

## RECURRING PROBLEMS IN AFGHAN CONSTRUCTION, Part II

MONDAY, FEBRUARY 14, 2011

Commission on Wartime Contracting

Washington, D.C.

The Committee met, pursuant to notice, at 09:30 a.m., in Room 216, Hart Senate Office Building, Hon. Christopher Shays, Co-Chairman of the Commission, presiding.

Present: Commissioners Ervin, Henke, Tiefer, Zakheim.

SHAYS:

Good morning. I'm Christopher Shays, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan. This is a joint statement, a shorter one, on behalf of my co-chair, Michael Thibault, and my fellow commissioners.

Co-Chair Thibault and Commissioners Katherine Schinasi and Grant Green could not be here with us today. The other commissioners at the dais are Clark Kent Ervin, Robert Henke, Charles Tiefer, and I believe Dov Zakheim will be here shortly.

Today's hearing is a continuation of our January 24th session on recurring problems in Afghan construction. We were looking into the planning, management, execution, accountability, and sustainability of contract construction projects in Afghanistan.

There are literally thousands of these projects, ranging from schools and clinics in Afghan villages to power plants and training centers in Afghan cities to barracks and dining facilities for U.S. and NATO troops. They are all important, and they all involve billions of taxpayers' dollars, mostly funneled to contractors through the Departments of Defense and State or through the U.S. Agency for International Development.

At our January 24th session, we heard from government folks—the Special Inspector General for Afghanistan Reconstruction, AID, and witnesses from the Army Corp of Engineer and the Air Force Center for Engineering and the Environment.

We were also supposed to hear from the witnesses who are back today, but we got so involved in the first two panels that there wasn't enough time left in our room reservation to do justice to our guests.

We apologize for the attendance of our third panel, which is here today, and we thank you, gentlemen, for agreeing to talk with us and take our questions, and we thank you for not complaining about having to come back.

Our witness panel comprises construction contractors who have carried out some major construction in Afghanistan. They are Michael E. McKelvy, president, Government, Environment, and Nuclear Division, CH2M HILL; Charles Mouzannar, executive vice president, AMEC Earth and Environmental, Inc.; and William Van Dyke, president, Black & Veatch Special Projects Corporation.

Also appearing today is Bruce McCarron, regional director, United Nations Office for Project Services, or UNOPS. UNOPS is USAID's implementing partner for the Ghazi Boys School Project.

I will note that the United Nations has made Mr. McCarron available to provide information today without prejudice to the status, privileges, and immunities enjoyed by the UN. Mr. McCarron, as a UN official, he will join us after I swear in the other witnesses.

Again, gentlemen, thank you for your cooperation with the commission.

Another witness scheduled to speak on January 24th had prior commitments and could not rejoin us today. He is Larry D. Walker, president of Louis Berger Group Inc. We are making arrangements for Mr. Walker to appear in a future hearing.

We have asked witnesses to offer brief oral hearings of their testimony. The full text of their written statements were entered into the hearing record last month and posted on the commission's website. We will also accept any updated versions they may provide.

We ask that the witnesses submit within 15 business days responses to any questions for the record and any additional information they may offer.

Now, if the witnesses would rise, I'll swear you in. If you'd raise your right hand: Do you solemnly swear or affirm that the testimony you will give before this commission today is the truth, the whole truth, and nothing but the truth?

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

Mr. McCarron, please join us. And I thank you. And let the record show that, as I've said, that they have responded in the affirmative.

I think we'll start with you, Mr. McKelvy, and your testimony. And let me say that you have five minutes. Given that you were having to come back, if you run two more minutes, we'll allow it to happen, and I will definitely stop you after 7. And we will finish by 11:30. I know two of you have commitments, but that you can count on.

Mr. McKelvy?

MCKELVY:

Thank you.

Chairman Shays, distinguished members of the commission, my name is Michael McKelvy, and I'm president and division chief executive overseeing our CH2M HILL Division that executes our government contracts for work in Iraq and Afghanistan.

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'll keep my remarks short and ask that my written statement be submitted for the record.

First, I would like to say that it was my pleasure to meet both co-chairs of the commission, along with the commission staff, at our corporate office in Denver last June. We also participated in the commission hearing last July. 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, and the Department of Energy. Approximately one-third of CH2M HILL's revenue is in support of the federal government.

Since 2004, CH2M HILL has been providing support to the U.S. military, first in Iraq and subsequently Afghanistan. This support embodies our corporate commitment to follow our DoD clients in both peace and war. While CH2M HILL has served numerous clients and has provided the full 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 trans-Atlantic Program Center IDIQ contract from January 2004 until January 2009. Second, from April 2006 to the present, CH2M HILL has also held an AFCEE (Air Force Center for Engineering and Environment) heavy-engineering repair and construction contract. And lastly, since July 2009, we have been a subcontractor to DynCorp under LOGCAP IV.

Chairman Shays, I understand that many from the commission visited Afghanistan last August, as referenced in the previous panel discussions, and many were briefed on one of our projects at Camp Phoenix in Kabul.

On December 7, Fred Brune, my government-facilities and infrastructure business-group president, visited Camp Phoenix and met with Brigadier General Ted Johnson, the Kabul-based cluster commander, who is anxious to receive the last three barracks being built by CH2M HILL for our AFCEE HERC (Heavy Engineering and Repair) client. These barracks are scheduled for completion within the next two weeks for turnover.

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 taxpayer dollars are spent wisely. CH2M HILL is committed to serving the facility, infrastructure, and logistics need 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 interest.

With that, Mr. Chairman, I'd be pleased to answer any questions the commission may have and to share lessons learned from our work in Afghanistan. Thank you.

SHAYS:

Thank you.

Mr. Mouzannar?

MOUZANNAR:

Chairman Shays and distinguished members of the commission, thank you for the opportunity to share AMEC's experience and observations relating to performance of U.S.-funded reconstruction projects in Afghanistan.

My name is Charles Mouzannar, and I serve as the executive vice president in charge of the Major Projects Group for AMEC Earth and Environmental Inc., a subsidiary of AMEC PLC.

AMEC is a focused supplier of high-value consulting, engineering, and project-management services to the world's natural resources, nuclear, clean energy, water and environmental sectors. AMEC designs, delivers, and maintains strategic and complex assets for its customers worldwide. With annual sales of approximately \$4 billion, AMEC has major operations in the Americas and the United Kingdom and works internationally for customers from the Arctic to Australia.

The company employs approximately 23,000 in 40 countries and more than 4,000 employees are in the United States. In 2010, AMEC Earth and Environmental Inc. sales to the U.S. government for work performed in Afghanistan were approximately \$58 million.

The commission has invited us to appear at this hearing to provide our perspective on recurring challenges relating to U.S.-funded construction projects in Afghanistan. Some of the key challenges that we have encountered, along with our recommendations for improvements, are provided in our written statement. I would like to briefly outline a few points we have presented.

A clear and comprehensive scope of work, reliable site surveys, and geotechnical reports are a prerequisite to preparing accurate and reliable proposals for firm-fixed-price construction contracts.

Faced with aggressive deadlines, it appears that the government is increasingly using firm-fixed-price-type contracts, competed and awarded on the basis of the lowest-price technically acceptable offer, even when site access and technical information are limited during the solicitation phase.

The firm-fixed-price contracting method is effective when site conditions are known, security conditions are relatively stable, the supply chain is available, and the scope of work is reasonably defined.

Many of the projects that are currently needed across Afghanistan do not conform to the above criteria, and we believe they could easily result in significant cost overruns, delays in contract performance, and the government's inability to achieve its desired mission at the project location on schedule and at the desired cost.

We recommend that acquisition officials reconsider the use of cost-type contracts with best-value selection criteria for projects when site conditions are unknown, security conditions are unstable, the supply chain is unavailable, or the scope of work is not well defined.

AMEC follows a local and sustainable approach to delivering projects. AMEC focused on sustainability from planning through commissioning and has developed various designs that maximize the sustainability of facilities and minimize operations and maintenance efforts required during the useful life of the facilities.

For project delivery, AMEC maximizes the use of Afghan workers and engineers in furtherance of the Afghan-first policy. Since 2006, AMEC has delivered its projects with a construction workforce consisting of a minimum of 95 percent Afghan workers, closely supervised and trained by AMEC technical staff.

We are proud to have surpassed 5 million man-hours on the Afghan National Defense University project without a single recordable health-and-safety incident, while also building a sustainable local workforce.

AMEC has received positive results by engaging and training Afghan workers and engineers, yet we are challenged with balancing these goals against achieving aggressive contract-schedule and cost requirements.

We believe the government can achieve desired sustainability goals for the Afghan workforce by setting aside a percentage of projects that specifically allot contractors time and funding to train and develop Afghan workers and engineers.

Last but not least, AMEC sees cultural training as an integral part of its contracting in Afghanistan. AMEC staff is given cultural training to maximize the effectiveness of the management team, build sustainable business relationships with the stakeholders and supply chain, and avoid cultural incidents.

We believe this approach is critical for government and contractor staff alike to successfully deliver projects in Afghanistan.

In closing, AMEC is proud and thankful for the opportunity to contribute to the reconstruction of the country of Afghanistan. Our ability to deliver projects in Afghanistan during the current challenging circumstances reflects the contributions of all stakeholders including the Afghan

end-users, U.S. government, and the AMEC team supported by our Afghan engineers and workers.

Thank you for the opportunity to brief the commission on AMEC's perspective on successfully delivering reconstruction projects in Afghanistan. And I'll be happy to answer any questions you may have.

SHAYS:

Thank you, Mr. Mouzannar.

Mr. Van Dyke?

VAN DYKE:

Good morning.

SHAYS:

Is your mike on, sir? That's a mistake we all make.

VAN DYKE:

Good morning, Chairman Shays, members of the commission.

My name is Bill Van Dyke. I'm president of Black & Veatch Special Projects Corporation. We're a wholly owned subsidiary of Black & Veatch Corporation.

Black & Veatch Special Projects performs federal work for the company and for the federal government. I thank the mission for this opportunity to discuss my company's efforts in support of USAID's mission in Afghanistan.

Black & Veatch Corporation is a leading global provider of power, water, telecommunications, and other infrastructure. As part of its worldwide reach, the company has proudly supported U.S. government projects for more than 90 years.

Since August 2006, as a partner in the Louis Berger Group Black & Veatch Special Projects Corporation Joint Venture, we have assisted our USAID client in developing essential energy infrastructure in order to improve the economy and quality of life for the people of Afghanistan.

From 2006 until today, total megawatts of power generation available for Afghanistan have more than doubled, and USAID projects supported by Black & Veatch have contributed to approximately 90 percent of that increase.

In December 2010, USAID awarded Black & Veatch a separate contract for the Kandahar, Helmand, power project to enhance electrical-power generation, transmission, and distribution in the south in support of U.S. government policy.

Working in support of USAID's mission to increase energy delivery to Afghan's people and with Afghan government organizations, Black & Veatch's dedicated professionals have delivered a number of successes. I'll summarize just a few examples.

We provided advice to the Afghan government in negotiating power-purchase agreements with other countries. We developed a successful plan in just 35 days that enabled Afghanistan's utility to transmit 70 megawatts of imported power from Uzbekistan in the northeast and to Kabul through a complex network of never-before-used existing facilities.

We constructed the 105 megawatt Tarakhil power plant at a green-field site northeast of Kabul which today provides power-generation source for Kabul and will ultimately provide 100 jobs.

We trained Afghan Kandahar power-plant workers to overhaul their generating engines instead of shipping them out of the country. This enhanced sustainability of the Kandahar power-operation program.

Projects currently under way will enable Afghanistan's utility to better manage loads from domestic hydropower, fossil fuel, and imported generation forces.

Now, in achieving successes, we've had challenges. In April 2010, our joint-venture's living quarters in Kandahar was destroyed by an improvised explosion device. When we were forced to evacuate all of our expatriates from the area following this event, Afghan staff, trained by Black & Veatch personnel, continued operating the Kandahar generation station without interruption for weeks, a proven success in training for sustainable operations.

In building the Tarakhil power plant, we experienced issues with a subcontractor that we were unable to resolve and that led to that subcontract's termination in June of 2009.

We addressed this issue in two ways. First of all, we figured out how to transmit power from Uzbekistan to Kabul, helping Afghan's utility deliver this power in January 2009, and that was far earlier than originally thought possible.

Second, Black & Veatch immediately stepped in to performing the remaining work on the Tarakhil plant, delivering a full power for the winter 2009 to '10 ahead of the schedule promised

USAID at the time of the subcontract termination. USAID has turned over ownership of the plant to Afghanistan in June 2010. The plant met all requests for power dispatch since it was commissioned.

And I want to point out that we worked more than 2.7 million person-hours in building this facility without a serious safety incident.

The costs of taking the Tarakhil project from an empty green-field site to an operational facility are comparable to recent acquisitions by the U.S. Army Corps of Engineers to design and build two 10-megawatt diesel plants for just over \$51 million that was discussed before this commission in January.

The Tarakhil costs in December 2008 after all major subcontracts had been awarded were \$260 million, as noted in the Special Inspector General for Afghan Reconstruction's report. This cost is precisely within the range of our second-quarter 2007 estimated range for the USAID project of \$240 million to \$290 million.

Now, let's talk about going forward. Today, measures to provide security represent the largest single challenge, due to a changing environment for private security. In the course of our work supporting USAID's mission, Black & Veatch has worked hard to ensure the safety and the security of all who work on USAID projects.

We have ongoing efforts under way with USAID, with Afghan government agencies, and with our contractors to determine how we will ensure the security of workers necessary to complete the important projects as we move forward to provide power in southern Afghanistan in support of U.S.- government counterinsurgency policy.

We're proud to support USAID's efforts, which have improved the availability of electrical power to hundreds of thousands of Afghans and will benefit their lives for many years to come. We never forget that our professionals on the ground, working in a hazardous environment, and those supporting them are the ones who deliver these results.

Thank you for the opportunity to appear before you today. I'll be pleased to answer any of your questions on these or on any other issues.

SHAYS:

Thank you, Mr. Van Dyke.

Mr. McCarron? And thank you for being here.

MCCARRON:

Chairman Shays, members of the commission, I am Bruce McCarron, currently regional director for North America for the United Nations Office of Project Services, UNOPS and formerly, from 2008 through December 2010, director of the UNOPS Operation Center in Afghanistan. And I'm honored to have the opportunity to brief the commission on UNOPS work in Afghanistan.

UNOPS was established by the UN General Assembly. Its mission is to implement peace building, humanitarian, and development operations.

Worldwide, UNOPS delivers approximately \$1 billion through project implementation annually and spends approximately \$60 million administering it.

UNOPS operates on a fee-for-service basis and receives no other form of revenue for its activities, and has no core funding from the United Nations. During periods of conflict or crisis, UNOPS maintains a physical presence on the ground and promotes the ownership and engagement of governments and local communities. UNOPS's transparent accountable management services meet the highest international standards.

Turning directly to Afghanistan, UNOPS has had a long and proud involvement in the delivery of over \$1.2 billion U.S. in infrastructure and other projects to the Afghan people, funded by the Afghan government and the international community.

One example is the Ghazi Boys School project that the commission visited. Presently under construction, the Kabul schools project covering the Ghazi Boys and Sardar Kabuli Girls schools is funded by the U.S. government, USAID, and represents some of the best standards of construction in Afghanistan. Designed to meet the California building code for seismic loading, as well as the operational demands of several thousand students, these facilities will be the best in the Afghan Education Ministry's portfolio.

As to the problems in contracting, despite the very real security-related limitations, it has been possible to implement substantial infrastructure projects in Afghanistan. Stating this is not meant to downplay the impact of the security risk on the delivery of capital-infrastructure programs.

Site preparation is key within any construction project, but in Afghanistan there is the additional complexity of land ownership, political pressure to develop perhaps less than ideal sites, and the presence of explosive remnants of war.

Operating almost without regulation, the Afghan construction industry has a range of vendors from very poor to very good. The situation makes construction management even more essential if the investment made by the international community is to be effective.

Security in Afghanistan is a major consideration for UNOPS. The staff have been directly impacted by abductions, IEDs, threats, and intimidation from the various anti-government and criminal elements operating across the country. UNOPS has found through long and sometimes bitter experience that infrastructure cannot be effectively delivered in Afghanistan without the serious social-inclusion effort working in parallel, as well as the provision of security forces.

UNOPS does not at present use international security providers in Afghanistan. We have found that when allocated appropriate resources, the Afghan national security forces and the Ministry of Interior can be effective. The commission recently visited the Ghazi School project in Kabul. That site is protected by ANSF, Ministry of Interior, on special assignment to UNOPS.

UNOPS maintains a very close liaison with the Afghan government through the UN country team, as well as our direct relationship with the Ministries of Finance, Public Works, Rural Rehabilitation and Development, and Agriculture, Irrigation and Livestock. At present, over 80 percent of our project work is on agreements with the Afghan government, while the remainder is bilateral with the governments or agencies of Australia, Italy, Japan, Sweden, and the U.S.A.

The close relationship between UNOPS and the Afghan government ensures that the host nation is thoroughly involved in project selection and benefits from capacity building in the ministries concerned.

UNOPS has invested in the necessary training and systems to ensure that best practice is observed in infrastructure-project management. In wartime contracting, operational imperatives can often arise that might pressure implementers to cut corners or take inappropriate management decisions. UNOPS has ensured that it has the procedures in place to respond to project demands in an accountable manner.

UNOPS has observed for some years that the massive international investment in infrastructure in Afghanistan has not included the concept of maintainability. UNOPS design teams composed of international and local architects and engineers seek to ensure that new infrastructure is maintainable and appropriate. Recent experience has also emphasized the need for safe buildings. The Ghazi Boys School, which the commission visited soon after the USAID administrator, is an example of safe, high-quality, maintainable, and appropriate construction.

This was not the case at the start of that project. UNOPS was faced with a decision that required the removal of the initial contractor on performance grounds. Not an ideal situation, but this led to the selection of a new contractor who could meet the required standards on time.

From UNOPS's extensive experience, as I hope my written statement has shown, wartime contracting in Afghanistan has generic challenges related to construction, project, and contract management, through to location-specific challenges such as security threats. Nonetheless, the international community's ongoing investment in this area indicates the important contribution to peace-building, humanitarian, and development objectives provided by infrastructure development. It also demonstrates that results can be achieved even in the most challenging environments.

Thank you again for the opportunity to brief the commission on this important subject, and I stand ready to answer any questions.

SHAYS:

Thank you, Mr. McCarron.

Let me just tell you the order that we'll proceed. We'll start with Commissioner Ervin, then Commissioner Zakheim, Commissioner Tiefer, Commissioner Henke, and then myself. We'll do eight minutes and then we'll do a five-minute follow-up and we'll complete our work.

So we'll start with you, Mr. Ervin.

ERVIN:

Thank you very much, Mr. Chairman.

I want to echo the chairman's comments at the beginning by thanking all four of you for having been here at our first hearing and for returning for this one. Thank you very much. We know how busy everyone is and we very much appreciate your accommodating our schedule.

As you know, Mr. Van Dyke, I spent a lot of time at the last hearing with Mr. Thier from AID talking about the Black & Veatch contracts in Kabul and Kandahar. And not surprising, I want to spend at least the bulk of my time in this initial round with you talking about the very same issue.

Just to get the facts on the record for those who weren't present at the last hearing, there was a \$266 million sole-source contract awarded to Black & Veatch and to Louis Berger to provide power to Kandahar, the real heart of the insurgency. And this was done in December of 2010 against a backdrop of AID's having complained vociferously a number of times about your performance under the 2006 contract to provide power to Kabul. The contract originally was projected to cost \$100 million. It ballooned to \$300 million. There were also overruns in terms of time. The project was a year behind schedule.

Now, it is not fair, it seems to me, to blame Black & Veatch for AID's decision to issue this sole-source contract. I think it is fair, though, to ask you whether you have any better justification for it than Mr. Thier was able to provide last time. And we spent a lot of time with him talking about this November 2009-2010 justification that AID prepared for that Kandahar contract.

And there are two terms that were used in it to justify it. First, they say that you were uniquely qualified to perform this work, and then the term "uniquely positioned" is used. If you really read this document, as I'm sure you have, it seems to me really the ultimate reason why Black & Veatch was chosen is because you were uniquely positioned, meaning you were the only contractor on site.

It also says that to get other contractors in would have taken a tremendous amount of time, even though, again, you were cited just months earlier for being a year behind schedule with regard to Kabul.

Do you have any better justification, sir, than AID had for why you were chosen for this no-bid contract?

VAN DYKE:

Commissioner Ervin, there was a lot in that preamble, and just one correction, if I may. The award was to Black & Veatch, not to the joint venture.

ERVIN:

OK.

VAN DYKE:

And it was to us directly.

I haven't seen the justification that our client wrote, but I believe we were both qualified and positioned. One thing that may not be clear to the commission is that we had done an extensive study of power needs, including power projects necessary in the south for five provinces, to include Kandahar and Helmand, and defined a lot of work that needed to be done there. So we had a good understanding of the work up front, and I think that's important to know.

I think the other thing that's important, as you talked about past issues, past comments by USAID, you heard Mr. Thier talk about what we had done since that time. And I remember that Commissioner Schinasi asked at the last hearing whether people were using evaluations of their contractors, and our latest evaluation is very, very positive.

I'd like to just read one comment from it. "The execution of the Tarakhil power plant has resulted in a high-quality, state-of-the-art power plant capable of meeting all technical requirements and able to provide reliable power for up to 600,000 Afghan citizens for many years to come."

ERVIN:

What's the date of that?

VAN DYKE:

The date that we received it was 2010 in May.

ERVIN:

And what's the date of it? You received it in May of 2010. What's the date of the document itself?

VAN DYKE:

The document says it reports on 2008 to 2009.

ERVIN:

Well, we'd like a copy of that.

VAN DYKE:

I can get you a copy.

ERVIN:

Thank you.

Now, you say that you did a number of things between March, 2009, and the last document that we have from AID complaining about your performance in Kabul between then and December 2010 when the Kandahar-plant contract was awarded to you. Can you describe and document what improvements in performance you're referring to?

VAN DYKE:

Well, some of those things were mentioned in my original statement, so I'll go back to them. If you recall in the SIGAR's report, one of the reasons for building the power plant—the short-term reasons, not the long-term—was fear that you couldn't get power through the NEPS system, the Northeast Power System, in the fall of 2008.

We were actually asked in December of 2008 by the Afghan government through USAID, how can we get power from Uzbekistan? Our creative engineers figured out how to do it in 35 days. So we got power to Afghanistan earlier than anybody thought possible for the winter of 2009.

ERVIN:

Well, let me stop you there, now. As I said to Mr. Thier in the last round, if that is, in fact, the case, then why wasn't that mentioned in the AID justification for the Kandahar work?

VAN DYKE:

You'd have to ask Mr. Thier that question.

I think the second thing that we did was, when we had an issue with the contract, we stepped in and solved the problem by getting the contract filled ourselves. We subcontract work; we don't subcontract responsibility. So we took responsibility and got the work done.

We've done a number of other things that you maybe don't hear about here, but some of them are mentioned in the SIGAR report. One of the things that's mentioned in the SIGAR report is the extreme effectiveness of the Inter-Ministerial Commission on Energy. We're the adviser, through USAID, to that.

ERVIN:

All right. My time is limited. Let me stop you there.

VAN DYKE:

OK.

ERVIN:

Do you have any reason as to why the work could not have been broken up into discrete parts? Why was it necessary to sole-source the entire contract?

VAN DYKE:

The fact is that that's exactly what USAID has asked us to do. We're a power-generating company; that's what we do for living. And we are going to break up the work into parts. We're going to competitively bid it and award bids on competition.

ERVIN:

Isn't that a function that the government ought to perform, rather than the contractor itself bidding out the work?

VAN DYKE:

I think the major question is does the government have the ability to do the technical details of dividing up a technical work scope like a whole energy-distribution transmission, generation system for the south. And that's what we were asked to do.

ERVIN:

Let me ask you about security. You talked in your statement about that being the single biggest challenge that you have to get the work done with regard to Kandahar.

And we understand that your security firm is Blue Hackle. Is that right?

VAN DYKE:

Well, that's the security firm that we have at the Tarakhil power plant right now, which is the only job we have. At Tarakhil, not mentioned anywhere in here, is we are providing training for operations and maintenance today. And so the only direct contractor we have is Blue Hackle.

ERVIN:

Right.

VAN DYKE:

We have no contractors, I want to emphasize . . .

ERVIN:

I understand that. I want to get to . . .

VAN DYKE:

OK. We have no contractors, security contractors, at the other plants.

ERVIN:

Let's talk about the Blue Hackle contractor that you have at the Kabul plant.

VAN DYKE:

OK.

ERVIN:

We understand that the Afghan government has called that contractor a "major offender." Is that right? And can you give us any details as to what's behind the Afghan government judgment in that regard?

VAN DYKE:

We're aware that there have been discussions between Blue Hackle, and we've seen the press releases that relate to those things. Blue Hackle is still licensed to do work and licensed to provide services to this plant. And so we are using them. We understand that USAID is in discussions with . . .

ERVIN:

Right. My time is limited, that's why I'm interrupting you.

VAN DYKE:

OK.

ERVIN:

If in the end, the Afghan government determines that Blue Hackle can no longer perform this function, what are your plans to provide additional support?

VAN DYKE:

We are working with USAID, with the Ministry of Interior in Afghanistan, with our own working contractors, the people doing the work, to figure out what our path forward is on security across the board.

We do not have firm answers yet, because a thing I think this commission needs to understand is that the security issues in Afghanistan are evolving daily.

I think Dr. Shah has been there this week. I know Mr. Thier is on his way back today. And we'll talk with them about what they have learned. But there are not yet solutions.

ERVIN:

A final question, the fact that you don't have a contractor right now with regard to the Kandahar plant, that surely poses some threat to the ability to actually perform under that contract, doesn't it?

VAN DYKE:

We have some time. Because we are getting the equipment and the subcontractors in place, we have some time. But there's a window within which this needs to be worked through.

ERVIN:

And what is the window? That's my follow-up.

VAN DYKE:

I'd say the next six to eight weeks.

ERVIN:

Thank you very much.

SHAYS:

Thank you, Mr. Ervin.

Dr. Zakheim?

ZAKHEIM:

Thanks very much, Mr. Chairman.

And thank you all for being here. I've got a few questions as well to pick up from where my colleague left off.

But first, Mr. McCarron, did I hear you correctly that you didn't think security was enough of a bar to your succeeding at what you've been asked to do?

SHAYS:

Is your mike on, sir?

MCCARRON:

It is now. I was actually trying to indicate that security is a big concern, but we still can achieve some great things in Afghanistan as long as we do the proper risk analysis and take the proper measures to address the security issues.

ZAKHEIM:

You believe you have, I take it?

MCCARRON:

It's very difficult to say. At the moment we seem to have a very good record. In the last two and a half years while I was the director of the operations center, we had just a few incidents. And I'm very thankful for that.

But any time, things can go wrong. I think even today it was a big IED explosion at Safi Landmark Hotel. You never know when something is going to go wrong.

ZAKHEIM:

I take it all of you gentlemen support the idea of going to cost-plus—can you hear me now?

SHAYS:

Just hold on one second. Thank you for letting us know that.

ZAKHEIM:

Yes, I'm speaking into the mike.

SHAYS:

Could we have staff sit in the back of the room? And if you can't hear, please let us know so the general audience doesn't have to tell us.

ZAKHEIM:

I'll try again. Is that better, ma'am?

SHAYS:

Let me understand: Can you hear the witnesses or is the issue not hearing the commissioners?

Witnesses, yes—Commissioners, OK.

ZAKHEIM:

Can you hear me in the back now? Still not?

The thing is practically in my mouth.

SHAYS:

OK. Go for it.

ZAKHEIM:

All right. I'll do the best I can, and you guys owe me 30 seconds.

I take it you all support the idea of moving to cost-plus contracts because of the security situation, is that correct?

It is not.

Does anybody disagree with that? You're comfortable with firm-fixed price?

VAN DYKE:

We actually bid out to subcontractors work on a firm-fixed-price basis. We do a lot, which Mr. Mouzannar mentioned, which is we try to specify a work scope that is biddable, with known conditions, so that it can be bid.

So in terms of subcontracting we do go for -contracts.

ZAKHEIM:

But for your own contracts, you prefer what?

VAN DYKE:

If you've got to define what the situations are, which is what we generally have to do, then a cost-plus is appropriate.

ZAKHEIM:

OK. Then let me ask you this: Given that the security situation has pretty much been the same since about 2005, and you've had overruns, but the security situation is no better. Why do you continue to bid on firm-fixed-price contracts?

Why did you bid on the 2010 contract? You're not going to lose money. I mean, you're not in the business to lose money.

Suppose the government complied with all its requirements, given the security situation, it would be your necks, wouldn't it? So why do you bid?

Mr. Van Dyke?

VAN DYKE:

The contract that we have is a cost-plus contract.

ZAKHEIM:

Oh, it's cost-plus.

VAN DYKE:

Right. And I guess . . .

ZAKHEIM:

You wouldn't bid if it was firm-fixed-price?

VAN DYKE:

Not on this particular work scope, no.

ZAKHEIM:

OK. Let me ask you this: The report of the SIGAR folks points out a number of things that were not AID's really responsibility, but yours, particularly with subcontractors. You apparently had some trouble doing things in time.

Do you have the same situation today? Are all your subs lined up? Have there been any delays at all since you signed on nearly a year now?

VAN DYKE:

Actually, the contract was signed on December 4<sup>th</sup> of 2010.

ZAKHEIM:

OK, so a few months.

VAN DYKE:

So we've had them a couple of months. We have projects out for bid. We're getting bids back. So we don't have delays.

ZAKHEIM:

So you don't have anybody lined up?

VAN DYKE:

Yeah, we have one contract ready to award.

ZAKHEIM:

OK.

Mr. McCarron, do you see yourself as essentially like a contractor, since you have to raise your own money?

MCCARRON:

It's an interesting question, and people have pondered over that for some time.

No, we don't. UNOPS has an implementation mandate from the UN, and so it doesn't have a political or policy mandate. But . . .

ZAKHEIM:

Well then, neither does any contractor that I've ever heard of.

MCCARRON:

That's right. But we do approach things in a businesslike manner. We have to be efficient. We have to be very tight on our margins. And we have to perform. But then . . .

ZAKHEIM:

Every contractor does that as well, right?

MCCARRON:

But we don't have shareholders.

ZAKHEIM:

Fine. Apart from that.

MCCARRON:

And in that regard, we're a not-for-profit organization.

ZAKHEIM:

OK, you're a not-for-profit organization, but not-for-profits also have contracts, correct?

MCCARRON:

That's right.

ZAKHEIM:

And they're contractors, correct?

MCCARRON:

That's right.

ZAKHEIM:

So who supervises you?

MCCARRON:

We're supervised by the . . .

ZAKHEIM:

Who oversees you? I mean, who checks your books? Who . . .

MCCARRON:

The executive board of UNOPS, UNDP (United Nations Development Programme), and UNFPA (United Nations Population Fund), as well as the United Nations Board of Auditors.

ZAKHEIM:

So they audit all your books?

MCCARRON:

They do.

ZAKHEIM:

OK. And you're accountable to them.

MCCARRON:

We're accountable to them, and we have unqualified audits for the last two years.

ZAKHEIM:

OK.

I've got a couple of minutes left.

Let me ask Mr. Mouzannar, when you hire a sub to provide security, how do you go about vetting them?

MOUZANNAR:

Sure. What we do, typically we have our internal security department, AMEC being a global contractor, we have a regimented system internally. How do we vet and audit internally the procurement process?

So in essence, first we go through the typical financial business requirements, but then we physically go and visit with the locations and make sure that the contractor has the appropriate, you know, systems and procedures that meet our requirements.

ZAKHEIM:

Does AID ever come out to see your people in the field?

MOUZANNAR:

We don't work for AID.

ZAKHEIM:

Well, that's true.

But Black & Veatch, sorry. I meant you. Do they come out and see your people in the field?

VAN DYKE:

Yes.

ZAKHEIM:

How often?

VAN DYKE:

Depends on the project. As we were finishing the Tarakhil plant they were out there very frequently. They've been up to visit the projects where we're doing the reactive-power compensation project. So they come as necessary.

ZAKHEIM:

What do you define as necessary?

VAN DYKE:

At the Tarakhil plant, they were out there weekly as we were finishing the plant. I think they've been up to the reactive-power compensation probably three or four times in the last six months. I would have to check.

ZAKHEIM:

SIGAR says they didn't provide quality control. Is that your view?

VAN DYKE:

I think if you carefully read the SIGAR's report, he talks about quality assurance, but the main issue was on communication. There's been no allegation that the Tarakhil power plant had any

quality issues, and in fact it is a high-quality plant that'll serve the purposes of Afghanistan for 20 or more years.

ZAKHEIM:

Well, I guess I'm a little puzzled. If these folks are coming out every week, how come there's no communication?

VAN DYKE:

I think the communication improved a lot after January 2009.

ZAKHEIM:

That may be, but I still don't understand how there could be no communication prior to that. Can you explain that to me? I mean . . .

VAN DYKE:

I don't think there was no communication. I think we improved communication a great deal. And I think you see it in the way that the plant was completed by the time that we told the client that we would complete it in 2009. In fact, we . . .

ZAKHEIM:

You mean a year late. You mean a year late.

VAN DYKE:

After we had the issue with the client, or with the subcontract, we did complete it late, but we did get power from the northern countries, from Uzbekistan, much earlier than anybody predicted, and that was equivalent to the amount of power that would have come early from the Tarakhil plant.

ZAKHEIM:

Thank you. My time's up.

SHAYS:

Professor Tiefer?

TIEFER:

Thank you, Mr. Chairman.

Although Chairman Thibault could not be here today, I just want to acknowledge that, like our previous panel on construction, I draw on his valuable leadership. He went out there. He saw these projects for himself. He was even correcting witnesses who may not even have seen those projects as much as he'd seen them. So I can believe and follow his leadership.

Let me build on Commissioner Ervin's recap, which was at the last hearing, as you said. We questioned AID about its sole-sourcing of the Kandahar power initiative to Black & Veatch this past December.

Now, at the last hearing SIGAR said that it has an investigation of the Kabul power plant going and what I understand to be a preliminary inquiry of the Kandahar power award, and that I have questions about prior projects, because if that project had been competed Black & Veatch might have had problems in the competition due to a history of unsatisfactory past performance.

So let me start with one of the energy projects that interests me, which was, Mr. Van Dyke, about your unsatisfactory past performance on AID's project to assess the Hsheberghan natural gas field. For those trying to follow this, that's H-S-H-E-B-E-R-G-H-A-N, Hsheberghan.

AID formally rated you after a year of the project overall as unsatisfactory; they rate on a scale from zero to five, and they rated it zero.

In particular, they said, or my understanding is their position was that overall the contractor has to date done an unsatisfactory job in getting the project started. Delays were due to unsatisfactory planning, that very thing, and that the contractor missed every milestone date in its revised work plan. Lack of coordination between offices also added to delays.

My question is: do you at least acknowledge that you did get that overall unsatisfactory rating that would count against you in a competition for new projects such as Kandahar?

VAN DYKE:

We did get a rating partway through that project. The client later terminated that contract for its own convenience, and we're in the process of settling that both with USAID and the subcontractor. I think the view of that project is a little different today than it was at the time you read that, if you look at the SIGAR's report for January of 2010.

TIEFER:

OK. Now let's go on, thank you, and I appreciate the brief answer. Let's take the Kabul power plant, where you were given in the course of its construction—and you discussed back and forth, there were arguments that you have about why your performance wasn't the way AID said. But AID rated you formally poor and unsatisfactory. It had four ratings, and as I understand you got one unsatisfactory, two poors, and one fair.

And I have to say, I teach at the University of Baltimore Law School and I have a diverse class there, but even the worst student in my class, when you rate on a scale from zero to five, does better than getting zero, two ones, and one two.

And, again, the key here was schedule, that they thought that the delays in the schedule of the plan can be attributed to the following performance deficiencies of the prime contractor, including, again, that the contractor has missed several schedule milestones.

Did they give you ratings like that, and were they critical in that way of your missing milestones?

VAN DYKE:

They gave us those ratings partway through the project. I read to you, and I'll read it to you again, their latest one, which is the execution of the power plant has resulted in a high-quality, state-of-the-art power plant capable of meeting all technical requirements and able to provide reliable power for up to 600,000 Afghan citizens for many years to come.

I think the other thing you need to realize is, as I said in my statement, when we had issues with the subcontractor, we stepped up and solved the problem and we did it two ways. One was to get power from Uzbekistan much earlier than anybody thought to Kabul. And that replaced the power . . .

TIEFER:

I understand.

VAN DYKE:

And the second issue was . . .

TIEFER:

... the Uzbek power.

VAN DYKE:

. . . was that we did step in and finish the plant faster than . . .

TIEFER:

I understand that after that rating—yes.

Let me ask, on the fact that the J&A (Justification and Approval) for sole-sourcing the Kandahar power initiative was that you were uniquely positioned.

This had two parts, and I discussed at the last panel with Mr. Thier, the AID chief, and he acknowledged that it was possible, that you could have separated into two halves, one the Kajakai dam part and then 100 miles away the diesel plant in Kandahar.

What I want to ask about first is the dam part. Although there had been previous work on the dam by your partnership, and specifically in 2009 Louis Berger completed the rehabilitation of the second of two working turbines at the Kajakai power plant, the work was not done primarily by you at that power plant, but Louis Berger.

Isn't that right that in fact you have said you don't want to take responsibility for the problems of your partner at that plant? And haven't you said that you deny you had any responsibility for the problems with the Kajakai dam because you asserted that Louis Berger had handled that part of the joint contract?

VAN DYKE:

It's a long question, Commissioner Tiefer. Let me clarify one thing first. There aren't halves here. Six percent of the total cost of the Kandahar-Helmand project is the Kajakai dam—6 percent.

The major part of the work that has to be done at Kajaki is a substation. That's what we do for a living and nobody else has done that work. I told you at the beginning as commissioners that we've done an extensive study of the power demands, needs, and projects necessary in the south. There are 11 separate projects in the recently awarded contract. We did not do the work on the dam that was done prior, but we do do hydropower work. We're a power company.

TIEFER:

I thank you that you did not do the work that was done prior.

VAN DYKE:

That's correct.

TIEFER:

You were not uniquely positioned to follow up that work.

My time's almost expired.

SHAYS:

Mr. Van Dyke, you referred to a later review. What is that later review?

VAN DYKE:

I told you we received it in May. It's for 2008 to 2009.

SHAYS:

OK. Would you make that available to our staff just to . . .

Was there anything in that review that was not complimentary?

VAN DYKE:

They acknowledge that early on in the project we had difficulties, but we had stepped up to solve them. So yes, they did talk about the . . .

SHAYS:

Yes, if you would allow one of our staff to take that, we'd like to look at . . .

VAN DYKE:

Or I can e-mail it to you.

SHAYS:

No, no, we want it now. You put it on the record, so we want to make reference to it.

VAN DYKE:

OK.

SHAYS:

So if one of the staff would get that document, please?

ZAKHEIM:

I'd actually like to see it now if possible.

SHAYS:

Yes.

ZAKHEIM:

Can I just interrupt?

VAN DYKE:

As long as I have a copy back; you're asking questions.

SHAYS:

One second.

We're going to make a copy for the commission members right now, if we would, and then we'll get it right back to you. We won't ask you any question about it until you get the copy back.

ZAKHEIM:

Mr. Chairman, you're referring to the 2008 evaluation, correct?

SHAYS:

Is that what you're . . .

VAN DYKE:

No, that was 2008 to 2009.

ZAKHEIM:

Yes, so that's the one that Professor Tiefer was referring to.

VAN DYKE:

No, he's referring to an earlier one.

ZAKHEIM:

The one where you're not committed to customer satisfaction is the earlier one?

VAN DYKE:

Yes.

SHAYS:

OK, thank you.

You'll get the copy back.

Mr. Henke, please?

HENKE:

I'd like to ask each of you some questions about security. Mr. McKelvy, in your statement you say that adequate mitigation of security risk is our first concern, and along with safety, it remains our primary concern throughout a project's life.

Mr. Mouzannar, you talk about access to sites that you can't get to to do site surveys until they're secure and unexploded ordnance impeding your progress.

Mr. Van Dyke, you very clearly state that your largest single challenge is the security environment in Afghanistan.

And Mr. McCarron, you say in your statement that your staff had been directly impacted by abductions, IEDs, threats, and intimidation from various anti-government and criminal elements in the country.

So I'd like to ask each of you just for a simple yes or no answer to the question of: Is security your number-one, your foremost challenge in operating in Afghanistan?

Mr. McKelvy?

MCKELVY:

Yes.

MOUZANNAR:

Yes.

HENKE:

Mr. Van Dyke?

VAN DYKE:

Yes.

MCCARRON:

And yes.

HENKE:

With that as background, how would you assess, how do you assess as a company trying to execute a contract, how do you assess the extent of your reliance on your security provision, your security contractors, or in your case, Mr. McCarron, the Afghan forces that guard your projects?

If you had to assess your extent of reliance on a scale from one to five, one being not reliant, if there was no security tomorrow projects would continue unimpeded; to five, I'm heavily dependent—I'm extremely reliant on that security. Without that security, it would come to a stop.

Just give me a numerical assessment of your extent of reliance and then discuss for a few seconds the impact of that on your company.

Mr. McKelvy?

MCKELVY:

I would say it's probably a four. For CH2M Hill, the first factor we always evaluate when we're considering an opportunity in Afghanistan is the security of our people. And there's many opportunities that we will not pursue if we deem them too dangerous. So we really look to, in this case, the professional security companies to provide security for us. And should they become not available, then we would reassess our interest in working in Afghanistan.

HENKE:

Does that mean one of the options would be leaving?

MCKELVY:

That's correct.

HENKE:

OK.

Mr. Mouzannar?

MOUZANNAR:

Yes, I would echo the same comments made by Mr. McKelvy, except that . . .

HENKE:

Just numerically?

MOUZANNAR:

I would say more of a five for us.

HENKE:

OK.

MOUZANNAR:

Except you've got two types of projects out there in Afghanistan; one, which you would refer to as "within the wire," and others outside the wire. Obviously, within the wire such as at Bagram or at Bastion that will be less of an issue, especially with fixed-wing flights going in and out of these bases.

So for the outside of the wire, a definite five; about a three for others.

HENKE:

OK, thank you. You're drawing a distinction between whether you're behind the fence with U.S. forces or when you're outside the wire. That's a key distinction, I believe.

Mr. Van Dyke?

VAN DYKE:

Yes, none of our work is inside the wire, so I would say we're in a four-to-five range. Security is very important to us. The situation is changing, so we're working on solving the problems. But our first requirement is keeping our people safe.

HENKE:

OK. Thank you.

Mr. McCarron?

MCCARRON:

Similarly with UNOPS, how I figure as well, four to five. And of course, priority is to keep people safe. We operate under the umbrella of the United Nations Department of Safety and Security also, so it's not just UNOPS deciding on its contract. It's the whole of the United Nations that we have to listen to in terms of safety and security and where we can put our people. That does complicate where we can send our staff.

HENKE:

With the understanding that security is your number-one challenge and that you're all extremely reliant on security, how do you as a company—and three of you are contracting, subcontracting for that security—how do you as a company ensure the quality of your private security? What vetting processes do you go through, to what standards do you look? Your security contractors, do they have certain professional standards that you hold them to? So how do you ensure the quality of your PSCs?

Mr. McKelvy?

MCKELVY:

Thank you.

Similar to what has been said before, we have an internal security group in CH2M Hill that does an assessment of the companies that we have to choose from. In the case of Afghanistan, we have three different companies that we use across the country based on what our investigation has found their strengths are regionally.

HENKE:

What are the companies?

MCKELVY:

We use Olive, Blue Hackle, and Cohort.

HENKE:

OK.

MCKELVY:

And, you know, what we found when we first went into the country is we used companies that were already in use in the area and that we got a good feedback from others, as well as the U.S. government, who used the same companies to a certain extent from time to time. So they were prequalified in that respect, and they've continued to serve us well over the last three years we've been there.

HENKE:

Do your companies subscribe to what people refer to as the "Swiss initiative" for international standards for private security?

MCKELVY:

I'm not specifically familiar with the Swiss standards, but I'm sure our security folks are.

HENKE:

OK.

Mr. Mouzannar?

MOUZANNAR:

Sure. As I indicated earlier, we have a very regimented procurement process that goes through prequalification, and not only just receiving documents, but also on the spot looking at facilities. We audit all the way to the mechanic that's changing the tire, making sure that they have processes and systems and a very regimented reporting that we would get. We have an internal corporate security group that does all of that and keeps a close tab on that.

The other piece of the puzzle is when we go to different regions, we look at established companies that are there from our prequalified list of companies because of the knowledge on the ground and being able to get (inaudible).

HENKE:

Thank you.

Mr. Van Dyke?

VAN DYKE:

I'll try to keep it short. We have a corporate security operation that helps us figure out what we need to do. We have individuals in Afghanistan who have security background, who help us also evaluate contractors. We routinely . . .

HENKE:

Black & Veatch employees?

VAN DYKE:

Yes. We routinely keep in touch with the regional security officer, with the U.S. embassy, about what's going on in the area. And we evaluate contractors based on past experience and past practices.

HENKE:

OK.

MCCARRON:

And with UNOPS, we have an in-house security team of some internationals, but mostly Afghans who know the security environment. We have close liaison with the Ministry of Interior, including the minister's office. And the team that are provided to us from the Ministry of Interior for the guard purposes, we pay close watch on and ensure that they're motivated to serve in their role.

HENKE:

OK.

Mr. Mouzannar, you talk about your vetting standards and the rigor of them. Your subcontractor for security, or maybe one of your subcontractors, is G4S, a British firm, the parent company of ArmorGroup North America. They were cited last week, and I know it's in the press and it's in the Afghan system, but they were cited as a major offender. They employed 1,358 guards more than they're allowed. They kept 27 illegal bullet-proof vehicles and used embassy vehicles for off-base, non-diplomatic purposes.

How did your system of quality assurance not catch that? Or did it catch that?

MOUZANNAR:

Actually, it did. In essence, the first we came across that information, we immediately contacted their senior management . . .

HENKE:

Well, you came across the press report?

MOUZANNAR:

Obviously, in terms of . . .

HENKE:

Yes.

MOUZANNAR:

They have two different teams . . .

HENKE:

You came across what information?

MOUZANNAR:

Well, we had, obviously, seen the . . .

HENKE:

OK. So you saw it in the press and then responded?

MOUZANNAR:

Correct.

HENKE:

OK. So your quality-assurance system found none of it before, right?

MOUZANNAR:

Well, again . . .

HENKE:

Is that right?

MOUZANNAR:

Correct.

HENKE:

OK, so you saw it in be the press, and then what did you do?

MOUZANNAR:

Well, we obviously communicated directly to try to find out, because, as you know, in the press, you can get all kinds of reports that come out.

HENKE:

Right.

MOUZANNAR:

So there were a lot of discussions in terms of the information.

HENKE:

Uh-huh.

MOUZANNAR:

And at that point, we had the change in a security subcontractor from the one site that they're operating at with a different company. Although, my understanding now . . .

HENKE:

You said you fired . . .

MOUZANNAR:

No, we did not. It was almost a request from their part because they were still trying to resolve the issues with the presidential decree that was . . .

HENKE:

OK.

MOUZANNAR:

So, in essence, it was a request that they came back, you know, to try to . . .

HENKE:

OK. But you told me your system checks down to the guy who changes the tires.

MOUZANNAR:

Sure.

HENKE:

But you found none of these, your system of checking your subcontractor found none of these

discrepancies before the press picked it up?

MOUZANNAR:

My understanding, there are different groups that operate in Afghanistan for G4S (private security firm). One is in support of the U.S. government . . .

HENKE:

Who operates for you?

MOUZANNAR:

We have a whole group within G4S that we interact with, and there's a fair amount of . . .

HENKE:

I'm over my time, but one brief last question for you, just yes or no. Do your private security providers, are they on fixed price, lowest-price technical acceptable contracts?

MOUZANNAR:

Yes. Best-value selection.

HENKE:

Best value, not LPTA (Lowest Price Technically Acceptable)?

MCCELVY

No.

HENKE:

Yours?

VAN DYKE:

Ours are best value also. There are certain minimum requirements.

HENKE:

Fixed price, best value?

UNKNOWN:

Yes.

HENKE:

OK. Sir?

MCCARRON:

Doesn't apply. Well, it doesn't apply, but we provide meal allowances for the guards.

HENKE:

OK. So, Mr. Mouzannar, yours are fixed price?

MOUZANNAR:

They are. We provide the scope of work. We actually develop the scope of work and then provide unit pricing for providing the resources.

HENKE:

Thank you. My time is expired.

SHAYS:

Gentlemen, again, thank you for being here.

We're going to be issuing our second interim report next week, and it's focused on legislative changes, some regulatory changes, maybe an executive order or two.

We're wrestling with a lot of issues that I'm sure you wrestle with as contractors. First off, the combination of participants are basically, the military, our government civil servants, contractors. Then you have, obviously, contractors who are domestic to the United States and overseas.

We wrestle with the fact that we'd like to know what that balance is, and we wrestle with the fact that nearly half as many military, we have an equal number of contractors.

We started out thinking that we just needed to oversee contractors better and manage them better, and that it was a management issue. And then we began to realize that if we couldn't properly manage them, maybe we shouldn't do it.

And it gets into this whole issue of waste, fraud, and abuse. You have waste in projects badly done, but you have waste in projects that are not sustainable, not culturally appropriate and so on.

We've seen a significant number of projects we believe are not sustainable, and, you wonder, are culturally absurd. And then we think we're building this to U.S. standards. Why the hell would we do that?

Why would we build an atrium in a school building? Why would we increase cost so much, the heating costs, the cooling costs, when we've got to, basically, bring in the diesel fuel and so on and so on.

When you see something that appears on the surface to be so stupid, why would we do it, and what is the obligation of a contractor when you're asked by the government to do it?

MCCARRON:

Mr. Chairman, the atrium that you refer to is actually not an atrium. I provided a supplementary.

SHAYS:

Let me back up. Forget the atrium.

MCCARRON:

OK.

SHAYS:

U.S. standards. Why?

MCCARRON:

Well, during the course of the project, there were two major earthquakes, one in China, one in Pakistan. And the international development community reacted, including USAID, reacted and said we don't want to see buildings we build kill children.

And so USAID decided to impose the seismic-design conditions to the California building code on the structure. That then determined the site limitations—we were going to a three-story building.

SHAYS:

Why would you build a three-story building? Why not one story? Why three stories? Why would we do that?

MCCARRON:

Well . . .

SHAYS:

Did you have to use steel to build a three-story building?

MCCARRON:

Yes, we do. It's a reinforced concrete structure. And we're servicing over 5,000 students and on a limited site. The Ghazi School is located within a short distance of the parliament, the old part of the city. So the available land was . . .

SHAYS:

Why a school for 5,000 students?

MCCARRON:

That's the number of children that are being serviced at the moment.

SHAYS:

Why not two schools, why not three? I mean, I'm just trying to understand why we would build buildings like this that then have huge energy costs, et cetera.

So, I mean, isn't there a part of you that says maybe that wasn't the way to go? You're going to build what you're paid to build, but what we're trying to do is wrestle with, what is the role of a contractor when we are doing things that you know are so different than what's there?

What is the role of the contractor? Mr. McKelvy, what is the role of the contractor?

MCKELVY:

I think that we have the responsibility to point out issues that are not culturally appropriate through the process of construction.

When you look back on our experience in Afghanistan, certainly several years ago there was quite a bit of United States-standard being put into projects that, perhaps, was not applicable. I think it was mentioned in the last panel.

SHAYS:

OK, let me just really go through this a little more quickly.

Mr. Mouzannar, what is the role?

MOUZANNAR:

Well, our role is to bring in the design, the engineering, to try to minimize the instances where you need the very extensive operation and maintenance type of an environment. It's keeping it basic, keeping it simple. That's our role.

SHAYS:

Keeping it basic, keeping it simple.

Mr. Van Dyke?

VAN DYKE:

I guess, rather than repeat, I would add to that that it's our job to also help with the training to operate the kinds of facilities that we build.

SHAYS:

Let me just go down again.

Mr. McKelvy, is there an instance when you had a conflict with what you were being asked to do because you thought it was culturally insensitive, just incredibly expensive, maybe not sustainable? Any example you could share with us?

MCKELVY:

There's been examples where we installed based on an international building code standard and then subsequent reviews asked us to increase those standards to the national electric code or other standards which were inappropriate for the purpose, in our opinion.

SHAYS:

And so you did it, though. Right?

MCKELVY:

That's correct.

SHAYS:

And so you're not given a document that allows you to put a protest in or at least be on record as saying this does not make sense?

MCKELVY:

No, there's dialogue with the client, dialogue with the team that you know, we feel . . .

SHAYS:

How do you document it? I mean, if I were a contractor and I was being asked to do something I thought well, didn't make sense, I would want to at least have some documentation.

MCKELVY:

There's documentation in our project file and correspondence.

SHAYS:

Would you give us any documentation where you've actually said we don't think this makes sense?

MCKELVY:

Yes.

SHAYS:

Would that be too difficult?

MCKELVY:

We'll provide that for you.

SHAYS:

Thank you very much.

I'll ask you the same question.

MOUZANNAR:

The same situation. I think the work that we're doing in Afghanistan predominantly is with AFCEE. There's a lot of that communication. And beyond just the client/contractor communication, we periodically on a quarterly basis we get together as contractors within the same IDIQ and share lessons learned.

And actually there's some good case studies that we'd be happy to share how the contracting community worked with AFCEE together to come back with some standard designs.

SHAYS:

I'd like an example of where maybe you have objected to something being done. You know, whether you did it or not, once you've gone on record, you're going to do it. But I'd like an example of it.

MOUZANNAR:

I meant more about an example of a positive situation where all together came in. I would have to research to see if there were instances where we came back and said, no, it doesn't make sense.

SHAYS:

OK.

Mr. Van Dyke?

VAN DYKE:

I can think of two instances relating more to operations where we've made a recommendation for change. One was the one I mentioned in my statement, where engines in Kandahar were being shipped out for overhaul, and we came and we trained people to overhaul them themselves so that it's a more sustainable operation.

The second is the heavy-fuel-oil issue with the Kandahar plant or, excuse me, the Kabul plant, where we recommended, really, if you're going to have the capability, wait for a while to use it, until you get people trained on operating a diesel plant.

And I could go into why if you want the details.

SHAYS:

Mr. McCarron? Thank you.

MCCARRON:

I'd like to perhaps propose the Kabul University women's dormitory as an example of where appropriate policy has been put in place, and that the building was not only refurbished, but the

infrastructure was established, the training, the personnel to ensure that the facility was looked after and maintained, that students were enrolled and looked after, and then seen through to their graduation.

So it was fully working before it was handed over. So the Ministry of Higher Education had the capacity to keep it going. Too often we build nice, shiny buildings and hand them over and . . .

SHAYS:

No, the sustainability is appreciated, but I just wanted to ask, do you have any example of where you were asked to do something that you thought was wasteful or inappropriate and, therefore, went on record as saying, "We shouldn't do this"?

MCCARRON:

Not so far.

SHAYS:

OK. Well, what's a little unsettling about your answers is that we know there are a number, and the fact that somehow you're not encouraged to do that and wouldn't, you know, want to be on record documented, "We didn't want to do this, this and this," I would have found a little more encouraging.

We're going to Mr. . . .

ERVIN:

Thank you, Mr. Chairman.

Mr. Van Dyke, thank you for making this document available to us. It is an evaluation. I can't find a date here, but it appears it had to have been done sometime after 8/31/2009, because that's the final completion date of the Kabul project. And as you say, it does give an overall rating of good to Black & Veatch and commends you on the work that you did.

I would just note for the record, though, that it's not an unalloyed bouquet. The two issues that were highlighted earlier, namely cost overruns and timeliness, are both noted here. With regard to the whole cost issue, the rating was given two, a fair.

And it's interesting what it says here. "Cost records . . ."

SHAYS:

Could I interrupt a second? We're all going to be taking one eight-minute question. I'm going to start you over again.

ERVIN:

Thank you. It says here, "Cost records and documentation was very good and complete in line with requirements and good cost control practices." So you were given kudos for keeping records properly.

Then it goes on to say that: "However, the project budget escalated substantially from initial estimates," and that's the \$100 million to \$300 million or thereabouts.

VAN DYKE:

I need to have the thing on.

No, the initial estimates were in the \$240 million to \$290 million range, as I stated. It did escalate the \$260 that we had as of having all subcontracts let.

ERVIN:

Escalated to?

VAN DYKE:

To \$300 million; it's actually a little under that, but that's what the cost estimate was.

ERVIN:

And . . .

VAN DYKE:

So it did go up, and that was the result of the subcontract issue I talked about.

That is the subject of a dispute resolution, and we've been asked not to talk about it further until the dispute is resolved.

ERVIN:

You've been asked by AID not to . . .

VAN DYKE:

No, no, no. I sent a note to you, maybe you haven't seen it. We have a dispute that is being resolved before the International Chamber of Commerce arbitration panel. The arbitration panel has asked both parties not to talk publicly about the issue before and until it's resolved.

ERVIN:

I look forward to following up on that.

VAN DYKE:

Yeah. By the way, nobody would be happier than I to talk more about that, but I do need to respect what the Arbitration Tribunal mentioned. And I would be happy to come back to this commission when the arbitration is resolved and talk more.

ERVIN:

I appreciate that. We'll talk to the arbitration panel about that. It also, of course, notes the timeliness issue that we've talked about beforehand.

VAN DYKE:

Yes.

ERVIN:

You've been very transparent and forthcoming, and I appreciate that. In that spirit, are there other—presumably there are—are there other documents, letters, memos, assessments, evaluations, et cetera from AID to Black & Veatch between the last communication that we had, March 2009, and December 2010 when the Kandahar plant was let, other than this.

VAN DYKE:

This is the only evaluation we've received since the one that you had.

ERVIN:

Do you have any other communications other than evaluations—letters, memos, e-mails, anything.

VAN DYKE:

I'm sure we have thousands of letters and e-mails. We provide them with weekly and daily reports on what we're doing.

ERVIN:

Would you be willing to make a representative sample of those documents available to us?

VAN DYKE:

I guess I can talk to your staff about what would be representative.

ERVIN:

Do you have any internal audits? Have you done any internal audits over the course of the term of the Kabul plant?

VAN DYKE:

Not specifically the Kabul plant.

ERVIN:

When you say not specifically . . .

VAN DYKE:

Well, we do internal audits all the time.

ERVIN:

Do any of those audits cover the Kabul power plant?

VAN DYKE:

No, they did not.

ERVIN:

So you haven't done any internal assessments of the Kabul plant?

VAN DYKE:

No.

ERVIN:

I find that a little hard to believe. OK.

Finally, I was interested in your agreement that the preference for Black & Veatch would be cost-plus contracts, but you say that you use contracts for your subcontractors. Why the difference there?

VAN DYKE:

Well, I think the difference is in the work scope. We are asked to go figure out how to get distribution, transmission and power generation out of Afghanistan . . .

ERVIN:

All right, let me stop you there. If the government properly scoped the work, would you then prefer to have firm-fixed-priced contracts, with you the prime contractor?

VAN DYKE:

Mr. Mouzannar laid out some requirements when you spoke originally, which is known conditions. If you can get adequately known condition, it's something we would consider.

ERVIN:

Something you would consider . . .

VAN DYKE:

We'd consider.

ERVIN:

But not pledge to right now?

VAN DYKE:

Something we would consider.

Well, I've told you all very honestly that the biggest problem we face is security in Afghanistan, and that's an issue that has to be addressed.

ERVIN:

Mr. Mouzannar and Mr. McKelvy, both of you in your testimony, in your written testimony, your oral testimony, you've laid out to me some really commonsensical things that would make life for contractors easier and therefore for the contractors. Sensical things, like making sure that the ordnance is removed beforehand, giving you access to topographical reports, taking cultural practices into consideration, et cetera.

Presumably, you two, your staffs, have raised these issues with the appropriate people in the United States government, right? And if so, what's the answer to that? Why do we continue to, you know, following the line of the chairman's questions, why do we continue to do this?

MCKELVY:

Well, I think there has been improvement over time. When you draw the distinction between when we all, together with AFCEE, for example, started doing work in Afghanistan, there's been a great improvement since then.

There's still room for improvement with respect to consistency of standards that we're asked to build to and design to across the life cycle of the project, but there has been measurable improvement.

ERVIN:

Mr. Mouzannar?

MOUZANNAR:

Yeah, I agree with that. And one thing that I'd like to add is also I think these types of common-sense measures happen more and more on IDIQs or framework contracts where an agency would look and interact with contractors.

I think some of the issues, and I don't have the full visibility of these, is where there are one-off contracts that are procured outside these IDIQs. Especially there are some projects that come up either as urgent or mission critical where there is no time to really conduct any of these types of analyses. And I think the temptation would be to just get them out.

And I think this is something that, hopefully, the commission and others would look into is what are these instances where projects were just let out on a lump sum without that, you know, all of the common-sense issues.

And then, also, the linkage between these actions, the way it affects the supply chain and subcontractors as if, you know, these things happen and then contractors fail, what is the effect on the overall contracting community.

ERVIN:

Thank you.

And then finally let me ask you, Mr. Mouzannar, a couple of questions about security.

We understand security for you is provided by a company called G4?

MOUZANNAR:

Well, G4S actually was one of the units. Olive Group is the current company that is helping us out.

ERVIN:

And so you no longer use G4S?

MOUZANNAR:

Well, they elected that they were going to retract because of the presidential decree that was going on, so they were practically pulling out at the time. So we went in with a different company.

ERVIN:

So just to be clear, you're not using G4.

MOUZANNAR:

I'll have to double check. My understanding is no, but I will confirm that and let the staff know.

ERVIN:

Thank you.

SHAYS:

Dr. Zakheim?

ZAKHEIM:

Mr. McCarron, you mentioned that there had been earthquakes in China and in Pakistan. Where in Pakistan?

MCCARRON:

It was a major earthquake in Pakistan in the mid-2000s.

ZAKHEIM:

Yeah, but where? Pakistan's a pretty big country.

MCCARRON:

Exactly. But I can't tell you. But it was very well broadcast around the world.

ZAKHEIM:

Was it close to the Afghan border?

MCCARRON:

I'm sorry, I can't say exactly where.

ZAKHEIM:

What about China? Was that close to the Afghan border?

MCCARRON:

No. But the seismic conditions in Afghanistan are such that the risk of earthquake is similar or higher.

ZAKHEIM:

When was the last earthquake in Kabul? I'm just curious.

MCCARRON:

The last earthquake in Kabul that I felt personally was just last year. But of course, it wasn't substantial. But there's regular tremors in Afghanistan and . . .

ZAKHEIM:

That's fine, but when you go to California standards, it's much more than tremors, right?

MCCARRON:

Yes, of course. But Afghanistan is a severe seismic area.

ZAKHEIM:

Kabul?

MCCARRON:

And Kabul included. Kabul has had a devastating earthquake in its history.

ZAKHEIM:

When was that?

MCCARRON:

It was in the last century, where it destroyed the famous walls of Kabul.

ZAKHEIM:

That's a while ago. OK.

A question for several of you gentlemen: You all said that security was the biggest concern you have.

Mr. McKelvy, do you have any firm-fixed-price contracts right now?

MCKELVY:

Yes, we do.

ZAKHEIM:

Why did you bid on them?

MCKELVY:

Over time, we've gotten better at doing work in Afghanistan and we will bid on a firm-fixed-price contract when the scope is well defined and we determine that the schedule is achievable, and it's within the fence, so to speak. It's within the purview of the military.

ZAKHEIM:

Outside the fence would you . . .

MCKELVY:

Outside the fence, we would not.

ZAKHEIM:

OK.

Mr. Mouzannar?

MOUZANNAR:

We have one firm-fixed-price project that is within the fence, inside the fence. And the reason because all of the . . .

ZAKHEIM:

Right, because it's in the fence, but you have nothing outside the fence?

MOUZANNAR:

Not in Afghanistan.

ZAKHEIM:

And you as well, Mr. Van Dyke?

VAN DYKE:

Correct.

ZAKHEIM:

And you, Mr. McCarron as well, correct? OK.

Question on . . .

SHAYS:

Mr. McCarron, we couldn't hear your answer.

ZAKHEIM:

He said no.

SHAYS:

I now, but . . .

MCCARRON:

No.

SHAYS:

Thank you.

ZAKHEIM:

OK. The electrical equipment that you actually install, is that to the U.S. or to the British standard, Mr. Van Dyke?

VAN DYKE:

It depends on the circumstances; primarily to a U.S. standard.

ZAKHEIM:

Can you explain to me why, since the Afghans use British standard, and when we leave we're going to leave it . . .

VAN DYKE:

Well, I think that we have made sure that the interfaces work.

ZAKHEIM:

The interfaces work.

VAN DYKE:

Right.

ZAKHEIM:

But that makes it more costly. I mean, obviously anybody who's ever used a shaver in London knows that interfaces, yes, but that's not the . . .

VAN DYKE:

Well, no.

ZAKHEIM:

Why are we doing that? Is AID telling you to do that?

VAN DYKE:

No, they're not. And I actually have to retract what I said because I know that, for example, for the piping on the Kabul power plant, we used DIN (Deutsches Institut für Normung) piping.

ZAKHEIM:

OK.

VAN DYKE:

So I need to probably check the specifics, but I don't think we're doing U.S. standards overall.

ZAKHEIM:

Primarily British standards?

VAN DYKE:

I think primarily, yes.

ZAKHEIM:

OK.

Mr. McCarron?

MCCARRON:

I think the criteria specified by USAID is international standards and they will take the most appropriate or the best for the country. Generally, the international community and the Afghan government require international standards. They don't want us to put in any old thing.

ZAKHEIM:

Those tend to be not 110, though.

MCCARRON:

Oh, definitely not 110.

ZAKHEIM:

Not to be American.

MCCARRON:

No, definitely not 110.

ZAKHEIM:

How about you, Mr. McKelvy?

MCKELVY:

The work that we do for the Corps and for AFCEE is initially done to the international building code. And then at certain times during subsequent reviews, we might be asked to do it to the NEC code (National Electric Code) in the United States. So there is . . .

ZAKHEIM:

How often is "certain times"?

MCKELVY:

Well, the preponderance of the work we've done is to the international building code. One some of our work recently at Camp Phoenix, task-force power and subsequent reviews asked us to recertify the wiring to NEC 2000 standards.

ZAKHEIM:

Have you been asked to certify wiring to those standards for anything that's planned to be handed over to the Afghans, to your knowledge?

MCKELVY:

Not to my knowledge.

ZAKHEIM:

OK.

How about you, Mr. Mouzannar?

MOUZANNAR:

We also in the same way, we are required to follow the international building code. So it's practically the same answer. And yes, we are checking against, let's say, the U.S. standards on all of our facilities.

ZAKHEIM:

OK.

Mr. McKelvy, I'm going to pick up on something that my colleague, Commissioner Henke, stated with respect to a different company. Did I hear you correctly? You've got Blue Hackle as a sub.

MCKELVY:

That's correct.

ZAKHEIM:

Well, they apparently are alleged to have employed 1,257 more guards than permitted; 385 unregistered weapons, et cetera, et cetera. And they're at Camp Eggers, which is pretty easy to figure out, having been there, what they're up to.

How come they're still your subs?

MCKELVY:

This has come to our knowledge just recently.

ZAKHEIM:

You mean because of the article in The Washington Post?

MCKELVY:

That's correct. We've had . . .

ZAKHEIM:

You mean to say that you didn't notice a thing until you picked up The Washington Post?

MCKELVY:

Well, what I can say is that Blue Hackle has done a good job for us. Our people have been remained safe while we've been there and we use them specifically in Kabul. And these allegations that you're referring to are something that our security group is investigating right now.

ZAKHEIM:

So you had absolutely no inkling that this was going on, even though Kabul is as safe as anywhere in the country, and Camp Eggers is as safe as anywhere in Kabul. And you had not the slightest inkling.

How often do you guys run a check on these folks?

MCKELVY:

We have security people that are in the theater with CH2M Hill corporate security who are currently, you know, and continually involved with those contractors. So I'd have to get you more information in regard if they found out before I heard about it personally, but chances are that they've been on top of it way ahead of the press release.

ZAKHEIM:

OK. If they were on top of it ahead of the press releases, I'd certainly be interested, and I'm sure my fellow commissioners would be, in seeing whatever report was sent back giving you a heads up, because if this was going on, I'm kind of puzzled, and maybe it's just me, but I'm puzzled why you continue to retain them.

MCKELVY:

Well, we'll certainly evaluate that.

ZAKHEIM:

OK.

Last question for each of you: In the past, there have clearly been issues regarding how statements of work are defined by AID or your other clients. When you get an SOW (Statement of Work) that's not clear, have you gone back to the U.S. government agency and said, "Look, this is not clear." Can you give me an instance of when you did that? I want to go through the line.

Mr. McKelvy, can you give me an instance of when you got a vague SOW and you said, "this is just unworkable, and it's going to cost you more money and it's going to take longer," et cetera, et cetera?

MCKELVY:

I'm certain that that happens on a very frequent basis because in a contingent environment, many of our projects are scoped before the full details are known, sometimes even a year to a year and a half before troops arrive at the location, for example.

So we come back and we can probably provide you many examples where we've asked clarifying questions on scopes of work as, you know, how many people, when will these people be there, et cetera and so forth. In many cases, the client cannot tell us that information at that particular time due to funding allocations or actual wartime strategies.

ZAKHEIM:

And in those circumstances, you still sign onto the contract.

MCKELVY:

We proceed. Those are cost-plus contracts and we proceed on . . .

ZAKHEIM:

So then it's no-lose for you. The government, of course, has to explain why they're doing it. That's not your problem.

MCKELVY:

That's right.

ZAKHEIM:

Mr. Mouzannar, same?

MOUZANNAR:

From our standpoint, when we cannot get answers, we don't bid. We have never bid a project where the scope of work was not up to our, you know, level of . . .

ZAKHEIM:

In the last three years, how many projects did you walk away from?

MOUZANNAR:

About \$1.5 billion, maybe.

ZAKHEIM:

Oh, if you can give us any examples of that, that would be helpful.

MOUZANNAR:

Sure.

ZAKHEIM:

Mr. Van Dyke?

VAN DYKE:

We typically under our joint venture contract have gotten requests for task-order proposals and we have back-and-forth all the time on defining what the projects are before we finally arrive at something.

One other comment I'd like to make. There is an issue for contractors on cost-plus. What you do is you agree to a given cost, and if you go over that cost you don't get any more profit on it.

ZAKHEIM:

Unless the government gives you new instructions.

VAN DYKE:

Unless the government changes the work scope.

ZAKHEIM:

Which it always does.

VAN DYKE:

Well, not always.

ZAKHEIM:

Let me ask you, how often does the government not change the work scope, what percent of the time—10, 20, 30 percent?

VAN DYKE:

Sir, I don't have that off the top of my head.

ZAKHEIM:

Oh, yes you do. Give me a rough . . .

VAN DYKE:

I have no idea.

ZAKHEIM:

But it's frequent, infrequent?

VAN DYKE:

I can tell you that on the work scopes that we've had even when there have been timeframe delays in getting the work done, we've held the cost. That's the best I can tell you.

ZAKHEIM:

Mr. McCarron, how about you? Vague SOWs, what do you do?

MCCARRON:

Well, we seek clarification on all of our relationships with USAID and the scopes of work. One example would be . . .

ZAKHEIM:

How often do you . . .

MCCARRON:

. . . the Ghazi School.

ZAKHEIM:

Yes.

MCCARRON:

. . . where initially USAID had actually had a design competition for that school, and then awarded the winner, and then came to UNOPS and asked us to implement the project. And during that initial phase, we went back to USAID and talked about solar efficiency and efficiency generally in layout and we changed the design in consultation with them. They came back to us and told us that we had to have disabled access, for instance, to American standards, and so that was incorporated. So it was to and fro in relation to developing the final design for Ghazi School.

ZAKHEIM:

You said "to American standards." How sensible are all these American standards in the Afghan context?

MCCARRON:

Well, in the case of the one I'm referring to is the Americans With Disabilities Act-standard for the access ramp, which resulted in the link-way between the main school buildings.

ZAKHEIM:

Are there many Americans in those schools?

MCCARRON:

No, but there's kids in wheelchairs that need . . .

ZAKHEIM:

The Americans With Disabilities Act last time I checked was an American law.

Thank you.

SHAYS:

Thank you. Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman. Mr. Van Dyke, let's focus for a second with respect to the Kandahar power initiative on the Kandahar diesel plant that you're to build. Your opening statement alluded indirectly to the fact that IAP, another big construction firm, was awarded a \$51 million contract, fixed-firm price, for the other power plant in the Kandahar industrial park.

And it's entirely appropriate for you to make comparisons to show that you are competitive with IAP in terms of what you charge. But what I want to ask is were you so uniquely positioned, to use the words of the justification for sole-sourcing, so uniquely positioned that there couldn't have been competition by IAP, the builder in the same industrial park of a power plant?

And if there had been such competition, wouldn't your unsatisfactory past-performance ratings have been evaluated?

VAN DYKE:

I think that all of our performance, past-performance evaluations would have been rated, and there are a large number of them, many of them in the excellent and outstanding category.

So I would hope they would look at all of them, number one. Number two, it's for USAID to say if they could get another qualified client, or competitor, but I will tell you what I said before, we had done an extensive study of all the requirements defining . . .

TIEFER:

Thank you. Thank you.

VAN DYKE:

. . . the projects prior to this . . .

TIEFER:

I know, Mr. Van Dyke. We'll take it as what was just asked and answered.

But I want to focus on the fact that there are pieces of the Kandahar power initiative. And you and I had a dialogue about this during the first round. The J&A (Justification and Approval) names the six pieces. And as you say, over in Helmand province, there's not only the work for the Kajaki dam turbine but also on a substation.

I asked Mr. Thier if you could imagine that the Helmand part, which has those two pieces, as distinct from the Kandahar part, which has four pieces, could have been considered separate.

They are 100 miles apart. There's no transmission line between them. And the dialogue between him and me went, Tiefer: "And could one to four, the first four, and five and six, be separable, Kajaki and Kandahar?"

And then I said again, "Couldn't they potentially be separated?"

Thier: "Yes, I have said they could be separable."

Now, he disagreed as to whether they should have been separated and so forth, but we reached that point.

And what I want to ask is, you must know, or I hope you know, the major breakdowns, cost-wise, of that project. Wouldn't the Kajaki part, if you tie the substation and the dam, then at least out of the \$255 million, \$80 million, at least \$80 million in terms of cost breakdowns?

VAN DYKE:

I don't carry the numbers in my head, but my recollection is that it was not that high.

TIEFER:

OK. Among other questions for the record, can we ask for the cost breakdowns?

VAN DYKE:

I think that USAID needs to provide those, but let me talk with USAID about that.

TIEFER:

OK. Now, I want to go to the issue of delay in your prior projects, not only because this has to do with how it would have been if Kandahar power initiative had been competed, but even more fundamentally, the Kandahar project is urgent time-wise, not like other projects, because General Petraeus himself, we were told by AID in the most direct way, General Petraeus himself said he needs it as soon as possible; he's got a counterinsurgency to fight in Kandahar province; that's the reason that we got from AID as to why they sole-sourced it at all, the extreme urgency, as part of the counterinsurgency strategy, and they allude to that end in their J&A.

Looking at the Kabul power plant, it seems to me that we have comments by AID IG and SIGAR—I'm reading from SIGAR, not years ago but in January of 2010. They said USAID Afghanistan contended it was unable to assist the contractor in moving the project forward because the contractor did not convey critical information to the mission promptly enough to be useful.

And at the end of this same paragraph, they say "the mission," meaning AID, contended that "had it known of all the problems the contractor was experiencing, it could have intervened sooner to help resolve the problems."

So we have SIGAR on this. We have AID IG on this. And we have, finally, AID itself when it gave you a rating, as I previously said, on business relations for the Kabul power plant.

“The contractor failed to maintain proper business relations with USAID. For instance, the contractor has not notified USAID of construction delays and other critical issues in a timely manner so that corrective action could be taken to expedite performance.”

Do you acknowledge that this same critique of you has been put forth, the delay critique, because you didn't want to be the bearer of bad news to USAID, by the AID IG, SIGAR and AID itself?

VAN DYKE:

What I'd call your attention to, Commissioner Tiefer, is that, in the subsequent work we've done, you have Mr. Thier's comments. You have the comments from this latest evaluation of us. We changed what we did. We stepped up what we did. We got power to Kabul earlier than anybody thought from the northeast, and we finished the plant. I think that speaks for itself.

TIEFER:

Looking down the road, there's one piece that had, at one time, been considered for the Kandahar power initiative, but was omitted. It was no fault of anybody. And that was to have a transmission line built in the immediate period of time between the Kajaki dam and Helmand and the big-user community which is around the city of Kandahar.

And my understanding is that AID would have liked to have such a transmission, but security is so poor in the area that they don't want to put on anybody to try to build the transmission line at this time.

So that means they're going to have to compete it out in the future, or rather, they're going to have to award it out in the future.

This is a practical matter. I'm not blaming you for doing this, but aren't you positioned, since you are going to be doing the work at the Helmand end of the transmission line, and you are going to be doing the work at the Kandahar end of the line, haven't you positioned yourself so that basically you have a lock when they finally come to awarding the transmission-line project?

VAN DYKE:

Commissioner Tiefer, I think that's a decision for USAID, but I will tell you they have competition on the street right now for energy and water, indefinite-quantity contracts. I think they plan to award at least five, as it specified in the RFP. So I'd suspect there will be competition.

TIEFER:

Thank you, Mr. Chairman.

SHAYS:

Thank you. Dr. Zakheim has a question for Mr. Van Dyke.

ZAKHEIM:

I just have a quick question for you, Mr. Van Dyke.

You've referred several times to getting the power from Uzbekistan, correct?

VAN DYKE:

Yes, sir.

ZAKHEIM:

That's fundamentally different. You were doing something very, very different from what you were doing in Kandahar, correct?

I mean, you were advising the government. You weren't building anything. Isn't that true?

VAN DYKE:

Well, it was fundamentally different in that we were advising, but what we had to do was use knowledge of how already-built systems work. That's sometimes more difficult.

Our engineers had to be very creative in figuring out how to use all of these facilities that have been built by a bunch of different donors that were not to the standards that you talk about where they're all the same standard. And our creative engineers did figure out how to do that.

Frankly, it's easier to design it all yourself and build it than it is to figure out how to use something that's already in place. So . . .

ZAKHEIM:

Now, you actually helped draft the agreements based on that knowledge?

VAN DYKE:

Well, we're talking about two different things. It's getting the power down through the transmission lines and advising . . .

ZAKHEIM:

No, no, no, I'm not asking about . . .

VAN DYKE:

You're talking about the power-purchase agreements?

ZAKHEIM:

I'm asking about the agreements.

VAN DYKE:

We advised them on how to negotiate.

ZAKHEIM:

Right. You didn't actually build anything or design anything. You were consultants on that?

VAN DYKE:

We were consultants on the power-purchase agreements. We told people how to integrate the transmission lines on moving the power down. As I told you, that's a more difficult project than just designing and building it yourself.

ZAKHEIM:

Thanks.

SHAYS:

Mr. Henke?

HENKE:

Mr. Van Dyke, your statement mentions very clearly, April 2010, your guest house in Kandahar was destroyed by an improvised explosive device.

VAN DYKE:

Yes, sir.

HENKE:

And then you had to evacuate injured and all other expatriates from the area. So you expatriates had to bug out and leave?

VAN DYKE:

Yes.

HENKE:

Can you, in a minute or so, tell us about that incident?

VAN DYKE:

Yes, well, what happened is that a van, laden with explosives, made it past the first line of defense and the security that was there—they had an arm and all these other things—made it to the gate of the quarters. And at that point they succeeded in detonating the van.

I haven't shown you the pictures.

HENKE:

Can you introduce the picture for the record, please?

VAN DYKE:

Let's see. Have you got the picture?

I don't think you can see it from there, but that gives you some idea of the explosion. So there were five people in the house at the time, three were injured, two were not. One of them was severely injured and will probably never return to work.

So we evacuated them first to the base, the military base, and then by helicopter to Kandahar or, excuse me, to Kabul and then finally, for the injured parties, out to Dubai.

HENKE:

Who was providing security at that point in time?

VAN DYKE:

I believe Blue Hackle was providing that security. That was not our security, by the way. It was a shared compound, and I would have to check who was providing it at the time.

HENKE:

Oh, shared by yourself and other . . .

VAN DYKE:

And other subcontractors. And it was their security contractor, not ours. So I would have to double check, but I will if you'd like.

HENKE:

Thank you.

Mr. McKelvy, in your statement, you make a clear pecking order. You say, ex-pat-owned private security companies have proven to be much more reliable than Afghan-owned private security companies. Is that correct?

MCKELVY:

Yes, that's correct.

HENKE:

And in that pecking order, where would you put Afghan security forces, meaning Afghan police and Afghan soldiers? You said ex-pat PSCs, Afghan PSCs. Where would you put Afghan government security?

MCKELVY:

I'm not sure that I could categorize them specifically. We just don't know that much about Afghan security forces. So internally, you know, we are able to see demonstrated results of the private security firms, ex-pat privacy security firms, and we haven't seen a demonstrated track record on just the Afghan security forces.

HENKE:

Mr. Mouzannar, any views on Afghan security forces?

MOUZANNAR:

Well, you know, we believe that obviously at some point it would be a good idea to turn over the security to the Afghans, but at the moment I don't believe that they're ready yet.

HENKE:

Right. So your view is at their current capability, at their current level of corruption, they're not viable?

MOUZANNAR:

And also there is no . . .

HENKE:

Is that right?

MOUZANNAR:

Yes. And there are no recourses for us to vet Afghan elements directly without . . .

HENKE:

Right. You can vet your subs, but you couldn't vet the guys the Afghan government might . . .

MOUZANNAR:

That is correct.

HENKE:

Mr. Van Dyke?

VAN DYKE:

We are working through how we will provide security. I can't tell you all the answers right now.

HENKE:

How do you view Afghan security forces in the . . .

VAN DYKE:

I think that everybody agrees the Ministry of the Interior does not have the level of people to do the job right now, so the question is how do we get there?

HENKE:

OK. So, three companies here have private security. Mr. McCarron, you're different in that you have by choice, by deliberate choice, for a reason I'd like you to explain, you use Afghan security forces.

And you say we have found that, when allocated appropriate resources, the ANSF can be effective. Why did you choose Afghan security, not private security?

MCCARRON:

That is correct. We've had success with using the Ministry of Interior, especially over the years.

And we've found, of course, it's not always easy. We have to maintain close liaison with the ministry and with the particular forces that operate with us. We call it our quick-reaction force, so they are dedicated to us and so that we can establish a rapport with that team

They travel on all of our missions. They guard our sites. And so it has been effective.

But I'd like to add I think perhaps compared to my colleagues here at the table, we are probably an order of magnitude smaller than the projects they're administering.

HENKE:

OK, I got it you're smaller, but why do you chose, why is it consistent, in your view, to choose government security of your site or sites?

MCCARRON:

I think it certainly meets with the stated objectives of the Afghan government to be responsible for their own security. It's been developed over the years, and with our relationship with the Afghan government in that most of the work we do is through the Ministry of Finance or the relevant line ministries, looking after public works or whatever. And so we have no reason to change that.

But we don't sort of just sit back and let it happen. It does require a lot of work. We have to have our own in-house specialty people.

HENKE:

Right.

MCCARRON:

. . . and also rely on our close coordination with the United Nations Department of Safety and Security in Afghanistan and their contacts to make sure what we've got is an effective resource.

HENKE:

Are you in a different threat environment? Is what you're working on low-threat, and everyone else is in a high-threat, and that makes it different?

MCCARRON:

I don't believe so. We are operating throughout Afghanistan. We're building roads in Kandahar. .

HENKE:

And all of that, all of your activities, with Afghan national security forces.

MCCARRON:

That's correct.

HENKE:

You've found them to be suitable and if you're there, building a school or building a road to give the Afghan government more capability, you find it at least logically consistent that you want to use Afghan security forces at their current state of capability?

MCCARRON:

We do.

HENKE:

OK. Let me make just an observation: It seems to me that we're asking companies, organizations, to go outside the wire, to step outside the wire, outside the fence and go into a war zone, simply. We call it a counterinsurgency. We call it a contingency. But the bottom line is it's a war zone.

So we're asking noncombatants like yourselves and your employees and your subcontractors, to step outside and go into this war zone and build something in an environment where someone else wants to blow it up or kill you. I think that's about as simply as I can conceive of it.

In that environment, we're bringing to bear an element of national power in Afghanistan, private industry, private expertise to bring things about that we want to have.

In that environment, where we're having, I'll be euphemistic to say we're having challenges with private security and we're having challenges with Afghan security, would you prefer security to be provided by U.S. or coalition troops?

They've been referred to before this commission as the gold standard for security. All else being equal, wouldn't you prefer doing your work guarded by U.S. troops, Mr. McKelvy?

MCKELVY:

By and large, that is the case on many of our projects where the project is on site and we are totally encircled by U.S. forces.

HENKE:

That's inside the wire.

MCKELVY:

Inside the wire.

HENKE:

Tell me about outside the wire.

MCKELVY:

If it could be provided and there were the resources, that would be preferable,

HENKE:

OK.

MOUZANNAR:

Depending again on the type of projects, sometimes, you know, our way of engaging, of doing business, is to keep a low profile. Obviously, in some cases—our business model is we use 95 percent Afghan workers. We don't want to get to the point where we change that.

But yet, at the same time, you should have a reliable security system there that we could vet and . . .

HENKE:

Would you prefer U.S. troops?

MOUZANNAR:

Not necessarily. You know, we need to keep low profile.

HENKE:

Mr. Van Dyke?

VAN DYKE:

You've asked what seems like a simple question. And it's a complex answer. We have to work with people in Kandahar to generate power. We have to work with EABS, the utility, to build the things that we're going to build. So we have to interact with them. There's some thought that having the U.S. military present makes things higher profile for attack.

So what we need to think through, and we're working through it today, and we do not have the answer, is how we go about doing that.

You know, sometimes in all this discussion we lose sight of the human element in all these things. And I mentioned we have a lot of dedicated people working on this.

HENKE:

OK.

VAN DYKE:

I have one person who told me, I came to thank her for helping get that power down from the north, and she looked straight at me and she said you don't need to thank me. I came to this company to make a difference and that project makes a difference.

HENKE:

Would you prefer U.S.-provided security?

VAN DYKE:

I think I need to think that through. That's what we're working on right now.

HENKE:

Thank you.

Mr. McCarron?

MCCARRON:

I'd like to echo that comment, in that it is a complex, very complex situation. And sometimes the insurgent motivation is not just necessarily there just to kill people or blow things up. So you really have to analyze each on a case-by-case basis.

And we've found, as I mentioned in my statement about the need for social inclusion, the engagement of the local community in the whole effort. There has been a deterioration in the fabric of Afghan society, and a lot of the criminal Taliban are not respecting the elders and things. That's seen a drop in security standards as well.

But effective engagement with the community is key. It's not always good to have the guy with the shiniest gun standing there.

HENKE:

And U.S. security might not support that?

MCCARRON:

Exactly, yes.

HENKE:

Thank you very much.

SHAYS:

Thank you.

When I'm done with my questions, we're going to give you each time to just make some closing comments and then we'll adjourn here.

Security is a huge issue. It's one of the reasons why, evidently, you want a cost-plus when you're outside rather than inside—I mean, a major factor.

Is the lack of literate Afghans an issue that presents a unique challenge? It's said that 15 percent are literate. There are estimates it's smaller and that it's fifth grade level, really not that high. So does literacy play into part of the challenge of doing your work? Mr. McElvy?

MCELVY:

It's certainly a challenge down when you get into craft labor on construction projects when you have workers that cannot communicate or speak with supervisors.

SHAYS:

The answer's yes. Mr. Mouzannar?

MOUZANNAR:

Yes.

VAN DYKE:

Yes it's an issue; it can be overcome.

SHAYS:

It can be overcome—by teaching them how to read?

VAN DYKE:

By training. For example, when we train people at Tarakhil, we use Dari, English, and graphics.

SHAYS:

OK. But it presents a challenge?

VAN DYKE:

It's a challenge. I said it can be overcome.

SHAYS:

Mr. McCarron?

MCCARRON:

It would say education is one of the key areas, otherwise it's too easy to pay \$60 a month and they'll carry an AK-47 for the great Taliban.

SHAYS:

Thank you.

Isn't one of the challenges of getting subs that you end up hiring an outfit that has some literacy to it, and there are very few of them? And the challenge that we saw in Afghanistan was that you have 85 percent of the population that thinks that 15 percent get some real special advantages because they're literate.

Is that an issue as well? In other words, that you end up just focusing on a few rather than the vast majority of Afghans.

Who would like to answer that question?

Thank you.

MOUZANNAR:

Yeah, if I can mention I think the biggest thing in here, and it's in my written statement, is obviously the Afghan-first policy is an important one. And I think companies like ourselves, in essence what we're doing out there is to try to bring the level of expertise and the technology into the country.

What comes in the way is there are a lot of almost a one-size- fits-all type of an approach to procurement where you have a very tight schedule, a very competitive environment. There are no specific projects that are designed solely for the purpose of training the Afghan workforce. Give us some projects where maybe the schedule is a bit more relaxed and it has . . .

SHAYS:

And part of the cost incorporates helping to educate.

MOUZANNAR:

Exactly. And that's the workforce that later on is going to come forward and then take over the O&M.

SHAYS:

I get it.

And, Mr. Van Dyke, I'm understanding that that's what you've tried to do in your area.

The advantage of a fixed price is that we know what it's going to cost. The disadvantage of a variable price is that you don't know what it's going to cost so we basically have to go with it.

But the disadvantage with a fixed cost is that if you don't know your cost, isn't it likely that you're just going to have to bid higher just to leave a margin? You can't be as precise, so you're going to bid in favor of making sure that you can cover yourself if the costs go higher?

The question is, if you have to bid on a fixed price on something that you're not certain about, is it likely that it's going to cost the government more money?

I'll start with you, Mr. McKelvy.

MCKELVY:

If the scope is really uncertain, which would drive you, as you say, to jack the lump sum or the fixed price up to cover the inconsistencies, then in the competitive-bid process you'll probably not get the project anyway.

For us, at CH2M HILL, when the circumstances . . .

SHAYS:

Is this a yes? Is your answer yes, that it's going to a higher cost?

MCKELVY:

If it the scope is uncertain, yes, it would be a higher cost.

SHAYS:

And I'm assuming that all of you agree with that. I'm wrestling with how you have a variable price contract with fixed subs. What is the incentive for the sub to come in low and for you to take a low fixed price, Mr. Van Dyke?

VAN DYKE:

We're focused on can the sub perform the work.

SHAYS:

That's not what I asked.

VAN DYKE:

OK. I'm sorry.

SHAYS:

Let me ask someone else. Mr. Mouzannar?

MOUZANNAR:

Yes?

SHAYS:

If you are a variable price and you are bidding fixed price, what is the incentive and how can the government be certain that you're going to pick a low fixed price? Why wouldn't you just accept pretty much whatever you got?

MOUZANNAR:

Sure. The incentive for us is the next project. That's as basic as it comes. When the government selects on the next type of a project, especially on a best value, this is what it takes into consideration, what we have . . .

SHAYS:

So what you're saying, though, it's really not that project but the next one. In other words, come in as low as you can. And that seems reasonable to me.

But what is the markup that you get, each of you, you get from a sub? In other words, what do you charge, when a sub comes in with a fixed price, what do you add to it.

Mr. McKelvy?

MCKELVY:

Well, I can't give you a specific number, because it's variable depending on the scope . . .

SHAYS:

Give me a range.

MCKELVY:

I mean, anywhere, you know, from 5 to 10 percent, 12 percent, 15 percent. It really depends on the scope of the work.

SHAYS:

Does it get up as high as 20?

MCKELVY:

No.

SHAYS:

Mr. Mouzannar?

MOUZANNAR:

Again, we price projects on a case-by-case process. This range seems to be in line with the industry.

SHAYS:

Five to 15 percent? Closer to 15 than 5?

MOUZANNAR:

Not really. But again, you know, this is on a case- by-case basis.

SHAYS:

This is not a difficult question.

MOUZANNAR:

Well . . .

SHAYS:

No, no. Hold on. And I'm going to give myself more time, if I need, to get a good answer here.

When you come in, what do you add to the sub when you give it to the government? Is at 5, 10, 15 percent? Is it more often the 15?

We're going to go back to the government. You're all under oath. This is not a game.

MOUZANNAR:

Sure. Sure.

SHAYS:

I know you know that. I want a better answer.

MOUZANNAR:

Yeah, we typically conduct a total-risk management process, where we price the different uncertainties on each one, the technical, security, et cetera. But . . .

SHAYS:

That's not what I asked.

MOUZANNAR:

. . . 5 to 15 percent would be a range.

SHAYS:

Mr. Van Dyke?

VAN DYKE:

Five to 10 percent, which includes costs.

SHAYS:

Mr. McCarron?

MCCARRON:

UNOPS operates on a 7 percent plus direct costs on project value. But that 7 percent can go up and down according to the risk profile as well.

SHAYS:

Mr. McCarron, I view you as USAID at the UN. In other words, to me, and this is not a criticism, and maybe you do the job better than USAID, so I'm not passing judgment that way either.

But basically you're being given money from the U.S. government. It's funneled, and I don't mean in a negative way, but it's passed through USAID. But in essence you're doing just what USAID is, and I'm making the assumption that they're using you because they don't have the resources to do it themselves and so they're turning to you.

Is that an accurate way to think of you?

MCCARRON:

That would be one scenario. We have at various times had even larger projects in the current relationship with USAID, in Kabul for instance.

We focus on implementation. As I said before in the statement, we implement, we provide the professional services to ensure the projects can be implemented.

SHAYS:

You provide professional services that USAID does not have.

MCCARRON:

I can't comment on USAID.

SHAYS:

Mr. McCarron, you know, I realize you don't want to criticize USAID. We on this panel recognize that we basically tore USAID apart in the last two decades, so that they've become pretty much a contracting organization without the expertise.

So I just want to know for the testimony, you have people within your staff that can do a lot of the critique and oversight of the projects. Is that your comment to us?

MCCARRON:

Yeah, that's correct. We are architects, engineers, the whole suite of professionals needed to implement.

SHAYS:

OK.

Is there any last question a commissioner needs to ask before we go?

Gentlemen, again, for the umpteenth time, we thank you are coming back so graciously, and we do appreciate it. And now we do want to leave you the opportunity to make any final statement that you'd like to make.

MCKELVY:

I'd like to thank the commission for this opportunity for us to speak this morning and to interact on the important projects in Afghanistan.

We'd like to thank you for the privilege, the U.S. government for the privilege of supporting the Department of Defense and these projects in the contingent environment.

These are the most important projects to CH2M HILL. We've been involved in over 60 projects in the contingent environment since 2004 and look to continue to do this.

I believe there'll be continuing challenges in the contingent environment between cost, quality and schedule with respect to firm-fixed-price contracting in coordination with the Afghan-First initiative.

And so perhaps through consistent quality standards and design standards and construction standards from inception through operations and maintenance we'll see continuous improvement that we've seen recently, together with AFCEE and the Corps of Engineers.

Thank you.

SHAYS:

Thank you, Mr. McKelvy.

MOUZANNAR:

Again, thank you very much for the opportunity to appear in front of the commission. This is an important exercise for us because the only way we're going to share lessons learned is through these types of conversations. And we're hopeful that with your work a lot of these obstacles that we face on a day-to-day basis will go away.

One last thing I'd like to mention is the fact that, you know, it's very easy to look at bad projects, and you see them on a daily basis almost in the media and other venues.

I just wanted to point out that work does not happen by accident, and there are literally thousands of very good engineers and construction specialists and support staff that work almost around the clock to make projects like that happen in a very challenging environment. So I'd like to urge you to also to look at the success stories, then be able to bring these out also to the open. And thank you very much.

SHAYS:

Thank you.

VAN DYKE:

Chairman Shays and Commissioners, we greatly appreciate the chance to sit here before this commission and set some of the facts straight on our projects.

A couple of things in my mind: One, doubling, more than doubling of the power brought into Afghanistan either through local generation or from outside in four years is a tremendous accomplishment.

Now, I think it's important to think of it in human terms. One of our female engineers asked a mother in Afghanistan while she was there, "What's important to you about electricity?" And her answer was, "It enables me to keep scorpions away from my baby at night."

One of our workers on the Tarakhil plant came to work with a big smile on his face one day, and one of our people said to him, "Why are you looking so happy today?" And he said, "Because we had power last night for four hours. We could pump water. We could bathe and wash our clothes."

Doubling the electrical power brought into the country means a lot of keeping scorpions away and clean clothes and clean bodies. And I think it's important to remember that.

As I told you, the biggest single challenge we face is security. Our company is very committed to going forward with the projects we have, subject to keeping our people safe. We thank you very much for the opportunity to appear.

Thank you, Mr. Chairman.

SHAYS:

Thank you.

MCCARRON:

Chairman Shays, members of the commission, I'd also like to thank you for the opportunity to appear today. And I'd also like to assure you that if at any time you require any further information, especially about Afghanistan, which is so dear to my heart, I'd be very pleased to assist. Thank you.

SHAYS:

Thank you all very much. We are going to close this hearing. Thank you.