



Iraqi contractors on school construction site, Baghdad, Iraq. (U.S Air Force photo)

Chapter 3

Inattention to contingency contracting leads to massive waste, fraud, and abuse



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Contingency-contract waste is a breach of agencies' fiduciary duty to efficiently manage budgets and resources. Contract-related fraud undermines the United States' defense, diplomatic, and development missions. Though calculating the exact dollar amount lost through waste and fraud is problematic, determining some measure of their extent is important in assessing their impact on contingency goals and objectives.

The Commission estimates that waste and fraud together range from \$31 billion to \$60 billion.¹ Given the often chaotic environment in Iraq and Afghanistan, this is a conservative estimate of the money that has been lost through contingency contracting. The Commission estimates that at the mid-range, waste and fraud during contingency operations in Iraq and Afghanistan averaged about \$12 million every day for the past 10 years.

Qualitative assessments of the impact of waste and fraud are also important because losses weigh heavily on political and operational effectiveness.

1. The Commission examined authoritative evidence on waste and fraud. It estimates that wartime-contracting waste in Iraq and Afghanistan ranges from 10 percent to 20 percent of the \$206 billion spent since fiscal year (FY) 2002, projected through the end of FY 2011. The Commission also estimates that fraud during the same period ran between 5 and 9 percent of the \$206 billion.

Concerns about wartime contracting have surfaced in numerous media reports.

The Gang That Couldn't Shoot Straight
Six billion dollars later, the Afghan National Police can't begin to do their jobs right—never mind relieve American forces
— Newsweek, March 29, 2010

How the US Funds the Taliban
—The Nation, November 11, 2009

Weak Oversight Mars Success of Iraq Hotel
— AP, July 26, 2009

\$40M fuel theft from Army prompts global manhunt
—Time, April 16, 2009

US Embassy in Iraq missing property worth millions
— AP, June 2, 2010

Headlines like those below illustrate the media attention given to waste, fraud, and abuse in wartime contracting.

Standards for successful contract outcomes are breached in many aspects of the contingency-contracting process. Agencies often fail effectively to:

- coordinate their project plans with foreign and domestic mission partners;
- estimate the costs of performing contracts in dangerous environments when making project-selection decisions;
- consider the host nation's ability to finance and sustain stabilization and reconstruction projects when developing project requirements and planning for effective transfers;
- set and meet goals for effective competition;
- control contractors' costs during their performance under undefinitized contract actions, even though performance continues without benefit of having defined requirements or negotiated terms and conditions;
- assess and mitigate contingency contractors' potential for organizational conflicts of interest; and
- monitor and correct poor contractor performance.

Despite years of experience with contingency contracting in Iraq and Afghanistan, the root causes of these failures persist.

Pentagon Hit for Lax Oversight of \$4.2 Billion Afghan Food Contract

— Bloomberg, March 4, 2011

**U.S. pulls \$644M Iraq
jobs program: Fraud,
'millions' to insurgents alleged**

— USA Today, July 27, 2009

**Audit: Agencies can't
readily account for
Afghanistan spending**

— CNN, October 28, 2010

**Audit: Pentagon overpaid
oilman by up to \$200 million**

— Washington Post, March 17, 2011

**With U.S. Aid,
Warlord Builds
Afghan Empire**

— New York Times, June 5, 2010

Waste from contingency contracting increases mission cost and diminishes mission success

As shown in the Commission's estimate, the waste incurred in Iraq and Afghanistan has added enormously and unnecessarily to the cost of U.S. involvement.

There is no commonly accepted methodology for determining the extent of waste. The Commission bases its estimate on information derived from multiple sources: 25 hearings; interviews with hundreds of military and civilian officials

during 15 trips in theater; hundreds of audit and inspection reports on projects in Iraq and Afghanistan; consultations with scholars in academia, policy institutes, and federally funded research-and-development centers; and a full-time staff presence in Iraq and Afghanistan.

The waste incurred in Iraq and Afghanistan has added enormously and unnecessarily to the cost of U.S. involvement.

The Commission's estimate of waste does not include what is yet to be revealed from expected shortcomings in program and project sustainability. The next chapter deals with these sustainability issues.

The Commission's research and the audits conducted by oversight organizations document agencies' repeated and unacceptable failures to meet standards for successful contract outcomes. Examples of poor contract outcomes highlight the areas where the risk of waste requires mitigation or prevention.

Wasteful contingency-contract outcomes have three contexts: host-nation issues, programs and projects, and individual contracts.

In Iraq and Afghanistan, significant *host-nation* issues include:

- limited economic-absorptive capacity,
- unsustainable development projects,
- diversion of contract funding to the insurgency, and
- unanticipated security costs.

At the level of programs and projects execution, significant aspects include limited competition and lack of control over poor performance by subcontractors.

At the level of *individual contracts*, significant aspects include failure to define requirements and definitize orders; lack of planning; inadequate oversight of construction, and poor oversight of diverse services. All of these are often coupled with poor contractor performance and failures often result from several inter-related conditions.

Host-nation issues

Limited economic absorptive capacity

In Afghanistan, the country's limited absorptive capacity poses a serious problem. When U.S. operations began there in 2001, Afghanistan's per capita gross domestic product was \$800.² As part of the counterinsurgency mission, the United States has poured more resources and development funding into the country than the domestic economy can support.

\$360 million USAID agricultural development project—The Afghan Vouchers for Increased Production in Agriculture began as a modest \$60 million initiative in 2009, distributing vouchers for wheat-seed and fertilizer to counteract drought-related food shortages in Afghanistan's north. Under pressure to inject \$1 million each day into a dozen or so key terrain districts for seeds, fertilizer, tools, cash-for-work, and community development, USAID within a few weeks turned the initiative into a massive \$360 million stabilization program in the south and east. The pressure to quickly spend the millions of dollars created an environment in which waste was rampant. Paying villagers for what they used to do voluntarily destroyed local initiatives and diverted project goods into Pakistan for resale.³



Afghan farmer,
Helmand province,
Afghanistan.
(U.S. Marine Corps
photo)

2. Central Intelligence Agency, "World Fact Book for Afghanistan," 2001.

3. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 20; Michael Bowers, Regional Program Director for South Asia, Mercy Corps, Commission hearing, April 11, 2011, transcript, 9; USAID IG Audit Report No. 5-306-10-008-P, "Audit of USAID/Afghanistan's Vouchers for Increased Productive Agriculture (AVIPA) Program," April 20, 2010, 7.

Unsustainable development projects

The U.S. government built many facilities in Iraq and Afghanistan that proved unsustainable.

\$6.4 annual billion Defense (CSTC-A, USACE) Afghan National Security Forces

Between FY 2006 and FY 2011, Congress appropriated \$38.6 billion, an average of \$6.4 billion a year, to the Combined Security Transition Command-Afghanistan (CSTC-A) program to train, equip, and provide other support for the Afghan National Security Forces (ANSF). Such costs far exceed what the government of Afghanistan can sustain, so it is unclear how those costs will be funded in future. Meanwhile, \$11 billion of facilities constructed by the U.S. Army Corps of Engineers (USACE) for the ANSF are “at risk.”⁴

The \$6.4 billion per year Combined Security Transition Command-Afghanistan program to train, equip, and provide other support for the Afghan National Security Forces goes far beyond what the government of Afghanistan can sustain.

\$82 million Defense Afghan Defense University—Defense awarded a contract for about \$82 million for the design and construction of Afghan Defense University, Afghanistan’s West Point. As the size of the ANSF tripled, the contract costs grew.⁵ During an August 2010 Commission trip to Afghanistan, Defense officials said it would cost \$40 million per year to operate and maintain—an amount possibly beyond the Afghan government’s ability to fund.



Afghan National Army soldier questioning villager. (U.S. Marine Corps photo)

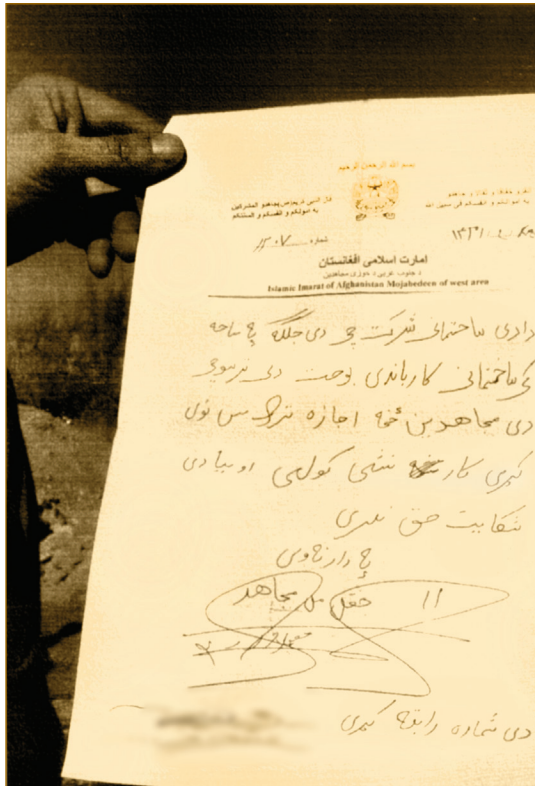
4. Major General Arnold Fields, USMC (Ret.), Special Inspector General for Afghanistan Reconstruction (SIGAR), Commission hearing, January 24, 2011, transcript, 30-32.

5. Major General Arnold Fields, USMC (Ret.), Special Inspector General for Afghanistan Reconstruction (SIGAR), written statement, Commission hearing, January 24, 2011, 2.

Diversion of U.S. funds

In Iraq and Afghanistan, U.S. funds have been diverted to insurgents and warlords as a cost of doing business in the country. In Afghanistan, insurgents, warlords, or other groups control or contest parts of the country. They threaten to destroy projects and harm personnel. The Commission finds it particularly alarming that Afghan subcontractors on U.S.-funded convoys, road construction, and development projects pay insurgent groups for protection.

Mujahedeen threat letter sent to contractor:



Islamic Imarat of Afghanistan Mujahedeen of west area

Letter # 1207

This construction company which is working in the Jagla area cannot continue to work unless it does obtain permission from the Mujahedeen.

Or else, it does not have the right to complain.

Sincerely,

Haqmal Mojahed

You can contact with this phone number XXXXXXXXXX.

Source: Provided by a representative of a provincial reconstruction team, Afghanistan, January 25, 2011, translated for the Commission by a USAID translator/interpreter, June 1, 2011.

While there is no official estimate of the amount of U.S. funds diverted to insurgents, it certainly comes to a significant percentage of a project's cost. The largest source of funding for the insurgency is commonly recognized to be money from the drug trade. During a March 2011 trip to Afghanistan, experts told the Commission that extortion of funds from U.S. construction projects and transportation contracts is the insurgent's second-largest funding source.

Afghan contractors hired under the Host Nation Trucking program have turned to Afghan private security contractors. These Afghan subcontractors in turn pay off

the insurgents or warlords who control the roads their convoys must use.⁶ Almost 6,000 Afghan truck movements a month are funded under the program. Diversion on this scale did not occur in Iraq, where the U.S. military provided most of the escorts for similar convoys.

Many contracts other than transportation provide opportunities for diversion:

- Afghan subcontractors on a USAID community-development program in Kunar Province were paying up to 20 percent of their total subcontract value to insurgents for “protection.” The USAID IG estimated that over \$5 million of program funding was at risk of falling into insurgents’ hands.⁷
- A congressional staff report cited Afghan Taliban demands for pay-offs from businesses and households for electricity generated by USAID-funded projects. This occurs in Taliban-controlled areas like Helmand Province.⁸

Because they directly strengthen the insurgency, diverted funds pose far more danger than other kinds of waste and have a disproportionately adverse impact on the U.S. effort.

Unanticipated security costs

Agencies continue to take on some projects without sufficient regard for the costs of security. Numerous audits estimate that unanticipated security costs increased expenses by 25 percent.⁹

Failure to anticipate, estimate, and factor spending on security costs into project and program decisions has led to massive waste as projects are shut down or abandoned.

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6. U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, “Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan,” June 2010, 29.

7. USAID IG Review Report 5-306-10-002-S, “Review of Security Costs Charged to USAID Projects in Afghanistan,” September 29, 2010, 6.

8. U.S. Senate Committee on Foreign Relations, Majority Staff Report, “Evaluating U.S. Foreign Assistance to Afghanistan,” June 8, 2011, 10.

9. GAO Report GAO-07-30R, “Rebuilding Iraq: Status of Defense’s Reconstruction Program,” December 15, 2006, 8; GAO Report GAO-05-737, “Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers,” July 2005, 33; SIGAR Audit 10-4, “Afghanistan Energy Supply Has Increased but an Updated Master Plan is Needed and Delays and Sustainability Concerns Remain,” January 15, 2010, 11; World Bank Report 34582-AF, “Afghanistan: Managing Public Finances for Development,” 2005, 17, 29.

\$176 million USAID Khost-Gardez road—Costs more than doubled for the Khost-Gardez road project built by a Louis Berger Group/Black & Veatch joint venture. The project was designed to link southeastern Afghanistan to the national highway system. The original USAID contract had a value of \$86 million.¹⁰ High security costs could double that figure by the time the contract is complete.

Programs and projects

Inadequate competition for contracts and task orders

Agencies' procedures failed to generate effective competition. The government awarded a large logistics-support contract that ran for a decade without a re-competition, with cost-reimbursable task orders that were not subject to competition. For different reasons, its replacement contract also failed to provide effective competition.

\$36.3 billion Defense (Army) LOGCAP III contract—The Army has awarded a number of contracts under its worldwide Logistics Civil Augmentation Program (LOGCAP). Of these contracts, the largest is the LOGCAP III contract supporting the wars in Iraq and Afghanistan. The base contract for LOGCAP III was awarded competitively, but lasted for 10 years without competition on any of its task orders.

Kellogg Brown and Root (KBR) was awarded the LOGCAP III contract in December 2001, as sole provider. The contract had one base year followed by nine option years. War requirements rapidly and unexpectedly expanded the contract value to more than \$36.3 billion from the time of award.¹¹

As sole provider, without the discipline of task-order competition, KBR proposals included large amounts of questioned and unsupported costs identified by the Defense Contract Audit Agency (DCAA). KBR billings also included large amounts subject to challenge for disallowance, such as unjustified dining-facility costs.¹²

\$6 billion Defense (Army) LOGCAP IV contract—Not until 2009—nearly a decade after the start of LOGCAP III—did the Army award task orders for Afghanistan under the successor LOGCAP IV contract. Factors contributing to the delay included a lack of government acquisition personnel,

10. Afghanistan Infrastructure and Rehabilitation Program Press Release, "President Karzai and U.S. Ambassador Wood Witness Contract Signing for Gardez-Khost Road Construction," April 26, 2008.

11. Commission analysis of Federal Procurement Data System-Next Generation (FPDS-NG) data.

12. April G. Stephenson, Director, DCAA, statement, Commission hearing, May 4, 2009, 9-11.

competing priorities, commanders' resistance to shifting contractors, and contractor protests.

Delay in implementing a competitive strategy for LOGCAP IV, combined with a failure to have competition at the task-order level at the outset of LOGCAP III, resulted in tremendous waste. The Commission estimates that waste from these two factors alone was \$3.3 billion.¹³

The LOGCAP IV task-order competition plan had a number of aspects that created "mini-monopolies." Each geographically awarded task order (Fluor in the northern Afghanistan provinces, DynCorp in the southern provinces) consisted of an initial year and four option years, a long period without a new competition. This meant that all new work in the two regions of Afghanistan went to single sources without further competition. The Army has in effect awarded two single-source, long-term task orders for Afghanistan.

In the first nine months of LOGCAP IV, more than \$500 million in new work was added to the LOGCAP IV Afghanistan task orders awarded in 2009—over \$235 million to DynCorp for Afghanistan South and \$270 million to Fluor for Afghanistan North. By comparison, over the life of the LOGCAP III task orders for work in Iraq, the Army issued 11,000 modifications adding more than \$2.7 billion in new work.

Contractors preparing to move U.S. military vehicles, Kuwait. (Commission photo)

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13. The Commission arrived at this estimate by applying the Army Sustainment Command's observed results of a 9 percent reduction in operating costs from the use of LOGCAP IV in Afghanistan (referenced in its business case analysis for transition from LOGCAP III to IV, March 4, 2010) to the \$36.37 billion in obligations under LOGCAP III as of September 30, 2010.

Contract extensions limit competition

Another kind of problem can arise at the end of a contract's period of performance when the government issues a long-term sole-source extension or contract "bridge" rather than recompeting the requirement. Agencies have justified long-term extensions, citing a need to obtain contractor support until they can take all the steps required to compete a follow-on contract. However, the agencies often have failed either to develop an acquisition strategy to re compete the follow-on contract promptly, or to compete a short-term contract that will bridge the gap between the expiration date of the incumbent's contract and the award date expected for the follow-on contract.

Some of the programs extended for long periods or expanded without competition are valued at over a billion dollars.

\$3 billion Defense (DLA) food service contract—Supreme Foodservice provided about \$3 billion in food, water, and non-food supplies for the troops in Afghanistan between 2005 and 2010. In December 2010, the Defense Logistics Agency (DLA) awarded it a one-year extension contract with two six-month option periods, for a total estimated value of \$4 billion.

Defense (Army) LOGCAP III base-life services task order—The Army awarded KBR, without competition, a task order under LOGCAP III for Base Life Services in Iraq in 2010. Commission hearings in spring 2010 raised doubts as to why the Army did not compete the task-order award under LOGCAP IV instead.¹⁴

\$1 billion Defense (INSCOM) translation services contract—INSCOM, the U.S. Army Intelligence and Security Command, expanded its contract with Mission Essential Personnel, LLC for linguist and translator services when the contract neared its funding ceiling in 2010, and again in 2011. Together these steps increased the contract ceiling by over a billion dollars.

Other problems that inhibit competition

A serious competition problem occurred with the handoff of the billion-dollar program for training the Afghan National Police from State to Defense, resulting in lengthy delays before the final contract award.

\$1.5 billion Defense (CSTC-A) Afghan National Police training program—In 2009, the Combined Security Transition Command-Afghanistan (CSTC-A) planned to award a task order for training the Afghan National

14. Commission hearing, March 29, 2010, transcript, 3.

Police (ANP). This indefinite-delivery contract limited competition to five contractors who provided the Army with counter-narcoterrorism technology but had not provided police training. The competition under this Army contract did not include the State Department's incumbent, DynCorp.

DynCorp protested to GAO, which sustained the protest, finding that the new award of a national police training program was outside the scope of an indefinite-delivery, indefinite-quantity (IDIQ) contract focused on counternarcotics programs. The original date for hand-over from State to Defense was mid-November 2009, yet not until December 2010 was DynCorp competitively awarded a two-year, \$718 million base contract for ANP training with a \$322 million one-year option.

Other problems ranged from awards with no justification for the absence of competition to awards with no audits of proposals—even for billion-dollar task orders. For the Iraqi police training program, State awarded a \$1.4 billion task order to DynCorp, foregoing competition.

\$1.4 billion State Department Iraq police training task order—In February 2004, State awarded a \$2.5 billion contract to DynCorp to support its Iraqi police training program. Task Order 1436, worth \$1.4 billion, was subsequently awarded for only four months as an exception to “fair opportunity” to compete without stating a justification for doing so. It was extended by modifications through May 2008.¹⁵ The Special Inspector General for Iraq Reconstruction found no written support for the exception to “fair opportunity.”¹⁶

The Defense Logistics Agency (DLA) failed to follow proper procedures for the procurement of fuel.

\$2.7 billion Defense (DLA) fuel contract—Starting in 2004, DLA Energy awarded four contracts totaling \$2.7 billion to the International Oil Trading Company (IOTC) for delivery of fuel in Iraq. The Defense inspector general found that DLA contracting officers improperly determined that adequate price competition existed even though only one firm could perform. Since the procurements were wrongly deemed “competitive,” IOTC was not required to submit certified cost and pricing data. Consequently, DLA did not perform a detailed cost analysis of what IOTC charged. DLA paid IOTC about \$200 million more than a cost analysis could support.¹⁷

15. SIGIR Audit Report 10-008, “Long-Standing Weaknesses in Department of State’s Oversight of DynCorp Contract for Support of the Iraqi Police Training Program,” January 25, 2010, 7-9.

16. *Ibid.*, i, 2.

17. Defense IG Report D-2011-049, “Competition Issues and Inherently Governmental Functions Performed by Contractor Employees on Contracts to Supply Fuel to U.S. Troops in Iraq,” March 15, 2011, 5.

The problems with competition and awarding contracts indicate the need for reforms to apply the discipline of competition in contingency operations.

Problems with subcontracting

Subcontracting has posed numerous problems in Iraq and Afghanistan. In these countries, key subcontractors came from cultures in which bribes and kickbacks are common, and United States' legal institutions often have little or no leverage over foreign subcontractors.

\$400 million Defense (Army) LOGCAP III subcontracts—Starting in 2002, the Iraq general manager for Tamimi, a Kuwaiti company, gave kickbacks to KBR's LOGCAP III managers on initial awards of contracts. Subsequently, KBR awarded additional subcontracts for dining-facility services to Tamimi worth more than \$700 million. Later, the general manager of Tamimi was convicted of related felonies.¹⁸ Finally, in March 2011, the Department of Justice filed a claim that KBR had engaged in false claims.

Both DCAA and the Commission demanded more complete records of these subcontracts, but at a 2010 Commission hearing Tamimi refused, relying on the fact that they performed under a fixed-price contract.¹⁹ It is difficult for the government to investigate the circumstances of performance by a foreign subcontractor working under a fixed-price contract.²⁰

The Commission's August 2009 hearing examined the five-year, nearly \$5 billion contract for translator services in Iraq between the U.S. Army Intelligence and Security Command (INSCOM) and prime contractor Global Linguist Solutions (GLS).

\$4.6 billion Defense (INSCOM) linguistics service subcontracts—GLS subcontracted work to Northrop Grumman, L-3 Communications, and other vendors. DCAA found that GLS subcontracted almost \$3 billion of work, issued under a contract with an estimated value of \$4.6 billion, to multiple subcontractors, some of which merely provided pass-through payments to the linguists, adding little value.

A large subcontract was awarded by GLS to its main competitor L-3, an award that appeared to be an accommodation to a firm that had protested

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18. United States of America v. Mohammad Shabbir Khan, Case No. 06-cr-40055 (C.D. Ill. 2006).

19. Commission hearing, July 26, 2010, transcript, 110-111, 182-184.

20. 10 U.S.C. 2313.

the award to GLS. To make up for the contract's cost increases from this "accommodation," GLS trimmed the salaries of linguists, and led them to believe the government had directed the salary reductions.²¹

The GLS procurement involved two large firms that were expected to compete—one of which protested the Army's contract award and later became a subcontractor to the awardee, to their mutual benefit.²²

Afghan subcontractors have proved to be unreliable, while agency oversight has been especially difficult to implement.

\$5.9 million Defense (USACE) Afghan National Police construction project—In 2007, the U.S. Army Corps of Engineers (USACE) was provided with \$5.9 million to construct seven Afghan National Police (ANP) district headquarters in Helmand and Kandahar Provinces. It awarded the contract to the Afghan-owned Basirat Construction Company. Basirat subcontracted work to two other Afghan-owned construction companies implicated in the problems that followed. SIGAR auditors identified construction deficiency costs up to \$1 million. The flawed work meant contract requirements went unmet and that delivery of the facilities to the ANP was delayed.²³

\$17.6 million Defense (AFCEE) infrastructure project—In September 2007, the Air Force Center for Engineering and the Environment (AFCEE) awarded a \$17.6 million construction contract to CH2M HILL for infrastructure work at Camp Phoenix, an Army installation in Afghanistan. During the months of April and May 2009, ENCORP (a subcontractor to CH2M HILL) failed to pay their subcontractors, and the owner fled Afghanistan with around \$2 million. Later, the second-tier subcontractors walked off the job site for lack of payment. One of the second-tier contractors removed two 750-kilowatt generators and other electrical material from the jobsite to hold as collateral for the money it was owed by ENCORP until CH2M HILL agreed to pay them. Completion of a key center at the camp was delayed for over a year, resulting in inadequate housing for several hundred military personnel for over 18 months.

21. Commission hearing, August 12, 2009, transcript, 1, 7, 8, 20-21, 28, 32, 35.

22. *Ibid.*, 1, 7.

23. SIGAR Audit 11-3, "ANP District Headquarters Facilities in Helmand and Kandahar Provinces Have Significant Construction Deficiencies Due to Lack of Oversight and Poor Contractor Performance," October 27, 2010, ii, 4.

Individual contracts

Problems with defining requirements and managing contractor performance

At the level of individual contracts, significant factors leading to waste include failures to define requirements, poor use of management resources, and poor oversight. These shortcomings are often linked to poor contractor performance.

The government accepts great risk when it fails to effectively define detailed requirements before it awards a contract. Inadequately defined contract requirements are particularly vulnerable to waste in construction contracting, since the government often provides engineers with little or no guidance. Two Afghanistan projects exemplify this failure.

\$57 million USAID health and education construction program—

Afghanistan entered into a cooperative agreement with the International Organization for Migration to meet health and education needs through the construction of 18 hospitals, midwife-training centers, and colleges in Afghanistan. The agreement was subsequently modified to conform to new, more rigorous international building codes and to address security issues, all adding to the project's time and expense.

\$24 million State prison renovation project—

Similarly, planning for the Pol-i-Charkhi Prison Renovation Project involved mid-course changes in requirements. In addition, a poorly performing contractor was selected to undertake the work. A base contract with Al-Watan Construction Company was modified twice by State. The first modification, to accelerate the schedule, cost \$3.6 million. The second modification, for the renovation of the industries building and the staff barracks cost \$500,000.²⁴ State issued a stop-work order effective November 5, 2010, to Al-Watan. Basirat Construction, the design consultant and quality-assurance firm, also received a stop-work order in November 2010, when the project was 66 percent complete.

The government accepts great risk when it fails to effectively define detailed requirements before it awards a contract.

U.S. Air Force and USAID personnel at school site, Panjshir Province, Afghanistan. (Defense photo)



24. Narcotics Affairs Section (NAS)/Bureau of International Narcotics and Law Enforcement (INL), "NAS/INL Construction Overview," November 16, 2010, 9.

Accurate and complete requirements are also essential for non-construction projects. When the government does not provide specific requirements, contractors sometimes charge excessive or unnecessary costs for the services.

\$3 billion Defense (DLA) subsistence contract—The Defense Logistics Agency has paid Supreme Foodservice AG about \$3 billion as the Subsistence Prime Vendor (SPV) for food, water, and some non-food items in Afghanistan. In 2011, the Defense inspector general estimated DLA overpaid Supreme by about \$124 million in transportation (airlift) and packaging costs.

Certain items, like fresh fruit and vegetables, required airlift to isolated bases, but DLA did not include this requirement in the original contract. The contracting officer attempted to rectify the omission by tasking Supreme with providing “premium airlift,” which it did at a total cost of over \$450 million.

DLA failed to ask the U.S. Transportation Command (TRANSCOM), which has extensive experience contracting for airlifting in Afghanistan, to review the requirement. The Defense IG recommended that DCAA determine a fair and reasonable price for the airlift. Commission inquiries found that DCAA is currently working on such a determination, which may lead to retrieving excess funding from Supreme.

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Problems with contract definitization

Problems also arise when agencies fail to definitize contract or task-order terms and conditions in a timely manner. Acquisition regulations require that when it is not possible to negotiate a definitive contract in advance of award, the terms must be definitized within 180 days of award or before completion of 40 percent of the work.²⁵

Agencies generally avoid using undefinitized orders because they permit a contractor to incur significant costs—which at times may be unnecessary and on which profit may be based—in the absence of fully defined constraints or contract terms and conditions.

In a contingency-contracting environment, agencies have all too often allowed a contractor to begin work under an “undefinitized” (nonspecific) contract or order.

25. FAR 16.603-2(c)(3); FAR 52.216-25; 10 U.S.C. 2326.

Waste from KBR support performed in Iraq under the LOGCAP III contract arose from billions of dollars of undefinitized task orders. Because of the questionable costs charged by the company, the DCAA sought to withhold hundreds of millions of dollars from contract payments.

Defense (Army) LOGCAP III undefinitized contracts—During 2003-2005, the U.S. Army awarded KBR numerous LOGCAP III task orders in Iraq on an undefinitized basis to supply accelerated services, despite the unpreparedness of both the officials and the contractor. Moreover, the task orders remained undefinitized even after delivery of billions of dollars in services. DCAA attributed the delay in definitizing the contracts to proposals by KBR that did not have sufficient specifics for negotiation and to insufficient staffing on the part of the agency.²⁶

DCAA recommended, and the Army contracting officer agreed, to withhold 15 percent of the contract value under the regulations regarding undefinitized contracts. However, this was overruled by higher officials.

\$2.5 billion Defense (USACE) fuel importing task orders—In March 2003, U.S. Army Corps of Engineers (USACE) awarded the Restore Iraqi Oil contract to KBR. USACE considered the \$2.5 billion cost-plus award-fee-type contract requirement to be urgent, so the contracting officer directed KBR to begin work before definitive contract terms, specifications, and pricing could be negotiated.

KBR completed work and incurred virtually all costs on each of 10 task orders before Defense and KBR reached agreement on terms and conditions in the wake of changing requirements, funding challenges, and inadequate KBR proposals. DCAA questioned \$221 million in excess KBR fuel payments. Eventually, Defense paid virtually all these costs, since the funds had already been expended by the contractor. Defense did, however, reduce the cost basis for the award fee by half the cost figure questioned by DCAA.

Shortfalls in managing contractor performance

Agency management and oversight of contractor performance is critical even in peacetime conditions. In contingency operations, problems in the early stages of the contracting process, such as inadequate planning and changing requirements, make agency management and oversight doubly important for controlling waste and achieving mission objectives. In Iraq and Afghanistan, performance problems

26. April G. Stephenson, Director, DCAA, Commission hearing, transcript, August 11, 2009, 12, 16-17.

were compounded because agencies failed to assign sufficient resources for management and oversight.

Agencies' failure to effectively monitor and correct poor contractor performance was widespread in both Iraq and Afghanistan. Lessons learned were not applied because U.S. personnel rotated frequently in and out of theater, staff at remote locations knew little about conditions on the ground, hundreds of contracts were involved, and for too long U.S. officials did not understand the importance of contingency-contracting activities.

\$119 million Defense (USFOR-A) for vehicle leasing—

Operating units on bases throughout Afghanistan require four-wheel drive vehicles. U.S. Forces-Afghanistan (USFOR-A) conducted a survey and determined that military units in country were leasing about 3,000 vehicles at an annual cost of \$119 million. Because these vehicles are not centrally leased, managed, or maintained, the regional contracting commands are burdened with hundreds of small-dollar value leases that recur every year.

Worse still, vendors in Afghanistan were charging grossly exorbitant lease rates for the vehicles. According to USFOR-A, "we have driven the [vehicle] lease market into a state where vendors are able to charge rates that allow them to recoup almost 80% of the procurement cost during the first year of the lease."²⁷

To its credit, USFOR-A took steps to get the costs under control, while also improving fleet management. In May 2010, USFOR-A began working with the General Services Administration (GSA) on a vehicle-lease program and determined that they could lease and maintain 1,000 vehicles for about \$19 million per year. USFOR-A hopes to have the GSA-leased vehicles and centralized motor pools in place by November 2011. While laudable, the solution is being implemented 10 years after U.S. operations began in Afghanistan.

Still, USFOR-A's preferred approach was to purchase the vehicles, and not lease them at all. Appropriations law requires that operation and maintenance funds be used for vehicle leases, and that procurement funds be used for vehicle purchases. But USFOR-A

In Iraq and Afghanistan, performance problems were compounded because agencies failed to assign sufficient resources for management and oversight.

Vendors in Afghanistan were charging grossly exorbitant lease rates for vehicles.

27. USFOR-A, "Letter of Justification for CJOA-A Non-Tactical Vehicle Lease and Theater Motor Pool Maintenance and Repair Services," May 6, 2011, 1-2.

was unable to access procurement funds to purchase the vehicles and had no choice but to lease the vehicles it needed.

Two instances in the Iraq war illustrate how poor planning and inadequate oversight lead to higher than necessary levels of contractor personnel costs.

Defense (Army) LOGCAP III vehicle-maintenance task order—In 2009 a Defense IG report revealed that the U.S. Army paid for underutilized contractor personnel at Joint Base Balad, Iraq who were responsible for tactical-vehicle field maintenance. From September 1, 2008, through August 31, 2009, the actual utilization rate was just 10-15 percent of the requirement. KBR alerted only low-level government officials that the actual labor utilization was far below that of the contractor personnel being paid. The government did not act on this information. The Commission has estimated that for a particular category of labor services, almost \$400 million paid to KBR was wasted through underutilization.

\$193 million Defense (Army) LOGCAP III contractor drawdown—DCAA issued a report in October 2009 critical of KBR for not preparing a drawdown plan. The agency projected \$193 million in savings through August 2010 if KBR were to reduce contractor personnel commensurate with the military drawdown.²⁸

KBR accounted for about half of contractor personnel in Iraq. When bases closed and its personnel left those bases, KBR merely transferred some of them to other bases and continued to bill for their support.

In response to the DCAA report, in November 2009, the U.S. Army directed KBR to develop a drawdown plan. A February 2010 Commission trip to Iraq and a March 2010 Commission hearing revealed that KBR was slow to reduce its Iraq workforce. Moreover, the U.S. Army did not instruct KBR to promptly reduce its contractor workforce. The executive director of the U.S. Army's Rock Island Contracting Center testified at a Commission hearing that there was no contractual requirement against which to hold KBR accountable for the delay.²⁹

Inadequate oversight of construction

In a counterinsurgency operation, contracting performance is particularly vulnerable to poor oversight. There may be a shortage of experienced and well-qualified contracting officer's representatives. Insecure conditions may make it

28. DCAA Audit Report 2131–2009R10502001, "Report on Audit of Labor Operations Relating to the Military Drawdown in Iraq," October 26, 2009, 2.

29. Commission hearing, March 29, 2010, transcript, 3, 17, 21, 32.

hard for them to check performance on-site. Contractors who are particularly likely to perform poorly may obtain contingency contracts or subcontracts due to flaws in the awarding process. And contractors may see any slackening of oversight as an opportunity to charge more or relax performance standards.

A substantial subcategory of the instances of poor oversight is construction contracts. The work occurs in the field and typically involves numerous subcontractors, many of them third- or host-country nationals with cultural differences from U.S. subcontractors.

Poor oversight may even mean rewarding bad work.

\$62 million Defense construction of Baghdad Police College—Despite major problems with the work by Parsons Delaware, Inc., on a construction contract for Baghdad Police College, Parsons was paid \$62 million for the work and received \$5.3 million in award fees.

Baghdad Police College. (SIGIR photo)



\$700 million State construction of Baghdad Embassy—State awarded a construction contract to First Kuwaiti General Trading and Contracting Company in July 2007 for the new embassy compound in Baghdad. State bypassed its traditional contracting office. Over \$43 million in construction deficiencies occurred due to failure to comply with specifications, improper construction and installation, and use of sub-standard materials and equipment, among other defects.³⁰ In late 2009, the State IG recommended recovering \$132 million from First Kuwaiti. State took no steps to recover the sum and continued to award contracts to First Kuwaiti through its U.S. partner.³¹ In response to Commission questions, State said it may seek the \$132 million as a response to claims by First Kuwaiti.

30. Department of State IG Report AUD/IQO-09-25, "Audit of the Design and Construction of the New Embassy Compound in Baghdad, Iraq," October 2009, 1-4.

31. Commission hearing, June 6, 2011, transcript, 16.

Poor oversight of diverse services

Poor oversight of services creates different kinds of problems than those that occur in construction.

\$2 billion Defense (DLA) fuel supply contract—Huge fuel purchases by the Defense Logistics Agency (DLA) pose a challenge because of their large scale and the role such purchases play in the political dynamics of Central Asia. DLA contracted for fuel supplies at a key air-transport node for Afghanistan in the Kyrgyz Republic. DLA and the American embassy ignored the political risk generated by local perceptions that the contracts abetted corruption under two successive governments.³²

\$189 million State Kabul Embassy security contract—State’s oversight efforts over two years did not apply enough pressure to stop the many blatant failings of Armor Group North America, contracted to protect the Kabul embassy. Examples were revealed in a September 2009 Commission hearing.³³

\$92 million USAID bank-supervision mentoring contract—Since 2003, USAID advisers BearingPoint, and later Deloitte, which acquired BearingPoint, provided capacity-building support at the Afghanistan Central Bank. The Central Bank supervised Kabul Bank, then Afghanistan’s largest private bank, with supposed assets of \$900 million that included a high percentage of worthless loans. USAID believes the advisers had several indications and opportunities to notify the agency, contractors, and other interested parties of fraudulent activities at Kabul Bank during the two years prior to its collapse. Evidence included death threats to the advisers, lack of onsite examinations, and continuous allegations of impropriety at the bank.³⁴

USAID staff learned of serious bank problems from reading about them in the *Washington Post*. Deloitte never notified the agency. The USAID inspector general found the oversight by the contracting officer’s technical representative to be weak.³⁵ Subsequently, USAID terminated the contract with Deloitte, but not for default.³⁶

Contractors in such a position of trust should know that their duty to warn the government of impending crises overrides most other considerations.

32. U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, “Mystery at Manas: Strategic Blind Spots in the Department of Defense’s Fuel Contracts in Kyrgyzstan,” December 2010, 1.

33. Patrick F. Kennedy, Under Secretary of State for Management, Commission hearing, September 14, 2009, transcript, 36, 43.

34. USAID IG Report F-306-11-003-S, “Review of USAID/Afghanistan’s Bank Supervision Assistance Activities and the Kabul Bank Crisis,” March 16, 2011, 1.

35. *Ibid.*

36. *Ibid.*, 4, 10, 13.

Property and safety issues pose challenges for oversight

U.S. policy attaches great importance to property and safety issues. Rules require rigorous control of inventories and protection of government property. Yet in contingencies, the government must entrust large amounts of property to contractors in situations rife with numerous threats to the condition of property and the problem of keeping track of it in a dynamic wartime setting. The Commission has found serious deficiencies in current property handling in Afghanistan, despite some instances of relatively vigorous oversight.

The Commission has found serious deficiencies in current property handling in Afghanistan.

\$1.5 billion Defense (Army) LOGCAP IV property management—In July 2009, DynCorp was awarded an Afghanistan task order. DCMA-Afghanistan performed a property-management system analysis of this contract 15 months later and issued a letter of concern in December 2010. Key elements deemed inadequate by DCMA included property management, acquisition, receiving/records management, physical inventories, equipment-utilization reports, and maintenance.³⁷

In Iraq, flawed contractor performance in dealing with the billions of dollars in property accumulated during the length of the war and now requiring disposition could have been tracked and perhaps mitigated by DCMA.

\$2.9 billion Defense (Army) LOGCAP III property disposition—In Iraq, the Defense IG identified systemic issues concerning the management and disposition of government-furnished property items located at KBR's property yards. The Defense IG estimated that KBR could not account for 3 percent of its government-furnished property, roughly 18,000 line items with a potential value of up to \$100 million.³⁸

Defense (Army) LOGCAP IV electrical repairs—In Afghanistan, DynCorp was not adequately staffed to make the enormous volume of electrical repairs needed to get buildings ready in a short time. DynCorp categorized repairs as "complete" when the parts were on order but the repairs had not been made. In January 2011, DCMA issued a Letter of Concern to DynCorp. The Commission pursued the matter, and DynCorp gave assurances of correction.³⁹

37. DCMA, "Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 7, 2011.

38. DoD IG Report No. D-2010-088, "Accountability and Disposition of Government Furnished Property in Conjunction with the Iraq Drawdown - Logistics Civil Augmentation Program," September 30, 2010, i, 1.

39. DCMA, "Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 7, 2011; DynCorp "Response to DCMA Letter of Concern, Contract W52P1J-07-D-0007, Task Order 0004," January 31, 2011.

Logistics matters of life, health, and safety must receive the highest level of performance management and oversight.

Government oversight was not adequate to deal with the serious risks revealed during the Commission's trip to Spin Boldak, Afghanistan, in March 2011.

\$86 million Defense (Army) LOGCAP IV fire protection—The government-owned fire equipment from Iraq was transferred to Afghanistan and arrived in poor condition. Consequently, DynCorp, the LOGCAP IV contractor in Afghanistan, was not provided adequate fire equipment and was at risk of providing inadequate fire protection. The DynCorp-operated fire department at Forward Operating Base Spin Boldak had only 23 firefighters out of 30 authorized and was not equipped with a needed “pumper” fire truck. Instead, the base relied on a limited-capacity pickup truck. Based on equipment status and staffing inadequacies, the DCMA subject-matter expert (SME) rated the contractor's level of performance at 10 percent. The poor condition of the equipment received from Iraq gave the SME great concern about the adequacy of future equipment deliveries throughout southern Afghanistan.

Military interpreter and Afghan contractor discuss a project, Helmand province, Afghanistan. (U.S. Navy photo)



\$204 million Defense (Army) LOGCAP III electrical construction and repairs—In January 2008, an Army soldier in Iraq was electrocuted while showering. The Defense IG attributed his death in Iraq to multiple systems and organizational failures on the part of both the U.S. Army and KBR.⁴⁰

DCMA advised KBR of a Level III Corrective Action Request (CAR), DCMA's most stringent criticism reserved for extraordinary contractor failures, identifying serious deficiencies in KBR's inspection system.⁴¹

KBR's poor rating in this instance lowered the evaluation of its past performance during the “best value” competition for LOGCAP IV task orders in Afghanistan and was a factor in its loss of that award.

40. Department of Defense IG Report, “Review of Electrocution Deaths in Iraq: Part I - Electrocution of Staff Sergeant Ryan D. Maseth, U.S. Army,” January 24, 2009, i-iv.

41. DCMA, “Level III Corrective Action Request (CAR) HQ-08-LOGCAP-QA-001-LIII,” September 11, 2008, 2.

Contingency-contract fraud undermines defense, diplomatic, and development missions

Fraud associated with federal government contracts in Iraq and Afghanistan has been widespread, especially at the beginning of these conflicts when oversight was weak and internal controls nonexistent.

Fraud includes such activities as bribery, gratuities, kickbacks, and conflicts of interest, as well as false claims and statements, cost/labor mischarging, bid rigging, and undelivered, defective, and counterfeit products. Fraud undermines programs, diverts money, and undermines public confidence in the U.S. government's fiduciary duty to spend taxpayer dollars wisely.

The Commission estimates that 5 percent to 9 percent of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud.

The Commission's estimate of a 5 percent to 9 percent fraud

rate would indicate that between \$10.3 billion and \$18.5 billion of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud. This estimate is consistent with the estimate of the Association of Certified Fraud Examiners, which has reported that 7 percent of commercial revenue is lost to fraud.⁴²



Shipping containers, Bagram Airfield, Afghanistan. (Commission photo)

The Defense Criminal Investigative Service (DCIS) has investigated a total of 500 cases involving 1,503 subjects for fraudulent activities associated with overseas contingency operations in Iraq and Afghanistan.

As of June 1, 2011, 251 cases were still open. The table below shows the number of cases related to each type of fraud.

Table 7. Number of open cases by type of fraud

Type of case	Number of open cases
Public corruption	124
Procurement fraud	91
Theft and technology protection	28
Miscellaneous	8
Total open cases	251
Percent of total cases still open	51 percent

Source: DCIS Headquarters, OCO-JOC Program, International Operations Directorate Report, "Overseas Contingency Operations (OCO) Monthly Statistics Report," June 1, 2011, 6.

There is a direct relationship between the level of vulnerability to fraud and the phase of war, type of program, and type of contract. For example, contracts supporting large troop movements, programs requiring large cash payments, and poorly written, undefinitized, or poorly supervised cost-reimbursement-type contracts are especially vulnerable.

In Iraq and Afghanistan, bribery and kickbacks are a way of doing business. Despite this, contracting officers must quickly select and manage foreign contractors in Iraq and Afghanistan, many of whom have no prior experience in working for the U.S. government.

The International Contract Corruption Task Force (ICCTF), which is composed of nine U.S. criminal investigative organizations, told the Commission in June 2011 that its members have opened 876 cases related to wartime contracting. These cases include public corruption, procurement fraud, theft and technology protection, and other categories of fraudulent activities.

Few cases of wartime-contracting fraud are actually prosecuted.

The sheer number of contracts for Iraq and Afghanistan points to a high potential for fraud. However, of the 332 cases that the task force reported as being closed, the Department of Justice told the Commission that it charged only 150 individuals and companies. Few cases of wartime-contracting fraud are actually prosecuted. Many of the cases are closed for a variety of reasons including a lack of evidence, the difficulty of investigating them, and the cost of prosecution.

Abuses in contingency contracting undermine the United States' reputation abroad

Contingency-contractor abuse of authority or position involves decisions made for personal financial gain, or gains by an immediate or close family member or business associate. Abuse does not necessarily involve fraud or the violation of law. But trafficking in persons does violate U.S. law and regulations.

U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit.⁴³ Their actions bring discredit to the United States and act as a barrier to building good diplomatic relations.

The globalization of the world economy has spurred the movement of people across borders, legally and illegally, especially from poorer countries, to fill low-skill jobs in support of the U.S. contingencies in Iraq and Afghanistan. Exploitation includes forced labor, slavery, and sexual exploitation.⁴⁴ Findings from one of the Commission's trips to Iraq in April 2009 include:

- A Ugandan security guard working for Triple Canopy at Forward Operating Base Delta committed suicide by shooting himself in the head. The guards at this base were often ill-equipped and without basic cold-weather gear such as gloves.
- Contractors withheld pay from third-country nationals until their contract term was completed, thereby preventing them from voluntarily returning to their homes of record.

43. Congressional Research Service Report RL34317, "Trafficking in Persons: U.S. Policy and Issues for Congress," August 4, 2010, 9.

44. United Nations Convention against Transnational Organized Crime and the Protocols Thereto, "Annex 11: Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime," Article 3a, 2004.

- Though providing a power generator for guard towers was required in one of the security contracts, there was no requirement to ensure they were operable, and they actually sat idle during the most frigid weather.
- The third-country national guards worked unusually long tours, sometimes 12-hour shifts and 72-hour work weeks.
- The SABRE International prime contractor paid the Ugandan guards an average of \$700 per month, but the government paid SABRE \$1,700 per month for each guard. This \$1,000 difference exceeds even the most generous indirect contract costs.
- SABRE did not provide many of the third-country nationals with the 30-day vacation they were promised. The base-contracting officer's representatives said they had no one with experience to consult on these labor-related matters. There was no community-of-interest on the secure portal where they could communicate, and no recurring telecommunication with the installation-security program stakeholders.

Kabul-to-Kandahar
road construction,
2003. (USAID photo)



The Commission learned of a number of other cases of exploitation during a trip to Afghanistan in August 2010:

- Third-country nationals were lured with promises of work in Kuwait at good wages, and upon arrival were routed to Afghanistan and paid wages lower than promised.
- Numerous Philippine nationals arrived at Kandahar Air Field, but only two had jobs lined up. Others stayed on the military base looking for work. The air field commander told the Commission that when he first arrived, “a couple thousand” unauthorized third-country nationals were on base.
- Living conditions were substandard for third-country nationals at Warrior Village at Bagram Air Field.
- Third-country nationals at Forward Operating Base Delaram II complained of poor living conditions and unfair pay provided by DynCorp’s subcontractor, Renaissance.

Root causes of contingency-contract waste, fraud, and abuse persist

After 10 years of contingency contracting in Iraq and Afghanistan, the root causes of waste, fraud, and abuse persist. These existed well before the contingency-contracting process began and only worsened as it progressed.

After 10 years of contingency contracting in Iraq and Afghanistan, the root causes of waste, fraud, and abuse persist.

The Commission’s observations of the contingency-contracting function revealed significant shortcomings in organizational leadership and alignment, management of human resources, application and enforcement of policies and procedures, management of budgets and resources, and management of knowledge and information.

These interrelated causes of the recurring contingency-contracting problems were discussed in Chapter 2, and will be further developed in Chapters 4, 5, 6, and 7.

