schedules, and leave policies can be exacerbated during contingency operations where contract employees are often half a world away from the corporate headquarters and the corporate services that are required to address these types of issues.

Finally, based on my own experience with a number of organizations, extra effort must often be made to assure that subcontracts are given the same level of importance and support that is applied to prime contracts within a company's portfolio. By its very nature, work performed in contingency environments can be dangerous and challenging.

McNeil is extremely proud of the work our employees are doing in support of our national security and foreign policy objectives, given the risk and personal sacrifice that is inherent in supporting these efforts. Thank you again for allowing me the opportunity to participate in this hearing. I look forward to and stand ready to answer any questions of interest directed to me by the commission. Thank you.

SHAYS:

Thank you, Mr. Kleckner.

Mr. Krens?

KRENS:

Good afternoon, Co-chairman Shays and Co-chairman Thibault and distinguished members of the commission. Thank you for the opportunity to appear before the commission to discuss our experiences as a subcontractor providing vital services related to rotary-wing transportation of personnel and cargo in support of our nation's mission in Iraq and Afghanistan.

My name is Marc Krens, and I served as the chief financial officer of the Diplomat Group based in Annapolis, Maryland. The Diplomat Group is a privately held commercial contractor employing approximately 95 personnel worldwide. We pride ourselves in providing quality and innovative transportation, logistics, and rapid construction solutions for our customers, such as USAID, Department of State, Fluor, DynCorp, and others.

The Diplomat Group has successfully completed thousands of contracts over the past 30 years and has undertaken projects throughout Asia, Africa, Australia, Europe, North and South America. Currently, we have ongoing operations in several countries, including Europe and the Middle East. Our largest operation is DFS Middle East, which is a division of the Diplomat Group that is contracted to Fluor for the services in Afghanistan.

Formed in 2003 and based in Dubai, DFS was established to target the freight and transportation market in the Middle East and surrounding region. DFS employs approximately 75 employees and provides freight-forwarding logistics services to commercial, government, and NGO sectors. We also specialize in rapid-response disaster relief, as well as emergency services.

In June 2009, DFS signed a basic ordering agreement, a BOA, with Fluor for the purpose of providing air-charter services. In December 2009, DFS was issued a task order under the aforementioned BOA to support Fluor's rotary-wing transportation requirements within Afghanistan under LOGCAP IV. This task order is a fixed-unit-rate level-of-effort contract for 10 months with four one-year options.

Our company's mission for Fluor is to safely and reliably transport personnel, luggage, and cargo between Bagram and forward operating bases throughout northern Afghanistan using MI-8 rotary-wing aircraft. Through June 30, 2010, I'm proud to say that we have transported safely and reliably over 19,000 employees of either Fluor or their contractors, flown 2,183 missions, and delivered 666,000 kilos of cargo safely.

Compliance with government contract rules, regulations, and policies in contracting is essential, and we know that they are there for good reasons. As a small business with limited resources both in terms of personnel and finances, we find ourselves time to time challenged to keep up with the pace and volume of the proposed changes and new regulations. We are becoming more effective, however, from our experience and by obtaining advice from qualified consultants.

Leadership is essential in ensuring a company and its personnel operate in an ethical and legal manner. Our group's leadership has provided a strong foundation through our organization with a

zero-tolerance policy. We maintain suitable internal controls, including our ethics policy, and are small enough to understand and monitor our personnel's actions and performance.

Our senior management team is hands-on in our oversight of contract and our personnel. In addition, we consult regularly with industry advisors and attorneys and follow their advice in all matters.

Notwithstanding the challenging environment and safety of all the personnel—employees, contractors alike—is our primary concern. While mindful of our fiduciary obligation to taxpayers, DFS spares no expense to ensure the safety of those people it transports.

It was with this mindset that we engaged Vertical Aviation, a CARB-certified provider of MI-8 aircraft with an impeccable record for safety and in-country experience. The RFP issued by Fluor preferred MI-8-type aircraft, which are ideally suited for the terrain and weather in Afghanistan.

As safety was a central theme of Fluor's requirement, we believed that CARB certification would provide a significant differentiator. Fluor understood this from the inception that we were engaging a primary subcontractor, and we believe a CARB-certified operator would provide Fluor the safest alternative. Both Fluor and DFS understood that this certification came with a higher price tag than the non-CARB certification.

DFS's role is to provide the following critical functions: overall project management, contract compliance, safety oversight, quality control, ground operations, logistics, and administration of both the project and VDA as the dedicated project management team in Bagram, as well as additional support required from our personnel and systems in Dubai.

I can see I'm running out of time.

In addition, DFS provided the initial positioning of all aircraft and spares, as well as personnel mobilization and demobilization and ongoing transport of required personnel. Our contract with VDA is a fixed-rate unit-rate of level-of-effort hours flown. We interact with VDA personnel daily and at various levels throughout the organization.

On behalf of DFS Middle East, our owner and employees, we are proud to support the efforts of our government and its coalition partners operating in Iraq and Afghanistan and throughout the world. Thank you again for the opportunity to participate. I look forward to your comments, questions and dialogue about our experiences.

SHAYS:

Thank you, Mr. Krens.

And Mr. Torres, thank you for being here. We appreciate it. And you can finish up with your statement.

TORRES:

Good afternoon, Chairman Thibault, Chairman Shays and members of the Wartime Commission. My name is Jerry Torres. I'm CEO of Torres Advanced Enterprise Solutions. I am privileged to have the opportunity to present testimony in support of the missions and objectives of the Wartime Commission. I'm here to answer questions today .We'll be available for future discussions at the commission's convenience.

A little bit about myself: I have over 20 years as an executive with three Fortune 500 companies, managing business operations in 64 countries. I am the author of two program- and business-management textbooks. I have 24 years as a Special Forces active-duty and reserve soldier, and I'm currently assigned to United States Special Operations Command as a U.S. Army reservist.

I established Torres in 2004 after returning from Special Forces deployments to Afghanistan, Belize ,and Africa, and today Torres has about 3,000 employees and contractors on five continents with about 40 percent serving under Operation Iraqi Freedom and Operation Enduring Freedom.

Our major lines of business in Iraq and Afghanistan include management consulting and information technology services, deployment and counterinsurgency training, language and professional advisory services, guard-force management, and security and security technology solutions.

I would like now to respond orally to two discussion points from the commission's letter of invitation. The first is the commission's concern with effective contract oversight. Throughout Torres' brief history, we've experienced very few oversight conflicts with the government agencies that we support. One primary reason is that we recognize that contractor and oversight officials must work as a team to effectively meet program delivery requirements regardless of the size, scope, complexity, or geographical distribution of the program.

We therefore work methodically with oversight officials to provide them with the information they need to plan and perform their oversight duties. For example, together we examine our mobilization and transition plans, project management plans, quality control plans.

The program management office has organizational structures, program standards, policies, procedures, and the additional components necessary for successful program delivery and for the oversight personnel to carry out their oversight duties.

This, combined with continuous reporting and communication, prepares oversight officials to accurately monitor, report, and correct program delivery at the earliest point possible.

I would like next to address the commission's concern with prime contractor-subcontractor relationships. Torres is both a prime contractor or both prime-contractor-subcontractor under multiple programs in both Iraq and Afghanistan.

As a prime contractor, we believe that small contracting teams are almost always more efficient and responsive than large teams. Less subcontractors bring less program complexities, such as differences in their management and leadership methods, their business culture and business ethics, the quality of their deliveries, their financial management practices, and their work ethic, among several other dynamics and several other factors.

Smaller teams are also easier for oversight officials to monitor. We therefore field small contractor teams and only use subcontractors that add genuine value to the program. Our corporate policy is not to use third-tier subcontractors except under extraordinary conditions. Third-tier subcontractors add unnecessary complexity and reduce visibility of their deliverables.

Torres screens all subcontractor candidates before entering into any contractual agreements, and each of our small-business subcontractors is required to engage in a mentor-protégé relationship with Torres that is sponsored by a small-and-disadvantaged business office, such as those of the United States Department of State, as well as the United States Department of Defense.

These are genuine relationships in which agencies have performance goals for both the mentor and the protégé. The relationship cannot be just a paper exercise. It must be authentic, active, and produce subcontractor skills and ultimately and obviously, program delivery results.

Therefore, as part of our mentor-protégé program, Torres trains each of our subcontractors in the program management disciplines necessary to succeed under wartime and peacetime conditions. For example, we train each subcontractor in mobilization, transition, and quality-control planning, risk management, program and project management, program standards, policies and procedures, the program management offices, and its program management office, and its support organizations, such as quality and contract management, financial management, security management, and in eight other support-organization disciplines.

We do this through both our formal classroom training and continuous on-the-job training, coaching, and mentoring. Our mentor-protégé program has been successful. Each of our current protégés, for example, has gone on to become successful prime contractors under Operation Iraqi Freedom, Operation Enduring Freedom, and right here in the United States.

This concludes my opening remarks. Again, I thank the commission for giving me the opportunity to present this testimony. Thank you.

SHAYS:

Thank all of you for being here, and thank you for having to wait for the third panel, and thank you for your testimony.

And we'll start with Mr. Thibault.

THIBAULT:

Thank you, Commissioner Shays. And again, I'll reiterate to thanks—the only thing worse than sitting up here all day is to set out there as the last panel all day and wait for the opportunity to come on forward. So again, I thank you.

I kind of want to work my way down, and I know some of you have already said it, but I'm going to just ask for a yes or no, not to describe it, but . . .

And starting with you, Mr. Brune, does CH2M Hill have a formal employee hotline program?

BRUNE:

Yes, sir.

THIBAULT:

General Dalby?

DALBY:

Yes, sir, we do.

THIBAULT:

Mr. Hinks?

HINKS:

No, sir, we don't.

THIBAULT:

OK.

Mr. Kleckner?

KLECKNER:

Yes, sir, we do.

THIBAUT:

Mr. Krens?

KRENS:

No, sir.

THIBAUT:

Mr. Torres?

TORRES:

Yes, sir.

THIBAUT:

OK.

And now starting with you, Mr. Brune, does your company, CH2M Hill, have formal ethics programs for its employees that, you know, actually, when you either bring them on, hire, or annually update them?

BRUNE:

Yes, sir, we do have a formal ethics program. It includes annual training, annual certification from each employee committing to the ethics and business-conduct standards of the company, along with some of the other tools which you mentioned earlier.

THIBAUT:

Right.

General Dalby?

DALBY:

Sir, we have an ethics handbook we provide to each employee as part of the in-processing of that employee into the company. Not only do we cover that with him at the first meeting, we also have monthly meetings on ethics and compliance that we have with the company employee every month.

THIBAUT:

OK.

Mr. Hinks?

HINKS:

Yes, we cover ethics in our contracts. We cover ethics when we're hiring people, and we continuously work with our people and educate them about . . .

THIBAUT:

OK. Now, does that in your mind fit the definition of formal?

HINKS:

I think it's formal structure . . .

THIBAUT:

Well, formal meaning documented so that you can hand me a pack of paper or a printout.

HINKS:

No, then, it's not formal.

THIBAUT:

Mr. Kleckner?

KLECKNER:

Yes, to reiterate from my earlier statement, we actually have a—one aspect of it is a computer-based training program that all new hires must participate in . . .

THIBAUT:

Right.

KLECKNER:

. . . and then on an annual basis participate in, and the end result of the training is actual testing, and they have to pass the tests associated with the training before they're, you know, certified to function as an . . .

THIBAUT:

OK.

Mr. Krens?

KRENS:

We do have a formal ethics policy that we do share with all employees. However, under your definition of a formal policy, no, we do not.

THIBAUT:

OK.

Mr. Torres?

TORRES:

Yes, we do. We have a couple of different flavors. One is for U.S. citizens, which is an initial and annual refresher training, and then for third-country and local nationals, it's quarterly.

THIBAULT:

All right. Thank you.

For the record, and I haven't noticed staff fearlessly writing, but one of them probably was. I would like to get copies, for those of you that have formal programs, of your ethics program and a description of your hotline program, however it works, you know, if you can give me an example. I don't care if you redact whatever you want to redact, but I think that would be very helpful.

THIBAULT:

Mr. Brune, I don't want anyone to say I'm going to totally give you a pass, because someone else here will probably jump you, but I want to say that that's a Charles Tiefer word—jump you.

I'm just joking, Charles.

Now, I did want to say, Mr. Brune, that you were right, you know, never easy to say when's the best, but there was an exceptional briefing that if all companies out of the gate briefed the way CH2M Hill did—and you weren't there, so we can give someone else the credit—it would make our life a lot easier.

And we are going to be going into theater soon, and I was keen on the how you try to manage world-class commercial companies with typical government suppliers such as in the world of well drilling. So I'm looking forward to seeing one of those world-class wells just to understand what it looks like. And I'm not a technician, so they don't have to worry about how well it was true. I'd just like to understand it.

BRUNE:

Very good, sir. We would welcome the opportunity.

THIBAULT:

We will do that.

Mr. Kleckner, were you here before in a prior discussion?

KLECKNER:

No, sir.

THIBAULT:

OK. You provide aviation support as a subcontractor to DynCorp, right?

KLECKNER:

Yes, sir.

THIBAULT:

And Dyn said you had this long history in aviation support for other contractors. Can you give me a couple of current contracts you're on where you're providing helicopter transport similar to what you bid on here?

KLECKNER:

You know, in comparison on the LOGCAP contracts, I've flown about 250,000 miles and 12,000 passengers transported. Our largest single contract on a revenue basis outside those contracts also involves airlift where we've flown approximately 7.5 percent . . .

THIBAULT:

Oh, they need you to turn your mike on. Maybe it's already on, but, OK, go ahead.

KLECKNER:

OK. You want me to start from the beginning?

THIBAULT:

No, go ahead.

KLECKNER:

Right. Well, you know, briefly again, 250,000 miles and maybe 12,000 passengers on the two LOGCAP tasks.

THIBAULT:

Right.

KLECKNER:

Our largest single contract, however, from a revenue basis, is tied to airlift as well, where we've flown around 7.5 million miles and 50,000 passengers over the last couple of years. So we . . .

THIBAULT:

Rotary-type based . . .

KLECKNER:

Fixed wing.

THIBAULT:

Fixed wing. So all right. And I was under a misconception, and I stand corrected, and you've done it, and I appreciate it. That why we have these hearings.

General Dalby, you indicate in your statement that you have an Army prime contract. That's in the food support, food logistics business also?

DALBY:

Yes, it is. That's located in Kuwait.

THIBAULT:

What type of a contract is that?

DALBY:

It's a fixed-price competitively bid contract.

THIBAULT:

OK.

Mr. Hinks, you seem to be a bit of a missionary on the fact that—and I appreciate that, because that's the whole intent of having the hearings—on your belief that you don't need, even in a contingency environment, you know, if you have well-defined work requirements and specifications to go the CPFF-type [cost-plus-fixed-fee] route. But you've been involved in both types of contracts?

HINKS:

I've never had a cost-plus contract, but I've worked as a subcontractor to many cost-plus contractors, including some of the primes that are here today.

THIBAULT:

So if—to put you in a different career field, if you were a government procurement person—one of your priorities might be to look at the potential of using fewer cost-type construction contracts?

HINKS:

Yes, what I said in the statement was it's not essential. I'm not saying you should abolish them.

THIBAULT:

Right.

HINKS:

But I don't think that they're entirely necessary. And the question I would ask is on many of these engineering contracts in Iraq and Afghanistan, the prime contractor subcontracts the entire job—procurement, shipping, installation. If he does that, why does he expect that subcontractor to take on all the risks of firm-fixed-price lump-sum contracting when he won't do it himself?

THIBAULT:

OK. All right. Thank you.

Ms. Schinasi? Commissioner Schinasi, please.

SCHINASI:

Thank you. And I'll just say I had that thought myself.

We've heard a couple of suggestions about having a pre-certification list for U.S. government suppliers at the subcontractor level. And I think General Dalby, you actually mentioned that in your statement and we've heard that before. It's an interesting concept. Most commercial companies have supplier lists that are your gold, silver, or bronze; and you can earn points and get into a better category by, you know, good performance, basically.

But I guess in this case, there would have to be some discussion about what the criteria for that certification would be. And my question to you all, and you represent different pieces of the supplier base here, is whether or not you would support that idea, whether or not you would make distinctions between whether it is a U.S. company we are talking about or a host company or a third-country company, and whether you would also make distinctions by categories of service, so that you would qualify under one category of services, but this wouldn't necessarily qualify you for other categories of service?

So I will just go down the line and next time I will start at the other side.

BRUNE:

Thank you, commissioner. I would think it would be important for the commission to perhaps make a distinction between service contracts and construction contracts.

SCHINASI:

OK.

BRUNE:

And in particular with regard to construction contracts with foreign nationals, we do pre-qualify all of the subcontractors when we work as a prime contractor. We try to qualify them on their financial capacity, their technical ability, their prior performance, their health and safety and quality methods, and prior performance. It is rather subjective, though, when you are talking about foreign-national contractors. For example, financial capacity; they may not have audited financial statements.

If you want to know about their credit history, you cannot order a Dun and Bradstreet [D&B] credit history. If you want to know about their health and safety statistics, one cannot get an OSHA log and examine how many incidents they have had.

So I'm not opposed to the idea of pre-qualification, but I would add that there in the case of construction subcontractors, foreign national in particular, there is a lot of subjectivity in making that determination.

SCHINASI:

Yeah. And I guess, General Dalby, you're a good one to go to next, because the question would be, if you don't come under all of those laws to begin with, would it be the sort of thing where in order to qualify, you would have to provide information that might otherwise not be available in the public record? .

DALBY:

Yes, ma'am. I fully support and I believe our company, and I believe after hearing the panel today, they fully support that pre-qualification in certain areas is essential to protecting the government's investment and interest in that region, especially on a contingency environment. There's a lot of companies that I have seen that they bid the work; they bid it very low; they win the work; and then when it comes to delivering, they cannot deliver and they cannot fulfill the requirements-period of performance. And sometimes the military suffers as a result of that. So that's our point.

SCHINASI:

General Dalby, let me ask you specifically as a representative of a Kuwaiti company here, is there anything in Kuwaiti law that would prevent you disclosing information that would be required for that kind of certification? Or would you see that a problem in other countries' laws?

DALBY:

Madam Commissioner, our contracts are exactly the same contract whether we are a Kuwaiti company or not. We follow the same FAR requirements in our contracts that says that our employees are 100-percent liable to the United States government in case we have any problems.

SCHINASI:

OK. Mr. Hinks, do you have an opinion on that?

HINKS:

With regards to qualification, I think there's two types of qualification. One, of course, is the prime contractors who are contracted to the government. I think that you certainly need pre-qualification. Sometimes they use post-qualification, which is equally acceptable.

When it comes down to subcontracting in the region, my experience is, frankly, that if you make the pre-qualification requirements like you did in the U.S., you will never get anything done, because those companies, you have to do a deep search and go out and work out if that company is capable of doing the work for yourself.

SCHINASI:

So it would take longer. You said you would never get anything done. But your point more specifically is that it would take longer, because the burden would be on you to find the information?

HINKS:

Well, in some places in this environment, for example, Al Anbar province in 2005, you couldn't find any contractors. It wasn't about going out and putting an RFP out and the contractors would come back. You had to go and search out those contractors. And in certain cases, we almost created those contractors, because there was nobody else that could work in the area.

So the point I'm trying to make is if you make a strict process like you would have in the United States, that's what I mean when I say you wouldn't get anything done, because you wouldn't find anybody.

SCHINASI:

Right. I made the point about criteria, what would the criteria be. And you would have to spend some time thinking about what the criteria . . .

HINKS:

You have to go out into the desert, speak to the sheiks, and find the people who will actually get the work done.

SCHINASI:

Right. Mr. Kleckner?

KLECKNER:

Yes. Given that McNeil currently doesn't subcontract to any foreign companies, we are able to access the more objective measures through D&B reports or records of disbarment. So it's a lot easier for us, because we have access to those U.S.-type records versus foreign records.

SCHINASI:

Is that why you don't use foreign companies as subcontractors?

KLECKNER:

To date, our contract portfolio has allowed us to work exclusively with U.S. companies.

SCHINASI:

Mr. Krens?

KRENS:

I think one of the overriding themes that a lot of panel members have said today is the time that is necessary to be able to support that type of qualification. We are a very small business. And with that, the senior management team wears a significant amount of hats. That would clearly slow down the process and potentially put any mission at risk if we had to go through a significant vetting process.

SCHINASI:

Even though if you were qualified once, you'd be qualified? I mean, going through that -- companies use the ISO 9000 [International Organization for Standardization], for example. I mean, there are a lot of certifications in the commercial world that companies go after. But I guess it's their choice whether or not to go after them. And you are saying you would prefer not to have that be a requirement?

KRENS:

Obviously, again, as a small business, there is time and money to be able to invest in going through an ISO 9000 certification process or any other type of process. And I don't say that we wouldn't be amenable to doing it. We would just have to evaluate it.

SCHINASI:

OK. Mr. Torres?

TORRES:

Excuse me. Is it on? OK. It is tough to find good companies in a wartime environment that you can rely on. And we struggle. We spend a lot of time looking for those contractors that we think are going to be able to produce for us. And it is a very long lead time. One of the things that we do before we even consider going for a program, we look to see if we have suppliers in place.

I think it is a great idea to have certifications. But in some of these countries, they just don't exist. And in one case, for example, we stood up a program and trained the folks to be able to meet our criteria.

So I would agree with the rest of the panel. We are a services company. We don't buy a lot of equipment. But the equipment that we do buy, you know, obviously things like personal protective equipment, helmets and vests, those sorts of things, we want to make sure that we get them from the right source.

SCHINASI:

OK. Thank you. My time is up.

THIBAUT:

Thank you. Mr. Green?

GREEN:

Thank you. Mr. Krens, how many people do you have on this Air Charter contract with Fluor?

KRENS:

We currently have approximately 15 in theater.

GREEN:

OK. And would you again review for me the value added that you believe your company brings to that contract?

KRENS:

Well, there is a lot of ground operations, logistics, and administration work that is necessary, applying for PPRs [Prospective Price Redetermination], arranging for fueling, moving personnel and cargo to the flight lines, insuring that our sub-subcontractor, in this case, is operating in a compliant manner, as we did flow down many of the FARs that were required to flow down, or I should say all the FARs that were required to be flowed down.

We also have 24/7 support in our Dubai office. We've got investments in software in which we are tracking all of the movements of the aircraft and providing, again, just general management.

GREEN:

And this is something you believe you are uniquely qualified to provide?

KRENS:

I wouldn't say we are uniquely qualified, sir, I would say that over our 30 years of experience, we have gained a significant amount of experience and knowledge in this field. We consider ourselves an asset-light company. And when a contractor comes out with a particular requirement, like Fluor did in this case, and they approached us, they said they were looking for a particular piece of aircraft with a particular requirement. And with the breadth of experience we have in the industry, we were able to locate what we believe was a very satisfactory solution for their requirement.

GREEN:

Where is your sub from?

KRENS:

Colombia.

GREEN:

South America?

KRENS:

Yes, sir.

GREEN:

How much do you make on this contract?

KRENS:

In terms of dollars percentage? We have been operating the contract since December of 2009. And we have generated approximately 22-million dollars in revenues. And our net profits are in the 10-percent range.

GREEN:

OK. What about your sub?

KRENS:

I don't have insights into that information, sir.

GREEN:

OK. Mr. Kleckner, same vein of questioning. McNeil is owned by Veritas, right?

KLECKNER:

Correct.

GREEN:

Veritas owns DynCorp, correct?

KLECKNER:

I believe DynCorp was sold a month or two ago to Cerberus. So that would no longer be the case, but it certainly has been the case.

GREEN:

OK. You said that McNeil had experience in aviation operations before this?

KLECKNER:

Yes, sir.

GREEN:

Nowhere in your statement did you mention aviation at all. Nowhere did you mention helicopter operations or that you had these particular skills.

KLECKNER:

Again, the largest contract we have on a revenue basis right now is actually a classified contract that involves airlift support similar to that associated with the LOGCAP tasks that are in question.

GREEN:

Who is your sub on this particular contract?

KLECKNER:

Aircraft Charter Solutions.

GREEN:

From? Where are they from?

KLECKNER:

I believe U.S.

GREEN:

OK. As I asked Mr. Krens, would you provide for me what value added you believe McNeil brings to this?

KLECKNER:

Well, I think there's a lot of vendors out that own assets, whether they're fixed or rotary wing. But even though it is a significant component from a cost perspective, providing the kind of support, it is a very small piece of the total services. I think Mr. Krens pretty effectively laid out all the different other value-added aspects beyond just, you know, flying from point A to point B on one of these given tasks.

And, you know, I think customer intimacy, you know, understanding how to operate within the FAR, understanding the necessary security requirements that need to be complied with, I think a lot of times it's difficult for commercial vendors or asset owners to be able to just jump right into the federal-market space. I mean, to use a simplistic analogy, I think we are a lot like a general contractor building a house, where, you know, obviously, you go out to the lumber yard and a lot of the cost goes to getting the resources you need, just like the flight assets or that resource, but we are really providing the integrated solution around that to meet the needs of the . . .

GREEN:

I would also submit that these companies that are providing the aircraft to both of you, they also have operational capabilities. They still have safety plans. They know how to refuel aircraft. They know how to schedule aircraft. So you may be adding something, but I would contend that many of those providers may well have similar capabilities, maybe not as sophisticated as you. But to me it looks like kind of a large pass-through.

KLECKNER:

Again, I think I would really focus on, too, the knowledge of the specific, you know, in-theater knowledge, customer intimacy, those kinds of things that you can't just jump in, and you don't

understand, you know, the logistics around, you know, potentially working in Kandahar or working, you know, with INSCOM, where they may just be a commercial carrier that has the general skills, but not the specific knowledge to address the immediacy and specificity of . . .

GREEN:

You mean how to load six people on an aircraft and get them from Bagram to somewhere?

KLECKNER:

Again, security elements too are significant. When you add all that stuff up . . .

GREEN:

OK. Mr. Hinks, without getting into the Louis Berger V&B stuff, we understand from earlier discussions and USAID IG report, that there was very limited oversight on your piece of the power plant project. How often did a quality service representative show up at the construction site, as far as you know?

HINKS:

In 2008, I don't think there were many visits at all until about December. I once had a meeting with the deputy mission director USAID, and we were well into the project by that time, and it was, you know, a lot of work going on there. And he told me at that point he hadn't been—I can't recall exactly when it was.

I know that in 2009, when things blew up there, things changed and people did start to appear at the site.

GREEN:

For different reasons, probably.

HINKS:

I think because things blew up. And people started to show up at the site. I always wondered why there wasn't more visits, because the Kabul embassy is just a short drive from the site. This is not in Kandahar or Ajiki [phonetic] or whatever.

GREEN:

Right.

HINKS:

So yeah, they told me that they had problems with their security to actually get out to the site, and it was a security issue. I know that they had one, I don't know if he was a local staff or a guy from somewhere like Egypt, who was their sort of eyes and ears, who was going backwards and forwards to the project. But as regards U.S. personnel, you'd have to check with them, but I don't think there was a lot.

GREEN:

OK. Thank you. My time's up.

THIBAUT:

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman. General Dalby, if you were here earlier, you know that I have asked first the DCA and then KBR about records of Tamimi. But I want to say—and both of them said their inquiries are ongoing and that they have done what they can, and they have not been able to obtain Tamimi's books and records for American review.

And I want to lay a proper record here on just what records, just what we are talking about. There are two categories. One is that your highest-ranking manager, that is Tamimi's highest-ranking manager for Iraq and Kuwait, was convicted on 14 of 16 counts, felony-level, kickback-related charges. So were the Americans who were receiving the kickbacks.

And the type of questions we'd like to find out about, both the commission and others interested, is why did Tamimi provide its New York counsel for the representation of Mr. Shabbir Khan? He used \$133,000 to suborn the American officials. How was he able to obtain this money without tapping Tamimi's till? How did the whole matter go undetected at Tamimi?

There were two other Tamimi managers who helped him cover this up. What was done by Tamimi to the people involved, not just the guy who went to prison, but the others at Tamimi who have been said to be involved?

The other matter besides that—that's the tainted-subcontract issue where we are trying to figure out about the other \$300 million in tainted subcontracts, of which \$49 million were Tamimi's. What's happened to that? What is the status of those subcontracts?

The other matter, which I will try to be briefer on, is, there's been an inquiry into the unallowable security costs for subcontracts in theater. A survey went from KBR to Tamimi. Tamimi sent back, as did others—Tamimi's not out of line here. But as with others, it sent back that about one-quarter of one-percent of its spending in theater had been for security.

Obviously, the American authorities would like to check up and see whether the books and records support that low figure. They don't want to just take somebody's word for it; they want to look. Has Tamimi been unwilling to provide the books and records I asked about? And if so, is it now willing to do so?

DALBY:

Commissioner Tiefer, I will tell you up front that Tamimi will do whatever is required of its contract to provide the information. I will tell you that what happened with Mr. Khan was a terrible thing. And Tamimi as a company suffered dearly for it. I will tell you that as a result of what he did, first of all, the company itself did not profit or did not gain any awards as a result.

This was . . .

TIEFER:

I don't want to break up your thought. But I just want to say, so your answer is there is no, the \$300 million in tainted subcontracts is a myth? In fact, the company never even benefited by the actual suborned instances—the ones that were in the criminal case? But go ahead.

DALBY:

The contracts that we actually were awarded were actual contracts, where we submitted our proposal and we were selected. On one contract that he was involved in was the palace contract. That may be the one that you are referring to.

TIEFER:

No, no. But let's go back to can American inquires look at the books and records? Have they been refused or am I wrong? Have they been refused or am I wrong?

DALBY:

Sir, they can look at everything that is in our contract that it requires.

TIEFER:

You said that twice. Can they look at what they want to look at?

DALBY:

Sir , , ,

TIEFER:

The books and records of the company. Or is your position the books and records of the company are not obligatory under the contract? I can't tell which one you are saying.

DALBY:

Well, I think that under firm-fixed-price contracts, there are certain aspects that are required.

TIEFER:

OK. I thought you were going there. The answer is no, they can't look at it. These are unallowable costs. Is your position that you were allowed to charge the U.S. government, under those firm-fixed-price contracts, contracts in which there were kickback-related inflated charges, or unallowable elements, as in the security case—you are allowed to charge the U.S. government unallowable expenses? Is that your position?

DALBY:

No, it is not my position.

TIEFER:

So why can't we look at your books and records and see if there were unallowable costs underlying this?

DALBY:

Well, I would say that if the government will change the terms and conditions of a fixed-price contract or over a cost-plus contract and do a hybrid, I think that you could get exactly what you would want in a contractual agreement with a company in a contingency environment. But there are certain audited procedures that our internal systems simply do not track. That is the only thing I'm saying, sir.

TIEFER:

Can't they look at their books and records and ask people things, so they can satisfy themselves, rather than take your say-so that the unallowable costs can't be found like that?

DALBY:

Sir, I'm certainly not an auditor or an attorney, but I will look into that and I will certainly get to you.

TIEFER:

Well, I know that. I mean, I have been a lawyer for 30 years, and I know well "I will go look into it." Is it the company's position that it will cooperate with American authorities looking into the matters of tainted subcontracts and unallowable security costs?

DALBY:

Yes, we will.

TIEFER:

OK. And if it turns out, could we have you back for some hearing. I don't have the authority to do this. But if it turns out that the access to books and records is not forthcoming, as you just said, could we have you back at a hearing to explain that?

DALBY:

Sir, let me please restate that we will provide you everything that's required by our contract.

TIEFER:

I thought you just went beyond that. The answer is I want to see what the tainted subcontracts tell.

DALBY:

I cannot go beyond that, sir.

TIEFER:

All right, well and does that include any information, such as where the \$133,000 of kickback money came from? Did it just appear in Mohammad Shabbir Khan's hands? He held the hands out and the money appeared, as opposed to it being Tamimi money? We can't ask about that?

DALBY:

Sir, I think the Department of Justice would be the appropriate place to ask that question, because they have investigated for five years now. And they have not been able to determine where the money came from. Our company, in going back and looking at our records, we cannot find where we are missing \$133,000.

TIEFER:

Can't we look and verify that? Can't this commission and/or the DCAA look and verify that?

DALBY:

Well, sir, I would hope the DOJ would have already looked at . . .

TIEFER:

They operate under grand-jury rules. This round is five minutes. Thank you.

SHAYS:

You have six subcontractors there. How many of you also do contracting work?

(UNKNOWN)

We are a prime.

SHAYS:

We have three. As a prime, I'm sorry.

UNKNOWN;

We're a prime contract as well as a subcontractor. Yes, sir.

SHAYS:

So four out of the six have been on both sides of the equation, correct?

UNKNOWN:

I think Tamimi said they were a prime also.

DALBY:

We are acting as a prime in food service in Kuwait, sir.

SHAYS:

Let me ask you differently: who has not served as a prime on this panel? OK, Mr. Krens. If the five of you would describe to me the difference, as you see it, of being the prime versus the sub, and describe to me, if you would, whether that inhibits you being the sub or whether, tell me first off, tell me the advantages of being the prime and then tell me the advantages of being the sub. Mr. Brune?

BRUNE:

Sir, we have always been a prime except in the case of our relationship with DynCorp on LOGCAP IV. And our relationship there is we are an integrated team member, but a subcontractor. And so we work directly in the contract-support office and the program

management office with DynCorp. So we are more akin to working as a prime contractor in our responsibilities, even though we have a subcontract arrangement.

SHAYS:

It's almost more like you're a partner?

BRUNE:

Yes, sir. I would character it that way, sir.

SHAYS:

OK. Mr. Dalby?

DALBY:

Sir, I can speak to you from the food-service area that we are familiar with. And we have acted as both a sub and a prime in those areas.

SHAYS:

That's great.

DALBY:

I will tell you that as a subcontractor, you have a level of management inside your DFACs at all times, 24 hours a day, seven days a week. If you have a prime contractor, they have another level of management inside that same DFAC, 24 hours a day, seven days a week. Then, on top of that, you have government personnel who are inside that DFAC, who, you know, they do the QA/QC [Quality Assurance/Quality Control]. They do safety checks.

SHAYS:

Do you make more money as the prime or more money as the sub?

DALBY:

Well, I'm not real sure of the financial aspect of this. But I would just say that there's redundant capabilities inside of DFACs as a result of the layered oversight.

SHAYS:

Is your relationship different with the government? You have experienced both sides of it. The interaction that you have with the government, does it change much?

DALBY:

Well I have to tell you, sir, it is a very simple procedure when you deal directly with the government. We have never experienced any problems really with either way.

SHAYS:

Is it a noticeable difference, your interaction with the government, prime versus sub?

DALBY:

Well . . .

SHAYS:

I mean you are providing the service one way or the other. It is the same service, basically. But in one case, you have a prime who is responsible. In the other case, you're the prime. And I'm just trying to get a sense of the realities of the differences between the two. This is a great opportunity. You have been on both sides of the equation. I'm not looking for any real refinement here. I'm just trying to get some basic sense of what the Goddamn difference is. Thank you.

DALBY:

Well, the difference is the levels of oversight in the relationships that you have inside those dining facilities. I think a lot of times when you have a prime contractor, really, the communication does not start until there is a problem that presents itself. The military, if you're direct with the military, you know on a daily basis how that contract . . .

SHAYS:

So the sense I'm getting from you is you're providing food service one way or the other, either as the prime or as the sub. And as long as you don't screw up, there is hardly much of a difference in that instance, in that kind of service. Is that correct?

DALBY:

You're exactly right, sir?

SHAYS:

OK. Mr. Hinks. And by the way, Mr. Hinks, I want to say to you that I loved your passion. I felt you'd go to the mat for what you believe. And it comes across. And I also love—I almost feel like you are a former Peace Corps volunteer. You've been in the thick of it over so many years. So I'm pretty impressed by it. I just wanted to say that.

HINKS:

Thank you very much. This question you just asked I could probably talk about all day. But I won't. What I'll do is answer one important thing. First of all, for me, working as the prime to the government is massively different than working as a subcontractor to a large U.S. prime.

I think if you ask most people who are subcontractors or have been in both positions, they will tell you that there is one key issue, which is if you work for the governments and you do your job, you get paid when you expect to get paid. If you work for a prime and you do your job, you may get stuck because they don't want to pay you or because you have the pay-when-paid clause. This pay-when-paid clause, which I brought up in my testimony, is a very, very important aspect of it.

SHAYS:

OK. Any one other comment? Or should I go—Mr. Kleckner? I'll go, Mr. Kleckner.

HINKS:

I think that's the important one.

SHAYS:

Yeah. OK.

KLECKNER:

Well, I think as I mentioned, I think 85 percent of our business is prime. And I would think most organizations would strive to build yourself as as much of a prime contractor as you can, because as the prime, you have got the control and you can provide the services, including the customer-service aspect, in the way that you want to to build your business. As a sub, you are basically working through a prime, and you aren't in a position to create as much value for your organization in that respect.

SHAYS:

OK. And the interaction with the government?

KLECKNER:

In most services contracts, which is really what we do, I can tell you it's minimal. The primes are really controlling that. As a prime, you would want to control that. You don't want a subcontractor being the interface or the voice of what you do to your customer. You may maintain that control as a prime. And we see that when we're a subcontractor as well.

SHAYS:

It probably depends on the kind of service. If you're in a food service business every day, you're interacting as the sub with military personnel and so on. You are interacting with the government continually. And that would strike me that there wouldn't be much of a difference unless you screwed up.

KLECKNER:

Right, but more professional services, I think high-order services, there is much more of a, you know, prime contractor oversight and control than in something of that nature.

SHAYS:

Mr. Torres?

TORRES:

There are huge differences. It really depends a lot on the prime contractors. There are some great prime contractors out there and there are some that hide you from the government, hide you from the mission, so you're always in response mode. We have one prime contractor now that doesn't want anything to do with us until they get into a situation where they need help. And we always stand up and do it. But it takes time. It takes energy. It takes focus. And it costs money.

Where if we are in the situation where we are helping them plan the future, and we know what the government's missions are, we can better prepare and make sure that we are not pulling them out of the ditch every once in a while.

SHAYS:

Thank you. What I didn't realize until I became part of this commission is that basically the work that you all do is more significant in terms of cost than as a contractor. In other words, the contractors that used to bend the tin to make the product, actually they are a smaller part of the U.S. budget than what all of you do. It has been fascinating for me to see how the government interacts with you, because DoD still doesn't get it. They do not get the fact that their biggest expense are you all, and not the people that make things. And the implications of that, because they don't seem to still get it, are huge in terms of oversight and so on.

Mr. Thibault?

THIBAULT:

I'll tell you, you're getting technical on me there, commissioner; bend the tin to make the product, I'm going to have trouble keeping up in the future. I'm just picking on you. It has been a long day.

SHAYS:

I asked someone else what that meant. That's why I . . .

THIBAULT:

There you go. Vetting employees—some of you talked about in the statements. We heard about it, the importance of having a vetting process that you, Mr. Brune may—well, you know, you're a construction company, so you are vetting employees too, big-time.

In this environment, and I'm really thinking contingency. I'm thinking heavy local national. I'm thinking a little bit foreign national. What are you all thinking? I'll go right down the line. Would you be in favor of—we were talking about the government doing something else on a

prior panel. If the government took over what I might call a terminated-employee list. You know, we at the commission sit up at night and worry also a little bit about someone that is a misbehaving employee or group of employees that are fired; they are terminated.

But we all know that when we leave a company sometimes, and we are terminated, it is just good riddance. So we cut this little deal so it isn't as litigious. They just let us go and our record is kind of clean. And then they go down the street looking for a job. That's a reality. We hear it. I've seen it.

Would a terminated-employee list, where you could go to some one person in the government, and in this environment, been going on eight, ten years, where the bad actors might be recycling—if you had something, would that be a real good tool with vetting?

BRUNE:

Sir, with regard to our direct employees I don't know that it would be particularly helpful. Our project delivery model for construction is to do it through subcontractors. So we actually . . .

THIBAULT:

So, from a . . .

BRUNE:

We manage others.

THIBAULT:

From a CH2M Hill, I would . . .

THIBAULT:

I would put you out there. Some of the others I wouldn't. General Dalby?

DALBY:

Sir, I think it would be an excellent tool that could be used by contractors and subcontractors alike. The terminology we use in theater is a blacklist.

THIBAULT:

We use it, too. But I was sitting up here trying to pick a softer list than just say blacklist, only for demonstration's sake. I don't disagree with your name.

DALBY:

Sir, I think once it gets to that point, where you are willing to put someone on the blacklist that means that they should never work for another subcontractor or a contractor in theater ever again.

THIBAULT:

Fired for cause, whatever that cause is?

DALBY:

Yes.

THIBAULT:

Mr. Hinks?

HINKS:

I think the problem with blacklists is people who don't deserve to be on them end up on them. So there is a risk there. I personally think that the responsibility for hiring should be the company itself, and the company should do a proper job of vetting all the people it hires, and go into a lot of research.

THIBAULT:

OK. Mr. Kleckner?

KLECKNER:

I would certainly welcome that, especially in a contingency environment. It would be I think a straightforward step to quickly eliminate a bad actor from consideration.

THIBAULT:

Mr. Krens?

KRENS:

I agree with what Mr. Hinks said with respect to being concerned about individuals being put on that list for not the proper reason. But that being said, as a small business, any tool that we have that could help us identify those bad apples, if you will, we would welcome.

THIBAULT:

It certainly would be probably controversial, one way or the other. Mr. Torres, would that be helpful?

TORRES:

Absolutely. We use a contracting firm that goes out there and does background investigations for us. So this would be helpful for us.

THIBAULT:

All right. Thank you. Mr. Torres, I absolutely owe it to you. Thank you for being here. There was some confusion last time. But I owe you the opportunity, without repeating everything that was repeated before, to talk a little bit about what happened with that situation where you had the 16-day delay because the records weren't complete. I am just going to turn it over to you because I owe it to you. But I've already had my day in court. Sir?

TORRES:

OK. Yeah, you're talking about a JSS [Joint Security Station] Shield and 441 TCNs [third-country nationals] and about 50 U.S. citizens . . .

THIBAULT:

Yes, sir.

TORRES:

. . . deploying? Yeah. You know, what happened is we got the task order on December 2nd, I believe. And we had 30 days to get them into place, which actually would have been 31 December, but I think they changed the day for some reason. The problem is we put about 440 TCNs in the air and sent them to Iraq, but the JSS Shield did not have property for us to build our temporary camp while the incumbent withdrew.

And we got the land on December 11th. So we had about 20 days to build our facility. During the process, we started to shift our focus to building the facility and not necessarily, you know, managing the records well. So I think it was both a little bit on our side as well as the government's side on that.

But ultimately all the TCNs that we had were approved by the government, and they all received LOAs [Letter of Offer and Acceptance], and they all served for the next six months.

THIBAULT:

So you probably got some lessons learned along with everyone else on that?

TORRES:

Oh, absolutely.

THIBAULT:

All right. Well, I wanted to give you that opportunity. I thank you for being up here. I do have to say that one of the contractors that was invited up here, in fairness to the record, APS, declined. But we sent him a letter a couple days ago, much like the nice one you got, that said that's not a really good thing to do, and it would have been a good way to explore further fixed-unit contracting. But maybe—maybe later. Thank you.

SHAYS:

Thank you. Ms. Schinasi.

SCHINASI:

Thank you, I will be quick this time around. I am going to ask a question that is not specifically within this hearing, but is certainly within our charter as a commission. One of the things we have been tasked to do is to look at the process by which the government decides what

it should contract out, what it could contract out, and those things that it needs to retain for its own performance.

Mr. Hinks, you raised in your comments, and I think we've also heard it, the World Bank model. I guess the Millennium Challenge has also picked that up. But my understanding is that is a model by which the government can bring in technical assistance as a check or a supervisor on particularly the large, complex engineering projects. What would the incentive that, to us, we would call contractor-supervising-contractors, which falls into that gray area. But what are the incentives that would keep that to be an honest arrangement? That either the company that you bring in would have—you know, how does that work? I was surprised to hear you raise that as a best practice.

HINKS:

At the moment, for prime contracts, you have the prime contractor is contracted to the Department of Defense or USAID, whoever. There is no one, no independent firm acting as that referee, if you like, or administrator and an oversight. The World Bank, for its existence, has been using that model.

What the Millennium Challenge have done is they tweaked that model slightly. They still have this oversight firm, which is hired by them. But the government is still the client. The problem that a lot of people have with World Bank contracts is the local governments are the clients, so they get worried about getting paid, et cetera, et cetera.

Millennium Challenge, they have this independent engineering oversight, which doesn't exist on the current contracts. And I don't quite understand your question about . . .

SCHINASI:

I guess the company you would hire would want to compete for future business?

HINKS:

No.

SCHINASI:

You know?

HINKS:

The government would hire let's say it was USAID. And it does this on other contracts, I believe. They will hire an independent engineering firm, which isn't a contractor as such. It specializes as a consultant. That firm, as I say, acts as a sort of contract administrator and a referee, and even gets involved in sorting out disputes between the government and the contractor. They are not going to appear later as a competitor to those contractors. They're specialized types of firm.

SCHINASI:

Actually, what we've seen is companies buying up those independent contractors. And then they become part of the company that bids for it next time. But thank you for explaining that.

SHAYS:

Mr. Tiefer, professor?

TIEFER:

Thank you, Mr. Co-chair. Mr. Torres, here is a more straightforward question than many. What indications have you seen that MEP is, for linguists, charging too much or managing too little or both?

TORRES:

I really don't have any evidence that they are charging too much. I will say that, you know, linguist salaries at \$250,000 to \$280,000 is way too high, in my opinion. We routinely hire linguists. I do the same thing for, you know, the \$140,000 to the \$170,000 range, under Department of State and Department of Defense programs. I'm not sure how they came up with that pricing structure. But we have always thought that that was a little high ourselves.

TIEFER:

Am I right that since they're a cost-plus contractor, that the higher the salary they pay to the linguist, the higher their own fees and profits and overhead.

TORRES:

That would be my conclusion, yes.

SHAYS:

Would the gentleman yield a sec?

TIEFER:

Please.

SHAYS:

Just it's kind of stunning the \$250,000 to \$280,000. Are these folks who have been brought in? Are these actually indigenous-country folk?

TORRES:

These are U.S. citizens with secret and top secret clearances and a degree, typically.

SHAYS:

OK.

TIEFER:

We heard testimony from them that they have 55 managers and about 400 and—math is my weak point—4,300 linguists. Do you think that that's the right way to be running things, with 80 to 90 linguists per manager, and yet charging the full cost-plus system?

TORRES:

You know, it's just based on geographical distribution, I would think. We don't have any management roles over there. We did early in the program. But if you take a look at the FOBs out there, each FOB might have about 100 linguists, and you'll have a site manager for those 100 linguists. The linguists would be a combination of U.S. citizens and local nationals typically. That looks to be, you know, about the right ratio.

TIEFER:

OK. Mr. Hinks, you were signed up as a subcontractor on the famous Kabul power plant. Yes?

HINKS:

Yes, sir.

TIEFER:

Now, that came in at about \$300 million. Is that what it should have cost?

HINKS:

Not in my opinion, sir.

TIEFER:

What is the general rate for that kind of power; you're buying that many megawatts of power capacity in sort of that area of the world?

HINKS:

Well, I mean, that area of the world, if it was in the Middle East, I would say it should be something just over \$1 million per megawatts. Perhaps in Afghanistan, 1.3 [million]. So maybe it should have cost \$130 million is my view.

TIEFER:

So it should have been \$130 million, and it cost \$300 million. You may have some idea about how it got to be so high. I once asked the AID official, Mr. Deaver [phonetic], about whether it really made sense to have an alternate fuel capacity built in, whether—this was to burn heavy fuel oil—whether this was really necessary or this was over the local capacity, that that's not what they wanted? They wanted, diesel was fine with them. Did you have any understanding about that subject?

HINKS:

I obviously wasn't involved in the gestation of that project. I don't think it was sensible to build a diesel power plant in Kabul, never mind heavy fuel oil. So that's my view.

TIEFER:

How should the need have been satisfied, the need for power, electricity?

HINKS:

I believe that they have gas in northern Afghanistan at a place called Sheberghan.

TIEFER:

Yes.

HINKS:

And I believe that that was on the agenda of USAID. I don't know why, but they started seismic work trying to tap the gas, if you like. And then they stopped after spending quite a lot of money.

But for me, it made no sense to put in a diesel-fired power plant in Kabul, if you had gas in the north. But there may be other reasons that I'm not . . .

TIEFER:

I'll go with your technical knowledge. What about delay? The power plant took some years to get together. I believe, didn't the ribbon cutting ceremony occur when it was about one-third built? That was a story I heard. Anyway, was the . . .

HINKS:

That project had deadlines which in my view were ridiculous. They bid out the project early in 2008, gave RFPs for the work. They then took months to evaluate and award. Then they awarded the contract in June and asked for completion of 70 megawatts of power by December. And I think if you go around the world and you ask people in the power industry how realistic that is, you'll get the same answer from everybody.

TIEFER:

They were unrealistic in their schedule.

HINKS:

Totally unrealistic.

TIEFER:

My time has expired. I'll pass it along.

SHAYS:

One of the facts that is becoming very real to this commission is that it's inadequate, the communication between the military and contractors. In other words, contractors constitute half of our military operation, including subs. In the quadrennial review, you'd have a hard time even seeing contractors come up. There's a failure to coordinate with the contractors. I'd like to know, in your experience as subs, and in your case, Mr. Brune, you weren't really as a sub. But do you feel you ended up in the relationship with your prime, do you feel you had good communications with your prime as a general rule? Or was it difficult sometimes to have that kind of communication?

I'm really responding to you, General Dalby, in terms of your five recommendations. And the first one is frequent open communication between the U.S. government and prime contractors, and between prime contractors and subcontractors. Would all of you buy that as a recommendation? And do you have any stories to illustrate the importance of it? So I'll start with you, Mr. Dalby, since you set this in motion.

DALBY:

Well, we . . .

SHAYS:

And I say mister; I mean General. Thank you.

DALBY:

Mister is fine sir, thank you. We feel like that frequent meetings with prime contractors, or face to face or virtual, it doesn't matter, just as long as you have the communication. And that way, we can, you know, ensure that if there's a piece of coaching and sharing of information that a prime can relate to a sub that is very helpful. And sometimes we just don't feel like that we get that in those relationships.

But the fact of the matter is that the sub, at the end of day, if they're fixed price, they take the risk. You know, it's not the prime or it's not the government. It's the subcontractor.

SHAYS:

Mr. Hinks, this didn't make it in your top six as a recommendation. Would it have been number seven?

HINKS:

I mean, again, it depends upon the prime contractor. As one of the other panel members said, there are good ones and there are bad ones. Some primes just do not want you ever to talk to the government, whether it's USAID or the Department of Defense. Others I've dealt with involve you in the meetings with the government and the Department of Defense.

For me, it's all about the project and getting the project done and what's best. I heard this morning people talk about the privity of contract and how the government should not get involved in a dispute between a prime and a sub. .From an attorney's point of view, I understand that.

SHAYS:

Right.

HINKS:

But I've seen in Iraq, I've seen the Department of Defense get right involved in the middle of disputes between subcontractors.

SHAYS:

And resolve them.

HINKS:

And resolve them. Many things wouldn't have been finished if it hadn't have been for U.S. Army.

SHAYS:

But their lawyers would probably tell them . . .

HINKS:

Yes, it depends on if you take that position. But a practical guy on the ground in Baghdad isn't thinking of lawyers, he's thinking of getting the job done. So some of those young guys from the U.S. Army Corps of Engineers get right in there, sit the Iraqi subcontractor down with the prime contractor, and say now you two sort it out. Now for me, that's the way it should be.

SHAYS:

Seems that's the way grown-ups would want to solve problems.

HINKS:

That is exactly the way it should be.

SHAYS:

My time is kind of coming to an end here. Mr. Kleckner, Mr. Krens, Mr. Torres, would you like to speak to that issue of really the issue of the communication between the government, the sub and the prime?

KLECKNER:

I just would briefly say, you know, as a prime, you're bearing the risk and responsibility for performance of the contract. So obviously, you want to manage the communications. But from a subcontractor's perspective, as a sub, I view my prime as my principal customer and would focus on working through them and meeting their needs and requirements.

SHAYS:

But it's pretty alarming if you think that the government really doesn't have, in every legal sense, access to the sub. And then you don't even have the sub having good communication with the prime. That's a pretty alarming thing, and probably leads to the kind of waste that we've been talking about.

Mr. Krens? Mr. Torres?

KRENS:

I would agree with Mr. Kleckner in terms of being a small contractor. We view our direct contact with the prime—Fluor has done I believe a very good job with us, in terms of partnering and having our personnel in theater, working side by side with theirs, to avoid a lot of the miscommunication that can happen if you're oceans apart.

SHAYS:

Mr. Torres?

TORRES:

Yes, I agree 100 percent. Our program management offices include managers and supervisors from both the prime and the sub. And the contracting entities like to be able to reach and talk to those people. We're completely open in that respect.

SHAYS:

Thank you. It's my understanding maybe more of you are impacted this way. Mr. Dalby and Mr. Hinks, you were having to rearrange your schedule overseas and so on. I know all of you have had to fit your schedule into our request that you be here now. So we thank all six of you and particularly any of you who had have to take that extra effort.

Mr. Torres, we're going to start with you, just any short statement to conclude that you want to put on the record. You do it without interruption from us.

TORRES:

Sure. You know, at the end of the day, and I think that everyone would agree with this, is we've got a lot of troops over there, men and women. And they depend on us to do the best thing we can possibly do. Things like communications, this last subject, between prime and subcontractor in the government—that should be completely transparent.

We should be able to focus on the mission first, take care of our folks first, and then think about the contracting piece and the protocol secondly. I think this is a good venue to move that in that right direction. I think prime and subcontractors need to work a little bit closer together. In my opening statement, I say we have very few subs, but the subs we have are protégés to us. And we train them the way we want them to be trained. When they hit the ground over there in Iraq

and Afghanistan, they're acting in our behalf. And they're acting in our behalf for the troops. And that's what we should be focusing on.

SHAYS:

Thank you, sir. Mr. Krens.

KRENS:

DFS is proud of our service to Fluor and our government's mission. We believe that the services we provide by teaming with our CARB-certified operator provides the safest and most reliable service. With our subcontractor focusing on maintenance and pilot training, which is their core competencies, and us providing the logistics, quality control, contract compliance, and administration, we believe our team provides the most safe and reliable solution for the mission at hand.

And safety is mantra number one within our organization. Last thing we want do is to be held responsible for any loss of life anywhere in our contracting world. So on behalf of DFS and our 95 employees worldwide, I'd like to thank the commission for the opportunity for coming here. It's been an experience. It's been my first experience. So after a sleepless night, I think I survived it.

SHAYS:

I think you all survived it. Mr. Kleckner?

KLECKNER:

Yes. I think I can certainly speak for all of McNeil when I say we fully embrace and support the work of the commission. Your objective to assure best practices in both contracting and subcontracting only benefits the contracting community. When there's corrupt or fraudulent practices by one, we can all be painted with that negative brush stroke.

So we certainly encourage what you're doing. And hopefully we'll continue to work with you to assure we achieve, you know, a maximum level of service and support to our customers, the U.S. government, on these efforts.

I want just to reiterate again, too, we're very proud of all our personnel working over in contingency environments. The personal sacrifice and risk that they're exposed to, along with their government and military counterparts, it can't be understated how much we appreciate what they're doing for the country and for our . . .

SHAYS:

Can't be overstated, I agree.

Thank you, Mr. Hinks.

HINKS:

Something brought all this home to me this morning on the way here. While I was on the way, I got a call from Baghdad. And our office in Baghdad, a car bomb had just gone off outside it, blown the windows apart, blown part of the house out, but everybody was OK. And I think that all of the people who have been here today have shared experiences like that. And it really brought it home to me that I was coming up to sit here and testify before you. So thank you very much for having me.

SHAYS:

Thank you. Thank you for sharing that point and actually waiting to the end. That's very thoughtful of you. Thank you.

DALBY:

Sir, I just want to tell you that I think the challenges that you face as a commission is extremely important to the way that we approach government contracting in the future. I think subcontracting and contracting in a contingency environment is very difficult at best. And if we can come up with better practices or a modifier to the systems we have now, we'll be better off in the next contingency.

SHAYS:

Thank you. Mr. Brune?

BRUNE:

Sir, we're just pleased to serve the commission's valuable work. And we are proud and honored to serve our military and our national security interests. Thank you very much.

SHAYS:

Well, we all know that you are in service to your country and to your companies, as well. My co-chair has separated the gavel from me. But any rate, this hearing is closed. Thank you. What were you doing, playing with it?