

April 2010

CONTINGENCY CONTRACTING

Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan



GAO

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Highlights of [GAO-10-357](#), a report to congressional committees

Why GAO Did This Study

The Departments of Defense (DOD) and State and the U.S. Agency for International Development (USAID) have relied extensively on contractors in Iraq and Afghanistan, including using contractors to help administer other contracts or grants. Relying on contractors to perform such functions can provide benefits but also introduces potential risks, such as conflicts of interest, that should be considered and managed.

Pursuant to the National Defense Authorization Act for Fiscal Year 2008, GAO reviewed (1) the extent to which DOD, State, and USAID rely on contractors to perform contract and grant administration in Iraq and Afghanistan; (2) the reasons behind decisions to use such contractors and whether the decisions are guided by strategic workforce planning; and (3) whether agencies considered and mitigated related risks. GAO analyzed relevant federal and agency policies and agency contract data, and conducted file reviews and interviews for 32 contracts selected for case studies.

What GAO Recommends

GAO is making recommendations to improve State's and USAID's ability to plan for the use and mitigate risks of contractors performing contract and grant administration functions. State and USAID generally concurred with the recommendations. GAO made similar recommendations to DOD in 2009, with which it concurred. DOD had no additional comments.

[View GAO-10-357](#) or [key components](#). For more information, contact John P. Hutton at (202) 512-4841 or huttonj@gao.gov.

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What GAO Found

DOD, State, and USAID's use of contractors to help administer contracts and grants was substantial, although the agencies did not know the full extent of their use of such contractors. GAO found that the agencies had obligated nearly \$1 billion through March 2009 on 223 contracts and task orders active during fiscal year 2008 or the first half of fiscal year 2009 that included the performance of administration functions for contracts and grants in Iraq and Afghanistan. The specific amount spent to help administer contracts or grants in Iraq and Afghanistan is uncertain because some contracts or task orders included multiple functions or performance in various locations and contract obligation data were not detailed enough to allow GAO to isolate the amount obligated for other functions or locations. Overall, the agencies relied on contractors to provide a wide range of services, including on-site monitoring of other contractors' activities, supporting contracting or program offices on contract-related matters, and awarding or administering grants. For example, Air Force Center for Engineering and the Environment officials noted that contractors performed quality assurance for all of the center's construction projects in Iraq and Afghanistan. In another example, USAID contractors awarded and administered grants on USAID's behalf to support development efforts in Iraq and Afghanistan.

Decisions to use contractors to help administer contracts or grants are largely made by individual contracting or program offices on a case-by-case basis. In doing so, the offices generally cited the lack of sufficient government staff, the lack of in-house expertise, or frequent rotations of government personnel as key factors contributing to the need to use contractors. Offices also noted that using contractors in contingency environments can be beneficial, for example, to meet changing needs or address safety concerns regarding the use of U.S. personnel in high-threat areas. GAO has found that to mitigate risks associated with using contractors, agencies have to understand when, where, and how contractors should be used, but offices' decisions were generally not guided by agencywide workforce planning efforts.

DOD, State, and USAID took actions to mitigate conflict of interest and oversight risks associated with contractors helping to administer other contracts or grants, but did not always fully address these risks. For example, agencies generally complied with requirements related to organizational conflicts of interest, but USAID did not include a contract clause required by agency policy to address potential conflicts of interest in three cases. Also, some State officials were uncertain as to whether federal ethics laws regarding personal conflicts of interest applied to certain types of contractors. In almost all cases, the agencies had designated personnel to provide contract oversight. DOD, State, and USAID contracting officials generally did not, however, ensure enhanced oversight as required for situations in which contractors provided services closely supporting inherently governmental functions despite the potential for loss of government control and accountability for mission-related policy and program decisions.

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Abbreviations

COR	contracting officer's representative
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System - Next Generation
JCC-I/A	Joint Contracting Command - Iraq/Afghanistan
LOGCAP	Logistics Civil Augmentation Program
USAID	U.S. Agency for International Development

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United States Government Accountability Office
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Congressional Committees

The Department of Defense (DOD), the Department of State (State), and the U.S. Agency for International Development (USAID) have relied extensively on contractors in Iraq and Afghanistan to undertake reconstruction projects, provide security for U.S. government officials and facilities, and support U.S. forces. During fiscal year 2008 and the first half of fiscal year 2009, DOD, State, and USAID reported obligating \$38.6 billion on contracts in Iraq and Afghanistan. Additionally, State and USAID have relied on grantees to support critical efforts such as infrastructure and economic development in Iraq and Afghanistan. We have previously reported on problems with the administration of these contracts and grants, including a shortage of government personnel to monitor performance.¹ Without adequate contract oversight, agencies risk being unable to identify and correct poor contractor performance in a timely manner and ultimately may risk paying contractors more than the value of the services they performed. Additionally, oversight of grantees is critical to creating and sustaining performance accountability.

In some cases, the government has turned to contractors to help support its performance of contract and grant administration functions. Contract and grant administration functions represent the government's primary mechanism for assessing whether it is getting the expected products or services from contractors or whether grantees are performing in accordance with grant programs. Examples of such functions include on-site monitoring of contractor activities, supporting contracting and program offices on contract-related matters, and awarding grants and monitoring grantee performance. Using contractors to support these functions can provide benefits, such as flexibility to meet immediate needs, but it can also introduce risks the government needs to consider and manage. For example, contractors performing certain contract or grant administration functions may closely support the performance of

¹ See, for example, GAO, *Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements*, [GAO-08-966](#) (Washington, D.C.: July 31, 2008), and *Afghanistan Reconstruction: Despite Some Progress, Deteriorating Security and Other Obstacles Continue to Threaten Achievement of U.S. Goals*, [GAO-05-742](#) (Washington, D.C.: July 28, 2005).

inherently governmental functions, which increases the risk that government decisions will be inappropriately influenced by, rather than independent from, contractor actions. In addition, reliance on contractor support to meet agency missions can increase the risk of conflicts of interest among companies and individuals, particularly for cases in which contractors closely support inherently governmental functions.

In the National Defense Authorization Act for Fiscal Year 2008, Congress directed us to report annually on DOD, State, and USAID contracts in Iraq and Afghanistan, including information on any specific contract or class of contracts that the Comptroller General determines raises issues of significant concern.² Pursuant to that mandate, this report addresses DOD, State, and USAID's use of contractors, including personal services contractors, to perform administration functions for other contracts or grants with performance in Iraq and Afghanistan during fiscal year 2008 and the first half of fiscal year 2009.³ Specifically, we analyzed (1) the extent to which DOD, State, and USAID rely on contractors to perform administration functions for other contracts and grants in Iraq and Afghanistan; (2) the reasons behind decisions to use contractors to perform these functions and whether the decisions are guided by strategic workforce planning; and (3) whether the agencies have considered and mitigated conflict of interest and oversight risks related to contractors performing contract or grant administration functions.⁴

To determine the extent to which DOD, State, and USAID relied on contractors to perform functions within our scope, we requested data from the agencies on contracts and task orders with at least 1 day of performance in fiscal year 2008 or the first half of fiscal year 2009 for

² Pub. L. No. 110-181, § 863. For earlier reports issued pursuant to this mandate, see GAO, *Contingency Contracting: DOD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan*, [GAO-09-19](#) (Washington, D.C.: Oct. 1, 2008), and *Contingency Contracting: DOD, State, and USAID Continue to Face Challenges in Tracking Contractor Personnel and Contracts in Iraq and Afghanistan*, [GAO-10-1](#) (Washington, D.C.: Oct. 1, 2009).

³ The Federal Acquisition Regulation (FAR) defines "personal services contracts" as contracts that, by their express terms or as administered, make the contractor personnel appear to be, in effect, government employees. FAR § 2.101.

⁴ For the purposes of this report, we use "contractor" to include both personal and nonpersonal services contractors. When it is necessary to distinguish between the two types of contractors, we use "personal services contractor" and "nonpersonal services contractor."

which duties included administration functions for other contracts or grants with performance in Iraq or Afghanistan.⁵ To assess whether the data provided by the agencies were accurate and appropriately categorized as within the scope of this engagement, we reviewed contract documents for 128 of the 186 contracts and task orders reported by the agencies.⁶ We also identified additional contracts and task orders in our scope by reviewing data from the Federal Procurement Data System – Next Generation (FPDS-NG) and data provided to GAO by DOD, State, and USAID for a related engagement. Although we found that the agencies’ data were incomplete based on additional contracts and task orders we identified, we determined that taken collectively data provided by the agencies and data on the contracts and task orders we identified and included in our scope were sufficiently reliable to establish the minimum number of contracts and task orders active during fiscal year 2008 or the first half of fiscal year 2009 that were awarded by DOD, State, and USAID to perform the functions within our scope.

To learn about the reasons behind decisions to use contractors to perform these functions and the extent to which agencies considered and mitigated risks related to the use of contractors to perform these functions, we purposefully selected 32 contracts at DOD, State, and USAID for case studies to provide a cross section of types of contracts, locations, and functions performed. We reviewed contract files and interviewed officials such as contracting officers, program managers, contracting officers’ representatives (COR), and contractors. For these case studies, we conducted fieldwork in Iraq, Afghanistan, and the United States. We also reviewed agency workforce planning documents and guidance and interviewed officials knowledgeable about workforce planning. Further, we reviewed federal regulations and agency policy related to conflicts of

⁵ The FAR defines a task order as an order for services placed against an established contract or with government sources. FAR § 2.101. The data we collected from the agencies were intended to include information on all contracts with administration functions for other contracts and grants with performance in Iraq and Afghanistan, regardless of the place of performance of the contractor performing administration functions. For example, the data we received included information on contracts with performance in the United States in support of contracts or grants with performance in Iraq or Afghanistan.

⁶ We reviewed contract documents for all but two nonpersonal services contracts or task orders reported by the agencies. The two contracts we did not review were State contracts for which officials could not identify the task orders that were within our scope. We also reviewed contract documents for all personal services contracts reported by DOD and State, and selected 25 of 81 personal services contracts reported by USAID for review during our fieldwork in Iraq and Afghanistan.

interest and oversight and interviewed officials responsible for contracting policy at each of the agencies. Our review did not assess the effectiveness of contractors performing contract or grant administration functions for other contracts or grants.

A detailed description of our scope and methodology is included in appendix I. We conducted this performance audit from February 2009 through April 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Contract and Grant Administration

Contracts and grants are two instruments the government may use to achieve its missions, with their selection principally governed by the nature of the activity. Contracts are procurement instruments and, as such, are governed by the Federal Acquisition Regulation (FAR) and agency procurement regulations. Contracts are to be used when the principal purpose of the project is the acquisition of goods and services for the direct benefit of the federal government. Grants, on the other hand, are to be used when the principal purpose of a project is to accomplish a public purpose of support or stimulation authorized by federal statute. Contract administration, as defined by the Office of Federal Procurement Policy, consists of those activities performed after a contract has been awarded to determine how well the government and the contractor performed to meet the requirements of the contract. Contract and grant administration include a number of similar functions, including monitoring contractor or grantee performance and reviewing contractor or grantee financial information.

Contract administration functions are carried out under the direction of contracting officers, who are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the government's interests. Contracting officers have authority to enter into, administer, or terminate contracts. A contracting officer may designate another individual to provide oversight on his or her behalf. For the purposes of this report, we use "COR" to refer to such individuals, although in some cases agencies or

offices use other terms. The COR functions as the “eyes and ears” of the contracting officer, monitoring technical performance and reporting any potential or actual problems to the contracting officer. Functions of the COR typically include informing the contracting officer of any technical or contractual difficulties encountered during performance, informing the contractor of failures to comply with technical requirements of the contract, performing inspection and acceptance of all final work required under the contract, and maintaining contract files. Similarly, grant administration functions are carried out under the direction of grant or agreement officers, who may be assisted by grants officers’ representatives or agreement officers’ technical representatives.

Risks Related to Reliance on Contractors

Our prior work has identified risks related to agencies’ decisions to use contractors to support certain types of agency missions, including potential conflicts of interest.⁷ An organizational conflict of interest can occur when a contractor has present or currently planned interests (including business or relationships with other contractors) that either directly or indirectly relate to the work to be performed under a contract and (1) may diminish its capacity to give impartial, technically sound, objective assistance or advice or (2) may result in it having an unfair competitive advantage. For this report, a personal conflict of interest is one that can occur in a situation in which an individual is employed by a contractor or is contracted for directly by the government as a personal services contractor and is in a position to materially influence an agency’s recommendations or decisions and, because of his or her personal activities, relationships, or financial interests, may lack or appear to lack objectivity or appear to be unduly influenced by personal financial interest.

In addition, other risks to the agencies may occur when using contractors for services that closely support inherently governmental functions. Inherently governmental functions are so intimately related to the public interest as to require performance by government employees, and include functions that require discretion in applying government authority or value

⁷ See, for example, GAO, *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*, [GAO-08-360](#) (Washington, D.C.: Mar. 26, 2008), and *Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees*, [GAO-08-169](#) (Washington, D.C.: Mar. 7, 2008).

judgments in making decisions for the government.⁸ FAR section 7.503(c) provides 20 examples of functions considered to be inherently governmental, including determining agency policy or federal program budget request priorities; directing and controlling federal employees; and awarding, administering, or terminating federal contracts. Similarly, FAR section 7.503(d) provides examples of functions that while not inherently governmental, may approach the category because of the nature of the function, the manner in which a contractor performs the contract, or the manner in which the government administers performance under a contract. These functions closely support the performance of inherently governmental functions and generally include professional and management support activities, such as those that involve or relate to supporting budget preparation, evaluation of another contractor's performance, acquisition planning, or technical evaluation of contract proposals. When contractors perform these functions, there is a risk of inappropriately influencing the government's control over and accountability for decisions that may be based, in part, on contractor work.

Nonpersonal and Personal Services Contracts

DOD, State, and USAID use both nonpersonal and personal services contractors to perform contract or grant administration functions. Nonpersonal services contracts are distinguished from personal services contracts in part by the nature of the government's relationship with the contractor. Under a nonpersonal services contract, the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration to the relatively continuous supervision and control of government personnel. On the other hand, personal services contracts are characterized by an employer-employee relationship created between the government and the contractor. Personal services contracts involve close and continual supervision and control of contractor personnel by government employees rather than general oversight of contractor operations. In general, personal services contractors perform services that are comparable in scope and nature to those of civil service employees and often appear, in effect, to be government employees. Additionally, the risks of contracting for personal

⁸ On March 31, 2010, the Office of Federal Procurement Policy issued a proposed policy letter that would, among other things, clarify what functions are inherently governmental and strengthen guidance related to functions closely associated with the performance of inherently governmental functions. Public comments on the proposed policy letter are due by June 1, 2010.

services are not always the same as the risks of contracting for nonpersonal services. For example, personal services contractors are not explicitly prohibited in the FAR from performing inherently governmental functions.⁹ Also, the level and type of oversight and management may differ between personal and nonpersonal services contracts.

The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws, and contracting for personal services is prohibited unless authorized by statute. DOD, State, and USAID are each authorized to hire personal services contractors under certain circumstances.¹⁰ For example, USAID and selected bureaus at State are permitted to hire personal services contractors to perform services outside of the United States. Similarly, DOD has specific authority to enter into personal services contracts to support operations outside of the United States in certain circumstances. Personal services contractors may be U.S. citizens, local nationals, or third-country nationals. State and USAID regulations state that personal services contractors generally cannot supervise government employees, serve as contracting officers, or otherwise obligate government funds. DOD regulations do not specifically address whether personal services contractors can supervise government employees or otherwise obligate government funds.

⁹ FAR § 7.502.

¹⁰ State is authorized under section 2 of the State Department Basic Authorities Act of 1956, as amended, to contract for personal services. 22 U.S.C. § 2669(c) and (n). USAID is authorized under section 636 of the Foreign Assistance Act of 1961, as amended, to contract for personal services. 22 U.S.C. § 2396(a)(3). DOD has authority under 10 U.S.C. § 129b to contract for personal services.

Agencies' Reliance on Contractors to Support the Administration of Contracts and Grants in Iraq and Afghanistan Is Substantial

DOD, State, and USAID relied on contractors to perform a wide range of administration functions for contracts and grants with performance in Iraq and Afghanistan, but did not know the full extent of their use of contractors to perform such functions. Our review found 223 contracts and task orders active during fiscal year 2008 or the first half of fiscal year 2009 that included the performance of administration functions for other contracts or grants in Iraq and Afghanistan. DOD, State, and USAID officials told us that there were no agencywide data sources that provided detailed information about the functions performed by contractors and that individual contracting offices would have to manually review their contracts to identify contracts within our scope. Of the 186 contracts or task orders reported to us by individual contracting offices, we determined that 161 were within our scope. Through our review of FPDS-NG data and agency data compiled for another purpose, we found an additional 62 contracts or task orders within our scope. Given limitations we have previously reported with FPDS-NG and agency contracting data, the 223 contracts and task orders we identified, including 119 contracts and task orders for personal services, represent the minimum number of contracts and task orders within our scope (see app. II for more information on the contracts and task orders we identified).

According to FPDS-NG and agency data, the agencies had obligated approximately \$990 million as of March 31, 2009, on the 223 contracts and task orders we identified, although we were unable to determine how much of this amount was specifically obligated for the performance of administration functions for contracts or grants with performance in Iraq or Afghanistan. For example, some of the contracts or task orders included the performance of functions besides contract or grant administration or the performance of administration functions for contracts or grants with performance outside of Iraq and Afghanistan. FPDS-NG and agency obligation data were not detailed enough to allow us to isolate the amount obligated for other functions or locations. The approximately \$990 million obligated by the agencies on the contracts and task orders we identified also includes more than \$116 million reported by USAID for grants that were awarded by USAID contractors in Iraq on behalf of USAID, as authorized in the terms of their contracts.¹¹ USAID contractors also awarded grants on behalf of USAID in Afghanistan, but

¹¹ USAID's Automated Directives System, Section 302.3.4.8, defines "grants under contract" as a contract that provides for a USAID contractor to execute grants with both nonprofit and for-profit nongovernmental organizations.

USAID officials told us that the Afghanistan mission does not track grants awarded by contractors.

As illustrated in tables 1 through 4, contractors in our case studies performed a wide variety of services in support of DOD, State, and USAID's administration and oversight of other contracts and grants collectively worth billions of dollars. Contract and grant administration functions performed by contractors included on-site monitoring of contractor activities, contracting office support, program office support on contract-related matters, and awarding or administering grants. For instance, Air Force Center for Engineering and the Environment officials told us that they used contractors to perform quality assurance functions for all of the center's construction projects in Iraq and Afghanistan. Obligations for construction on these projects totaled over \$790 million for approximately 200 task orders during fiscal year 2008 and the first half of fiscal year 2009. In another example, State had obligated just over \$700,000 as of March 2009 for a Bureau of International Narcotics and Law Enforcement personal services contractor to provide oversight, such as performing inspections and accepting contractor work on behalf of the U.S. government, for two task orders that included support for an Iraq criminal justice development program and had combined obligations of \$343 million as of March 2009.

Table 1: Examples of On-site Monitoring of Contractor Activities

Activities include:

On-site quality assurance work to ensure that construction standards outlined in a contract are being adhered to, ensuring that safety procedures are being followed, and monitoring of contractors' technical performance

Personal services contracts

The U.S. Army Corps of Engineers had obligated more than \$44 million as of March 2009 toward 10 task orders under two personal services contracts with firms in Iraq and Afghanistan to provide services such as providing oversight of quality and safety of construction contractor work products.

Nonpersonal services contracts

State had obligated \$3.2 million as of March 2009 on a contract to provide quality assurance services, including identifying and reporting contractor performance problems and assessing contractor compliance with standard operating procedures, for an aviation support task order in Iraq on which the department had obligated \$144 million as of March 2009.

USAID had obligated approximately \$35 million as of March 2009 on a contract to provide continued performance monitoring and evaluation of the program managed by USAID in Iraq, including activities carried out by other USAID contractors and grantees.

Source: GAO analysis of agency contract information and interviews with agency officials.

Table 2: Examples of Contracting Office Support**Activities include:**

Maintaining contract administration files, reviewing invoices for contractor payment, and administering contract modifications

Personal services contracts

As of March 2010, USAID's Office of Acquisition and Assistance in Iraq comprised 2 U.S. government employees and 10 personal services contractors. Personal services contractors supporting the office were responsible for a range of postaward administration activities, such as preparation of modifications to acquisition actions, postaward approvals and actions, terminations, audits, and closeout. According to USAID, 8 of the 10 personal services contractors were third-country nationals. USAID officials noted that third-country nationals are recruited by USAID missions in other countries to provide temporary support, training, and mentoring to local staff and are critical to helping the agency achieve its development mission. They also noted that third-country nationals are not considered temporary employees, as many often return to their countries and continue as local permanent staff with USAID.

Nonpersonal services contracts

The Joint Contracting Command—Iraq/Afghanistan obligated over \$16 million through March 2009 on a contract in Iraq for the performance of a wide range of contract administration functions, including inspection and surveillance of various contractors' care and control over government property valued at over \$500 million.

State's Office of Acquisition Management had obligated just over \$900,000 as of March 2009 toward a task order for contract specialist support, including support for two of the State contracts within our scope with combined obligations of nearly \$24 million through March 2009. The task order states that contractor personnel employed under it perform the full range of pre- and postaward duties. According to a State contracting official, specific duties included serving as a liaison between the contracting and program offices and maintaining contract files.

Source: GAO analysis of agency contract information and interviews with agency officials.

Table 3: Examples of Program Office Support on Contract-Related Matters**Activities include:**

Evaluation of cost and schedule performance, support to program offices regarding program performance and actual or anticipated program problems, and evaluation of contractor proposals

Personal services contracts

State had obligated just over \$200,000 as of March 2009 for a personal services contractor to serve as a deputy program manager at the Bureau of Diplomatic Security to provide management oversight and evaluate the performance of an aviation support contractor in Iraq performing under a task order with obligations of approximately \$144 million as of March 2009. The statement of work for the personal services contract stated that the deputy program manager exercised wide latitude for independent action, initiating projects and executing approved new programs under general supervision of the division chief.

Nonpersonal services contracts

The Army had obligated approximately \$62 million as of March 2009 toward seven task orders that included contract administration support, among other functions, for its Logistics Civil Augmentation Program (LOGCAP) contracts. The LOGCAP contracts provide logistical and life support services in contingency locations worldwide, and had obligations of approximately \$7.6 billion during fiscal year 2008 and the first half of fiscal year 2009 for task orders with performance in Iraq and Afghanistan. The support contract includes a wide range of functions, such as evaluating task order proposals and providing financial and technical analysis of contractor costs and performance.

State had obligated just over \$20 million as of March 2009 toward a contract to provide program and acquisition support to the Bureau of Diplomatic Security's Office of Overseas Protective Operations, including for State's Worldwide Personal Protective Services II contracts. As of March 2009, the department had obligated approximately \$1.2 billion toward task orders under these contracts with performance in Iraq or Afghanistan. Contract administration activities performed by the support contractor included reviewing invoices and evaluating contractor price proposals.

Source: GAO analysis of agency contract information and interviews with agency officials.

Table 4: Examples of Awarding or Administering Grants

Activities include:
Awarding grants on behalf of a federal agency, monitoring and evaluating grantee performance, and reviewing grantee reports

Personal services contracts	Nonpersonal services contracts
Some USAID personal services contractors in Iraq and Afghanistan working in contracting offices were also responsible for assisting with the award and administration of grants, including preparing award and closeout documents.	USAID had obligated approximately \$165 million as of March 2009 toward a contract, including approximately \$76 million in grant funds, for the contractor to award and administer grants in Iraq to support community-based conflict mitigation and reconciliation projects. State had obligated \$350,000 as of March 2009 toward a task order that included the monitoring and evaluation of grantee performance in Iraq. Functions performed by the contractor included verifying the performance of work that is reported by grantees and assisting in other oversight activities.

Source: GAO analysis of agency contract information and interviews with agency officials.

We found that the way DOD acquired personal services contractors and the functions performed by these contractors differed when compared to those of State and USAID. At DOD, we identified two contracts for personal services awarded by the U.S. Army Corps of Engineers to firms that would in turn hire individuals, including local nationals, to provide construction quality assurance. In these cases, contract personnel (up to an estimated 174 individuals, in one case) work under the direct supervision and control of agency officials while administrative aspects of their employment are managed by the contracted firm. In contrast, State and USAID awarded personal services contracts directly to individuals for a range of functions, including on-site monitoring of contractor activities, supporting contracting and program offices on contract-related matters, and awarding grants and monitoring grantee performance.

Offices Used Contractors to Address Contingency- Related Challenges, but Decisions Are Not Guided by Agencywide Strategies

The decisions to use contractors to support contract or grant administration functions are largely made by individual contracting or program offices within the agencies on a case-by-case basis. The offices cited the lack of a sufficient number of government staff, the lack of in-house expertise, or frequent rotations among government personnel as key factors contributing to the decision to use contractors to support their efforts. These individual decisions, however, are generally not informed by more strategic, agencywide workforce plans or guidance on the extent to which contractors should be used to support these functions.

Offices Largely Used Contractors to Alleviate Workforce Challenges and Cited Additional Benefits to Using Contractors in a Contingency Environment

Individual contracting or program offices generally decided to use contractors to perform administration functions for other contracts or grants to address workforce challenges, including a shortage of government personnel and a lack of expertise among government personnel to perform specific functions, as well a lack of continuity because of frequent rotations. While workforce-related challenges were cited most frequently as a reason for needing to acquire contractor support, contracting and program officials also noted that using contractors in contingency environments can be beneficial to meet unforeseen or changing needs, address safety concerns regarding the use of U.S. personnel in high-threat areas, and provide a means to overcome language barriers or help develop the local economy (see table 5).

Table 5: Reasons Agencies Cited in Case Studies for Using Contractors to Support Contract and Grant Administration in Iraq and Afghanistan

Reason	Personal services (of 13 case studies)	Nonpersonal services (of 19 case studies)	Total (of 32 case studies)
Government personnel shortages	10	17	27
Special skills/lack of expertise among government personnel	13	14	27
Flexibility/surge capacity	7	12	19
Continuity/frequent rotations of government personnel	4	11	15
Security and logistical concerns	2	9	11
Cultural familiarity	3	5	8
Local economy development	2	5	7
Cost	2	2	4

Source: GAO analysis of agency contract documents and interviews with agency officials for 32 case studies.

Note: Agencies could cite more than one reason for using contractors.

The examples in table 6 provide illustrations from our case studies of the reasons cited by the agencies for their reliance on contractors to perform contract or grant administration functions for other contracts or grants in Iraq or Afghanistan.

Table 6: Examples of Reasons Agencies Cited for Using Contractors in Iraq and Afghanistan

Reason	Example
Government personnel shortages	<p>The U.S. Army Corps of Engineers cited a shortage of personnel, among other reasons, as justification for using personal services contractors in Iraq and Afghanistan. For example, the determination and findings that supported the use of such contractors in Iraq stated that it had proven impossible to assemble sufficient numbers of U.S. quality assurance personnel to adequately monitor construction progress at thousands of expected work sites.</p> <p>USAID officials noted that a long-standing staffing shortage has led to the need for personal services contractors in missions worldwide, and indicated that these shortages are particularly acute in Iraq and Afghanistan.</p>
Special skills/lack of expertise among government personnel	<p>State program officials noted that the department's nonpersonal services aviation quality assurance contract required personnel with specific technical skills and years of experience that are difficult to find among government employees.</p>
Flexibility/surge capacity	<p>State Bureau of International Narcotics and Law Enforcement Affairs officials told us that personal services contractors are a good fit for COR positions in contingency environments because State needs surge capacity to support the increase of State agents and programs in the conflict region, and the contracts can be terminated later.</p>
Continuity/frequent rotations of government personnel	<p>Under a nonpersonal services contract to support the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A), contractor personnel made up about 15 percent of JCC-I/A's contracting workforce in Iraq as of December 2008. DOD officials noted that contractors were needed to maintain continuity within the office given that the relatively short deployments of DOD personnel could otherwise result in loss of institutional knowledge.</p>
Security and logistical concerns	<p>USAID contracting officials for a nonpersonal services contract in Iraq that included the performance of on-site monitoring of contractor and grantee activities at remote locations noted that local national contractor personnel could generally travel more easily to project sites because of familiarity with local languages and customs and fewer travel restrictions.</p> <p>The determination and findings that supported the U.S. Army Corps of Engineers' use of personal services contractors to perform construction quality assurance in Afghanistan stated that local nationals are able to travel to remote job locations and complete work that security concerns prevent U.S. personnel from performing.</p>
Cultural familiarity	<p>JCC-I/A's Regional Contracting Center in Kabul justified using a nonpersonal services contract to provide contracting administration support because of the contractor's experience with local businesses and ability to speak and interpret the language, for which no reasonable alternative existed.</p>
Local economy development	<p>Regarding a construction oversight contract in Afghanistan, DOD officials indicated that hiring local nationals to perform quality assurance functions for construction projects helped build local knowledge about construction standards so local communities could maintain and continue existing projects once U.S. efforts were complete.</p> <p>Regarding the issuance of grants under contract in Iraq and Afghanistan, USAID contracting offices noted that grants under contract are good for development projects in quickly changing environments because they are a way to bridge the gap between formal institutions while engaging local nationals, and contractors are used to increase the capacity of local grantees.</p>
Cost	<p>The determination and findings justifying the use of a DOD personal services contract to provide construction quality assurance functions in Afghanistan noted that the average cost of hiring a local national personal services contractor was approximately 4 percent of the cost of hiring a U.S. employee for an equivalent position.</p>

Source: GAO analysis of agency contract documents and interviews with agency officials for 32 case studies.

Agencies Generally Lack Strategies to Determine How Extensively Contractors Should Perform Contract or Grant Administration Functions

Individual offices' decisions to use contractors are generally not informed by more strategic, agencywide workforce plans or guidance on the extent to which contractors should be used to support contract or grant administration functions. Agencies' current strategic human capital plans and guidance generally do not address the extent to which it is appropriate to use contractors, either in general or more specifically to perform contract or grant administration functions. Some DOD, State, and USAID officials noted that they would prefer to use government employees to perform some of the functions currently being performed by contractors. Our work indicated, however, that agencies intend to continue to rely on contractors to perform these functions in Iraq or Afghanistan on a longer-term basis. For example, in 15 of the 32 case studies we conducted, contracts or task orders were awarded in 2007 or earlier, and we found cases in which the contract or task order had recently been or was in the process of being recompleted.

Our prior work has noted that to mitigate risks associated with using contractors, agencies have to understand when, where, and how contractors should be used given the risk of diminished institutional capacity, potentially greater costs, and mission risks.¹² We have also reported that decisions regarding the use of contractors should be based on strategic planning regarding what types of work are best done by the agency or by contractors.¹³ DOD and the Office of Management and Budget have recently issued guidance that further emphasized the importance of this type of planning. Specifically, after recognizing in its 2006 update to the Quadrennial Defense Review that contractors are part of the total force, DOD issued guidance in May 2009 that encouraged DOD components to consider when to use contractors as part of a total force approach to workforce management and strategic human capital planning.¹⁴ Similarly, the Office of Management and Budget's July 2009 *Managing the Multi-Sector Workforce* guidance required civilian agencies to take immediate steps to adopt a framework for planning for and managing the multisector workforce of federal employees and contractors,

¹² GAO, *DOD's High-Risk Areas: Actions Needed to Reduce Vulnerabilities and Improve Business Outcomes*, [GAO-09-460T](#) (Washington, D.C.: Mar. 12, 2009).

¹³ GAO, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002).

¹⁴ Deputy Secretary of Defense, *Insourcing Contracted Services – Implementation Guidance* (May 28, 2009). The Quadrennial Defense Review defines “total force” as comprising active and reserve military, civilian, and contractor personnel.

including principles for considering the appropriate mix of contractors and government employees.

We reported in 2009 that while DOD had made good progress in developing a civilian workforce plan and had recognized contractors as a part of its total workforce, the department had yet to develop a strategy for determining the appropriate mix of contractor and government personnel.¹⁵ DOD Instruction 1100.22, which provides guidance for determining the appropriate military, civilian, and contractor mix needed to accomplish the department's mission, focuses on individual decisions of whether to use contractors to provide specific capabilities and not the overarching question of what the appropriate role of contractors should be. For example, the guidance distinguishes between contract administration functions that contractors can and cannot perform based on which functions are considered to be inherently governmental and states that contractors may be used in certain circumstances to perform contract quality control and performance evaluation or inspection functions, but does not address the extent to which contractors should be used to perform these functions. We recommended in March 2009 that DOD revise its criteria and guidance to clarify under what circumstances and the extent to which it is appropriate to use contractors to perform acquisition-related functions.¹⁶ DOD concurred with our recommendation and, according to DOD officials, is in the process of finalizing revisions to its guidance as of March 2010.

State's departmentwide workforce plan also generally does not address the extent to which contractors should be used to perform specific functions. As part of State's fiscal year 2011 budget process, State has asked its bureaus to focus on transitioning some activities performed by contractors to performance by government employees. State officials told us, however, that departmentwide workforce planning efforts generally have not addressed the extent to which the department should use contractors because those decisions are left up to individual bureaus. Officials at State's Bureaus of Acquisition Management, Diplomatic

¹⁵ GAO, *Human Capital: Opportunities Exist to Build on Recent Progress to Strengthen DOD's Civilian Human Capital Strategic Plan*, [GAO-09-235](#) (Washington, D.C.: Feb. 10, 2009), and *Department of Defense: Additional Actions and Data Are Needed to Effectively Manage and Oversee DOD's Acquisition Workforce*, [GAO-09-342](#) (Washington, D.C.: Mar. 25, 2009).

¹⁶ [GAO-09-342](#).

Security, and International Narcotics and Law Enforcement Affairs told us that they do not have workforce plans that include consideration of the extent to or the circumstances under which contractors should be used to perform contract or grant administration functions. These officials indicated that decisions about the use of contractors are generally made on a case-by-case basis and often reflect the necessity of using contractors because of a shortage of direct hire employees.

USAID has taken steps to determine the extent to which personal services contractors should be used, but has not addressed the extent to which nonpersonal services contractors outside the United States should be used, either in general or to perform specific functions. USAID officials told us that personal services contractors are used across the agency's overseas missions and that they consider these contractors to be part of their workforce. As such, personal services contractors have been included in the agency's workforce planning model. For example, the model for USAID headquarters includes an estimate of the extent to which various functions should be performed by personal services contractors. Officials told us that future iterations of the model will address the extent to which personal services contractors should be used to staff contracting offices in Iraq and Afghanistan. USAID's current workforce planning efforts, including its human capital and workforce plans, however, do not address the extent to which nonpersonal services contractors working outside of the United States should be used as officials do not consider those contractors to be part of USAID's workforce.

DOD, State, and USAID will be challenged to fully address the appropriate role for contractors performing specific functions during workforce planning efforts because of the lack of complete and reliable data on the functions performed by contractors. We recently reported that all three agencies continue to struggle in implementing improvements to track data on contracts and contractor personnel in Iraq and Afghanistan.¹⁷ Our past work has shown that such data are important to enable agencies to conduct adequate workforce planning.¹⁸

¹⁷ GAO, *Contingency Contracting: Further Improvements Needed in Agency Tracking of Contractor Personnel and Contracts in Iraq and Afghanistan*, [GAO-10-187](#) (Washington, D.C.: Nov. 2, 2009).

¹⁸ See, for example, [GAO-02-373SP](#), [GAO-10-187](#), and GAO, *Department of Homeland Security: A Strategic Approach Is Needed to Better Ensure the Acquisition Workforce Can Meet Mission Needs*, [GAO-09-30](#) (Washington, D.C.: Nov. 19, 2008).

Agencies Did Not Always Mitigate Risks Related to Contractors Supporting Contract or Grant Administration Functions

DOD, State, and USAID took a number of actions to mitigate conflict of interest and oversight risks associated with contractors supporting contract and grant administration functions, but did not always fully address these risks. For example, the agencies generally complied with requirements related to organizational conflicts of interest. USAID, however, did not always include a contract clause generally required by USAID policy intended to protect the government's interest regarding potential organizational conflicts of interest. Additionally, some State officials were uncertain as to whether or how federal ethics laws regarding personal conflicts of interest applied to personal services contractors. In almost all cases, the agencies had designated personnel to provide contract oversight, though they did not ensure enhanced oversight for contractors that closely supported inherently governmental functions in accordance with federal requirements.

Agencies Generally Complied with Requirements Related to Organizational Conflicts of Interest, Although USAID Did Not Always Follow Agency Policy

FAR subpart 9.5 requires contracting officers to identify and evaluate potential organizational conflicts of interest prior to contract award and take steps to address potential conflicts that they determine to be significant. If the contract may involve a significant potential conflict, before issuing a solicitation, the contracting officer must submit for approval to the head of the contracting activity a written analysis with courses of action for avoiding, mitigating, or neutralizing the conflict. Though not mandatory, the contracting officer may use solicitation provisions or a contract clause to restrict the contractor's eligibility for other contract awards or require agreements about the use of other contractors' proprietary information obtained during the course of contract performance.¹⁹

In six of the contracts we reviewed, agencies addressed potential organizational conflicts of interest by incorporating a clause into the contract that precluded the contractor from bidding on other related work that may result in a conflict of interest. For example, Air Force Center for Engineering and the Environment officials identified the potential for an organizational conflict of interest in a contract used in part to support the center's CORs in Iraq and therefore restricted the contractor from participating in any of the center's other contracts for the life of the

¹⁹ If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation must contain a proposed clause that specifies both the nature and duration of the proposed restraint. FAR § 9.507-2.

contract plus 1 year. Similarly, a State contract to support the department's management and oversight of security operations overseas, including in Iraq and Afghanistan, had a clause that precluded the contractor and its subcontractors from participating in directly related department contracts for 3 years after the completion of the contract. These six case studies also included a contract clause addressing the protection or nondisclosure of other contractors' proprietary data.

Agencies have broad discretion in how to address potential organizational conflicts of interest. Solicitation and contract clauses are one of many options contracting officers have, though they are not always used. For example, agency documents in two cases suggested that there had been consideration of the possible need to restrict contractors' activities because of potential conflicts of interest. Clauses related to potential conflicts of interest, however, were not included in the contracts at the time of award. In one case, the Commander of the Joint Contracting Command – Iraq/Afghanistan's (JCC-I/A) letter of justification for contract and property specialist support stated that the award of the contract may preclude the contractor from being eligible for or working on other contracts. The contract itself, though, did not contain any related organizational conflict of interest clauses. Additionally, the contract file of a Defense Energy Support Center contract to support the oversight of fuel delivery in Afghanistan included e-mails indicating that the oversight support contractor could not provide services to the companies providing fuel delivery services for the center. Contracting officials told us that the related discussions had been informal and therefore had not been documented.

In addition to the FAR, USAID also has specific agency policy that addresses organizational conflicts of interest for certain contractors, including contractors that evaluate USAID program activities or other contractors.²⁰ The policy requires that an organizational conflict of interest clause be included in the evaluation contract that precludes the contractor from providing certain related services within 18 months of USAID receiving an evaluation report from the contractor unless a waiver is authorized; restricts the use of information obtained from other parties during the course of the contract; and requires nondisclosure agreements with other contractors to protect proprietary data. This clause was not, however, incorporated in any of the three USAID contracts we reviewed

²⁰ USAID Contract Information Bulletin 99-17, *Organizational Conflict of Interest*.

that included the evaluation of program activities or contractors. In one of these contracts, the statement of work notes that the contractor may be precluded from performing work under the current task order or from award of other contracts if USAID determines the contractor has a conflict of interest, and that the contractor shall protect proprietary information. This statement is not, however, specific as to when those circumstances occur, nor does it specifically restrict the contractor's use of information obtained from other parties during the course of the contract in future proposals. USAID officials told us that when this contract is recompeted in 2010, the clause required by USAID policy will be included. In another of these three cases, USAID's response to a prospective bidder's questions indicated that prior to the award of the contract, a determination was made that the contractor would be restricted from bidding for the award of other related contracts, but the restrictions were not addressed in the solicitation or contract despite the requirement to do so in FAR section 9.507-2.

One case study illustrated the challenges of identifying potential organizational conflicts of interest prior to award and the potential effect if one is identified after award. In this case, JCC-I/A awarded a \$1 million contract to support the Armed Contractor Oversight Directorate in Afghanistan. The contractor, which itself was a private security contractor, was assigned a number of responsibilities related to oversight of private security contractors, including monitoring private security contractor activity, documenting and analyzing security incidents, and assisting the government in conducting incident inspections. The contract files we reviewed did not include documentation that the contracting officer assessed the potential for a conflict of interest, though as previously noted, a written analysis would not be necessary unless the contracting officer decided that there was a significant potential conflict of interest. In addition, no clauses were included in the solicitation or contract that precluded the contractor from bidding on other contracts. After the support contract had been awarded and performance had begun, the support contractor competed for and won a separate contract to provide armed guard services in Afghanistan. Subsequent to the award of the second contract, however, a JCC-I/A attorney became aware of the two contracts and, according to JCC-I/A officials, alerted a JCC-I/A contracting official. JCC-I/A counsel concluded that the contractor's objectivity in supporting the Armed Contractor Oversight Directorate could potentially be impaired by its performance of armed guard services. Ultimately, JCC-I/A counsel determined that no mitigation plan would adequately mitigate this conflict. Therefore, JCC-I/A terminated the ongoing Armed Contractor Oversight Directorate support contract for the convenience of the

government and awarded another support contract to a different contractor.

Agencies are not required to have a formal process for monitoring potential organizational conflicts of interest after award, but in some cases, officials told us that they did so informally. For example, for a State task order to provide contract administration support, officials noted that it was possible to mitigate potential conflicts of interest because the small size of the office facilitates direct government oversight of contractor activities, and contractors that perform contract administration functions for State do not often perform other services that could be in conflict with their current responsibilities. In several other case studies we conducted, agency officials told us that contractors have responsibility to bring organizational conflicts of interest to the attention of contracting officials if they occur.

Under USAID acquisition regulations, contracts that include restrictions on a contractor's eligibility for future work should also include a standard clause stating that the contractor should disclose any postaward conflicts of interest it discovers. In the three contracts that we previously indicated should have had a clause to restrict the contractor's eligibility for future work based on USAID policy because they included evaluation services, one contract had the clause to disclose postaward conflicts of interest discovered while the other two did not. USAID officials in these cases, however, told us that they take steps to mitigate potential organizational conflicts of interest during the life of the contract. For example, for a USAID contract for monitoring and evaluation services in Iraq, the personal services contractor responsible for contract oversight told us that he addressed potential conflicts of interest by limiting contact between the contractors responsible for executing mission programs and the contractor evaluating their services. Although DOD and State regulations do not require contract clauses related to the disclosure of conflicts of interest by contractors, changes to governmentwide requirements on organizational conflicts of interest, including the establishment of standard contract clauses, are being considered.²¹

²¹ The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are currently considering revising FAR policies for addressing organizational conflict of interest issues. (FAR Case 2007-018)

Mitigation Efforts for Personal Conflicts of Interest Vary by Agency and Contract Type

Most requirements governing personal conflicts of interest that apply to federal employees are generally not applicable to nonpersonal services contractors and their employees. Since December 2007, the FAR has required certain contractors to have a written code of business ethics and conduct, although this requirement did not apply in most of the nonpersonal services case studies we conducted.²² We have previously reported that this requirement will not ensure that the advice and assistance received from contractor employees is not tainted by personal conflicts of interest.²³ We recommended in March 2008 that DOD develop and implement policy that requires personal conflict of interest safeguards for certain defense contractor employees that are similar to those required of DOD's federal employees. In November 2009, DOD issued a memorandum providing additional information on risks related to personal conflicts of interest and how those risks should be addressed under current federal regulations, but DOD's response to our recommendation is pending resolution of a proposed amendment to the FAR to address personal conflicts of interest by contractor employees performing acquisition functions.²⁴

Several contracting officials told us that contractors have responsibility to bring personal conflicts of interest to the agency's attention. In our case studies, we found that contractors managed personal conflicts of interest in a variety of ways. For example, in two USAID case studies that included the award of grants, the contractor included in its grant management plan criteria for identifying contractor personnel with conflicts of interest and the process for mitigating those conflicts. Representatives from a DOD contractor providing construction quality assurance services in Iraq and Afghanistan told us that they screen and interview all employees they hire to identify personal conflicts of interest and require employees to sign a

²² FAR § 3.1002. Although this requirement now applies more broadly, it did not apply to most of our nonpersonal services case studies because the contract was either awarded prior to December 2007, valued at less than \$5 million, or issued before December 2008 and was considered to be for commercial items or performed entirely outside of the United States.

²³ [GAO-08-169](#).

²⁴ Under Secretary of Defense (Acquisition, Technology and Logistics), *Personal Conflicts of Interest (PCIs) of Contractors' Employees* (Nov. 24, 2009). A proposed amendment to the FAR addresses personal conflicts of interest by employees of government contractors, as required by section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 (2008). The proposed rule was published on November 13, 2009. (FAR Case 2008-025)

form stating that they have no such conflicts. In this and three other DOD case studies we conducted, agency contracting and program officials stated that they attempt to identify and mitigate potential personal conflicts of interest by reviewing the résumés of proposed contractor employees.

The agencies vary in how they address personal conflicts of interest among personal services contractors. DOD officials told us that the department does not have specific policies related to conflicts of interest among personal services contractors. USAID policy states that personal services contractors are covered by all federal ethics laws that apply to direct hire personnel, including requirements to file financial disclosure forms.²⁵ USAID policy requires the contracting officer or executive officer who awards a personal services contract to make a determination at the time of contract award about the specific financial disclosure filing requirements that will apply to the personal services contractor and to include that determination as part of the contract. USAID officials complied with this requirement in each of the six USAID personal services case studies we conducted.²⁶

Unlike USAID, neither State nor its bureaus that hired personal services contractors within our scope have guidance that specifically addresses the applicability of federal ethics laws to personal services contractors. According to the senior ethics counsel at State, understanding which financial disclosure requirements apply to personal services contractors is complicated and depends on the personal services contractor's contract and the bureau's statutory basis for hiring that personal services contractor. Our work at State identified some confusion among contracting personnel and supervisors of personal services contractors as to whether federal ethics laws, including those related to financial disclosure requirements, were applicable to personal services contractors. In the five personal services case studies we conducted at State's Bureaus of Diplomatic Security and International Narcotics and Law Enforcement Affairs, contracting personnel and supervisors of personal services

²⁵ USAID Contract Information Bulletin 93-17, *Financial Disclosure Requirements Under a Personal Services Contract*.

²⁶ For the case studies we conducted at USAID, it was determined that none of the personal services contractors were required to complete a financial disclosure form. However, two of these contractors had completed forms that were on file with the USAID Office of the General Counsel.

contractors either were uncertain of how requirements to file financial disclosure forms applied to personal services contractors, told us that the requirements did not apply, or told us that the requirements had only recently been applied at all or consistently to personal services contractors. The five personal services contractors in these case studies told us, however, that they were generally required to complete financial disclosure forms or that they had completed financial disclosure forms in the past year.

Agencies Appointed Oversight Personnel for Contracts but Did Not Consider Enhanced Oversight for Contractors Closely Supporting Inherently Governmental Functions

In most case studies we conducted, the agencies had designated oversight personnel to monitor contractors performing administration functions for other contracts or grants in Iraq or Afghanistan. A primary characteristic of a personal services contract is the relatively continuous supervision and control of the personal services contractor by a government employee, and in the case studies we conducted, we generally found personal services contractors had designated government supervisors who worked within the same program. In 18 of 19 nonpersonal services case studies we conducted, agencies had identified individuals to provide contract oversight, though the extent of that oversight varied in part based on the functions performed by the contractor and whether the contractor performed at remote locations. For example, State officials told us that for a contract to provide program and acquisition support for the department's oversight of overseas security operations, including those in Iraq and Afghanistan, government officials supported by the contractor are collocated with contractor employees, and government branch chiefs routinely meet with the contractor's program manager to discuss contractor employee performance on assigned work. In contrast, CORs in some quality assurance case studies conducted oversight primarily of remote locations. For example, U.S. Army Corps of Engineers officials told us that CORs for a construction quality assurance contract conduct oversight primarily by reviewing contractor reports and photos of work sites and conducting meetings with quality assurance and construction contractor personnel. In several cases, agency officials indicated that they did not maintain or could not locate documentation of oversight activities.

Agencies faced challenges providing sufficient oversight of contractors performing administration functions for other contracts in Iraq or Afghanistan in several case studies we conducted. For example, agency officials stated that when they cannot visit contractor work sites for security reasons—as with some sites for the Defense Energy Support Center's fuel delivery inspection contract in Afghanistan and USAID's Monitoring and Evaluation Performance Program contract in Iraq—their

oversight is entirely remote. USAID officials told us that other U.S. government officials, such as representatives from provincial reconstruction teams, may be able to provide some insight into contractor activities during times when those officials are at contractor work sites. Defense Energy Support Center officials told us that the inability of government personnel to visit contractor work sites can make it difficult for them to verify the quality of work of the contractor that is supporting the oversight of work performed by other contractors. In addition, the COR for a U.S. Army Corps of Engineers quality assurance contract told us that some contractor personnel did not provide high-quality reports and that construction oversight personnel who reviewed the reports on a daily basis sometimes lacked the quality assurance expertise to direct the contractor's quality assurance personnel. The COR told us that training efforts were under way to address this issue. Further, according to State officials, they had difficulty filling the government deputy program manager position for State's aviation quality assurance contract, which affected the department's plans to provide continuous oversight of the contractor's technical operations in Iraq since the deputy program manager was intended to provide in-country oversight when the program manager was not in Iraq. In another State case, contracting officials told us that oversight was conducted entirely by the COR and program office staff but were unaware that there was not a COR currently designated for the contract. The officials later told us that staff turnover in Iraq had resulted in the lack of a COR, and they were taking steps to try to get a new COR appointed.

In the 19 nonpersonal services case studies we conducted, we found that the contract or task order statements of work provided for the contractor to perform functions that closely support inherently governmental functions. For contractors administering other contracts, this includes evaluating another contractor's performance, providing inspection services, and performing tasks that might allow access to confidential business or other sensitive information, among other functions; for contractors administering grants, awarding or recommending the award of grants closely supports the performance of inherently governmental functions.²⁷ We have previously reported that when contractors provide

²⁷ FAR § 7.503(d) lists examples of functions that are closely associated with or closely support the performance of inherently governmental functions. Although not specifically identified as such in the FAR, for purposes of this report, we considered contractors responsible for assisting in the awarding of grants as closely supporting an inherently governmental function. USAID's Automated Directives System, Section 302.3.4.8, provides guidance that governs the use of contractors to award grants on USAID's behalf.

services that closely support inherently governmental functions, there is the potential for loss of government control and accountability for mission-related policy and program decisions, and that risk increases the closer the services come to supporting inherently governmental functions. This loss of government control may result in decisions that are not in the best interest of the government and may increase vulnerability to waste, fraud, and abuse. To address this risk, the FAR and Office of Federal Procurement Policy guidance require that agencies provide greater scrutiny and an enhanced degree of management oversight of contractors performing services that tend to affect government decision making, support or influence policy development, or affect program management.²⁸ This enhanced oversight would include assigning a sufficient number of qualified government employees to provide oversight and to ensure that agency officials retain control over and remain accountable for policy decisions that may be based in part on a contractor's performance and work products. These requirements for enhanced oversight are not applicable to personal services contractors, including the 13 personal services case studies we conducted, because Office of Federal Procurement Policy guidance and FAR restrictions on contractors performing inherently governmental functions do not apply to these contractors.²⁹

Although we found that statements of work for all of the 19 nonpersonal services case studies we conducted provided for the contractor to perform activities that closely supported inherently governmental functions, we did not find evidence that the agencies considered related requirements to provide greater scrutiny and an enhanced degree of management oversight in these 19 cases. In our prior work at DOD and the Department of Homeland Security, we found that program and contracting personnel were unaware of requirements related to providing enhanced oversight of services that closely support inherently governmental functions.³⁰ In the case studies we conducted, we found that many contracting and program

²⁸ FAR § 37.114, and Office of Federal Procurement Policy, *Management Oversight of Service Contracting*, Policy Letter 93-1 (May 18, 1994).

²⁹ FAR § 7.502.

³⁰ GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, [GAO-07-990](#) (Washington, D.C.: Sept. 17, 2007), and *Defense Acquisitions: Further Actions Needed to Address Weaknesses in DOD's Management of Professional and Management Support Contracts*, [GAO-10-39](#) (Washington, D.C.: Nov. 20, 2009).

officials were unfamiliar with the concept of contractors closely supporting inherently governmental functions. Further, DOD, State, and USAID regulations generally do not require contracting or program officials to document an assessment of whether contractors closely support inherently governmental functions or any consideration given to enhanced oversight.³¹ According to DOD, State, and USAID officials, no specific guidance has been developed that defines how contracting and program officials should conduct enhanced oversight. In November 2009, we recommended that DOD require program and contracting officials to document risks and risk mitigation steps when awarding any contract or issuing any task order for services closely supporting inherently governmental functions and develop guidance to identify approaches to enhance management oversight for these contracts or task orders. DOD concurred with these recommendations and identified a number of actions that would be taken to address them.³²

Conclusions

Contracting in contingency environments such as Iraq and Afghanistan presents unique security and logistical challenges, including difficulty traveling to dangerous or remote locations and frequent rotations among government personnel. Despite such challenges, effective oversight of contractors and grantees remains critical to help ensure that contractors are meeting contract requirements and grant funds are being used for their intended purposes. Using contractors to support the administration and oversight of other contracts and grants can facilitate the government's ability to carry out this critical function. Our prior work and the Office of Management and Budget's July 2009 guidance, however, have underscored the importance of strategic planning to guide decisions related to how contractors should be used to support agency missions. Until DOD, State, and USAID fully consider in their workforce planning efforts the extent to which contractors should perform contract and grant administration

³¹ Section 207.503 of the Defense FAR Supplement requires that before a contract for the performance of acquisition functions closely associated with inherently governmental functions (those listed at FAR § 7.503(d)) is entered into, the contracting officer has to make certain determinations related to the availability of DOD personnel to perform the functions and the oversight of the contract after award. However, the Defense FAR Supplement does not require documentation of this assessment, and DOD officials confirmed that the requirement could be considered fulfilled without documentation of the determination. In July 2009, the Army began requiring that an official for the requiring activity complete a form that included a determination of whether contractors will be closely supporting inherently governmental functions.

³² [GAO-10-39](#).

functions, the agencies will not be positioned to consider the potential implications of relying on contractors to perform these functions, such as a loss of institutional capacity to perform mission-critical functions or greater costs.

The agencies did not fully address risks related to potential conflicts of interest and oversight for contractors performing contract or grant administration functions. For example, USAID did not always address potential organizational conflicts of interest in its contracts in accordance with agency policy, though ongoing efforts to revise federal organizational conflict of interest regulations could potentially improve USAID's and other agencies' ability to mitigate this risk in the future. Additionally, without management understanding of whether federal ethics laws related to personal conflicts of interest apply to the department's personal services contractors, State runs the risk of inconsistent application of these laws, potentially limiting the department's ability to ensure that contract and grant administration decisions are made in the best interest of the government. Further, DOD, State, and USAID's lack of consideration of the need to provide greater scrutiny and an enhanced degree of management oversight when nonpersonal services contractors closely support inherently governmental functions may impair the agencies' ability to ensure the appropriate level of oversight. The agencies will continue to face this challenge without an effective process to identify contracts that closely support inherently governmental functions and guidance to assist program and contracting officials.

In 2009, we made recommendations to DOD with regard to improving the department's ability to plan for the use of contractors supporting acquisition functions and mitigate the risks of contractors closely supporting the performance of inherently governmental functions. Since the department concurred with these recommendations and has identified steps it plans to take to address them, we are not making any additional recommendations to DOD.

Recommendations for Executive Action

To improve State and USAID's ability to plan effectively for the use of contractors to perform contract or grant administration functions and to improve oversight of contracts that closely support inherently governmental functions in Iraq, Afghanistan, and future contingency environments where the agencies rely heavily on contractors, we recommend that the Secretary of State and Administrator of USAID take the following three actions:

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- Determine the extent to which contractors should perform administration functions for other contracts and grants in accordance with strategic human capital planning principles outlined in the Office of Management and Budget's July 2009 multisector workforce guidance.
 - Develop guidance to identify approaches that contracting and program officials should take to enhance management oversight when nonpersonal services contractors provide services that closely support inherently governmental functions.
 - Before the award of any nonpersonal services contract or task order for services closely supporting inherently governmental functions, require that program and contracting officials document their consideration of related risks and the steps that have been taken to mitigate such risks.

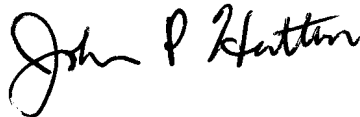
To improve State's ability to mitigate risks related to potential personal conflicts of interest among personal services contractors, we recommend that the Secretary of State clarify the department's policies regarding the application of federal ethics laws to personal services contractors.

Agency Comments and Our Evaluation

We provided DOD, State, and USAID with a draft of this report for their review and comment. DOD provided technical comments, which we incorporated as appropriate. State agreed with our recommendations and identified steps that the department plans to take to address each recommendation. State's comments, along with our response, are reprinted in appendix III. USAID generally agreed with our recommendations and identified steps the agency is taking or plans to take to address them. With regard to our recommendation related to determining the extent to which contractors should perform contract or grant administration functions, USAID noted that it is already in the process of determining the extent to which nonpersonal services contractors, which USAID refers to as institutional support contractors, should perform such functions. As we noted in the report, however, USAID's current efforts do not address the extent to which nonpersonal services contractors performing such functions outside of the United States, such as in Iraq or Afghanistan, should be used. We believe it is important for the agency to make such a determination to position itself to effectively mitigate the potential risks associated with reliance on contractors. USAID also provided some points of clarity related to the recommendations, and we incorporated the comments in the report as appropriate. USAID's comments, along with our responses, are reprinted in appendix IV.

We are sending copies of this report to the Secretary of Defense, the Secretary of State, the Administrator of the U.S. Agency for International Development, and interested congressional committees. The report also is available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841 or huttonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



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Director
Acquisition and Sourcing Management

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Appendix I: Scope and Methodology

The National Defense Authorization Act for Fiscal Year 2008 directed us to report annually on Department of Defense (DOD), Department of State (State), and U.S. Agency for International Development (USAID) contracts in Iraq and Afghanistan, including information on any specific contract or class of contracts the Comptroller General determines raises issues of significant concern. Pursuant to that mandate, we reviewed DOD, State, and USAID's use of contractors, including personal services contractors, to perform administration functions for contracts or grants with performance in Iraq and Afghanistan for fiscal year 2008 and the first half of fiscal year 2009.¹ Specifically, we analyzed (1) the extent to which DOD, State, and USAID rely on contractors to perform administration functions for other contracts and grants in Iraq and Afghanistan; (2) the reasons behind decisions to use contractors to perform these functions and whether the decisions are guided by strategic workforce planning; and (3) whether the agencies have considered and mitigated conflict of interest and oversight risks related to contractors performing contract or grant administration functions.

To determine the extent to which DOD, State, and USAID rely on contractors to perform administration functions for other contracts and grants in Iraq and Afghanistan,² we obtained data from the agencies on contracts and task orders with at least 1 day of performance in fiscal year 2008 or the first half of fiscal year 2009 for which duties included administration functions for other contracts or grants with performance in

¹ The Federal Acquisition Regulation (FAR) defines "personal services contracts" as contracts under which, by their express terms or as administered, contractor personnel are subject to relatively continuous supervision and control of a government officer or employee. FAR § 37.104. State is authorized under section 2 of the State Department Basic Authorities Act of 1956, as amended, to contract for personal services. 22 U.S.C. § 2669(c) and (n). USAID is authorized under section 636 of the Foreign Assistance Act of 1961, as amended, to contract for personal services. 22 U.S.C. § 2396(a)(3). DOD has authority under 10 U.S.C. § 129b to contract for personal services.

² For the purposes of our data request to the agencies, we defined administration functions for other contracts as including, but not limited to (1) surveillance, monitoring, evaluation of contractor performance, or a combination of these; (2) support of program, product, and project offices regarding program reviews, program status, program performance, and actual or anticipated program problems; (3) performing property administration; (4) reviewing contractor financial information or vouchers/invoices; (5) maintaining contract administration files; and (6) performing administrative closeout procedures. We defined administration functions for grants as including, but not limited to (1) surveillance, monitoring, evaluation of grant recipients' performance, or a combination of these; (2) receipt, analysis, or both of technical, financial, or performance reports from grantees; (3) making site visits to grantee performance locations; and (4) awarding grants on behalf of a federal agency.

Iraq, Afghanistan, or both.³ The data we obtained from the agencies were intended to include all contracts with administration functions for other contracts and grants with performance in Iraq and Afghanistan, regardless of the place of performance of the contractor performing administration functions. For example, some contracts or task orders in our scope included performance in the United States in support of the administration of contracts or grants with performance in Iraq or Afghanistan.

To assess whether the data obtained from the agencies were accurate and appropriately categorized as within the scope of this engagement, we reviewed contract documents for a selection of reported contracts. We reviewed contract documents for all 49 contracts or task orders reported for DOD and 37 of the 39 contracts or task orders reported by State. The 2 contracts we did not review at State were contracts for which officials could not identify the task orders that were within our scope. For USAID, we reviewed contract documents for all 17 nonpersonal services contracts or task orders reported by the agency and selected 25 of 81 personal services contract files for review during our fieldwork in Iraq and Afghanistan.⁴ For the most part, we determined that the contracts or task orders we reviewed had been appropriately reported by the agencies as being within our scope. When we noted discrepancies, we gathered additional information about contracts or task orders reported by the agencies, and if we determined that a contract or task order was not within our scope, we removed it from our analysis.

We attempted to identify additional contracts or task orders within our scope by reviewing data from the Federal Procurement Data System – Next Generation (FPDS-NG) and data provided to GAO by these agencies for a related engagement. Specifically, for both sources of data, we used a list of keywords related to contract and grant administration to search for contracts or task orders not reported by the agencies that might be within

³ For DOD, we requested data from the Joint Contracting Command – Iraq/Afghanistan; the U.S. Army Corps of Engineers; all Air Force major commands, Navy systems acquisition commands, and Marine contracting activities; the Army Contracting Command; the Defense Logistics Agency; and the Defense Contract Management Agency. Together, these contracting activities accounted for more than 95 percent of DOD contract obligations in Iraq and Afghanistan in fiscal year 2008 and the first half of fiscal year 2009 according to Federal Procurement Data System – Next Generation data. For State and USAID, we requested agencywide data.

⁴ In Afghanistan, we randomly selected personal services contract files for review. In Iraq, we purposefully selected personal services contract files to provide a cross section of functions performed and contract types.

our scope.⁵ When we identified such contracts or task orders, we followed up with the agencies to obtain contract documents and additional information from knowledgeable officials as necessary to determine whether the contracts or task orders were within our scope. If we determined that the contracts or task orders were within our scope, we added them to our analysis. In total, we added 62 contracts or task orders as a result of our data reliability reviews. Although we found that the agencies' data were incomplete based on these additional contracts and task orders we identified, we determined that taken collectively, data provided by the agencies and data on the contracts and task orders we identified and included in our scope were sufficiently reliable to establish the minimum number of contracts and task orders active in fiscal year 2008 or the first half of fiscal year 2009 awarded by DOD, State, and USAID to perform the functions within our scope.

For the contracts and task orders within our scope, we also obtained data from FPDS-NG or the agencies on the total obligations for the contracts or task orders through March 31, 2009. To assess the reliability of the obligation data from FPDS-NG, we compared them with related data from our contract file reviews for the nonpersonal services contracts we selected as case studies. In two cases at USAID, we identified discrepancies. In these cases, we followed up with the agency to determine the reasons for the discrepancies and made corrections as necessary. We determined that the data were sufficiently reliable for the purposes of our review, although obligations for some USAID contracts in Afghanistan may be underreported in FPDS-NG because of discrepancies between USAID information systems and FPDS-NG. State and USAID obligations for personal services contracts were generally not included in FPDS-NG, so we obtained obligation data from the agencies for these contracts. We assessed the reliability of the data provided by the agencies by comparing them to related data we collected during our file reviews for the personal services contracts we selected as case studies. Based on this assessment, we determined that the data were sufficiently reliable for the purposes of our review. We were unable to determine how much of the amount obligated by the agencies on the contracts or task orders within our scope was specifically obligated for the performance of contract or

⁵ From FPDS-NG, we obtained data on all DOD, State, and USAID contract actions during fiscal year 2008 or the first half of fiscal year 2009 with performance in Iraq or Afghanistan. The data we used from the other GAO engagement included all contracts and task orders reported by the agencies as having performance in Iraq or Afghanistan during fiscal year 2008 or the first half of fiscal year 2009.

grant administration functions in Iraq or Afghanistan. Some of the contracts or task orders included the performance of functions besides contract or grant administration or the performance of administration functions for contracts or grants with performance outside of Iraq and Afghanistan, but FPDS-NG and agency obligation data were not detailed enough to allow us to isolate the amount obligated for other functions or locations.

To gather information about the reasons behind decisions to use contractors to perform functions within our scope, we purposefully selected 13 personal services contracts and 19 nonpersonal services contracts at DOD, State, and USAID for case studies to provide a cross section of types of contracts, locations, and functions performed. For these case studies, we conducted fieldwork in Iraq, Afghanistan, and the United States. We reviewed available documentation of agencies' justifications for using contractors, such as acquisition strategies and relevant determinations and findings for the contracts we selected. We also interviewed agency officials, such as contracting officers, program managers, and contracting officers' representatives (COR), about the reasons for using contractors to perform contract or grant administration functions. To determine the extent to which agencies had developed strategies to inform decisions about the use of contractors to perform these functions, we reviewed agency workforce planning documents, such as strategic human capital plans. We also analyzed relevant guidance, including DOD Instruction 1100.22, *Guidance for Determining Workforce Mix*, and Office of Management and Budget and DOD guidance related to insourcing, and reviewed our prior work on the inclusion of contractors in workforce planning. Further, we interviewed knowledgeable agency officials about steps taken to include contractors in agency workforce planning efforts.

To assess the agencies' consideration and mitigation of conflict of interest and oversight risks related to contractors performing contract or grant administration functions, we reviewed relevant federal regulations and agency policy and analyzed data collected through the case studies we conducted. Specifically, to determine the steps taken by the agencies to address risks related to potential organizational and personal conflicts of interest, we analyzed contract clauses and other contract documentation relevant to conflicts of interest. To determine the steps taken by the agencies to address risks related to oversight, we analyzed relevant contract documentation, such as COR appointment letters, surveillance or contract administration plans, and documentation of the consideration of whether contractors closely supported inherently governmental functions

when available. To gain additional insight into how potential conflict of interest and oversight risks were addressed by the agencies, we interviewed agency officials responsible for contracting policy as well as officials such as contracting officers, CORs, and program officials responsible for the contracts we selected as case studies. Our review did not assess the effectiveness of contractors performing contract or grant administration functions for other contracts or grants.

We conducted this performance audit from February 2009 through April 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summary of Agency Contracts and Task Orders

DOD, State, and USAID relied on contractors to perform a wide range of administration functions for contracts and grants with performance in Iraq and Afghanistan. Our review found 223 contracts and task orders active during fiscal year 2008 or the first half of fiscal year 2009 that included the performance of administration functions for other contracts or grants in Iraq and Afghanistan. Tables 7, 8, and 9 provide more details about these contracts and task orders.

Table 7: DOD Contracts and Task Orders Active in Fiscal Year 2008 or the First Half of Fiscal Year 2009 That Include Administration Functions for Other Contracts or Grants in Iraq and Afghanistan

	Supporting Iraq	Supporting Afghanistan	Supporting Iraq and Afghanistan	Total
Dollars in millions				
Nonpersonal services contracts/task orders	23	37	8	68
Personal services contracts/task orders	1	9	0	10
Total	24	46	8	78
Obligations as of March 31, 2009 ^a	\$170.9	\$52.5	\$70.4	\$293.8

Source: GAO analysis of DOD and FPDS-NG data.

^aWe were unable to determine how much of this amount was specifically obligated for the performance of contract or grant administration functions in Iraq or Afghanistan because, while some of the contracts or task orders within the scope of this engagement include administration functions for contracts or grants with performance outside of Iraq and Afghanistan or the performance of functions besides contract or grant administration, FPDS-NG and agency obligation data were not detailed enough to allow us to isolate the amount obligated for other functions or locations.

Table 8: State Contracts and Task Orders Active in Fiscal Year 2008 or the First Half of Fiscal Year 2009 That Include Administration Functions for Other Contracts or Grants in Iraq and Afghanistan

	Supporting Iraq	Supporting Afghanistan	Supporting Iraq and Afghanistan	Total
Dollars in millions				
Nonpersonal services contracts/task orders	5	1	14	20
Personal services contracts/task orders	7	5	14	26
Total	12	6	28	46
Obligations as of March 31, 2009 ^a	\$12.1	\$2.9	\$26.0	\$40.9

Source: GAO analysis of State and FPDS-NG data.

Note: Numbers may not add to totals because of rounding

^aWe were unable to determine how much of this amount was specifically obligated for the performance of contract or grant administration functions in Iraq or Afghanistan because, while some of the contracts or task orders within the scope of this engagement include administration functions for contracts or grants with performance outside of Iraq and Afghanistan or the performance of functions besides contract or grant administration, FPDS-NG and agency obligation data were not detailed enough to allow us to isolate the amount obligated for other functions or locations.

**Appendix II: Summary of Agency Contracts
and Task Orders**

Table 9: USAID Contracts and Task Orders Active in Fiscal Year 2008 or the First Half of Fiscal Year 2009 That Include Administration Functions for Other Contracts or Grants in Iraq and Afghanistan

	Supporting Iraq	Supporting Afghanistan	Supporting Iraq and Afghanistan	Total
Dollars in millions				
Nonpersonal services contracts/task orders	5	11	0	16
Personal services contracts/task orders	30	53	0	83
Total	35	64	0	99
Obligations as of March 31, 2009 ^a	\$365.4 ^b	\$286.1 ^{b,c}	\$0	\$651.6^{b,c}

Source: GAO analysis of USAID and FPDS-NG data.

Note: Numbers may not add to totals because of rounding

^aWe were unable to determine how much of this amount was specifically obligated for the performance of contract or grant administration functions in Iraq or Afghanistan because, while some of the contracts or task orders within the scope of this engagement include administration functions for contracts or grants with performance outside of Iraq and Afghanistan or the performance of functions besides contract or grant administration, FPDS-NG and agency obligation data were not detailed enough to allow us to isolate the amount obligated for other functions or locations.

^bThese obligations include more than \$116 million reported by USAID for grants that were awarded by contractors in Iraq on behalf of USAID, as authorized in the terms of their contracts. USAID contractors also awarded grants on behalf of USAID in Afghanistan, but USAID officials told us that the Afghanistan mission does not track grants awarded by contractors.

^cObligations for some USAID contracts in Afghanistan may be underreported in FPDS-NG because of discrepancies between USAID information systems and FPDS-NG.

Appendix III: Comments from the Department of State

Note: GAO's comments supplementing those in the report text appear at the end of this appendix.



United States Department of State

Chief Financial Officer

Washington, D.C. 20520

APR 02 2010

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "CONTINGENCY CONTRACTING: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan," GAO Job Code 120812.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Jason Passaro, Director, Office of Commercial Services Management, Bureau of Administration at (703) 875-5114.

Sincerely,

A handwritten signature in black ink that reads "James L. Millette".

James L. Millette

cc: GAO – Anthony Moran
A – Steven Rodriguez
State/OIG – Mark Duda

Department of State Comments on GAO Draft Report

CONTINGENCY CONTRACTING:
Improvements Needed in Management of Contractors Supporting Contract and
Grant Administration in Iraq and Afghanistan
(GAO-10-357, GAO Code 120812)

The Department of State appreciates the opportunity to comment on GAO's draft report entitled "Contingency Contracting: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan."

The GAO report recommends the following to the Secretary of State:

Recommendation 1: Determine the extent to which contractors should perform administration functions for other contracts and grants in accordance with strategic human capital planning principles outlined in the Office of Management and Budget's July 2009 multi-sector workforce guidance.

Response: The Department concurs with the GAO's recommendation that the determination of the extent to which contractors can and should perform services in the administration of other contracts and grants should be in accordance with strategic human capital planning principles and Office of Management and Budget (OMB) guidance.

In accordance with OMB's Multi-Sector Workforce Management (MSWM) guidance, the Department is conducting a pilot study, which is being used to examine an organization's workforce mix and determine the appropriate balance of contractor and government positions. The process includes a determination as to whether or not the contracted functions are inherently governmental (or closely associated) or mission critical. The Department also assesses costs in its determinations as appropriate and has developed a costing methodology to perform these comparisons. The Department notes that our MSWM program has included strategic human capital planning principles at each step of development, pilot testing, and implementation.

The Acquisitions Management Office (A/LM/AQM), the Office of the Procurement Executive (A/OPE), the Commercial Services Management Office (A/CSM), the Human Resources Resource Management Analysis Office

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(HR/RMA) and the Office of the Legal Advisor (L/BA) will work together to identify the general extent to which contractors should perform administrative functions for contracts and grants. In accordance with the Acquisition Workforce Human Capital Plan, AQM will significantly reduce reliance on nonpersonal service contractors to perform acquisition work.

Recommendation 2: Develop guidance to identify approaches that contracting and program officials should take to enhance management oversight when nonpersonal services contractors provide services that closely support inherently governmental functions.

Response: The Department agrees with the GAO's recommendation that guidance be developed to aid contracting and program officials in making vital decisions about the appropriateness of using nonpersonal service contractors in functions that closely support inherently governmental operations. Through its Quadrennial Diplomacy and Development Review (QDDR), the Department is focusing efforts on its workforce balance and rebuilding core capabilities within the Department. The MSWM pilots being concluded are resulting in the development of a rigorous process to examine contracted functions to determine if it would be more appropriate to perform the work with government employees. The Department notes that this will result in balanced workforce guidance and criteria that will be disseminated Department-wide. The criteria will include the process for examining contractor duties to determine if it is an inherently governmental process, or closely associated with inherently governmental. Functions which are closely associated must be examined using an extensive list of questions to highlight operational, conflict of interest, or other issues which present an unacceptable level of risk.

Recommendation 3: Require before the award of any nonpersonal services contract or task order for services closely supporting inherently governmental functions that program and contracting officials document their consideration of related risks and the steps that have been taken to mitigate such risks.

Response: The Department agrees and the Acquisitions Management Office (A/LM/AQM), the Office of the Procurement Executive (A/OPE), the Commercial Services Management Office (A/CSM), and the Office of the Legal Advisor (L/BA) will work together to identify the types of services closely supporting inherently governmental functions that occur on our contracts. Acquisition planning documentation will address the decision to use nonpersonal services contractors instead of federal personnel. Additional considerations will include

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avoiding conflicts of interest, correct identification of affiliation, and appropriate reservation of decision-making authority to federal personnel.

Recommendation 4: To improve State's ability to mitigate risks related to potential personal conflicts of interest among personal services contractors, we recommend that the Secretary of State clarify the Department's policies regarding the application of federal ethics laws to personal services contractors.

Response: The Department of State agrees that federal ethics rules applicable to personal services contractors should be clarified. The Office of Ethics (L/Ethics) is working with the Office of the Procurement Executive (A/OPE) and the Commercial Services Management Office (A/CSM) to standardize and clarify the application of federal ethics laws to personal service contractors. A/OPE will issue guidance to require the use of a standard clause in all Personal Services Contracts regardless of bureau that will advise personal services contractors of their ethics responsibilities. We would note, however, that a number of federal agencies and departments also have authority to employ personal service contractors. The Office of Government Ethics (OGE) is responsible for providing standards of conduct guidance to employees of the Executive Branch. GAO should consider requesting OGE to provide regulatory guidance on the scope of ethics obligations to all personal services contractors so that there is consistency in the Executive Branch. While the Department of State intends on developing a standard clause applicable to all State personal services contractors, the more systemic approach is one standard applicable to all Executive Branch personal services contractors.

See comment 1.

The following are GAO's supplemental comments on the Department of State's letter dated April 2, 2010.

GAO Comments

1. State's comments raised an issue about whether there was a need for additional regulatory guidance to help determine the scope of ethics obligations applicable to all executive branch personal services contractors. As we focused on DOD, State, and USAID, whether there is a need for consistent guidance across the executive branch was beyond the scope of this work.

Appendix IV: Comments from the U.S. Agency for International Development

Note: GAO's comments supplementing those in the report text appear at the end of this appendix.



USAID
FROM THE AMERICAN PEOPLE

APR 18 2010

John P. Hutton
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Hutton,

I am pleased to provide the U.S. Agency for International Development's (USAID) formal response to the GAO draft report entitled: "Contingency Contracting: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan" (GAO-10-357).

We appreciate the time and attention the GAO team paid to this issue and the intricacies involved in understanding the various contracting mechanisms and the appropriate risk mitigation. After review of the draft comments within the report, we appreciate GAO's overall findings. We do offer some points of clarity, however, in relation to the recommendations posed in the draft report.

The enclosed USAID comments are provided for incorporation with this letter as an appendix to the final report.

Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff in the conduct of this audit review.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew W. Luten".

Drew W. Luten
Acting Assistant Administrator
Bureau for Management

Enclosure: a/s

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USAID COMMENTS ON GAO DRAFT REPORT No. GAO-10-357

GAO Recommendation 1: "Determine the extent to which contractors should perform administration functions for other contracts and grants in accordance with strategic human capital planning principles outlined in the Office of Management and Budget's July 2009 multi-sector workforce guidance."

USAID Response: USAID is already in the process of determining to what extent institutional and other contractors should perform administration functions. The USAID Multi-Sector Work Force Pilot, which will be complete by April 30, 2010, will function to inform the integration of institutional support contractors into USAID's Consolidated Workforce Planning Model (CWPM).

As part of the Agency plan to rebuild, USAID will be doubling the size of its Foreign Service personnel. The Foreign Service personnel system is a rank-in-person model (similar to that of the military). Most new employees will enter at the junior officer rank. As these new employees progress up the ranks, they will move into jobs currently occupied by non-U.S. Direct Hires, excluding our Foreign Service Nationals (FSNs).

The USAID FSN staff represent our permanent local staff and are critical to helping the Agency achieve its development mission in each host country where we work. While their roles and responsibilities differ from those of U.S. Personal Service Contractors, who are U.S. citizens hired as temporary employees, FSNs' work is closely monitored in a similar fashion as any U.S. government employee.

Third Country Nationals (TCNs) are recruited by USAID missions in other countries to provide temporary support, training and mentoring to local FSNs. In recent years, most of USAID/Iraq's local FSNs and their families have been targeted and intimidated by violent groups for their association with the USG. As a result, the vast majority of USAID/Iraq FSNs have qualified for asylum in the US, making it difficult to recruit and retain them. TCNs have proven to be a valuable temporary resource to make up for the current difficulties in recruiting local FSNs. For this reason, please note on page 12 of the draft report that 8 of the 10 "personal services contractors" who were responsible for contracting office support are TCNs. TCNs are not considered temporary employees, like U.S. PSCs, as many often return to their country and continue as local permanent staff with USAID. These staff from third countries are on temporary duty (TDY) and are

See comment 1.

Now on p. 10.

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critical to helping the Agency achieve its development mission during a shortage of local permanent FSN staff.

In regards to institutional support contractors, it is important to note that those institutional contractors who implement USAID projects, including grants under contracts, are considered under USAID's program policy and planning guidance, not under the Agency workforce planning.

GAO Recommendation 2: "Develop guidance to identify approaches that contracting and program officials should take to enhance management oversight when non-personal services contractors provide services that closely support inherently government functions."

USAID Response: USAID ensures within institutional support contracts that the appropriate oversight functions are involved throughout the life of an award. Many of our institutional contractors are closely monitored on a daily basis by the cognizant Contracting Officer's Technical Representative. We do agree with the GAO, however, that up-to-date guidance for enhancing management oversight of institutional support contractors and their employees would be beneficial to the Agency as a whole.

GAO Recommendation 3: "Require before the award of any non-personal services contract or task order for services closely supporting inherently governmental functions that program and contracting officials document their consideration of related risks and the steps that have been taken to mitigate such risks."

USAID Response: USAID will consider how to best address this recommendation through its current pre-award procedures and based upon guidance, per recommendation 2.

We do wish to address one point raised by the GAO draft in Table 6 on page 16, "Local Economy Development." USAID does issue contracts in Iraq and Afghanistan that do authorize specific institutional contractors to issue grants under contracts. The primary purpose of such grants is to build local capacity; these grants are an integral part of the project itself rather than a reflection of an implementing partner performing an inherently governmental function. We mitigate the risks associated with these mechanisms through our Agency policy, which requires that for each of the contracts where grants may be let, the Head of

Now on p. 13.

See comment 2.

- 4 -

the Contracting Activity—only after legal officer clearance—make the final affirmative determination as to whether specific criteria are satisfied. If a contractor is authorized to issue grants, the Agency requires substantial involvement with the development of the selection criteria and the selection of the grantee. Contractor-executed grants must follow the same requirements as Agency-issued grants, but as a final risk management tool, USAID may terminate the grants made under the contract at any time.

USAID recognizes the increased risks in using a contractor to perform grant-making and administration functions but believes that we mitigate these risks through: 1) the approvals required by the Agency before authorization; 2) the Agency's authority over the grant pre-award and during administration; and 3) the requirements imposed on the contractor to comply with Agency policy. USAID also believes building local capacity, through the use of small grants, is an important development best practice that needs to be carefully maintained.

The following are GAO's supplemental comments on the U.S. Agency for International Development's letter dated April 8, 2010.

GAO Comments

1. We have revised table 2 to reflect USAID's comments.
2. As noted in the report, we consider contractors responsible for assisting in the award of grants as closely supporting an inherently governmental function. USAID's Automated Directives System provides guidance on the use of contractors to award grants on behalf of USAID. We have reflected this guidance in the final report.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

John P. Hutton, (202) 512-4841 or huttonj@gao.gov.

Acknowledgments

In addition to the contact named above, Timothy DiNapoli, Assistant Director; Johana R. Ayers; Shea Bader; Noah Bleicher; John C. Bumgarner; Morgan Delaney Ramaker; Kathryn M. Edelman; Walker Fullerton; Katherine Hamer; Art James, Jr.; Justin M. Jaynes; Julia Kennon; Anne McDonough-Hughes; Christopher J. Mulkins; Jason Pogacnik; Thomas P. Twambly; and Gwyneth B. Woolwine made key contributions to this report.

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