

PROCUREMENT ETHICS: HAVE WE RESOLVED THE ARMY'S EXPEDITIONARY CONTRACTING PROBLEMS?

BY

LIEUTENANT COLONEL ANTONIO BROWN
United States Army

DISTRIBUTION STATEMENT A:

Approved for Public Release.
Distribution is Unlimited.

USAWC CLASS OF 2011

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.



U.S. Army War College, Carlisle Barracks, PA 17013-5050

The U.S. Army War College is accredited by the Commission on Higher Education of the Middle State Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

REPORT DOCUMENTATION PAGE

Form Approved
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.**

1. REPORT DATE (DD-MM-YYYY) 11-03-2011		2. REPORT TYPE Strategy Research Project		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Procurement Ethics: Have We Resolved the Army's Expeditionary Contracting Problems?				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Lieutenant Colonel Antonio Brown				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Dr. James E. Gordon Department of Strategy, Planning, and Operations				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT The United States Army discovered numerous occurrences of unethical behavior by contracting officials and contractors while providing contracting support in Kuwait, Iraq, and Afghanistan. The number of substantiated cases through the International Contract Corruption Task Force was astounding. As a result, the credibility of the Army and the contracting workforce took a devastating blow. The Secretary of the Army established an independent commission under the leadership of Dr. Jacques S. Gansler to review lessons learned and provide recommendations to establish the future of expeditionary contracting operations. The Army has aggressively implemented many of the Gansler Commission recommendations; but have we taken adequate measures to mitigate the procurement fraud issues? This paper reviews expeditionary contracting operations and provide additional recommendations toward the future success of expeditionary contracting. Once implemented, the US Army will become better stewards of the nation's financial resources and restore the public's confidence in our ability to responsibly conduct contracting operations.					
15. SUBJECT TERMS Acquisition, Fraud, Gansler Commission					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UNLIMITED	18. NUMBER OF PAGES 30	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code)

USAWC STRATEGY RESEARCH PROJECT

**PROCUREMENT ETHICS: HAVE WE RESOLVED THE ARMY'S
EXPEDITIONARY CONTRACTING PROBLEMS?**

by

Lieutenant Colonel Antonio Brown
United States Army

Dr. James E. Gordon
Project Adviser

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

ABSTRACT

AUTHOR: Lieutenant Colonel Antonio Brown

TITLE: Procurement Ethics: Have We Resolved the Army's Expeditionary Contracting Problems?

FORMAT: Strategy Research Project

DATE: 11 March 2011 **WORD COUNT:** 5,888 **PAGES:** 30

KEY TERMS: Acquisition, Fraud, Gansler Commission

CLASSIFICATION: Unclassified

The United States Army discovered numerous occurrences of unethical behavior by contracting officials and contractors while providing contracting support in Kuwait, Iraq, and Afghanistan. The number of substantiated cases through the International Contract Corruption Task Force was astounding. As a result, the credibility of the Army and the contracting workforce took a devastating blow. The Secretary of the Army established an independent commission under the leadership of Dr. Jacques S. Gansler to review lessons learned and provide recommendations to establish the future of expeditionary contracting operations. The Army has aggressively implemented many of the Gansler Commission recommendations; but have we taken adequate measures to mitigate the procurement fraud issues? This paper reviews expeditionary contracting operations and provide additional recommendations toward the future success of expeditionary contracting. Once implemented, the US Army will become better stewards of the nation's financial resources and restore the public's confidence in our ability to responsibly conduct contracting operations.

PROCUREMENT ETHICS: HAVE WE RESOLVED THE ARMY'S EXPEDITIONARY CONTRACTING PROBLEMS?

The United States Army discovered numerous occurrences of unethical behavior by contracting officials and contractors while providing expeditionary contracting support in Kuwait, Iraq, and Afghanistan. The number of substantiated cases through the International Contract Corruption Task Force was astounding. As a result, the Army and the contracting workforce lost the credibility, trust and confidence of our tax payers and elected officials. The Secretary of the Army established an independent commission under the leadership of Dr. Jacques S. Gansler to review lessons learned and provide recommendations to establish the future of expeditionary contracting operations. Although the Army aggressively implemented many of the Gansler Commission recommendations; have adequate measures been taken to mitigate the procurement fraud issues? To answer this question, this paper conducts a review of expeditionary contracting operations, discusses the implementation of Gansler Commission recommendations, and provides additional recommendations for future success during expeditionary contracting operations. Once all recommendations are implemented, the US Army will become better stewards of the nation's financial resources and restore the public's confidence in our ability to responsibly conduct contracting operations.

With numerous issues concerning expeditionary contracting operations, the easy answer would be to eliminate contractors on the battlefield altogether. Eliminating our dependence on contractors would not be an easy task. This paper; therefore, starts

with a discussion of the history of our use of contractors, the requirement for contractors on the battlefield, and the significant contributions of contractors on the battlefield.

Contractors on the Battlefield

The use of contractors on the battlefield to support our armed forces did not begin with contingency operations in Bosnia, Iraq and Afghanistan. Civilian contractors have provided a wide array of essential goods and services to military personnel operating both in garrison and in field since the Revolutionary War.¹ The role of and need for contractor support, however, began to expand greatly during the war in Vietnam² and has dramatically increased during the War on Terror.³ This amplified reliance on contractor support in contingency operations expanded significantly during the post-Cold War era. Some analysts credit post-Cold War reductions in the size of military forces, increases in the operations and missions undertaken by the military, and increased complexity and sophistication of new weapon systems as the major factors leading to our increased reliance on contractors.⁴

The increased reliance is reflected in the number of contractors on the battlefield. Up to the Vietnam War, the primary use of contractors in wartime was for manufacturing weapons and logistics materials. During Vietnam, however, the use of contractors began to change. Not only did they support the war effort, but they also deployed to the theater to provide a variety of services to the military.⁵ As troop reductions were implemented in anticipation of a safer post-Cold War era, numerous emergencies and small-scale conflicts led to more frequent U.S. troop deployments than there were in the 1980s. The 1985 Defense Appropriation Law required the Army to establish a contingency contracting capability to support force deployment.⁶ The need for expeditionary contracting was recognized as a lesson learned from Vietnam, therefore,

the Pentagon attempted to streamline the expeditionary contracting process by establishing and implementing the Logistics Civil Augmentation Program (LOGCAP) - laying the groundwork for expanded deployment of contractors for logistics support.⁷ The first centralized umbrella contract for LOGCAP support was awarded to Brown and Root Services (now Kellogg, Brown and Root – KBR).⁸

Of course the LOGCAP contractor is not the only type of contractor used on the battlefield. Contractor support is categorized by the type of support they provide on the battlefield and by what type of contracting organization has contracting authority over them. Battlefield contractors are generally referred to as external support contractors, system contractors, or theater support contractors.⁹

External support contractors provide support through contracts typically awarded by the US Army Material Command (USAMC) or the Army Corps of Engineers to provide a variety of combat and combat service support to deployed forces. The contracts are typically awarded prior to expeditionary operations and support is provided by a combination of US, local national and third country nationals. The LOGCAP contract is an example of an external support contract.¹⁰ System contractors provide support through contracts typically awarded before expeditionary operations by the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)) program executive officer (PEO)/program manager (PM) offices and USAMC's Simulations, Training and Instrumentation Command (STICOM). These contractors provide support to newly or partially fielded vehicles, weapon systems, aircraft or command and control systems such as the Army Battle Command System (ABCS). Support is primarily provided by US citizens.¹¹ The final type of contractor providing

expeditionary support on the battlefield is the theater support contractor. Theater support contractors provide support primarily through contracts awarded from the mission area by contracting officers serving under the direct contracting authority of the principal assistant responsible for contracting (PARC) servicing a particular geographical region. Theater support contractors are an expeditionary source to meet the immediate needs of operational commanders through local commercial sources to provide goods, services, and minor construction.¹² Theater support contracts are the type of contracts most commonly associated with expeditionary contracting and will be the primary focus of this paper for issues and solutions.

The use of contractors on the battlefield, particularly theater support contractors, is advantageous to theater planners where countries impose a force cap limiting the number of military personnel allowed. Since contractors are not included in most force caps, their utilization in the place of military personnel significantly increases our ability to meet requirements typically achieved through military personnel. Contractors' ability to perform noncombat duties is also advantageous to operational commanders in terms of freeing up uniformed military personnel to project combat power.¹³ In addition to streamlining the procurement process through locally purchased commodities and services, the utilization of theater support contractors also meets socio-economic initiatives by enhancing financial opportunities of local companies and generating income for the local citizens.

Roles and Responsibilities of Government Personnel

Contractors have become so interwoven with US forces during expeditionary operations that it has become difficult to imagine operating without them. Even though contractors operate without the direct supervision of military personnel, it would be

unwise to permit them to self certify compliance with contract terms and conditions. The government has specific roles and responsibilities for policy makers, expeditionary contracting officials, and the requiring activity to serve as a system of checks and balances.

The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget plays a central role in shaping the policies and practices federal agencies use to acquire the goods and services they need to carry out their responsibilities. OFPP was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations and procedures and to promote efficiency and effectiveness within the acquisition processes.¹⁴ OFPP's statutory authorities and responsibilities are set forth in the Office of Federal Procurement Policy Act, 41 U.S.C. 401, et seq. OFPP's primary responsibilities include overseeing the development of acquisition regulations, formulating and coordinating acquisition legislation, leading the activities of the Chief Acquisition Officers Council, managing the government-wide procurement data system, directing the activities of the Federal Acquisition Institute, promoting maximum participation of small businesses in government contracting, and chairing and supporting the Cost Accounting Standards Board.¹⁵

Expeditionary contracting officials such as contracting officers and contracting specialists utilize policies established by OFPP to perform their duties and responsibilities to support contingency operations. These policies allow a head of contracting activity (HCA) or a PARC to appoint, in writing, a contracting officer to legally obligate funds on behalf of the US government.¹⁶ Contracting officers are also responsible for the oversight of contract management functions to ensure contractors

perform in accordance with contract terms and conditions. Additionally, contracting officers train and appoint contracting officer representatives to assist with contract management functions.

The requiring activity, as the organization or agency that originates the specific requirement for support, is the principal organization responsible for defining the requirements for contractor support.¹⁷ Once the decision is made to utilize contractor support, the requiring activity is responsible for developing the statement of work or performance work statement to identify the requirement and nominating a contracting officer representative to assist the contracting officer with contract management functions. The requiring activity's contracting officer representative (COR) is responsible for interfacing with the contractor on a daily basis. This interface allows the contracting officer to monitor and direct the activities of the contractor within the scope of the contract to ensure the commander's requirements are met.¹⁸

Operational Army and Institutional Army Shortcomings

This overview of contractors on the battlefield coupled with the significant roles and responsibilities of expeditionary contracting officials and policy makers allows us to conclude that expeditionary contracting and contractors on the battlefield will remain key enablers in accomplishing strategic and operational objectives. With that being said, we must overcome the overarching expeditionary contracting problems that are significantly impacting strategic objectives. The problems began in the 1990s when the Army struggled with effectively transforming the contracting force structure from the post-Cold War era. These transformation issues included both Operational Army and Institutional Army shortcomings that had strategic implications.

Our Operational Army is expeditionary and engaged in an extended war. The success of our sustainment and security functions during the war is only possible through the use of contractors. Yet, the Operational Army has not fully realized the impact of contractors and the importance of their role in the contracting process.¹⁹ The evidence of this is poor requirements definition documents such as statements of work, performance work statements and commodity descriptions. Additionally, many view the responsibilities of the COR as an additional duty. Complex service requirements, especially those awarded through cost-reimbursement contracts, demand a robust and sophisticated contract oversight approach that cannot be accomplished by part-time representatives of the requiring activity. In other words, the Operational Army failed to make the required adjustments to prepare requiring activities to perform requirements generation and contract oversight functions.

Just as the Operational Army failed to prepare requiring activities, critical segments of the Institutional Army failed to adapt in order to enable responsive acquisitions and sustainment for expeditionary operations. The critical segments included financial management, civilian and military personnel, contracting and contract management, training and education, doctrine, regulations and processes. These key failures impede the Army acquisition system's performance and have significantly contributed to in-theater waste, fraud, and abuse by Army personnel.²⁰ In essence, the Institutional Army failed to anticipate, plan for, adapt, and adjust acquisition and program management to the needs of the Operational Army as it has been transformed, since the end of the Cold War, into an expeditionary force. The Institutional Army did not adjust to the challenges of providing timely, efficient and effective contracting support to

the force in Operation Iraqi Freedom even though more than half of the personnel in theater were contractor personnel.²¹ This essentially forced the Army to send a skeleton expeditionary contracting force into theater without the tools or resources necessary to adequately support the operational and tactical war fighters. The personnel placed in that position focused on accomplishing the mission under risky conditions. They used their limited knowledge, skills, resources, and strong dedication to mission accomplishment to get contracts awarded.

In addition to shortcomings in the Operational and Institutional Army, the expeditionary contracting force structure also provided an unstable foundation for inefficient expeditionary contracting operations. Expeditionary contracting has seen many structural changes since the end of the Cold War. During the mid-1990s, the majority of expeditionary contracting support was provided by inexperienced Contingency Contracting Officers (CCOs) assigned to an Army Service Component Command such as United States Army Central (ARCENT). In January 2002, the Secretary of the Army directed the establishment of the Army Contracting Agency to provide command and control of, among many other contracting operations, contingency contracting functions.²² In the spring of 2004, CCOs were notified that they would support Army transformation through an assignment in the new modular Brigade Combat Teams and Division staff sections.²³ In each of the previously described configurations, CCOs received their formal training through the Defense Acquisition University. Hands' on experience was primarily through peer support or trial and error. Very few senior contracting officials were available to provide supervision, mentorship and guidance to CCOs during exercises and contingency operations. On the surface,

the organizational structure and training plan appeared to be a viable roadmap to successful expeditionary contracting support. In many cases, however, the results were disastrous.

The primary operating environment for CCOs after 1999 was the U.S. Central Command (CENTCOM) Area of Operations (AOR). The CCOs were mostly involved in CENTCOM or ARCENT training exercises requiring contracting support. The expeditionary contracting mission expanded further after the Army deployed to Afghanistan for Operation Enduring Freedom. In 2003, the mission expanded more significantly with the start of Operation Iraqi Freedom. Expeditionary contracting personnel faced a workload expansion in excess of 600 percent while performing more complex actions than ever before. Yet, the number of Army civilian and military in the contracting workforce remained stagnant or declining.²⁴ In addition to the increased quantity and complexity of the expeditionary contracting workload, the inexperienced CCOs attempted to perform their duties without the benefit adequate supervision or mentors. Specifically, the post-Cold War force structure reductions eliminated all contracting general officer positions between 1991 and 1998.²⁵

Unethical Behavior During OEF and OIF

Typically, the number and level of general officers reflects the degree of importance of a military career field. With no general officers overseeing operations in Kuwait, Iraq, and Afghanistan, one would have expected expeditionary contracting operations to be a total disaster. Although there were no general officers in the early days of OEF and OIF, most contracting officials and contractors performed their duties with honor and integrity. On the other hand, there were numerous occurrences of

unethical behavior by contracting officials and contractors while providing support in Kuwait, Iraq, and Afghanistan.

In November 2004, the Federal Bureau of Investigations established the International Contract Corruption Task Force (ICCTF) with the Department of Defense Inspector General – Defense Criminal Investigative Service, Department of State, Office of the Inspector General, U.S. Army Criminal Investigative Division – Major Procurement Fraud Unit, and other agencies.²⁶ The ICCTF investigated procurement fraud allegations in the CENTCOM AOR and the number of substantiated cases was astounding. The September 2009 Department of Defense Inspector General Semiannual Report to the Congress of the United States of America identified a number of bribery, conspiracy, money laundering, and wire fraud violations committed by contracting officials, contracting officer representatives, and contractors. One example is the case of a former Army contracting official who pled guilty to steering service contracts to two trucking companies based in Afghanistan. The contracting official received more than \$87,000 in bribes from the two companies in exchange for assigning them additional days of trucking services at the U.S. Army's Bagram Airfield.²⁷ The second example is a contract employee that was sentenced to 84 months imprisonment for bribery of a public official, conspiracy, false statements, and false claims regarding fuel receipts from Afghan truck drivers.²⁸ A third example is the case of two dual Afghan/U.S. citizens who pled guilty in connection with a scheme to offer \$1 million in bribes to a U.S. Army contracting official to influence the award of a road construction contract in Afghanistan. The two individuals allegedly offered a bribe of \$1 million to the Contracting Officer Representative in return for the award of the

Commander's Emergency Response Program project.²⁹ The largest and perhaps most widely publicized case of corruption involved Major John L. Cockerham, his wife and his sister. While serving as a CCO at Camp Arifjan Kuwait, Cockerham accepted bribes from contractors to award contracts in their favor. Cockerham received at least \$9.6 million and, according to his hand-written ledger, expected to receive another \$5.4 million from at least eight other contractors for his services. Cockerham eventually pled guilty to bribery, conspiracy, and money laundering.³⁰

The Gansler Commission Development and Findings

As the number of fraud cases continued to grow, the Secretary of the Army established an independent commission to examine the causes of unethical behavior in CENTCOM AOR contracting. Secretary Peter Geren named Dr. Jacques S. Gansler chairman of the commission in September 2007. Dr. Gansler was a former Undersecretary for Defense for Acquisition, Technology and Logistics.³¹ This high-powered commission also included David J. Berteau, former Principal Deputy Assistant Secretary of Defense (Production and Logistics); David M. Maddox, General, U.S. Army (Retired), Commander in Chief, U.S. Army Europe; David R. Oliver, Jr., Rear Admiral, U.S. Navy (Retired), former Director, Office of Management and Budget, Coalition Provisional Authority, Iraq; Leon E. Salomon, General, U.S. Army (Retired), former Commander, U.S. Army Materiel Command; and George T. Singley III, former Deputy Director, Defense Research and Engineering.³² Dr. Gansler's primary objectives were to assess failures, review lessons learned and provide recommendations to establish the future of expeditionary contracting operations.³³ Dr. Gansler's Commission determined that a number of institutional failures existed. This paper discusses the

failures of personnel shortages, lack of senior leader oversight, and lack of contracting expertise to perform the mission.

One of the more significant issues discovered by the Gansler Commission was the shortage of personnel. At the end of the Cold War, pressure from Congress to cut budgets and reduce the urgency to purchase high-tech equipment resulted in significant cuts in the acquisition workforce.³⁴ In 2006, only three percent of Army contracting personnel were active duty military.³⁵ During this same timeframe Army contracting personnel faced over a 600 percent increase in workload while performing far more complex contracting actions.³⁶

A second significant issue was lack of senior leadership among the military contracting workforce. Between 1991 and 1998, all five Army General Officer positions requiring contracting expertise were eliminated. The Gansler Commission commented that, “the Army needs General Officers who know contracting. The Army needs General Officers who can serve as functional advocates for expeditionary operations and avoid the problems that are being experienced in Iraq, Afghanistan, and Kuwait. It cannot be considered a coincidence that of 78 fraud investigations [as of 1 November 2007], 77 involved Army personnel.”³⁷ The number and level of Generals associated with a discipline reflects its importance. With no contracting Generals between 1998 and 2006, the Army exchanged cost savings for risk in expeditionary contracting operations which clearly showed a lack of understanding of the importance of expeditionary contracting.³⁸

The third significant issue is lack of adequate training and experience. While formal Defense Acquisition University training was the acceptable standard, many

military contracting personnel were assigned to a contingency contracting position as their first assignment. As stated by MG Darryl Scott, former Commander of the Joint Contracting Command – Iraq/Afghanistan (JCC-I/A), “This is the Super Bowl, not a scrimmage.” CCOs should learn the fundamentals under the supervision of a seasoned contracting official who can certify their preparedness for the challenging, fast-paced demands of expeditionary contracting operations.³⁹ It was also suggested that military contracting personnel should start their contracting career much earlier in their careers. Unlike the Air Force that allows officers and enlisted personnel to join the contracting workforce at the beginning of their careers, Army military contracting personnel entered the career field as field-grade officers or senior non-commissioned officers.⁴⁰

The specific findings of the Commission can be grouped into three categories: Operational Army findings, Institutional Army findings, and policy and force structure findings. The principal finding of the Operational Army is that the expeditionary focus of the Operational Army does not recognize expeditionary contracting as a core capability of the Army. As previously stated, the Operational Army does not fully recognize the impact of contractors in expeditionary operations and mission success. Instead, expeditionary contracting is treated as an operational and institutional side issue.⁴¹ The Operational Army must realize that contracting is not limited to the process of drafting and executing contracts in a contracting activity. It involves everything from a war fighter identifying and defining an operational need, completing the pre-award and contract award processes, receiving delivery and acceptance of the supplies or services from the contractor, and closing the loop with contract closeout.⁴² The Operational Army, or war fighter, plays an extremely large role in contracting. This is especially important in the

contract management process of service contracts. Too often, commanders do not fully understand the impact when nominating a COR for service contracts. CORs are an essential part of contract management. Complex service contracts may require full-time oversight; however, CORs are typically assigned the responsibilities as an additional duty with little to no technical expertise in the service they monitor. Quite often a COR is a young Soldier who does not have any experience as a COR and is not viewed as a valuable contributor to the command's primary mission. ⁴³

The Institutional Army's critical segments of defining operational requirements, financial management, personnel, contracting and contract management, training and education, and doctrine, regulations and policies have not adapted to support responsive expeditionary operations.⁴⁴ Operational commanders and their staffs are not trained to fulfill their roles and responsibilities of the requirements generation process or the contract management process for service contracts. Although the Defense Acquisition University offers several training opportunities for members of the acquisition workforce, there is no requirement for operational commanders to receive training on the responsibilities in the contracting process. The significance of this is revealed in an analysis of the 96 Army personnel under investigation for contracting related fraud. The analysis shows that the significant majority of fraud actions were committed by persons with relatively little training or background in Government contracting. Of the 96 Army personnel targeted by CID, 78 were not trained contract professionals (i.e., contracting officers). They were either contracting officer representatives or perform other duties related to the contracting process such as comptrollers, quality assurance engineers, technical advisors, and

members of source selection boards. Typically these are individuals with little training in Government contracting and perform the contracting related duties as an additional duty in conjunction with their primary responsibilities.⁴⁵

In terms of personnel, the Army has excellent and dedicated people performing expeditionary contracting duties. They continue to excel while under staffed, overworked, under-trained and under-valued. Despite significant increases in workload and complexity since 1996, the number of civilian and military contracting workforce members remained stagnant or declined.⁴⁶ The senior leadership to manage expeditionary contracting operations disappeared with the elimination of all five Army General Officer positions in the contracting career field. Most Army military personnel assigned to perform expeditionary contracting duties do not have the needed skills and training when they arrive in-theater. According to a former JCC-I/A Commander, only 38 percent of the total Army Acquisition/Contracting Workforce in-theater is certified for the positions held.⁴⁷

The outdated Army civilian personnel policies were obstacles to compensating for the limited military experience by augmenting the expeditionary workforce with seasoned civilian professionals. The civilian personnel policies did not provide the authority to involuntarily deploy civilian personnel even though only three percent of the Army's contracting workforce was active duty military. Civilians considering a deployment to support expeditionary operations are restricted from receiving four benefits offered to military personnel. The first restriction is a pay cap. This is a self-imposed impediment intent on constraining congressional abuse by constraining the length and frequency of civil servant tours. The second restriction is tax free status.

Government civil servants do not qualify for favored tax treatment while deployed. This benefit is available to both military personnel and contractors. The third restriction is the inability to receive the Armed Forces Civilian Service Award (AFCSA). As a general rule, civilian personnel can receive the award when the Chairman of the Joint Chiefs of Staff approves the issuance of the Armed Forces Service Medal (AFSM) to military personnel. When DoD elected to award the global war on terrorism medal instead of the AFSM, the regulatory predicate for the AFCSM, it eliminated the opportunity for civilians to receive the award. The final restriction is long-term medical care for theater injuries. Civilians receive immediate care for injuries incurred in theater but they are not provided long-term care.⁴⁸

Gansler Commission Recommendations

The Commission reviewed each finding and provided the Secretary of the Army four overarching recommendations regarding expeditionary contracting personnel, revising the organizational structure, expeditionary contracting training and tools, and legislative, regulatory and policy changes. Each recommendation contains several subsidiary recommendations; however, this paper focuses on the recommendations providing the biggest impact to enhancing expeditionary contracting operations.

The first recommendation to enhance expeditionary contracting is to increase the stature, quantity, and career development of the Army's military and civilian contracting personnel. The Commission recommended five General Officer billets and one SES billet be authorized by Congress and specifically assigned to the Secretary of the Army for assignment to acquisition and contracting billets. The placement and responsibilities of each new flag officer billet is later explained in the recommendation addressing organizational structure. In addition to establishing senior contracting billets, the

Commission also recommended a 25 percent increase in the contracting workforce. This recommendation considered the Air Force and Marine Corps models to determine the number of military members and concluded with an overall ratio of 70/30 percent civilian to military personnel for the total Army Acquisition Force and an 80/20 percent ratio for the Contracting Corps. Of course this assumes legislative changes impacting civilian personnel that provide an incentive to volunteer for expeditionary operations. The Commission further recommended that Army officers and non-commissioned officers enter the contracting workforce field much earlier in their careers. Enlisted personnel should be assessed directly into the contracting career field while officers should be assigned to a combat branch for two or more years, capitalizing on the strength of company-level operational experience, before rotating to the contracting career field. Finally, the Commission recommended fostering an environment for civilian contracting personnel to participate in future expeditionary operations.

Restructuring organization and restoring responsibility to facilitate contracting and contract management in expeditionary and CONUS operations was the Commission's second overarching recommendation. The primary change was the recommendation to reorganize contracting organizations and functions under the command and control of an Army contracting command under the Army Materiel Command. The Commission recommended two subordinate commands to the Army Contracting Command – one managing expeditionary operations and one managing installation level contracting operations. As addressed in the recommendation for senior contracting personnel, the five General Officer billets and one additional SES billet provides growth potential for the contracting workforce and leadership in the

recommended organizational structure. The Commission recommended placing the General Officers in two in staff positions and three command billets. The Deputy for Contracting and Director of the Contracting Corps should be a Major General reporting to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology. The Army Contracting Command should be commanded by a Major General reporting to the Commanding General of the Army Materiel Command. The Expeditionary Contracting Command should be commanded by a Brigadier General reporting to the Commanding General of the Army Contracting Command. The Installation Contracting Command should be commanded by a Brigadier General reporting to the Commanding General of the Army Contracting Command. The Chief of Contracting in the Corps of Engineers should be a Brigadier General responsible for Corps of Engineer contracting operations with access to resources in the Army Contracting Command for reach back. The individual responsible for the accountability of DoD contracting policy, education, training and readiness should be a civilian executive reporting directly to the Undersecretary of Defense for Acquisition, Technology, and Logistics.

The Commission's third overarching recommendation was to provide the training and tools for overall enhancement of activities in expeditionary operations. Under the train as we fight principal, the Commission recommended we stress rapid acquisition, logistics, and contracting in expeditionary operations in training exercises. The intent of this recommendation is to train operational commanders on the important role contracting plays in expeditionary operations. Further, the training should also focus subordinate officers and non-commissioned officers on determining requirements,

translating those requirements into statements of work or performance work statements, then overseeing performance.

The final overarching recommendation was to obtain legislative, regulatory, and policy assistance to enable contracting effectiveness in expeditionary operations. The Commission recommended legislative changes to authorize five General Officer billets with fencing for contracting professionals and the 25 percent increase of the Army military and civilian contracting workforce. The most significant recommendation; however, was legislative and policy changes that would help recruit and retain civilian to work in expeditionary operations. This recommendation included an elimination of the pay cap, establishing tax-free status for Government civilians deployed to support OCONUS expeditionary operations, make the Armed Forces Civilian Service Medal available to DoD civilians involved in direct support of expeditionary operations, and allow long-term medical coverage as well as life insurance comparable to military personnel serving in expeditionary operations.

The report of structural weaknesses and organizational shortcomings in the Army's expeditionary acquisition and contracting system was accepted by Secretary Geren on 1 November 2007.⁴⁹ Effective implementation of all recommendations may take several years; however, training initiatives for the expeditionary contracting workforce have significantly increased. Also, personnel and organizational structure recommendations have been addressed and implemented by the Army. Most notably was standing up the Army Contracting Command and achieving the status of fully operational capable in October 2008. Until the military contracting workforce is capable of promoting a senior contracting officer into the Major General billet at the Army

Contracting Command, the command will remain under the leadership of a civilian executive serving as the Executive Director. Discussions for legislative changes to incentivize civilian personnel to participate in expeditionary operations are ongoing. One major legislative change made by the 111th Congress addressing Acquisition Reform was to insert a new chapter (Chapter 149 – Performance Management of the Defense Acquisition System) to Title 10 of the United States Code. This amendment requires the Secretary of Defense to regularly assess the performance of the defense acquisition system designed to ensure that all elements of the defense acquisition system are subject to regular performance assessments.⁵⁰

Additional Recommendations to Enhance Expeditionary Contracting

Now that we have discussed the expeditionary contracting environment, roles and responsibilities, issues, findings, recommendations and implementation one question remains – have we fixed the Army’s expeditionary contracting problems? Most of the issues have been addressed, resolved or on track to meet the desired end state. Additional shortcomings remain; however, that should be addressed immediately for a more effective transformation of the expeditionary contracting process. The issues are initiatives to enhance the training of inexperienced military contracting personnel, an enhanced screening process before acquisition corps assessment, recruiting and retaining military contracting workforce members, and formally training operational commanders and their staffs in the requirements generation process and contract oversight.

In order to fix expeditionary contracting problems, each member of the military contracting workforce should be paired with a senior contracting mentor to perform daily contracting duties until the military member receives level II certification in contracting.

The immediate increase of military contracting workforce members is a significant step towards building the bench for the future. The Army Logistics University – Huntsville has completed several curriculum changes to ensure newly assessed officers and senior non-commissioned officers are provided quality training to meet levels I and II certification standards in accordance with the Defense Acquisition Workforce Improvement Act. Once these individuals complete the training programs, they report to a contingency contracting team where there is no additional training program to ensure each military acquisition workforce member is matched with a seasoned contracting official for hands-on experience – a must to achieve the level of proficiency required to award and manage complex service contracts in an expeditionary environment.

In order to fix expeditionary contracting problems, the Army must increase measures to mitigate procurement fraud by screening for potential indicators while assessing contracting workforce applicants. The recent emphasis on procurement ethics and the enhanced training programs are great initiatives to mitigate fraud by members of the contracting workforce. This initiative can be improved by additional screening measures for military contracting workforce applicants. In coordination with the Department of Justice, the Army can analyze the profile of individuals guilty of procurement fraud to determine potential indicators of individuals who may be susceptible to fraud. Potential indicators may include high debt to income ratio, low credit score, and lavish lifestyle or apparently living above one's means.

In order to fix the expeditionary contracting problems, the Army must develop an aggressive recruiting and retention program to maintain a cadre of experienced personnel to perform in expeditionary operations. The military contracting force

structure changes yield promotion potential through Major General for officers and Sergeants Major for enlisted. This significantly increases the appeal of the expeditionary contracting career field to the pool of potential workforce applicants. Additionally, the contracting career field offers highly competitive command opportunities through the two-star level. The training, experience and professional certification in contracting makes military contracting workforce members extremely marketable for a second career as a civilian contracting workforce member or with a defense contractor. Retaining certified military contracting workforce members is a difficult task. The level of difficulty increases when the military member reaches retirement eligibility. To strengthen the contracting workforce it is in the Army's best interest to (1) retain quality military contracting workforce members to fill senior military billets and (2) recruit military workforce members into the civilian contracting career field based on their experience and professional certification.

In order to fix the expeditionary contracting problems, the Army must develop an aggressive training program for commanders and their staffs to understand their roles and responsibilities in the expeditionary contracting process. The Commission's recommendation to provide training and tools to commanders and their staffs under the train as we fight principal is an effective initiative. The intent is to stress rapid acquisition, logistics, and contracting in expeditionary operations in training exercises. This initiative; however, does not include a formal training program for commanders or staff members on their roles and responsibilities in the requirements generation process, how to write statements of work, how to write performance work statements, or how to provide oversight to contractors providing service contracts during expeditionary

operations. This can be achieved by adding the training to professional military schools such as the Army War College, pre-command courses, officer basic and advanced courses, non-commissioned officer basic and advanced courses, and the Intermediate Level Education Course.

Conclusion

In conclusion, the Army's expeditionary contracting problems have damaged our image with the American public. Major newspapers such as The Washington Post, The New York Times and USA Today have each published numerous articles regarding unethical behavior among the contracting workforce and contractors supporting expeditionary operations. As a result, we are not viewed as fiscally responsible custodians of the nation's financial resources. The good news is that the Army is well on its way to resolving the expeditionary contracting problems through implementing the Gansler Commission's recommendations. Following through with the Commission's recommendations along with hands-on training, an enhanced screening process, an aggressive recruitment and retention program, and formal training for operational commanders and staffs will further enhance the probability of eliminating the expeditionary contracting problems. These initiatives will mitigate the possibility of overpaying contractors for goods and services, paying for poor services or services not performed, and unfair procurement practices. The end state will be an increased capability of filling the war fighter's capability gaps for goods and services as well as restore the public's trust in the Army's contracting workforce during expeditionary operations.

Endnotes

¹ Moshe Schwartz, *Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis*, Congressional Research Service Report for Congress, (Washington, DC: U.S. Congress, July 2, 2010).

² James J. McCullough & Abram J. Pafford, Contractors on the Battlefield: Emerging Issues for Contractor Support in Combat & Contingency Operations, in BRIEFING PAPERS, June 2002, at 1 (West 2002)

³ Richard Fontaine and John Nagl, "Contractors in American Conflicts: Adapting to a New Reality", Center for a New American Security, Washington DC, December 2009, 5.

⁴ Stephen M. Blizzard, "Increasing Reliance on Contractors on the Battlefield; How Do We Keep from Crossing the Line", *Air Force Journal of Logistics* (Spring 2004).

⁵ Deborah D. Avant, "The Privatization of Security: Lessons Learned from Iraq", lecture abstract, W. W. Keen Butcher Lecture Series on Military Affairs, October 7, 2005.

⁶ Ibid.

⁷ Fontaine and Nagl, "Contractors in American Conflicts", 6.

⁸ Avant, "The Privatization of Security".

⁹ U.S. Department of the Army, *Contractors on the Battlefield*, Field Manual 3-100.21 (100-21), (Washington DC: U.S. Department of the Army, January 2003), 1-2.

¹⁰ Ibid., 1-3.

¹¹ Ibid.

¹² Ibid.

¹³ Blizzard, "Increasing Reliance".

¹⁴ The White House Home Page, http://www.whitehouse.gov/omb/procurement_default, (accessed December 9, 2010).

¹⁵ Ibid.

¹⁶ U.S. Department of the Army, *Contractors on the Battlefield*, 1-5.

¹⁷ Ibid., 3-3.

¹⁸ Ibid., 1-8.

¹⁹ U.S. Department of the Army, *Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations* (Washington, DC: U.S. Department of the Army, October 31, 2007), 1.

²⁰ Ibid.

²¹ Ibid., 8.

²² Suellen D. Jeffress, "The U.S. Army Contracting Agency," *Army AL&T Magazine*, January-February 2003, 15.

²³ Greg Franks & Thomas Lippert, "Army Transformation and Contingency Contracting With the 101st Airborne (ABN) Air Assault Division (AAD)," *Army AL&T Magazine*, October-December 2007, 80.

²⁴ U.S. Department of the Army, *Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations*, 4.

²⁵ Ibid., 3.

²⁶ Kelvin L. Perkins, "Statement Before the Commission on Wartime Contracting in Iraq and Afghanistan," May 24, 2010, linked from *The Federal Bureau of Investigation Home Page* at "Testimony," <http://www.fbi.gov/news/testimony/the-fbi2019s-efforts-to-combat-international-contract-corruption> (accessed October 14, 2010).

²⁷ U.S. Department of Defense Office of the Inspector General, *Semiannual Report to the Congress* (Washington, DC: U.S. Department of Defense Office of the Inspector General, April 1, 2009 – September 30, 2009), 30.

²⁸ Ibid.

²⁹ Ibid, 31.

³⁰ The Washington Post, U.S. Uncovers Iraq Bribe Case, August 22, 2007.

³¹ Department of the Army, U.S. Army News Release, *Army Accepts Gansler Commission Report on Contracting; Commits to Action*, November 1, 2007.

³² U.S. Department of the Army, *Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations*.

³³ Ibid., 1.

³⁴ Ibid., 14.

³⁵ Ibid., 91.

³⁶ Ibid., 4.

³⁷ Ibid., 33.

³⁸ Ibid., 4.

³⁹ Ibid., 6.

⁴⁰ Ibid., 5.

⁴¹ Ibid., 90-91.

⁴² Ibid., 21.

⁴³ Ibid., 43.

⁴⁴ Ibid., 90.

⁴⁵ Ibid., 23.

⁴⁶ Ibid., 91.

⁴⁷ Ibid., 28.

⁴⁸ Ibid., 36.

⁴⁹ U.S. Department of the Army, (November 1, 2007), *Army Accepts Gansler Commission Report on Contracting; Commits to Action* [U.S. Army News Release].

⁵⁰ U.S. House Resolution 5013, 111th Congress of the United States of America, Washington DC, April 23, 2010, 5.