

FRAUD, WASTE, AND ABUSE AND CONTINGENCY CONTRACTS:  
A CRITICAL ASSESSMENT OF DOD AND ARMY PROCESSES

A thesis presented to the Faculty of the U.S. Army  
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MASTER OF MILITARY ART AND SCIENCE  
General Studies

by

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

## ABSTRACT

FRAUD, WASTE, AND ABUSE AND CONTINGENCY CONTRACTS:  
A CRITICAL ASSESSMENT OF DOD AND ARMY PROCESSES by MAJ Michael S.  
Mullins, 100 pages

The thesis addresses the fraud, waste, and abuse (FWA) issues associated with contingency contracts that DoD has faced for the last nine years. The topic was chosen because of the potential impact it could have on the national debt, military pay freezes, and retirement for military service members.

My primary research question is what programs or processes has DoD initiated to mitigate FWA within government contracting, and, have any initiatives been effective?

After nine years of conflict the nation now faces its biggest economic crisis in U.S. history with a national deficit at \$1.64 trillion.

By 2009, Congress has appropriated nearly \$888 billion to pay for U.S operations in Iraq and Afghanistan. The Pentagon estimated that \$10 billion was misspent or lost in related contracts valued at \$57 billion.

The thesis cites several federal agencies who identified systemic contributing factors to FWA in contracting. These areas include: (1) sustained leadership, (2) capable acquisition force, (3) adequate pricing, (4) appropriate contracting approaches and techniques, and (5) sufficient contract surveillance.

The study further identifies DoD's 2008-2010 initiatives to combat the systemic issues including restructuring the Army Material Command to establish a subordinate Army Contracting Command.

In conclusion, the findings in this report indicate that DoD has implemented effective changes across the Army's DOTMLP domains in order to combat, deter, and reduce FWA. However, FWA continues to stain military contracts.

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## ACRONYMS

CERP	Commander's Emergency Response Program
COR	Contracting Officer's Representative
CWC	Commission on Wartime Contracting
DCAA	Defense Contract Audit Agency
DOD	Department of Defense
DOTMLPF	Doctrine, Organization, Training, Material, Leadership and Education, Personnel, Facilities
DSB	Defense Science Board
FAR	Federal Acquisition Regulation
GAO	US Government Accountability Office
IG	Inspector General
KBR	Kellogg, Brown and Root
LOGCAP	Logistics Civil Augmentation Program
MAAWS	Money as a Weapon System
OSA (ALT)	Organization of the Assistant Secretary of the Army (Acquisition, Logistics and Technology)
OSD	Office of the Secretary of Defense
SIGAR	Special Inspector General for Afghanistan Reconstruction
SIGIR	Special Inspector General for Iraq Reconstruction
TARP	Troubled Asset Relief Program



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## CHAPTER 1

### INTRODUCTION

#### Background

As a Soldier who recently returned from a deployment from Iraq in 2010, I was deeply concerned about talks of federal pay freezes and the possibility of military retirements deferred past the normal 20 years (Maze 2011). As a professional Soldier with more than 20 years of military service and having served multiple deployments, I found it unbelievable that the Congressional Debit Task Force would entertain such ideas. However, given the fact that the nation was facing its worst economic crisis since the Great Depression, one should expect to see such extreme measures (DiStasio 2011).

Having personally observed what the Department of Defense (DoD) was paying for in contracts to support the deployments was more alarming. Specifically, I witnessed Soldiers who departed the theater of operations only to return months later as a contractor earning triple the amount of his Soldier's pay while performing the same job or completing the same task for the government. Coincidentally, upon my return to the U.S., the subcommittee for Contract Oversight was holding a public Senate hearing on national television. The subcommittee was investigating the office of the Special Inspector General for Afghanistan (SIGAR). Senator Claire McCaskill (D-MO) grilled Major General Arnold Fields, the Special Inspector General for Afghanistan, for inappropriately hiring a contractor for approximately \$45,000 a month (McCaskill, 2010). Ironically, Congress created SIGAR to protect American taxpayer's money by providing oversight for the 7,000 contracts that were currently in theater (McCaskill 2010). The example may be unusual, but the use of contracts and contractors has increased precipitously when

compared to other conflicts. Even more disconcerting is the U.S. contractor's average annual salary of approximately \$208,000 (Commission on Wartime Contracting 2011, 226).

Other troubling accounts regarding contracts and contractors were equally as disturbing. Multiple investigations concerning FWA were brought to the surface when companies such as Halliburton's subsidiary, Kellogg, Brown, and Root (KBR), were cited for contract misconduct. Anthony J. Martin, a KBR contractor, pled guilty in 2008 to a "kickback scheme" which awarded \$13 million in contracts to a company in Kuwait. In exchange for his actions Martin received \$200,000. In 2009, Phillips and Cohen LLP, attorneys at law, cited a historical record for "whistleblowers" against contractor fraud waste and abuse. "We have achieved a record settlement in 2009 with one of our qui tam cases: Northrop and Grumman paid \$325 million to settle a . . . lawsuit . . . that involved military satellites and classified programs. It was the largest settlement ever paid involving defense contract fraud. The whistleblower received \$48 million" (Phillips and Cohen 2009). The idea that we could recover a portion of the nation's debt from the savings gained through effective and efficient use of the government contracts instead of curtailing or freezing federal pay inspired me to critically assess DoD and the Army contracting processes.

The significant costs associated with the DoD's involvement in Afghanistan and Iraq for the last nine years, has contributed to the U.S. government's financial crisis. Even more disconcerting is the amount of the nation's discretionary income lost to FWA during these two wars. Given the discretionary budget and the mandated military cap restriction within DoD, it is not surprising for one to see an increase in a contracted

civilian workforce in order to sustain the prolonged engagements in Afghanistan and Iraq.

On the other hand, the increasing use of contracts and contracted personnel inherently increases FWA opportunities within the DoD procurement process. DoD is the only U.S. governmental organization that directly impacts the national budget through its military operations and other world-wide deployments. DoD's budget accounts for the largest portion of the federal budget's discretionary income. From a budget of \$499.4 billion in 2006, DoD's spending increased to \$583 billion in 2008 (Higgs 2007, 1). From 2006 to 2010, the DoD's budget rose by 33 percent to \$685.1 billion which accounted for the nation's largest portion of discretionary spending.

Out of this budget, DoD's Procurement component is third only to the Operations and Maintenance and Personnel components to spending. If one were to add military construction, family housing and research and development components to procurement, no other component within the military would outspend procurement. The DoD procurement budget for 2010 alone was more than \$134 billion (DiStasio 2011, 27). Figure 1 depicts the annual increase of the DoD budget in billions of dollars. The Procurement Department is highlighted to allow the reader to focus in on the substantial increase to indicate that DoD has been buying more and that the trend has continued for years. While DoD has realized its strategic, operational and tactical responsibilities, it also has a fiscal responsibility to the people of the United States. Currently, \$31 to \$60 billion has been lost in contract FWA. This lost money is passed on to the federal government and ultimately to American taxpayers (Commission on Wartime Contracting 2011, 1).

Department of Defense Budget Authority - Current Dollars (\$ billions)									
Fiscal Year	FY 95	FY 00	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 011
Military Personnel	71.6	73.8	121.3	128.5	131.8	139	149.3	156.4	158.8
Operations and Maintenance	93.7	108.7	179.2	213.5	240.3	256.2	271.6	297	317.9
Procurement	4.6	55	96.6	105.4	133.8	165	135.4	134.5	137.6
Research, Development, Test	34.5	38.7	68.8	72.9	77.5	79.6	80	80.6	76.8
Military Construction	5.4	5.1	7.3	9.5	14	22.1	26.8	22.9	18.2
Family Housing	3.4	3.5	4.1	4.4	4	10.3	3.98	2.3	1.8
Other or Misc	3.4	5.6	6.6	2.3	0.9	1.3	-0.6	2.9	1.2
<b>Total Budget Authority</b>	<b>256.7</b>	<b>290.5</b>	<b>483.9</b>	<b>536.5</b>	<b>602.2</b>	<b>674.7</b>	<b>667.5</b>	<b>696.9</b>	<b>712.3</b>

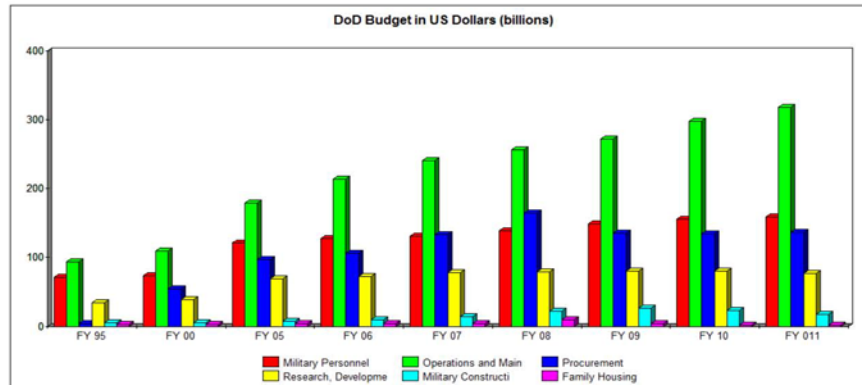


Figure 1. Department of Defense Budget Authority by Title

Source: Created by author, adopted from Frank A. DiStasio Jr., *Army Budget: An Analysis FY 2011* (Arlington, VA: The Association of the United State Army, 2010), 27.

Because of DoD's large discretionary budget, DoD must question its efficiency, effectiveness, and accountability procedures. With DoD's increased reliance on goods and services during the Iraq and Afghanistan wars, this trend will likely continue even as the U.S. military decreases its overall manpower. By 2005, DoD had already obligated \$270 billion in contracts to private vendors for services and goods devoted to security, governance and development of the Afghanistan and Iraq (Schinasi 2006, 1). The largest contracts in terms of money were awarded to a very select pool of vendors. The top ten vendors historically included Agility, Combat Support Associates, DynCorp, Flour Intercontinental, ITT Federal Services International, KBR, Kuwait Petroleum, The Bahrain Petroleum Company, The Louis Berg Group, and miscellaneous foreign

contractors (Commission on Wartime Contracting 2011). Multiple criminal cases involving senior acquisition officials committing FWA have marred DoD's reputation and continue to contribute to the nation's deficit problems.

#### Primary Research Question

What has DoD done to mitigate fraud, waste, and abuse (FWA) within Contingency Contracts? Has it been effective?

#### Secondary Research Questions

To address the primary research question, the following secondary questions must be answered:

1. What were the major contract requirements during the initial combat operations for Operation Iraqi Freedom (OIF)?
2. What were the major contract requirements during Operation Enduring Freedom in Afghanistan (OEF)?
3. What part of government contracts appears to have the greatest vulnerability or risk?
4. How much money does DoD spend on Contingency Contracts?
5. What are the recognized vulnerabilities to military contracts that contribute to fraud, waste, and abuse within DoD? What has been DoD's greatest FWA concern since 2003?
6. What are the recommended changes within DoD regarding military contracting?

7. How has DoD responded to recommended reforms, new procurement policies and procedures?

8. What initiatives have been implemented throughout DoD to improve military contracting?

9. Have any initiatives been effective?

### Significance

Just before the US began its Global War on Terrorism, Congress had a budget surplus. After nine years of conflict and associated supplemental budgets to pay for the U.S. operations in Iraq and Afghanistan, the U.S. faces its biggest budget crisis with a national deficit at \$1.64 trillion and growing (Chantrill 2011, 2). Wars are expensive. Since DoD is the biggest spender of the nation's discretionary income, one way to aid deficit reduction is to look for solutions that eliminate or mitigate FWA incidents.

### Assumptions

U.S. Government Accountability Office (GAO), DoD Inspector's General's Office, DoD internal audits and all Congressional Commission assessments regarding the lack of sound contracting techniques, lack of oversight, unorthodox accounting measures, improper payments, incomplete or inaccurate reports, and untrained contract officers within government contracting practices are true. These FWA performance measures must be accepted as fact to conduct any analysis as to when, what, and if any changes have been made in contracting and the overall DoD fiscal responsibility.

### Definitions of Key Terms

The following terms are used throughout the study:



Abuse: “is the manner in which resources or programs are managed that create or perpetuates waste or contributes to acts of fraud. Abuse is also called mismanagement” (Schinasi 2006, 3).

Fraud: “any intentional deception taken for the purpose of inducing DOD action or reliance on that deception. Fraud can be perpetrated by DOD personnel---whether civilian or military---or by contractors and their employees” (Schinasi 2006, 3).

Waste: “is the extravagant, careless, or needless expenditure of DOD funds or the consumption of DOD property that results from deficient practices, systems, controls, or decisions. Waste includes improper practices not involving prosecutable fraud” (Schinasi 2006, 3)

### Limitations

The primary limitation is the inability to actually audit DoD’s procurement and contracting process. The Government Accountability Office (GAO) was unable to provide an audit opinion using 2010 DoD financial statements “because of widespread material internal control weaknesses, significant uncertainties, and other limitations” (GAO 2011, 1). In other words, a formal GAO audit could not provide any details or any opinion regarding FWA vulnerabilities because DoD’s financial statements were lacking the required documents to support spending decisions or simply missing making them unauditible. This study attempts to use sources other than financial statements to draw any conclusions or recommendations. This study reflects research over a span of only ten months from February to November 2011. Although many research designs and approaches were used, this thesis represents only the data collected during these ten months, but includes the GAO, Defense Contracting Audit Agency (DCAA), Office of

the Secretary of Defense (OSD), and several Congressional Commissions’ research as well as existing surveys in order to validate and corroborate the study’s findings. These include Congressional Reports on wartime contracting, IG criminal investigations and “whistleblowers,” OSD findings and recommendations, DCAA performance audits, and many other performance assessments.

A second limitation is the willingness of DoD and civilian organizations to provide current, accurate, and truthful data regarding their appropriate contracting approaches and techniques and sufficient contract surveillance. These organizations may not share all ‘close hold’ data or any negative information that may have emerged from their research. Only those agencies willing to provide relevant information were useful to this study.

### Delimitations

The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) policies, guidance and oversight govern DoD acquisition and contracting functions. On a much larger scale, government contracting itself has at least three distinct phases with five life-cycle processes and covers at least three major acquisition categories (ACAT). These include ACAT I, which is under the direct visibility of Secretary of Defense and usually the highest monetary cap. The second is ACAT II, which is under the decision and control of the parent service secretary. The last is ACAT III, which has the lowest monetary cap and is usually under the control and decision of the Program Executive Officer (PEO) or Program Manager (PM). In addition, the Defense Acquisition System’s three phases include the Pre-Systems Phase, the Systems Acquisition Phase, and the Sustainment Phase. Within these phases, a contract

pertaining specifically to equipment or material can be in one of the five life cycles that include the Material Solution Analysis, Technological Development, Engineering and Manufacturing Development, Production and Deployment or Operations and Support. It is impossible to cover all three phases and all three ACAT areas within all five life cycles in this particular study. Therefore, this study centers on the life cycle of DoD's Service Contracts in the Sustainment Phase that have already been fielded and fall into the Operations and Support of Contingency Contracts within Contingency Operations (United States Command and General Staff College 2010, F104AA-6).

## CHAPTER 2

### LITERATURE REVIEW

This literature review evaluates existing literature relevant to the thesis and identifies significant gaps. The literature reviewed captures enough relevant data associated with Contingency Operations in the last nine years to make informed conclusions. This study begins with a recent review of DoD's use of contracts. The research contains five distinct areas: (1) sustained leadership, (2) capable acquisition force, (3) adequate pricing, (4) appropriate contracting approaches and techniques, and (5) sufficient contract surveillance. The review in these areas may expose one large gap or prove that these areas of vulnerabilities have been addressed and currently mitigate FWA within government contracting. In 2005 and 2006, The Defense Science Board and the GAO concluded that the current acquisition policies and procedures would not prevent future incidents of FWA. However, this research shows major infrastructure, policy, and procedural changes within DoD that have been initiated and to what degree they have effectively mitigated FWA incidents.

#### DoD Contract Requirements for Operation Iraqi Freedom

The recent budget crisis has triggered greater concern among the average American taxpayer. The average citizen wants to know how DoD is using their budget to support the GWOT. In light of the recent news of billions of dollars lost or wasted in government contracts, the average citizen wants to know how this can be possible and can anything be done about it? This chapter explains how and why the DoD increased its reliance on government contracts and subsequently increased its vulnerabilities to FWA.

Although the government sets aside a supplemental budget for emergencies, no one could have predicted the size of the budget needed for Operation Iraqi Freedom (OIF).

Consequently, by OIF's peak, DoD could no longer depend on its original budget. Combatant Commanders often requested logistical services and supplies that they saw as "warstoppers." In addition, as the U.S. military continued to draw down in overall manning strength in theater, its reliance on contracts for services increased. Therefore, it was not surprising to see an increase in supplemental spending to support the increase in the Logistics Civilian Augmentation Program (LOGPAC). In fact, the U.S. had 119,000 contractors compared to the 128,700 Soldiers in Iraq in 2007. By the end of 2010, there were more civilian contractors than military personnel. DoD had more than 52,000 active contracts in Iraq at that time, but not much of a change in the number of acquisition personnel overseeing the increase in contracts. The reality is that contracting was and still is big business that involves billions of dollars (GOA 2009, 11).

DoD's use of outsourcing services to overcome the capability shortfalls and military manning caps led to a 700 percent increase in contracting since 1997. One may question the necessary dependency of contracts for Contingency Operations such as Iraq, Afghanistan, and other locations around the world. The 2011 Congressional Report from the Commission on Wartime Contracting states that DoD is over-reliant on contract support for the military during Contingency Operations. Overreliance includes the inability to manage contracts and contractors in theater, more contractors than service members, and erosion of the military's own capabilities due to the ever-increasing dependency on contractors. Regardless, one must recognize that the contracting process has a cost. The Pentagon estimates that in Iraq alone \$10 billion has either gone missing

or simply been misspent by military contractors because of poor planning, lack of government oversight, or was used for purposes other than what it as intended for. The question is to find out why in order to mitigate future risks to the American taxpayer and its Soldiers (Singer 2010, 2).

### DoD Contract Requirements for Operation Enduring Freedom (Afghanistan)

After the terrorist attacks on September 11, 2001, the U.S. accelerated a contingency deployment timeline, which sent the U.S. Army, and its sister services to Afghanistan in October. By 2010, the U.S. military literally had an army of private contractors to accommodate the theater drawdown. As the number of U.S. combatants departed, the ratio of contractors to Soldiers reached parity. The majority of contracts fell into ten categories. These included logistics support services, construction of miscellaneous buildings, technical assistance, professional services, guard services, maintenance and repair, construction of office buildings, lease-rent or restoration services, facility operations, and program management (Commission on Wartime Contracting 2011, 23). As military personnel continue to depart, these services will increase. Contractors will deal with all the administrative and facility functions necessary to maintain the orderly drawdown as the mission in Afghanistan transitions from major combat operations to stability support operations.

Some argue that private contractors are not cost effective at all. As one Air Force Officer concluded:

The increasing belief since the 1990s that private is better rests on the assumption that free-market capitalism is operating. This assumption, however, is often unfounded; there are several relevant dissimilarities. First, free market capitalism requires a competitive environment, yet over the last 5 years over 40% of DoD

contracts have been sole source single bidder contracts. Second, free markets rely on numerous customers, yet the military in particular or the government in general is often the only customer. Finally, free market capitalism rests on the assumption that consumers cannot pass on economic inefficiencies, but the military can pass these losses to the federal government and eventually the taxpayers. In other words, there is not the same market incentive to require utmost efficiency. (Isenberg 2010)

The intent of his message was that often contracts are awarded to a select few during wartime operations in a closed-bid or single-source bid, which in itself is very vulnerable to FWA. Also, without several bidders, fair-market pricing is lost and therefore so is efficiency.

Another advocate for a self-reliant U.S. military, Colonel Matthew Moten, the deputy head of the Department of History at West Point, claimed that military contracts were necessary to support the armed forces after the Cold War drawdown as the Army cut logistical and support personnel. However, he argued that an Army that increases its reliance on contractual services such as guarding military FOBs and providing logistics and other functions that military forces performed previously loses its ability to train and sustain future professional experts.

An army that depends on commercial enterprise to deliver its food and fuel is subcontracting its sustenance--an army travels on its stomach. An army that relies on contractors for its doctrine is farming out its thinking--an army fights with its brain as much as its arms. And an army that permits civilians to employ armed force on the battlefield tolerates mercenaries, the antithesis of professionals. (Isenberg 2010)

Increased reliance on contractors makes DoD vulnerable to FWA and will eventually atrophy the U.S. Army's sustainment capability. The Under Secretary of Defense for Acquisition, Technology and Logistics, Ashton Carter, has stated that the drawdown of U.S. forces will require two contractors for every Soldier. He expects the ratio to be at 2:1 by 2011 in order to maintain the lines of communications and logistical support

necessary for the drawdown. The point is that DoD's reliance on contracts has become so great that our efforts to decrease the military's presence in contingency operations must be supported by contracts. As the drawdown occurs, a surge in contracts is expected. Why look internally at DoD? DoD currently manages 80 percent of contracts in theater. Why does such a reliance on contracts make DoD vulnerable to FWA? Overwhelming oversight is required, but it is often not present. The military acquisition force is strained from the reducing numbers of capable and qualified personnel leading to more FWA. These and many more indicators suggest that DoD will face even more contract vulnerabilities to FWA (Commission on Wartime Contracting 2011, 20).

Private contractors are necessary. Contractors kept the military's day-to-day logistical activities running. This freed the military to use its service members for war fighting functions. With private contractors doubling to more than 70,000 in Afghanistan by 2010, the military has fewer Soldiers in theater than private contractors (Vlahos 2009, 2). Overall troop strength was estimated to be at 63,500, which is less than the number of private contractors. To clarify, the number of private contractors is at an all time high and the ratio of contractors to Soldiers by 2011 was nearly 1:1 (Schwartz 2011, 6). Figure 2 depicts a trend of increasing support by contractors compared to the number of Soldiers in a particular theater of operations. The figure suggests that DoD has clearly relied on contractors now more than any other time.





Figure 2. Importance of Contracting: A Historical Perspective

Sources: Richard Fontaine, John Nagal, and Allison Stanger, *Contracting in Conflicts: The Path To Reform* (Washington, DC: Center for a New American Security, June 2010), 9.

So why should Congress care how much the military has relied on contractors and their contracts? With the amount of money that is spent on contracts, private contractors have a direct impact on DoD's budget, and may adversely affect the government's ability to protect the federal taxpayers and to maintain our military readiness. Despite President Barak Obama's efforts to reform government contracting to save the American taxpayer \$40 billion a year, government contract spending has doubled from 2001-2009. The cost of outsourcing government goods and services increased from \$200 billion to more than \$500 billion by 2008. As the wars in Iraq and Afghanistan continued so did the quality of life. Many companies were hired to build infrastructure. Dining facilities were erected,

makeshift FOBs established electricity, and additional services were required to sustain the improved infrastructure as combat operations were extended over the years. DoD hired several private companies to provide those services because the number of contractors, unlike the military, were not capped by law (O'Harrow 2009, 2).

Unfortunately, as the government and specifically DoD's reliance and spending on government contracts increased, so has the number of FWA incidents. Some companies were guilty of hiring employees for \$95,000 each and charging DoD over \$200,000 for each employee. This is not a natural phenomenon, but a result of increased contracts without the military acquisition force necessary to provide oversight and support to the increased reliance on contracts. The military acquisition force and those responsible for overseeing contracts continued to decrease. In accordance with Procurement Policy Letter 05-01, "The acquisition force is defined as those individuals who are substantially involved, individuals involved in the acquisition planning and strategy, individuals who participate in the process of establishing a business relationship to obtain the needed goods and services." These include Contracting Officers (CO), Contracting Officer Representatives (CORs), Contracting Officer's Technical Representative (COTRs), all positions in general purchasing, and Program Managers (Safavian 2005).

In accordance with the Federal Acquisition Regulation (FAR), all contracting officers or their representatives (COR) are responsible for the "performance of all necessary actions for effective contracting, ensuring compliance with the terms, of the contract, and safeguarding the interests of the United States in its contractual relationships as well as provide oversight of the contract over the life of the contract that

was established (Federal Acquisition Regulation 2011). The Army's acquisition force reached 10,000 in 1990. By 1996, the acquisition force decreased to approximately 5,500. The military's qualified and capable acquisition personnel decreased by 38 percent in 2002 and the amount of contract obligations increased 88 percent by 2005. The difference did not generate additional acquisition personnel. Most of the qualified personnel were eligible for retirement and retention did not appear to be a priority, but the real reason for the sharp decline was the mandate of the DoD Authorization Act of FY 1996 (GAO 2006, 8). It required DoD to reduce its personnel acquisition strength by 25 percent by the end of FY 2000. By 2007, the military acquisition force consisted of a mere 279 personnel (Gansler 2007).

With the nation at war, the acquisition oversight and management agencies that were responsible for such contracts simply could not keep up with the related contract transactions. However, lack of oversight and management were not the only measures of performance. For example, the Inspector General's Office launched investigations regarding allegations of criminal activity within contracting. Some instances were caused by a blatant disregard for established policies and procedures while others were the result of mistakes made by untrained personnel.

In 2009, Thomas Gimble, from the Defense Department's Inspector General's (DoD IG) office, admitted that at least 154 "criminal investigations into allegations of bribery, conflicts of interest, defective products, bid-rigging, and theft" have to do with military contracts in Iraq, Afghanistan and Kuwait (Vlahos 2009, 2). In other words, the DoD IG believes that these types of activities could have been avoided if proper oversight

and management were in place to govern contract behavior throughout the life of the contract.

### Types of DoD Contracts

For one to understand the complexity of contracts and the specific contracts that are most often susceptible to FWA since 9-11, an understanding of basic contracts that supported the contingency operations within Iraq and Afghanistan is needed. A quick review of the distinct categories is necessary to understand its related contractual support and award authority within DoD. There are three major categories of government contracts developed to support contingency operations. The first major category provides service and support to theater operations. These contracts are Theater Support Contracts or Contingency Contracts because they support contingency operations. These contracts were the most common in Iraq and Afghanistan (Commission on Wartime Contracting 2011). Historically, they provided services, supplies, and the necessary construction to the force through commercial acquisition. For example, the common contracts that often fell within this category provided basic food, water, shelter, and FOB security to sustain the force as it rotated units through theater operations on a regular basis.

Service Component or designated joint head of contracting activity (HCA) awarded Theater Support Contracts directly to the private corporations. Some well-known corporations included Kellogg, Brown and Root (KBR), Blackwater, Halliburton and others that quickly augmented military forces in the more lengthy conflicts. It is important to note that the bulk of employees from these contracts were locals. For instance, Halliburton hired local Iraqis to clean out the black water waste in the FOBs as a daily service the Soldiers who live in the FOB. The strategy of hiring local contractors

is particularly important to the U.S. objectives to help develop the economy and establish a good rapport with the host nation (Commission on Wartime Contracting 2011, 29). For example, many linguists were hired locally. This provided another source of income for the local nationals and therefore another reason to accept U.S. military presence. Other job opportunities for local Iraqis were created as well. Iraqi civilians cleaned and serviced FOBs. In addition, many Iraqi civilians worked the mass fuel pumps that kept the military vehicles full and ready to perform tasks beyond the reach of the FOBs.

The second broad category of contracts during Contingency Operations is Systems Contracts. Soldiers use these contracts to help provide support to new equipment and other fielding to include repair parts and services to aircraft, ground vehicles and automation systems. These types of contracts are within the military program of the materials acquisition program awarded by the Military Department acquisition program management offices (CGSC 2010, K221AA-5). The employment of these contracts included U.S. and contingency operations and is largely made up of U.S. workers. This is largely due to the sensitive nature of the material and the security requirements needed to maintain that security while working on such equipment. For example, the common contracts that often fell within this category within the last few decades included well-known corporations such as the Lockheed Martin Corporation, Boeing, and DynCorp. The Military Department acquisition program management (PM) offices or the PM (US JCS JP 4-10 2008, I3-I4) award these contracts. These contracts were often let to a select few and contributed to inappropriate sole-source bidding, over-pricing, conflicts of interest or other inappropriate techniques that often led to FWA.

The third broad category is External Support Contracts. These contracts provide related services and support through the Army's LOGPAC, Defense Logistics Agency (DLA) or prime vendor contracts. The employees within these contracts are generally mixed between U.S. citizens and third country nationals (TCNs). Why is this important? As contracts are awarded, U.S. contractors are typically paid more because of the nature and sensitivity of the contract support they provide. However, third country nationals are typically providing sanitary and logistical resupply services which commensurate with the salary awarded. Hiring local nationals to perform sustainment and logistical services has a strategic goal as well as providing very basic sustainment capabilities unique to that country. Typically, local nationals are paid less than any other employees and thus are hired at a much higher volume.

The thesis focuses on the life cycle of the DoD Service Contracts within the Sustainment Phase that fall within the contingency operations category, which may prove to have substantial impacts in the billions of dollars on the national deficit because of the cost savings. The governmental studies in this section identify the vulnerabilities of Contingency Contracts that contributed to FWA and if DoD had effectively mitigated the risks after sufficient supported data was collected from interviews, surveys, comparative analysis, historical audits, and other research methods.

### Contingency Contracts

The DoD and the Army will continue to use government contracts to fulfill unforeseen demands and requirements of the next conflict. As the Army experienced demobilization after each major conflict and rapid expansion during war, this pattern is likely to occur again as the Army experiences the same drawdown in the next few years

(Solis 2009). Therefore, the Army will need contracts to cover the specialty skills, capability gaps, and extensive services that cannot be grown from within the ranks. Developing such skills from the ranks will take too long and the requirement is immediate. In addition, the cost of hiring a contractor can be significantly less when compared to training and sustaining the Soldier. Once the job is complete, the service is no longer required and the contractor is released. Evidence to support this claim can be found in table 1. The figure compares options to either provide the capability within the already standing army or hire the skilled worker only when the skill or capability is needed.

What are the recognized vulnerabilities to military contracts that contribute to FWA? The Secretary of the Army, Pete Geren, demanded a complete assessment of the army's acquisition system in 2007. This decision was not a surprise considering the previous GAO audit failures; FWA issues cited from previous contingency operations in Iraq; and the on-going investigations that ensued in Afghanistan. By October 27, 2007, the Army's Criminal Investigation Command (CID) was already conducting 83 FWA Contingency Contract investigations. Although these contracts varied in complexity and severity, CID confirmed that most were bribes of more than \$15 million affecting contracts worth more than \$6 billion (Geren 2007, 11).

As an immediate reaction to the related contract frauds, Pete Geren formed an independent commission on October 31, 2007. Secretary Geren established an internal commission charged with the duty of identifying any needed reform within DoD contracting. Geren chose Dr. Jacques Gansler, the former Undersecretary of Defense for Acquisition, Technology and Logistics, as the Commission Chairman. Obviously,

Gansler was the perfect choice considering his previous level experience in contracting. Gansler's published report looked much like the previous GAO report. It appeared that the first report from the GAO was a wasted effort because DoD did not put much effort into acting on GOA's recommendations. This was clearly not the case after the Gansler Commission Report.

The Gansler Commission Report (2007), *Commission on Army Acquisition and Program Management in Expeditionary Operations*, surveyed over 100 individuals who personally experienced issues and challenges while deployed to Iraq and Afghanistan. The study also included financial audits and performance reports from the Defense Science Board, DoD Inspector General, and the GAO. Those surveyed had extensive experience not just as the end user, but also at the general officer level. The survey identified a need for urgent contracting reform. One general officer explained: "This problem is pervasive DoD-wide, because workload continues to go up while contracting and acquisition assets go down---there is a cost to the trends that is paid in risk, and we don't realize how big the bill is until there's a scandal" (Gansler 2007, 3).

### DoD Organization for Contracts

This chapter serves as a reference to the U.S. agencies, Department of Defense, and other organizations within DoD including the Under Secretary of Defense for Acquisition, Technology, and Logistics who are responsible for contracting and have accountable measures that establish and enforce policies referencing contracts. Figure 3 depicts the Secretary of Defense and the office under the Secretary of Defense that is responsible for all DoD contracts: Office of the Secretary of Defense that houses the under Secretaries and the Assistant Secretaries (OSD 2008, 1).



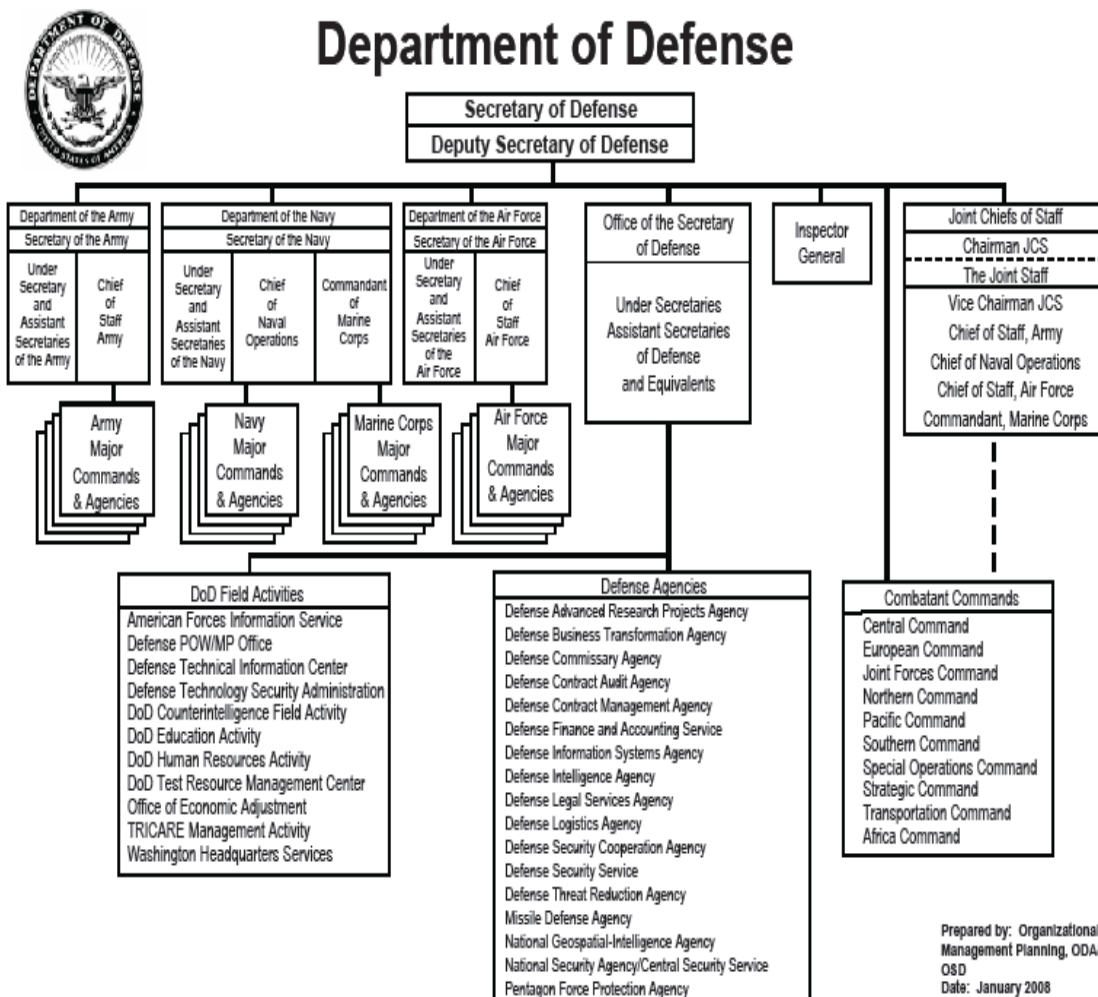


Figure 3. Deputy Secretary Organizational Chart

Source: Office Secretary of Defense, *DOD Organizational Chart* (Washington, DC: Government Printing Office, January 2008), 1.

Figure 4 depicts the Deputy Secretary of Defense who houses the Under Secretary of Defense and who is responsible for Acquisition, Technology, and Logistics. The department has four components. The key entity for this research is the Department of Acquisition and Technology (OSD 2008, 1). These diagrams depict the level of complexity while attempting to portray where the level of responsibility for government contracts lie within DOD.

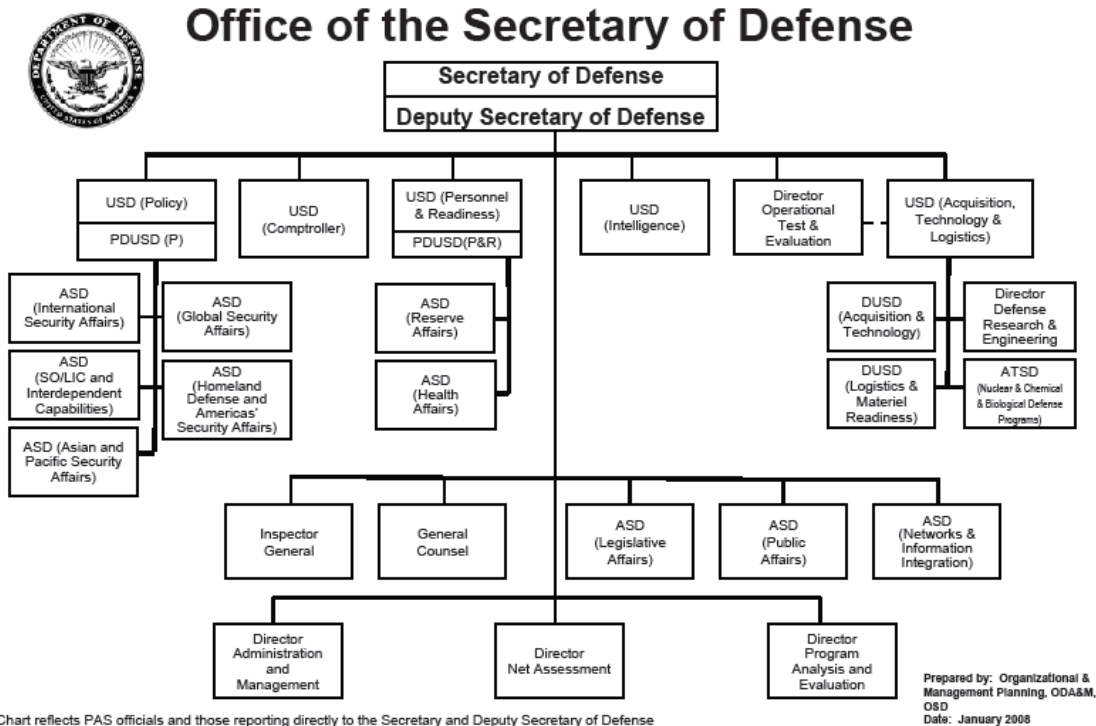


Figure 4. Under Secretary of Defense Organizational Chart for Acquisition and Technology and Logistics

Source: Office Secretary of Defense, *Deputy Secretary of Defense Organizational Chart* (Washington, DC: Government Printing Office, January 2008), 1.

### Studies by Defense Science Board, Government Accountability Office and Other Sources

The GAO assists Congress with the responsibilities of improving the performance and accountability of the federal government. The GAO is the congressional arm that investigates, evaluates, and audits public funds, federal programs and policies to help Congress make informed decisions on funding, policy, and oversight (GAO 2006, 27). After the National Defense Authorization Act of 2006, the GAO studied DoD's contract vulnerabilities. The GAO study specifically targeted Contract Management because it was considered the high-risk area to FWA within contracts. GAO identified and assessed

DoD's vulnerability to FWA within contracts rather than the contractors (GAO 2006, 1). Moreover, DoD's reliance on contracts more than doubled from 2000 to 2005. Because of the billions of dollars that are linked to contracts, the GAO placed government contracting on their high-risk list (GAO 2006, 6).

Given DoD's increased reliance on contracts and the millions of dollars already lost through FWA, the National Defense Authorization Act for Fiscal Year 2006 mandated a review. The goal was to assess DoD's FWA vulnerabilities to FWA and identify initiatives to address those vulnerabilities.

The magnitude of money spent on contracts to support military operations was evident shortly after Operation Iraqi Freedom began. By 2005, DoD had obligated more than \$270 billion for contractual goods and services (GOA 2006, 1). Other government agencies helped control the behavior and overall performance of contracts. The Defense Contract Audit Agency (DCAA), which falls in the department of the Under Secretary of Defense (Comptroller), is directly responsible for all DoD contract audits. The agency provides financial and advisory services including negotiations, administration, and settlement of contracts and subcontracts with the goal of improving efficiency and accountability.

Unfortunately, even the agencies that were designed to oversee government contracts were also under GAO scrutiny. If the DCAA can't be trusted to uphold the standard, who can? The GAO identified DCAA audit standards that did not meet professional auditing standards. In other words, even the professional auditors were failing. The GAO gave several examples where the DCAA tried to intimidate senior auditors to tweak a negative report into one that was more favorable (Sanders 2009, 40).

Senator McCaskill explained the seriousness of such auditing practices. “In the world of auditing,” McCaskill concluded, “what has been happening here is a capital crime. There can be no bigger indictment of an agency than this GAO report. . . . At this point, DCAA audits are a joke. If someone is not fired over this, I don’t think that anyone should ever take this agency seriously again” (Sanders 2009, 43).

### The GAO Study

Although the GAO chastised the DCAA for using non-standard auditing practices to conduct internal audits for DoD, this particular incident did not identify the problems found within the DoD’s acquisitions. In other words, DoD’s inappropriate approaches and techniques as well as the inability to conduct internal audits on their contracts were not the only issues GAO investigators cited. The 2006 GAO report made more than 26 recommendations, but found five overarching systemic areas in which DoD continued to exhibit contract-related FWA vulnerabilities.

**Sustainable Leadership.** The first critical weakness concerned DoD’s inability to sustain its leadership roles and responsibilities. GAO discovered that many senior billets required Senate confirmation. This process consumed an enormous amount of time and the senior billets would go unfilled for up to a year without some sort of oversight. This, in turn, created the perfect environment for increased FWA vulnerabilities because individuals would abuse or circumvent the system. Without effective and sustained leadership, misconduct would often go unchecked until a significant amount of money was lost. More importantly, the most critical billet within the Acquisition Corps remained unfilled.

The current theater acquisition culture emphasized concluding a contract as quickly as possible. The goal was to streamline the acquisition process by overriding controls, disregarding transparency, or conducting other inappropriate procedures to get the necessary contract signed. This type of organizational behavior needed to be changed, but it had to start from the top (Schinasi 2006, 7). A myriad of oversight policies will not be sufficient without the leadership in place to enforce those policies that help guide and govern contract behavior. This means that DoD must establish and support such leadership to oversee DoD contracts that support contingency operations.

Capable Acquisition Force. The second critical weakness was a lack of a capable acquisition force. The GAO report suggested that one of the reasons for FWA came indirectly from the lack of qualified and trained personnel. Prior to September 11, 2001, DoD had qualified, trained contractors. However, after the initial conflict, the war's longevity required more support than the Army could provide. To compensate, the Army increased its obligations to contractors. Complicating the workforce composition, the acquisition workload increased while the number of people that worked in acquisition decreased. From 1989 through 2002, the acquisition workforce decreased by as much as 38 percent, while the number of contract obligations increased by 88 percent by 2005 (Schinasi 2006, 8). The GWOT increased contract obligations. With DoD fully engaged in Afghanistan and Iraq, it was unfortunate that half of the qualified workforce was eligible for retirement by 2010 (Schinasi 2006, 9).

The challenges increased as contractors performed and provided support that was more technical. Technical support included functions beyond the normal cleaning, cooking, and maintaining type of services. They included, but were not limited to

servicing electronic warfare equipment, servicing complicated turret maintenance on the combat vehicles, and software upgrades for the on-board Forward Battle, Brigade and Below (FBCB2) systems. As the number of obligations increased with a corresponding decrease in the workforce, military contractors were overwhelmed. Alternative approaches introduced vulnerabilities that would not normally be experienced. Within full spectrum operations, Contingency Contracting required a workforce that had the necessary skills to adapt to the specific approach of pricing and payment vehicles that were not often considered in the past. The October 2005 GAO forum remarked that the current workforce lacked the new business skills necessary to perform as contract managers (Schinasi 2006, 9).

Adequate Pricing. The third systematic concern was the inability to obtain fair and reasonable pricing or “Adequate Pricing” of contracts. GAO’s review pinpoints DoD’s failure to provide adequate pricing for sole-source contracts that often led to waste. Many contracts were poorly defined with an indefinite or undefined vague scope of work or a timeline that was undefined altogether in order to initiate the work quickly. The intent was to gain small, but quick actions that would help establish a working relationship with the local political figures, villagers, and all those that fell within the area that the U.S. contract could affect. The DoD IG reported that the efforts to rebuild Iraq in 2004 started with indefinite scope of work that was modified from \$900,000 to \$200,000,000 within a six-month period. The inadequate acquisition requirements cost DoD more than \$200 million before a contract agreement was reached (Schinasi 2006, 10).

Another example of inadequate pricing related particularly to sole-source contracts. The nature of sole-source pricing relied heavily on the contractor to provide pricing information. Contracting agents are expected to review all available data to determine a reasonable price for the contract regardless of the lack of competition. However, the GAO report consistently found an insufficient evaluation of data prior to an agreed price for a contract. In some cases, this requirement was waived altogether in order to achieve obtain immediate services and achieve immediate operational and favorable gains with the local populace. The Federal Acquisition Regulation states that before a price can be settled, a price analysis must be conducted to strike a reasonable and fair market price of a good or service (Federal Acquisition Regulation 2011, 1.602).

One particular example included the purchase of spare parts for an Airborne Warning and Control System for the Air Force. The Defense Management Agency did not analyze sales information and it did not reference historical data. If the contract manager conducted an analysis, a much lower price would have been negotiated. This was evident after GAO investigators found a much lower price available through other resources when they conducted a post contract analysis. Instead, the contracting officer relied solely on the skewed contractor-prepared analysis (Schinasi 2006, 10). Contracting agents delayed pricing and vaguely described the scope of work to accelerate the service. This cultural trend to expedite contracting methods often circumvents the established quality assurance measures, exposes DoD to several vulnerabilities and increase the FWA risk.

Contracting Approaches and Techniques. Inappropriate contracting approaches and techniques constitute the fourth weakness. The appropriate contract approach and

technique allows the government to negotiate a reasonable risk contract that can provide an incentive to the contractor and offer the government with the greatest efficiency at the lowest cost. Although the GAO conducted a study on DoD's approaches and techniques, the full extent of vulnerability could not be ascertained largely because DoD did not have the necessary documents to support the contract decisions made. Some were missing price analysis while other CORs were missing documents altogether. However, the data collected through several contract examples suggested that such practices have increased over the last five years (Schinasi 2006, 11).

One example referred to DoD's ability to leverage buying power by using a simplified and expedited method to acquire goods and services. For instance, DoD has the option to use other federal agencies to carry out the contract process. The IG reported that they found several instances where DoD would transfer funds to another agency's acquisition center in order to purchase goods and services when requirements for those goods and services were not clearly determined (Schinasi 2006, 12).

GAO cited another example where DoD did not use appropriate contracting approaches to hire interrogators in Iraq. DoD acquired the interrogator service through a Department of the Interior acquisition center under a General Service Contract for information technology. The contract was not subject to competition and therefore increased its vulnerability to FWA. All contracts must follow very strict procedures and policies that provide a fair and competitive environment to awardees unless an exception applies. Because this method often took an inordinate amount of time, the normal practice was to award contracts that were justified as sole-source or meeting the exception to competition in order to bypass the time consuming process (Schinasi 2006).



Contract Surveillance. The fifth weakness was in contract oversight or insufficient contract oversight over the life of the contract. Most might assume that once the contract was let, that was the end of the contractual process. Actually, the contracting agent has the responsibility to ensure that the contracted goods or services were delivered on time, at the agreed price, agreed quantity, and quality within the contract's scope of work. In other words, the contracting agent must monitor the contract implementation and execution until completion. Considering the lack of trained personnel, lack of filled key billets, and the blurred lines of contract management, one can easily see that sufficient oversight could mitigate contracting FWA. These vulnerabilities suggest that without the proper systems in place, properly trained personnel, and enough trained personnel, FWA will continue (Schinasi 2006, 13).

DoD IG and GAO investigated the contractors that provided the supplies and services that supported the LOGPAC in Kuwait and Afghanistan. The 2003 and 2005 findings reported that the most senior level Air Force Officials felt that contract surveillance was essentially an additional duty. As such, it was low on their priority of tasks. Senior officials had several responsibilities that were a higher priority. Contracting became a secondary concern and the haphazard approach generated results even if it meant circumventing the lengthy policies and regulations that were designed to mitigate FWA vulnerabilities (Schinasi 2006).

#### The Gansler Report

The more recent 2007 Gansler Commission report identified similar vulnerabilities within DoD's Service Contracts. The Commission outlined four distinct areas that required improvements for successful Army acquisition processes. These

recommendations were required to be implemented within six months in accordance with the National Defense Authorization Act of 2007.

The first suggestion called for an “increase in stature, quantity, and career development of contracting personnel, military and civilian” (Gansler 2007, 99). Some of these reforms included an increase of more than 400 Army personnel and 1,000 civilian contracting personnel. The report also recommended the creation of a Contracting Corps with a traditional career from entry-level positions to General Officer and SES positions. The commission also recommended ten additional General Officer positions, five for Army and five for a joint billet. One key position included a 3-star billet for Defense Contracting Managing Agency (DCMA). The commission also recommended a separate Army Contracting Promotion Board for Army and civilian personnel to ensure that the best qualified are not adversely profiled in other branch promotion boards (Gansler 2007).

Second, the commission recommended a single Army Contracting Command that would be responsible for all contracting (Gansler 2007, 101). The command structure would synchronize all aspects of contracting below the Army Secretariat level. Currently, multiple commands at the two-star level have responsibility for contracting, but none synchronizes the efforts across the Army. This command would have a two-star billet with a SES deputy. Of course, the commander would be responsible for having a trained, relevant, and ready expeditionary capability. The DCMA should be designated as a center-of-excellence for Expeditionary or Contingency Contract Management. The GAO made a similar suggestion in 2006. The GAO report also recommended a “sustained senior leadership” organization that would have the responsibility to provide vision, set

policy and enforce training and provide an ethical climate to all those within its organization. This would ensure senior positions would not go unfilled. In addition, it would provide synergy and efficiency with an economy of effort under one entity.

Third, the commission recommended changes within the Army's Doctrine, Organization, Training, Material, Leadership, and Personnel (DOTMLP) domains for overall contracting activities in expeditionary operations (Gansler 2007, 103). This recommendation targeted the transformation of the Officer Education System. The transformation could start by adding a Program of Instruction (POI) that would teach the role and importance of contractors in Expeditionary Operations as early as the Officer Advance Course, but continue through the Command and General Staff College, the War College, the Sergeant Majors Academy and other advanced programs. The Commission also suggested incorporating contract events in all major exercises and training centers, and all leadership courses. Army Field Manuals would codify contracting practices and these the lessons learned from Iraq and Afghanistan would be absorbed in all of the Army's DOTMLPF domains.

Fourth, it recommended "legislative, regulatory, and policy assistance to enable contracting effectiveness in expeditionary operations" (Gansler 2007, 105). This recommendation creates flexibility and expedites acquisition to transfer funds without the "color of money" limitations similar to U.S. AID funds. This recommendation seeks to relieve the cumbersome burdens the contracting agents currently face while providing maximum response time to the required forces.

### Special Inspector General for Iraq Reconstruction

Congress created the Special Inspector General for Iraq Reconstruction (SIGIR) in 2004 to replace the Coalition Provisional Authority of Inspector General (CPA-IG). Its primary mission has been and continues to be the independent supervision and execution of audits and investigations in accordance with the congressional amendment to Public Law 108-106 (SIGIR, 1). SIGIR provides oversight responsibilities for the \$52 million Iraq Relief and Reconstruction Fund. SIGIR's detects and deters FWA of U.S. reconstruction dollars. SIGIR reports directly to the Department of State and Department of Defense Directorates and continues to influence DOS and DOD anticorruption programs and procurement guidance as the US government withdraws from Iraq (SIGIR, 1).

### Special Inspector General for Afghanistan Reconstruction

The Special Inspector General for Afghanistan Reconstruction (SIGAR) and SIGIR both report directly to the Directorates of the Departments of State and Defense. The National Defense Act of 2008, in accordance with Public Law 110-181, officially established SIGAR. Congress modeled SIGIR and its lessons learned in Iraq and established the SIGAR to provide oversight responsibilities for the Commander's Emergency Relief (CERP), Trouble Asset Relief (TARP) and various other reconstruction programs valued at over \$700 billion in contracts. SIGIRs highest priorities remain in contract management and oversight, building the Afghan National Security Force (ANSF), and anti-corruption programs in Afghanistan (SIGAR, 1).

As of January 2011, SIGAR has completed 36 audits that addressed more than \$16 billion in Afghanistan reconstruction. Three audits are currently analyzing

reconstruction contracts of more than \$37 billion. Currently, SIGAR has 105 on-going investigations with more than 62 investigations that are directly related to procurement fraud. To date, SIGIR has recovered more than \$6 million in repayment to the government (SIGAR 2011). In accordance with congressional reporting requirements, SIGAR and SIGIR must submit a quarterly report no later than 30 days at the end of each fiscal quarter to Congress to summarize their investigations, audits and on-going challenges. According to its 10th Quarterly Report, SIGAR was directly responsible for the U.S. and Afghanistan returning more than \$190 million in CERP funds for other programs. In addition, SIGAR negotiations contributed to several companies repaying 4,000 Afghans \$22 million in wages (SIGAR 2011, 144). (A complete review of the agencies that played a critical role within the research of this thesis is in Appendix A.)

## CHAPTER 3

### RESEARCH DESIGN

This study focuses on FWA within DoD's recent Contingency Contracts. What has DoD done to mitigate FWA and have any DoD initiatives been effective?

The election criteria for measures of performance and measures of effectiveness for this topic identify what constitutes relevance. Information collected through November 2011 helped develop the detailed analysis. A balanced method of comparative case studies, evaluation studies, and analysis of government contract vulnerabilities within DoD before and after the introduction of broad initiatives led to a comprehensive answer. Many reliable sources, including performance evaluations and demonstrations, historical interviews and congressional hearings, and field investigations in Iraq and Afghanistan, provided multiple viewpoints that allowed one to compare and contrast several interpretations and explanations.

The first few paragraphs of this research included some overall negative and positive perceptions regarding why the U.S. government chooses to use contracts rather than Soldiers to fulfill certain requirements during Contingency Operations. The interviews comply with Command and General Staff College policy, procedures, and guidelines. The collection plan included:

1. The plan included multiple case studies, congressional reports, and investigations from government agencies to gather the relevant information in order to determine the significant vulnerabilities of DoD contracts. The government agencies included The National Deficit Task Force, The Defense Science Board, The United States Government Accountability Office, The Defense Contract Auditing Agency, The Gansler

Commission, The Special Inspector General for Reconstruction of Iraq and Afghanistan, the DoD Panel on Contracting Integrity, and the Commission on Wartime Contracting.

2. Systemic issues and trends were identified, selected and refined based on a very select portion of government contracts in order to narrow the focus of the research question. The research question focuses specifically on Contingency Contracts because they appear to have the largest use in theater and consequently they have the largest monetary impact. There are a plethora of issues that contribute to FWA, but this research is focuses on five systemic vulnerabilities that contribute to FWA within Contingency Contracts. The systemic acquisition vulnerabilities include: (1) a lack of sustained leadership, (2) a lack of a capable acquisition force, (3) inadequate pricing, (4) inappropriate contracting approaches and techniques, and (5) insufficient contract surveillance through the life of the contract. These identified vulnerabilities constitute the criteria used to measure the effectiveness of DoD's FWA initiatives.

3. Several DoD initiatives implemented were identified and refined to evaluate a select few in order to answer the research question. For example, DoD initiated an internal task force, the Defense Science Board, which made 20 recommendations in March 2005 to address methods to mitigate FWA. Instead of addressing all of the initiatives, the researcher categorized the initiatives into manageable DOTMLPF domains. This methodology is consistent with the Army's method of implementing and introducing change.

4. DoD initiatives were recorded, collected and analyzed by using a comparative analysis of historical events with current events to determine if vulnerabilities in government contracts still exist in order to determine credible findings. The measure of

effectiveness was determined using a comparison of past and current criminal FWA cases, financial audits, transparency of contracts, cultural change within the Acquisition Command, and recorded cases where money was saved or continues to be absorbed. These are just a few examples that were used to help determine if the systemic vulnerabilities still exist.



## CHAPTER 4

### ANALYSIS

#### Primary Research Question

What has DoD done to mitigate FWA within Contingency Contracts? Has it been effective? Where has most of DoD's FWA occurred. Second, what initiatives has DoD taken to combat FWA. Lastly, have DoD initiatives been successful.

DoD's Contingency Operations have generated an unprecedented number of contingency contracts. This chapter identifies common vulnerabilities through an analysis of independent studies, describes DoD and Army initiatives that are directly related to FWA mitigation within contracting, and determines if DoD's initiatives are effective.

#### Why Government Contracts for DoD?

The U.S. Army has used service contracts as a method to support military operations since the American Revolution. Artillery used them first. As early as 1781, Robert Morris, the Superintendent for Finances, used the closed bidding system for government contracts. Morris often paid for supplies, equipment, and other resources for the continental army out of his own pocket only to be compensated in full through military contracts. He considered contracts as “the cheapest, most certain, and consequently the best mode of obtaining those articles which are necessary for the subsistence, covering, clothing, and moving of an Army” (Weitzel, 1).

The U.S. Army has used government contracts to fill capability gaps. The Mexican-American War, the American Civil War, the Great War, World War II, and the Korean War saw the increased use of Contingency Contracts during each war's peak.

There was a sharp decline once each conflict ended. One notable reform regarding contingency contracts included appointing Quartermaster officers in charge of Army contracts. It wasn't until after World War I (WWI) when the Army began to consolidate and coordinate all its contracts under one entity to reduce internal competition and redundancy which often led to inflated prices and unwanted services or FWA. The acquisition portion of the Army became the Army Service Forces (ASF). It acquired transportation, services and supplies. After WWII, a large portion of the Army and the ASF demobilized.

It was not until 1950 and the Korean War that the military acquisition force witnessed its most notable change. It was the first time that the Army used contracts to fill the supply and service requirements for the augmented United Nation's forces. Of course, the use of contracts to augment UN forces increased the costs. As the Army transitioned to an all-volunteer force in 1971, contracts were drawn and let to provide immediate services, logistical support, technical assistance, guard services, maintenance and many other support services. These functions were no longer available internally because of insufficient numbers of forces or the requirement to fill an identified capability gap.

By 1985, the Army introduced the Logistics Augmentation Program (LOGPAC) to provide contracting for emergency Contingency Operations. This program provided the most responsive logistics, life support, and infrastructure for the Army during times of conflict and ceased once the conflict ended. When the Army deployed to Somalia in 1992, the LOGPAC and its associated contracts became a billion dollar business (Weitzel, 1). After Somalia, DoD's tendency to use contracts to provide goods and

services during Contingency Operations grew. As the number of DoD contracts soared, so did the quantity of contractors needed to manage them. In 1991, the ratio of Soldiers to contractors was 50:1. However, within the last few years the ratio has narrowed to a mere 1:1 (Singer 2010, 1). This ratio occurred because DoD has increasingly relied on service and logistical contracts to fulfill the immediate wartime needs and capability gaps identified in recent Contingency Operations. The continued withdrawal of troops in Iraq has also contributed the unbalanced ratio of contractors to Soldiers. Based on these developments, a potential surge is looming to support Contingency Operations in Afghanistan as the private contractor support for Soldiers in Iraq is no longer necessary. One can expect contractors to shift from one theater to the next in order to support the Army's renewed emphasis in Afghanistan.

The frequency and amount of Contingency Contracts have increased and they will continue to do so. The GAO reported a 700 percent increase since 1997. The most recent GAO, Gansler, SIGIR, and SIGAR Reports support this conclusion, but it also suggests that dependence on Contingency Contracts to support Contingency Operations will also increase. More than 100 personal interviews within the 2007 Gansler Report suggested that such a trend will inherently increase the likelihood of FWA as DoD's dependency on civilian contracts increases and the workforce to manage contracts decreases. If most of DoD's contracts that support contingency operations cannot be monitored, then contracts within contingency operations will have the biggest impact on the DoD budget and subsequently the national deficit. "Congress has appropriated nearly \$888 billion to pay for U.S. operations in Iraq and Afghanistan. Reliance on private contractors to support these contingency operations has reached unprecedented level." The 2010 congressional

preliminary report, *At what cost? Contingency contracting in Iraq and Afghanistan*, suggested that out of 240,000 contractors, approximately 80 percent were foreign nationals who worked in both Iraq and Afghanistan for DoD (Thibault and Shays 2010, 22).

More specifically, the Commission on Wartime Contracting in Iraq and Afghanistan (CWC) stated that two-thirds or 44 percent of the money the U.S. spent on Contingency Contracts has been obligated for logistics support services since 2002. To date, the largest amount of money obligated to Contingency Contracts went to logistical and support services. From 2002 through 2011, DOD spent \$46.5 billion on logistical support services alone (Commission on Wartime Contracting 2011, 23). Clearly, one of the most important characteristics of Contingency Contracts is the amount of money spent to support such operations. Other reasons the government opted for Contingency Contracts includes the decreased military workforce, the reduced capability, and a decreased budget while the time-critical missions continued to increase. In addition, the perception that hiring civilians is cost-effective and immediately responsive when compared to growing (training and developing) the organic capability from within the military dominates contemporary thinking regarding contracting (Commission on Wartime Contracting 2011, 28).

If one were to use the current CWC cost comparative analysis between contingency support services performed by the military and those performed by contractors, the civilian contracted force is most cost effective in a prolonged conflict. The analysis is based on the work force mix used during the operation. In other words, contractors make up a mixed workforce of local nationals (LNs), third country nationals

(TCNs), and U.S. citizens. During short contingency operations, the military is capable of sustaining itself internally and thus the military is the cost-effective solution. For example, the sunk cost of using the military that is training in the continental U.S. or deployed to Haiti is much lower than hiring new civilian employees (Commission on Wartime Contracting 2011, 225).

However, if the military needed prolonged life-support services and installation-support, contracting a civilian force would be more cost effective than increasing the military strength. The incremental cost of keeping a military service member deployed includes transportation, hostile-fire pay, family separation pay, and hardship duty pay which totals an additional \$10,000 a year for one soldier (Commission on Wartime Contracting 2011, 225). The cost of increasing the military is even higher if the hired force is predominately TCNs and LNs who perform the same duties at a considerably lower cost. In Iraq, 60 percent of the contract support performed logistical and life support functions while another 25 percent performed security, construction or translator functions (Commission on Wartime Contracting 2011, 226). Using the CWC Annual Cost Comparison in table 1, it is reasonable to believe that the military will continue to use civilian contractors. Moreover, as the number of military personnel decreases due to budget constraints, one can expect the military to rely even more on civilian contract support. However, relying on contract support has created several vulnerabilities and risks that have contributed to FWA. Has DOD relied on contracts too much?

Table 1. Annual cost comparison for larger scale/prolonged contingency

Skill level	Work example	Contractor billing rate	Military FTE costs	Federal civilian FTE costs
<b>Lower</b>	Food service	LN = \$35,700 TCN = \$67,600	E-3 (Private 1/C) = \$86,671 (\$251,758 with dwell)	WG (wage-grade, \$13/hr base) = \$81,189
<b>Middle</b>	Construction: plumber, electrician	LN = \$35,700 TCN = \$67,600	E-4 (Corporal) = \$97,439 (\$283,037 with dwell)	WG (\$22/hr base) = \$137,397
<b>Higher</b>	Communications support	U.S. citizen = \$185,700 to \$231,600	O-3 (Army Captain) = \$175,335 (\$509,309 with dwell)	GS-12, Step 5 = \$178,502

*Source:* Commission on Wartime Contracting, “Transforming Wartime Contracting” (Final Report to Congress, August 2011), Table F2.

#### FWA Contract Vulnerabilities

Congress has had several independent agencies identify the FWA vulnerabilities of Contingency Contracts. Because the amount of money involved, the Defense Science Board reported in 2005 that DOD’s contract management needed to be on the high risk list and commented that immediate changes were necessary. In 2006, The National Defense Authorization Act mandated a review to identify DoD’s FWA vulnerabilities as well as address any recommendations to mitigate such vulnerabilities.

The Defense Science Board and the GAO cited at least five systemic problems that contributed to FWA. These included (1) DoD’s ability to sustain its leadership roles and responsibilities, (2) a lack of a capable Acquisition Force, (3) an inability to obtain fair and reasonable pricing, (4) using inappropriate Contracting Approaches and Techniques, and (5) insufficient contract oversight (Schinasi 2006, 6-13). The 2007 Gansler Commission identified similar systemic contract vulnerabilities. The major

findings included: (1) a lack of financial management, (2) shortage of contracting personnel, (3) a lack of trained or qualified personnel, and (4) a lack of doctrine, regulations and or processes that govern the use of contracts. According to the Gansler Report, “These key failures encumber the Army acquisition system’s performance and have significantly contributed to the waste, fraud and abuse in-theater by Army personnel” (Gansler 2007). If one were to compare all the independent reports, their common findings include: (1) a lack of sustained leadership, (2) a lack of a capable acquisition force, (3) inadequate pricing, (4) inappropriate contracting approaches and techniques, and (5) insufficient contract surveillance through the life of the contract. This would imply that within the Contingency Contracts, the largest FWA vulnerabilities fall within these five categories. After the Science Board Review in 2005, The GAO Report in 2006, and the Gansler Commission investigation in 2007, one might assume that DoD has done little to mitigate contracting FWA. However, by 2008, DoD (Army) had implemented several initiatives to address the recognized risks.

#### Organizational and Personnel Initiatives

On October 1, 2008, the Army established the Army Contracting Command (ACC) as a new major subordinate command to the Army Material Command (AMC). The Gansler Report recommended four major changes. One of the recommendations included an organizational change that would fill key billets at the most senior level in order to establish the proper culture, ethical climate and mentorship at the top. In addition, establishing and filling senior key billets could sustain and maintain the force with qualified contracting officers with contracting as their core competency. The newly formed command would also contain a subordinate command known as The United

States Army Contingency Contracting Command (ECC). The ECC provides contractual support outside of the continental US in addition to effective and responsive expeditionary contracting to military operations for all of the Army Service Component Commands and the Joint Warfighter. These include Third Army, Pacific, Fifth Army, Central Command, Seventh Army, South, Eighth Army, Korea, US Army, Africa, US Army Europe, and the Continental United State expeditionary contracting missions (ACC, 1). Figure 5 depicts how the Department of Defense's initiatives have directly changed internal organizations to fill those key contracting billets that were previously missing.

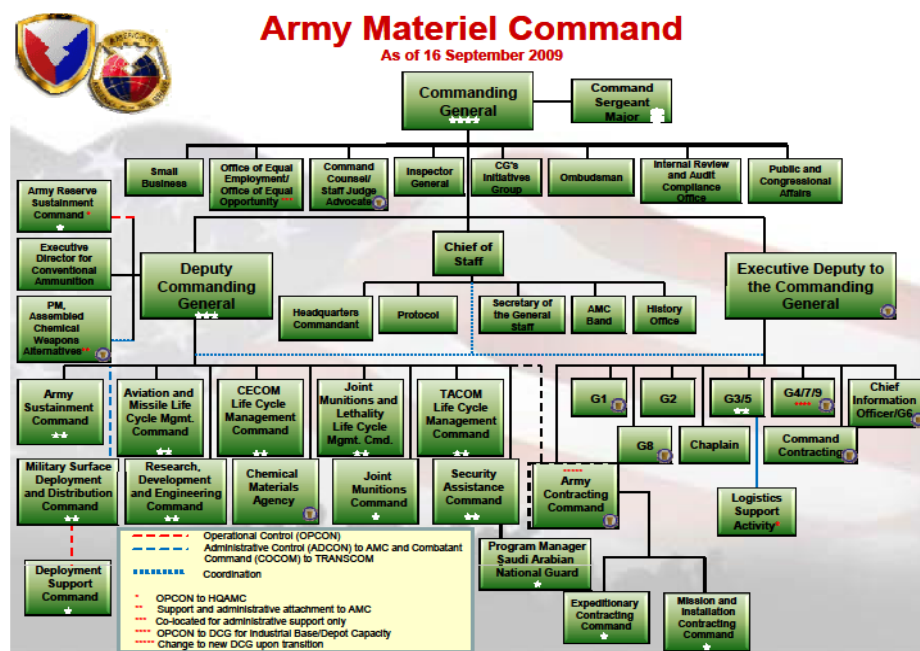


Figure 5. Headquarters Army Materiel Command Organizational Chart; subordinate Contracting Command Organizational Chart

Source: Department of Defense, AMC Homepage, <http://www.amc.army.mil/pa/about.asp#orgs> (accessed July 30, 2011), 2.



Within the Army Material Command in figure 5, a more detailed organizational change is evident. AMC now houses the Army Contracting Command, and the subordinate Expeditionary Contracting Commands. As of October 2009, the Army developed the Contracting Command that was to be filled by a two-star billet. The Army also stood up seven active duty component Army Contracting Support Brigades. These brigades were fielded with 42 officers and 24 Non-Commissioned Officers. The Army Contracting Brigades would serve as the contract support coordinator and operational support for the Army forces in deployed geographical regions similar to Combatant Commanders geographical regions. Contracting Support Brigades (CSBs) served as the “primary theater support contracting element” (Campbell 2010, 3). The Army stood up three CSBs and four subordinate Contingency Contract Battalions (CCBn), seven Senior Contracting Teams that were supported by 32 Contingency Contracting Teams consisting of 122 Officers and 118 Non-Commissioned Officers (Campbell 2010, 3).

According to the earlier studies, these were two of the five systemic problems that contributed to FWA. According to the 2006 GAO report, the contracting workload increased by as much as 88 percent from 2000 to 2005. The increase of obligated contracts was further complicated with more than half of the acquisition workforce eligible for retirement by 2010 (Schinasi 2006, 9). The increased Army Force design, which includes the Army Contracting Command and its subcomponents, was implemented in an attempt to mitigate DoD’s reoccurring inability to sustain its leadership roles and responsibilities.

### Doctrinal Initiatives

Although all services made changes based on the recommendations from the 2007 Gansler Report, the U.S. Army made the most notable changes. The doctrinal changes were the direct result of working with ASA (ALT) Acquisition, Logistics, and Technology Office, Training and Doctrine Command (TRADOC), Combined Arms Support Command (CASCOM), CALL, DCS G4, US Army Material Command and many other subordinate commands. Because many doctrinal changes addressed the new organizational structure designed to mitigate FWA, a few should be noted.

The Army added Field Manual (FM) 4-92, *Contracting Support Brigade*. This manual explains CSB operations. It is focused largely on the operational commanders, their staff members, and the logistical staff of the Army service component commands through their assigned theater support commands brigades, and support battalions. FM 4-92 was published in 2009, and it is now being used as a guide for contingency operations and other worldwide deployments (Campbell 2010, 1). Although it is too early to measure the impact, one can clearly see the how a trained acquisition force can be integrated with the Army's Brigade Combat Teams through the Joint Task Force with relative ease.

The Army also developed a "capstone" contracting manual. The new *Army Tactics, Techniques, and Procedures* (ATTP) provides Operational Contracting Support (OCS) to Army Force Commanders. This manual provides a holistic point of view of OCS to tie in AR 715-9, *Operational Support Planning and Management and the Common Battle Staff Task*, and "Coordinate Contracting Support." This manual is still in draft (Campbell 2010, 2).

DoD's inability to obtain fair and reasonable pricing as well as using inappropriate contracting approaches and techniques stemmed from a lack of policy or procedures to effectively construct and manage contracts. One of the DoD's initiatives immediately affected Field Ordering Officers, Pay Agents, and others who managed the Commander's Emergency Relief funds and acquisition projects. The magnitude of transactions coupled with the lack of trained personnel complicated contracts and contributed to FWA. The Army recognized this and published the, *Deployed COR Handbook* in 2008 (HB 08-47). For the first time, a handbook that addresses potential problems one might face while providing contractual support in a Contingency Operation.

In addition, the Army published the *Commander's Emergency Response Handbook* in 2009 (HB 08-12). This handbook focuses on the TTPs for the use and application of the Commander's Emergency Response Program (CERP). The targeted audience includes the Brigade, Battalion, and Provincial Reconstruction Team Commanders (PRT) and their staffs. This manual captured best practices from lessons learned in Iraq and Afghanistan. It helped identify the training, planning, and procedures in order to fund a project or provide a service during stability operations. In addition, the Army published a *Field Ordering Officer and PA Agent Handbook* in 2009 (HB 0916). Also in 2009, *Developing a Performance Work Statement* (HB 09-08) assisted contracting officers, contracting officer representatives and many others who manage performance work statements. CORs no longer had to guess or rely on previous Performance of Work Statements that really did not address everything that was necessary to accomplish the intended task that was contracted (Campbell 2010, 2).

As the Army began to move from Major Combat Operations to more Stability and Civil Support Operations, Mission Command received greater emphasis. This allowed subordinates to gain and maintain the initiative in an ambiguous environment, but it also created additional vulnerabilities to those who handled money directly to acquire immediate services. One contracting and services tool at the company level was money itself. In 2009, the Army published *The Commander's Guide to Money as a Weapon System* (MAAWS) (HB 09-27). This publication assisted the company, battalion, and brigade-level officers during the counter insurgency operations (COIN). The MAAWS SOP is now widely distributed and is being used extensively in Iraq and Afghanistan. This manual details the available commander's resources and how to actually apply them in relation to CERP, LOGCAP, PRTs, Purchasing Officers, Pay Agents, Operations and Maintenance (Army) OMA contracts, reconstruction contracts, and much more (MAAWS 2009, 4). Now, non-acquisition personnel can understand the intricacies of contracting and how to use the CERP and MAAWS without inadvertently getting into trouble.

### Training Initiatives

Another initiative the Army implemented to address the lack of a capable acquisition force focused on training. DoD recognized that the current acquisition force and the newly formed acquisition force could still be susceptible to FWA if they were not trained to deal with the intricacies of Contingency Contracts. To mitigate the impacts of untrained personnel, the Department of the Army added individual, collective and unit contracting training. One of the most recent individual training initiatives was the addition of Student Text (ST) 525 within the CGSC program of instruction. In 2010, this

block of instruction was embedded in the Force Generation classes. It is still being used in an eight- hour block today. The program of instruction specifically addresses the Army Force Generation Process and the phases including Global Force Management while deploying in Contingency Operations (Campbell 2010, 4).

The Army also initiated a certification course to allow non-acquisition service members the ability to earn a special skill identifier, 3C, for completing a two-week Operational Contract Support (OCS) Course. The course started in 2010. It trains staff officers from brigade through Army service component commands in operational contract support and planning. The Defense Acquisition University accredited another course in 2010, the Contracting Officer's (COR) Representative Course, which is taught in one-week resident or distance learning method. The focus of this course is to help the student understand the overall Federal and Defense Acquisition Regulations that govern the overall contracting processes and management of services, supplies, and construction contracts (Campbell 2010, 5). It is too early to measure this efforts success.

Similar to the Officer Basic Courses, the Army added an 8-week Army Acquisition Course. It is the Level 1 Education Certification in contracting. Level 2 Certification consisted of a 4-week, Army Acquisition Intermediate Course, which was a resident course designed to emphasize unique Army systems as well as Army doctrine. Other courses that were much shorter included the practical application using computer models and scenarios such as the Army Intermediate Contracting Laboratory taught by the Army Logistics Management College (ALMC). Although short in duration, ALMC also offered a three-day resident Performance Work Statement Course designed to give one an overview in contracting, terminology, and various organizations involved in

contracting. This course also gives the student examples, illustrations, and multiple formats of performance work statements used in a facet of scenarios and practical exercises injecting specific cases of FWA from the lessons learned in theater (Campbell 2010, 5).

As recent as 2010, the Army implemented collective and unit training for contracting in the form of Logistics Training Exercises (LTXs), Mission Rehearsal Exercises (MRXs) and the Mission Command Training Program (MCTP) with multiple contracting injects. It tested the unit and its ability to deal with Contingency Contracting Officers and LOGCAPs. Mission Command Training Programs, Combat Training Centers (CTCs) would place units in situations to allow the training of integrated contract support with a specific focus on exercising contracting systems and contracting staff (Campbell 2010, 5).

### Leadership Initiatives

The lack of sustained leadership was largely addressed by DoD once the Army Contracting Command was established in 2008. Many senior-level positions with the acquisition force were filled with commanders in the seven Army Contracting Brigades, three Contracting Support Brigades, four Contingency Contract Battalions 32, Contingency Contract teams with more than 122 officers and 118 non-commissioned officers. The key role of the commander is to provide vision, mission, and the mentorship that would transform the contracting climate into one that is ethical and accountable. As recent as 2011, ALT- IO introduced a new Deployed Manager's Course. In February 2011, the Army established Joint Logistics and Logistics Pre-Command Course.

In addition, Field Ordering Officers would be armed with the new “3-in-1 Tool,” which provided an automated capability for receipts, invoices, and disbursements for better management capabilities. The 3-in-1 tool helps acquisition management monitor contracts through automated reports and views automated transactions from anywhere in the world. The hand-held application is currently being tested in Iraq (Campbell 2010, 7). In 2009, OCS updated the Training Support Package (TSP). The educational leadership initiatives provided Army leaders with the necessary training for using contracts in support of Contingency Operations. Professional Military Education (PME) changed considerably. ILE, PCC, BCTP, Combined Logistics, Captain’s Career Course (CCC), Multinational Logistics Course, and the Logistics Transformation Course, were all embedded with contracting injects (Campbell 2010, 7).

In addition to the leadership courses provided, ACC leadership established internal initiatives to address five priorities through a strategic roadmap. The idea was to work closely and align with their higher command, the Army Material Command (AMC), in order to refine AMC’s guidance and make it executable and measurable. ACC’s goal for the Army Contracting Command was to use AMC’s mission, objectives, and lines of operations as starting points in their planning process for future contingency operations (Price 2010)

The Strategic Priorities are: one, to grow and develop a professional civilian and military workforce; two, to maintain superior customer relationships; three, standardize, improve and assure quality contracting support, business processes and policies across the organization; four, obtain and maintain needed resources; and five, to enhance working environment and quality of life. The acquisition leadership communicated these

initiatives down to every employee and assigned a special group to monitor each priority in order to foster “a culture of mentorship across the organization; finding ways to execute the contracting mission more efficiently and effectively” (Price 2010, 1).

#### Other Operational Contract Support Initiatives

The Army now incorporates a reach-back program to help Army leaders already deployed in Contingency Operations by providing a single-source repository or database. The AMC managed database helps CORs with tracking and managing contracts. The Army Contracting Task Force and Campaign Plan were approved in 2009 in response to the Gansler Report. The Contracting Campaign Plan addresses the findings and recommendations from the independent assessments and reviews in order to address FWA vulnerabilities. In addition, the Army has incorporated best practices through its Army Operational Contract Lessons Learned Program. This program leverages best practice communities and captures those lessons learned from forces already deployed in Contingency Operations (Campbell 2010, 5). These examples suggest that the program is effective.

#### Effectiveness

Although the Department of Defense, particularly the Army, implemented major initiatives between 2008 and 2010, have those initiatives had any positive impacts on a “lack of sustained leadership, lack of a capable acquisition force, inadequate pricing, inappropriate contracting approaches and techniques, or insufficient contract surveillance through the life of Contingency Contract?” Do these vulnerabilities still exist? In order to make an informed assessment, the researcher relied on the recent studies provided by



individual assessments from various agencies made after the implementation of the Army Contracting Command and other initiatives. These agencies include SIGIR, SIGAR, CWC, ASA (ALT) Directorate, and several other independent reports. The following addresses and compares these reports against the metrics discussed in chapter 3.

### Contract Surveillance

One concern was the lack of oversight regarding contract performance throughout the life of the contract. Although DoD placed emphasis on initiatives to deal with this concern, the 2011 IG audit suggested that this vulnerability still exists. The IG cites several examples of CORs who were responsible for the contracts that were either not present or simply not effective. If CORs are the “eyes and ears” of for the actual contracting officer, then they should oversee the life and performance of the contract. In fact, the FAR details the COR’s role. The COR “assists in the technical monitoring or administration of a contract” (Federal Acquisition Regulation 2011, 1.602-1.604). The 2011 IG audit also cited a lack of oversight within the Marine Corps. The Marine Corps Systems Command Joint Program Officer was in charge of the \$815 million that was procured for New Equipment Training (NET) an Instructor Services designed to provide training on the Mine Resistant Ambush Protected Vehicles (MRAP). The IG discovered that the NET program lacked a quality assurance surveillance plan. The contractors relied on complaints from the units going through the training to measure the performance of the contract (Blair 2011, 7).

The USAF offered another example of a lack of surveillance. The Air Force Center for Engineering an Environment CORs were charged with monitoring six separate task orders in Afghanistan and Iraq. The IG discovered that the CORs failed to conduct

local site visits. Instead, they attempted to monitor the performance of such contracts from the CONUS. In one case an investigation revealed that a fire within the Afghan National Barracks was due to faulty engineering and construction projects that could have been avoided with proper oversight. Consequently, the Air Force was charged with an additional \$24.2 million in labor costs to fix the issues (Blair 2011, 8). The IG also discovered that the Air Force Center for Engineering and Environment contracting officers did not perform proper invoice analysis for almost three years. The invoices for services performed were paid without anyone certifying that the invoices were actually correct. More explicitly, one invoice revealed that the local construction inspector billed the U.S. for 630 hours for 27 days. That billing period translates to a person working 23.3 hours a day, which is highly unlikely (Blair 2011, 9).

Another gross oversight in invoice reviews discovered major vendors overcharging DLA for Troop Transport. In April 2009, DLA received an invoice for Troop Transport with a weight of 356 pounds. However, the air invoice showed a weight of 311 pounds. The COR paid the vendor for the higher of the two invoices at 356 pounds. These examples show that vulnerabilities to FWA because of a lack of oversight that still exist within the Air Force and Marine Corps. If this oversight is simply due to human error, then it suggests that the CORs were not trained. If this error was simply due to laziness, then it suggests that the CORs were non-complaint with established FAR procedures and should be reprimanded and the transportation costs should be adjusted.

According to DCAA, audit oversight of contracts has created a \$2.9 billion net savings. In contrast, the DCAA cannot keep up with the number of audits required to continue the recovery of unjustified payments. Currently, the DCAA has a backlog of

\$558 billion in unaudited contracts, a 27 percent increase within the last nine months. The primary reason is the lack of trained auditing personnel. At the current rate, unaudited contracts will exceed \$1 trillion by 2016 (Commission on Wartime Contracting 2011, 162). An independent study conducted by the Army Force Management Support Agency suggests that the DCAA would have to increase its total workforce to 6,250 by 2015 to accomplish such a task. Currently, FY 2012, the Department of Defense has not funded such an increase and is not expected to due to the DoD budget cuts (Commission on Wartime Contracting 2011, 162-163).

DoD provided more than 42 audits and inspection reports since May 2010. The audits and investigations resulted in a total of 34 convictions and \$42 million recovered in monetary value and \$90 million in restitution to the US government (Blair 2011, 10). One might ask if hiring more staff costs more than it is worth? The DCAA believes that the net savings of \$2.9 billion equates to \$5.20 for every dollar invested in audits and other forms of oversight. The audits were focused specifically on contracts related to Contingency Operations.

Do the audits show that FWA is still prevalent? The audits in Iraq focused on accountability of assets, base closures, and the demobilization of contractors as the U.S. military continued to drawdown. The investigations from the audits continued to focus on corruption and fraud of contracts and contract management. The latest audits showed weaknesses and vulnerabilities in pricing and contract surveillance. For example, DoD IG cited DLA for overpaying vendors potentially \$98.4 million for transportation costs from 2005 through 2008. DLA was also cited for overpaying \$45.9 million for transporting fresh fruit from the United Arab of Emirates (UAE) to Afghanistan. In addition, the

contract did not document that the airlift price was fair and reasonable. According to the DCAA audits in 2008, DLA knew that the transportation rates were too high, but continued to use the provisional contract without any adjustments after the fact. No one is perfect, but once the price analysis was complete, price adjustments should have been made to meet the FAR standards (Blair 2011, 12).

One notable FBI and CID investigation in 2010 revealed that U.S. Army Staff Sergeant Nathan Ringo and Sergeant Michael Dugger accepted over \$400,000 in cash to make fraudulent paper work that allowed a contractor to steal approximately \$1.5 million in fuel from the Forward Operating Base (FOB) Shank (Blair 2011, 17). This particular example involved several individuals accepting bribes to allow the fuel to be stolen within a three-month period. Although the Department of Justice prosecuted these individuals for defrauding the government through inappropriate contract techniques, contract fraud appears not to be an isolated incident. Another recent example of contract fraud revealed Marine Corps Captain Eric Schmidt who deployed to Iraq as a Logistics Officer. He sold at least \$1.2 million in stolen government property. In addition, he was convicted of steering his contracts to one major contracting company, the Al Methwad Company (Blair 2011, 17). The issues are criminal, but they contribute to FWA concerns.

To look at an overall view of the FWA trends from 2003 through 2010, one could easily refer to a snapshot of the entire 398 Department of the Criminal Investigations associated in OSC. These investigations resulted in a total of “86 federal indictments, 73 criminal informations, 11 military Article proceedings, and 114 felony convictions.” The monetary value resulted in \$18 million assets forfeited and \$200 million in restitution that went back to the US Government (Blair 2011, 22). This snapshot is from just one

investigative office alone. The newest report to Congress from the Commission on Wartime Contracting estimates, “contract waste and fraud ranged from \$31 billion to \$60 billion during military operations in Iraq and Afghanistan” (Commission on Wartime Contracting 2011, 32). The cost of \$200 million in restitution compared to a \$31 billion loss is clearly not effective.

Both the Democrats and Republicans claim that FWA accounts for millions and possibly billions of wasted dollars (Brodsky 2011, 1). However, this perception is not groundless. In February 2011, members of the House Oversight and Government Reform Committee commented that federal programs and contractors were to blame for the billions of dollars lost. Senator McCaskill, the chair of the Senate Homeland Security and Government Affairs Subcommittee on Contracting Oversight, stated that approximately half of the wasteful spending involved contracting. Representative John Tierney, another member on the Government Reform Committee, criticized private security contractors. Delegate Eleanor Holmes focused her comments on the familiar KBR contracts that supported U.S. troops in Iraq (Brodsky 2011, 1). Because Congress was concerned that the huge amounts of waste could be accepted as the norm, it created several independent commissions in order to gain insight and an assessment to identify what has contributed to FWA within the contracting process and to provide recommendations to improve the contracting process and contractors.

One of the newest commissions, the Commission on Wartime Contracting (CWC), has been collecting and assessing contracts regarding reconstruction, logistics, and security contracts for the past three years. The CWC published a final, comprehensive report in August 2011. The report cited several vulnerabilities or risks of

using contingency-support contracts that permit a comparison to the findings from the 2005 Defense Science Board; the 2006 GAO; and the 2007 Gansler reports.

The CWC's observations suggested that after 10 years of Contingency Operations in Iraq and Afghanistan, FWA still existed (Commission on Wartime Contracting 2011, 94). Some specific examples are cited in detail. Contracting performance and oversight of contracts are still vulnerable. CWC cited a lack of trained or experienced CORs contributed to rewarding bad construction work. For example, \$62 million was awarded to Parsons Delaware Incorporated on a construction project for the Baghdad Police College despite several major problems that were identified prior to completion. Specifically, substandard equipment was used, materials improperly constructed, construction codes and safety specifications were not met. The COR awarded the company an additional \$5.3 million for completing the work. Essentially, a subsequent contract was awarded to finish the job that the contractor was originally hired for. Proper oversight and surveillance of the contract before, during, and after the contract let could have saved the additional \$5.3 million (Commission on Wartime Contracting 2011, 86). Moreover, the IG investigation in Iraq revealed that KBR could not account for government furnished property valued up to \$100 million. The CWC suggests that the DCMA could have "tracked and perhaps mitigated" property accountability by monitoring contract performance (Commission on Wartime Contracting 2011, 88).

Similar issues surfaced in Afghanistan. Under Army LOGCAP IV, DynCorp was contracted for a large volume of electrical repairs. In January 2011, the DCMA cited DynCorp for recording electrical repairs as "complete" when in fact the parts were still on order. DCMA issued a Letter of Concern to DynCorp to correct the issues, but the lack

of oversight continued to put Soldiers at risk (Commission on Wartime Contracting 2011, 89). A CNN Special Investigations Unit covered DoD IG's investigation of the 18 deaths caused by electrocution in Iraq in 2009. Improper grounding reportedly caused nine of those deaths. The most recent death was Staff Sergeant Staff Ryan Maseth, stationed at a U.S. base in Baghdad, Iraq in 2009. KBR Contractors were accused of installing improper grounding and faulty equipment. The IG report concluded "that a water pump installed by military contractor KBR was not grounded, leading to Maseth's electrocution when it short-circuited . . . that the Army did not set standards for jobs or contractors, and KBR did not ground electrical equipment it installed at the facility (Bronstein, 2009). The unreasonable and unacceptable safety risks are perhaps indicators of a climate or culture that has relied on contracts too much.

A more recent example of a lack of oversight involved the Anham LLC Company based in Dubai. SIGIR's 30th quarterly report to Congress on July 29, 2011 cited gross overcharges. SIGIR believed that the company overcharged the Pentagon as much as \$4.4 million in spare parts and equipment. Specific examples included an electric control switch valued at \$7.05 that was billed for \$900; a circuit breaker valued at \$183.30 billed for \$4,500; or a drainpipe valued at \$1.41 billed for \$80. The overcharges are nothing new in the world of contracting, but the systemic problem suggests a lack of contract surveillance. Even more egregious was the \$20,000 charge to crank down the legs and crank up the tower of a one-man operating voice system. The Special Inspector General for Iraq Reconstruction, Stuart Bowen, said, "the audit found weak oversight in multiple areas that left the government vulnerable to improper charges" (SIGIR 2011, 11). SIGIR cited a lack of contract oversight by the CORs because the CORs responsible for

monitoring Anham's billing system did not compare invoice vouchers and receiving documents allowing one to sign for delivery of goods without actually receiving them (SIGAR 2011, 110).

SIGIR also recently audited five contracts of Theater Wide Security Services (TWISS) in which DoD was responsible for providing oversight. SIGIR concluded that the CORs who were directly responsible for the contracts lacked sufficient training or time to provide oversight. SIGIR also concluded that the DCMA, who is responsible for providing the training and issuing performance reports, was not complying with the specified requirements. Out of the CORs surveyed, 40 percent said that the training did not prepare them for their duties (SIGIR 2011, 12). The recent audits make a compelling argument that contract surveillance is still ineffective. One could argue that this is a systemic symptom and not the root cause due to a lack of training or time, but it is clear that contracts are still vulnerable because of insufficient surveillance.

Is it also a problem in Afghanistan? The Special Inspector General for Afghanistan (SIGAR) issued its 10th Quarterly Report on January 30, 2011. During this quarter alone, SIGAR opened 35 new cases totaling 105 criminal and civil investigations of fraud waste and abuse. Of those cases, 86 percent focused on contract and procurement fraud (SIGAR 2011, Executive Summary, 6). SIGAR audit 11-7 cited contract oversight and sustainment concerns within the Commander's Emergency Response Program (CERP). SIGAR targeted 69 specific CERP projects in Laghman that totaled \$53.23 million in obligated funds. The results were startling, 27 of the 69 projects targeted were at risk to waste. The projects at risk totaled \$49.2 million of the obligations reviewed (SIGAR 2011, 10). Some were at risk due to a lack of sustainability, oversight, or just



failed to follow FAR requirements. In other words, the contracts that were specifically designed to repair roads and buildings valued at \$44.6 million had no plans or assurance that the Government of Afghanistan (GIROA) could sustain them. In addition, many of the files audited lacked documentation to “substantiate payments” with very little proof that the contracts were monitored (SIGAR 2011, 10).

SIGAR also received several complaints from Afghan local nationals referencing contractors and U.S. based companies committing fraud by not fulfilling their obligations. Specifically, two companies left Afghanistan before paying their workers \$2.55 million. K5 Global and Bennett and Fouch LLC were recommended to the Army’s Procurement Fraud Branch for debarment. The real issue is the risk to the national strategic objectives. If companies are allowed to continue in such a manner that discredits the U.S., it threatens the overall goals of the nation and puts U.S. Soldiers in physical harm. SIGAR investigator, Major General (Retired) Arnold Fields concluded:

Through its audit and investigative work over the last 18 months, SIGAR has identified six broad issues putting U.S. investment in Afghan reconstruction at risk of being wasted or subject to fraud and abuse...: inadequate contract and program management, need to work in greater partnership with the people of the country we are trying to rebuild, measuring outputs rather than outcomes, inability to curb corruption, insufficient local capacity to manage and sustain projects, and lack of security. (SIGAR 2011, 2)

#### Qualified Acquisition Force

Although the Army has incorporated its Contracting Command and added more contracting personnel to support contingency operations, the previous examples of poor contract oversight and the continued inadequate pricing of contracts suggest that DoD may still have a lack of experienced or qualified contracting representatives available. The previous example, where DLA for overcharged for Troop Transport suggests that the

COR did not provide adequate oversight of the invoices. In April 2009, DLA received an invoice for Troop Transport with a weight of 356 pounds. However, the air invoice showed a weight of 311 pounds. The COR paid the vendor for the higher of the two invoice at 356 pounds.

These examples show that DoD contracts are still vulnerable and that FWA is still prevalent due to the lack of personal oversight over the life of the contract. Is the continued lack of oversight due to a lack of personnel? According to Defense Contract Audit Agency (DCAA), the increase in audit personnel has allowed the additional oversight of contracts and created a \$2.9 billion net savings by identifying FWA and recouping the money. In contrast, the DCAA cannot keep up with the number of audits required to continue the recovery of unjustified payments. Currently, the DCAA has a backlog of \$558 billion in unaudited contracts that increased almost 27 percent from \$406 billion within the last nine months. However, the audit revealed that the primary reason for a lack of oversight was a lack of an auditing workforce. At this rate, the unaudited contracts will exceed \$1 trillion by 2016 (Commission on Wartime Contracting 2011, 162). An independent study conducted by the Army Force Management Support Agency suggests that the DCAA would have to increase its total workforce to 6,250 not later than 2015 to accomplish such a task. Currently, FY 2012, the Department of Defense has not funded such an increase and is not expected to due to the DoD budget cuts (Commission on wartime Contracting 2011, 162-163). Table 2 depicts a quick snapshot of the 2006 GAO Report, 2007 Gansler Report, and the 2011 CWC Report and their key findings and vulnerabilities that directly contribute to fraud, waste and abuse within government contracts. The highlighted column in table 2 represents the major

DoD initiatives following the Gansler Report. The 2011 column represents the final report to Congress and the current vulnerabilities to fraud, waste, and abuse in which DoD still faces today. Please note that the metrics used do not match exactly in each column, but are close enough to make a valid comparison.

Table 2 helps portray the CWC “after action” report on the identified FWA vulnerabilities before and after DoD sponsored initiatives between 2007 and 2010. Although the comparisons are not exact, the results are close enough to determine key vulnerabilities from 2006 until the present. The comparison suggests that poor oversight over a contract’s lifespan is still a major problem. Although DoD has increased the Acquisition Force, the recent CWC report suggests that the current increase in the acquisition force structure (personnel strength) is not enough to sustain on-going obligated contracts. According to the Army Force Management Support Agency, the DCAA would need 6,250 personnel to keep up with the \$558 billion in backlogged contracts (Commission on Wartime Contracting 2011, 162). The metrics allow for some conclusions about the effectiveness of DoD’s initiatives, but they are not conclusive.

Table 2. Chronological Comparison of Independent Vulnerability Reports

BEFORE DoD INITIATIVES		AFTER DoD INITIATIVES	
2006	2007	2007-2010	2011
<b>GAO Report</b>	<b>Gansler Report</b>	<b>DoD Initiatives implemented</b>	<b>Commission on Wartime Contracting</b>
Lack of Sustained Leadership	Lack of Leadership (General Officers in Contracting)	Army Contracting Command (ACC) with (1) one-star and (2) two-star positions established	Agencies have not institutionalized acquisition as a core function
Lack of a capable Acquisition Force	Inadequate Training Contracting Personnel in Theater	Contracting Collective/Unit Training Initiatives established Army Acquisition Basic Course	Over reliance on contractors for contingency operations
Inadequate contract pricing	Inadequate Quantity of Contracting Personnel leading to Inadequate Pricing	New Contracting Doctrine and Policies established (growth of 261 Officers and 254 NCOs)	Current Federal Guidance is not sufficient
Inappropriate contracting approaches and techniques	Lack of Recognition of Complexity of Contracts	Training for Acquisition and non-Acquisition Professionals	Contract competition, management, and enforcement are ineffective
Insufficient contract surveillance	Insufficient Resources to Monitor Performance	DoD established SIGIR, SIGAR, Procurement Fraud Working Group	Inattention to contingency contracts leading to massive FWA

Source: Created by author using data from Katherine Schinasi, *Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse* (Washington, DC: US Government Accountability Office, 2006), 1-25; Jacques S. Gansler, *Urgent Reform Required: Army Expeditionary Contracting, report of the commission on Army acquisition and program management in expeditionary operations* (Washington, DC: Government Printing Office, 2007), 1-116; Gordon Campbell *Information Paper: Army Operational Contract Support (OSC) Doctrine, Organization, Training, Material, Leadership and Education, Personnel (DOTMLP)/Policy Initiatives* (Washington, DC: ASA Acquisition, Logistics, and Technology-Integration Office, February 25, 2010). 1-11; Commission on Wartime Contracting in Iraq and Afghanistan, *Transforming Wartime Contracting: Controlling costs, reducing risks* (Arlington, VA: U.S. Government Printing Office, August), 1-174.

One should also consider additional FWA indicators to help determine if the new DoD initiatives have effectively decreased FWA vulnerabilities or determine if they still

remain? One indicator is the amount of criminal cases linked to FWA. Many agencies conduct procurement fraud investigations. These include DoD IG SIGIR, SIGAR, DoJ, Defense Criminal Investigative Service (DCIS) and several others. However, the CWC's most recent report compiled a monthly status report from the DCIS that shows 251 criminal procurement fraud cases still open in June 2011 (Commission on Wartime Contracting 2011, 91). SIGIR reported had a total had 223 FWA criminal cases in 2010. According to the DOD's deputy inspector general, James Burch, this was an increase from of 18 percent from the previous year (Madhani 2010, 1). In 2009, SIGIR reported only 67 criminal cases open in Iraq. In Afghanistan, only 47 criminal cases were open in 2010, with just four criminal fraud cases open in 2009 (Madhani 2010).

The tough part is to determine if the increase in criminal procurement fraud cases is a change that reflects in an increase in FWA suggesting that DoD initiatives are not working. On the other hand, is the increase in quality assurance personnel from SIGIR, SIGAR, or DCIS investigators responsible for the increased caseload? By October 2010, SIGAR increased its workforce over 100 percent. In fact, the agency increased its personnel strength from 15 to 32 and expects to increase its personnel strength to 49 by the end of FY2011. That is a considerable increase in qualified personnel considering the agency started with just five civilians and three contractors in 2004.

The increase in prosecuted criminal cases is proportional to the increase in the personnel staff of the investigative agencies that monitor FWA. This suggests that some of the initiatives are effective at identifying and prosecuting FWA incidents. The head of SIGIR, Mr. Stewart W. Bowen Jr., believes that more witnesses are coming forward. After they return to the United States from the contingency operations, they no longer

feel threatened (Madhani 2010, 1). The increase in criminal cases also suggests that the Department of the Army's Procurement Fraud Branch has made significant impacts by holding individuals and contractors accountable for misconduct and effectively disbarred guilty individuals or companies from future DoD contracts (Bowen 2007, 7).

### Contract Approaches and Techniques

The DoD IG recently completed a review of Army Contracting Command contracts. The June 2011 report recorded several ACC contract and contract management approaches that stated that officials were still using inappropriate techniques. One example included the "Kuwait Base Operations, Security Support Services, supply Support and Ammunition Supply Point contracts" (SIGIR 2011, F3). The ACC did not have a process in place to review the validation of the contract requirements, fixed prices, or property accountability. The report specifically blamed ACC and its leadership for failing to plan for the Army's transition to Kuwait. The result was an unexpected cost because of the unplanned growth and poor accountability of DoD property, and thus vulnerable to FWA.

The Program Office for Simulation, Training, and Instrumentation (PEO STRI) maintained its contract so poorly that the DoD IG was simply unable to audit its records. The contracting officers lacked essential documents associated with accountability and transparency of the activities within the contract. For instance, the critical pre-negotiation and price memorandums were missing. Internal controls that should have been written within the contract were also missing. In addition, three training efforts were awarded to this contract totaling \$94.3 million for supplies and services. Because of the inappropriate techniques used, DoD was unable to verify that this price was fair and reasonable (SIGIR

2011, F3). It appeared that after several audits, missing price memorandums and the lack of internal controls are becoming the norm.

The United States Army Auditing Agency recently audited the government-furnished fuel contract in Camp Steeler, Iraq in 2010. The contract for Recycling and Disposing Waste material at Camp Steeler cited misappropriation due to several factors. First, the contract lacked COR oversight. The COR was not aware that the contractor was selling waste fuel valued at approximately \$573,000. Second, the audit revealed that the contractor received more fuel than was authorized because:

The government did not have procedures for estimating contractor fuel requirements, (2) properly prepared authorization documents, or (3) controls to sufficiently monitor fuel delivery and report results. As a result, the government experienced a loss of about \$1,373,000 in fuel that went undetected from January 2006 to August 2009. (SIGIR 2011, F12)

Although corrections were made and the government is seeking restitution for \$1,946,000, the audit suggests that appropriate contract procedures could have avoided or at least detected the issues much sooner.

#### Adequate Contract Pricing

The DoD Panel on Contract Integrity made a special report to Congress in 2010. According to the National Defense Act of 2007, DoD was directed to convene a panel of senior leaders to find ways to eliminate FWA within contracting. The annual report in 2010 covered 25 actions to include those recommendations from the Gansler report to help determine if the identified weaknesses to FWA have been eliminated. Action 4a cited the current Federal Acquisition Regulation (FAR), FAR Supplement and its policies, procedures and guidance was sufficient enough to determine fair and reasonable contract prices. The FAR specifically requires prime and subcontracts to conduct an

analyses that would establish price for the contract and any related subcontract prices (Assad 2010, 18).

However, to evaluate if those policies are understood, one would have to look at the actual performance of the contracts or talk the contractors themselves to determine the effectiveness. The panel conducted several interviews of contracting officers to see if they understood their roles and responsibilities. The contracting officers and contracting officer representatives understood what the requirements were, but simply did not comply. The panel discovered that the analyses of prime contracts and subcontractors were either inadequate or simply missing. The actual analyses of the subcontract prices were generally missing at the time of the proposal or at the time of the awarded prime contract. Non-compliance continued without consequences. The established climate led CORs to believe that an analysis for an adequate price for subcontracts were not necessary since the prime contract was already awarded (Assad 2010, 18).

The panel also discovered that contractors circumvented prices that were over the established thresholds. For example, contractors issued several separate contracts below the threshold, but the aggregate of the separates contracts clearly exceeded the maximum thresholds. This would effectively circumvent the FAR's requirements for certified cost or fair price analysis (Assad 2010, 19). Adequate pricing also implied that a proposed contract should be vetted with multiple contract offers. The working group discovered additional inadequate pricing practices when multiple contracts received only one bid. The GAO reports recorded the same practices.

In 2009, The Panel on Contracting Integrity tasked a separate subcommittee, The Contract Pricing Advisory Group (CPAG), to evaluate the need for additional training



and guidance to mitigate inadequate contract pricing. One of DoD's initiatives in 2007 led to the creation of the Defense Acquisition University. The panel tasked the CPAG to evaluate the university's curriculum to make sure that it supports a contract price analysis portion. The CPAG's recommended changes included: a Level I Pricing Course, 80 hours of resident training, increase the topics in Level II to include topics on "Cost Analysis and Negotiation Techniques," advance topics in pricing in the Level III capstone, and directly link the pricing courses to the current pricing and reference guides (Assad 2010, 21). These changes are already approved and being implemented by FY 2012. At this point, the DoD initiatives that were established following the Gansler Report in 2007 appear to be ineffective. The examples provided cited very recent issues in contract pricing analysis and contractor compliance with the current FAR requirements. However, the recent 2010 initiatives in the area of adequate contract pricing by DoD are too recent to gain a fair measure of effectiveness.

#### Sustained Leadership

The introduction of the Army Contracting Command itself suggests that the responsibility of contracting is no longer perceived as an additional duty. If the measure of success is the number of leadership positions filled compared to those that were empty before 2008, then one can easily come to a positive conclusion. However, a real comparison of effectiveness should be measured beyond numbers. Has leadership changed the culture? Have senior-level leaders within the acquisition force coached, mentored and taught contracting officers and CORs how to make better ethical decisions within the contracting process? Is acquisition seen more as a core function like Infantry,

Artillery, and Armor? These metrics may be difficult to ascertain and quantify, however, Congressional and DoD agencies provide some insight.

According to DoD, the new structure has not yet integrated OCS into “task planning, operational assessments, force development, training, readiness reporting, and lessons learned” (CWC 2011, 120). DoD and the Joint Chiefs of Staff suggested in August 2011 that contracting was still looked at as a method of logistical support rather than a full spectrum operational support. One of the recommendations was to establish a joint contracting directorate (J10) at the flag officer level. This position would be able to tackle operational contract issues and promote better planning and coordination across combatant commands by assigning responsibility and demanding accountability. This recommendation suggests that sustainable leadership is still lacking, and that acquisition has not yet been institutionalized

Many examples of COs and CORs not complying with the established rules and regulations that govern contracts have been cited. Who holds the CORs accountable and who enforces the policies and procedures? The lack of oversight alone is a failure to comply. In 2009, SIGIR revealed that KBR’s tactical-field maintenance contract in Joint Base Balad, Iraq was based on a utilization rate. However, the investigation determined that the utilization was actually 10-15 percent of the utilization requirement. Who had oversight responsibility for this contract? The result was a \$400 million loss through underutilization (CWC 2011, 85).

When contracting management fails to centralize contracts throughout an operation, many contracts are awarded or duplicated which inadvertently allows FWA to occur. The cost of such errors can be in the millions. For example, before 2011, DoD

awarded multiple contracts in Afghanistan to operate approximately 3,000 leased vehicles for \$119 million. In 2010, GSA determined that it could lease and maintain 1,000 vehicles for only \$19 million per year (CWC 2010, 84). That is a savings of about \$67 million. These examples and many more like it can be found throughout this research suggest that CORs are still not being held accountable. However, the Army Contracting Command is new and it may not a fair assessment of its leadership given the fact that many of the Army's initiatives are still developing.

## CHAPTER 5

### CONCLUSION

Why should we care about FWA within government contracts? The evidence suggests that the war in Iraq and Afghanistan has already cost the U.S. government \$888 billion. As of 2011, the CWC estimated that billions of dollars were lost in contracts that supported the two wars. The conservative estimate was \$31 to \$60 billion lost due to fraud and waste since FY2002 (Commission on Wartime Contracting 2011, 5). As the president's Debit Task Force looks for ways to balance the budget, reducing risks and controlling contract costs offers a partial but significant solution.

The important part of this report questions if DoD has implemented any initiatives in order to mitigate the billions of dollars lost to FWA. More importantly, has DoD been effective at controlling those identified vulnerabilities to reduce FWA for future contracts? The systemic findings and recommendations each agency offered and how those findings and recommendations compared against this more recent report is critical.

The 2006 GAO Report identified five systemic vulnerable areas. These included a lack of sustainable leadership, a lack of a capable acquisition workforce, inadequate pricing, inappropriate contracting techniques and insufficient contract surveillance throughout a contract's lifespan. The 2007 Gansler Report produced similar concerns. It concluded with four overarching areas that needed improvement: an increase in the stature, development, and quantity of military and civilian contracting personnel; restructuring the organization to restore responsibility; provide training tools and training for contracting in contingency operations; gain policy, regulatory, and the need for legislative assistance to help with contracting during contingency operations (Gansler

2007, 5). With a rising national debt, congressional considerations for federal wage freezes and retirement delays, and the urge for Congress to cut DoD's budget, earlier serious assessment of FWA contracting issues could ease the fiscal pain.

### DoD's Response

In retrospect, DoD implemented a few tangible changes based on the Defense Science Board in 2005 and the GAO study recommendations from 2006. The 2007 Gansler Report generated changes that were more substantial. Consequently, the initiatives also addressed earlier recommendations from the GAO, and the Defense Science Board because the recommendations were based on the same systemic problems DoD faced while managing government contracts in the previous years.

**Organizational and Personnel Initiatives:** One of DoD's largest initiatives was the introduction of the Army Contracting Command. The entire acquisition corps was transformed. This initiative addressed the need for a more capable acquisition force, sustained leadership, appropriate contract techniques and approaches, contract oversight, and much more. The Contracting Command added more contracting personnel to the acquisition pool and assigned responsibility and accountability for all contracts under one chain-of-command. Additional qualified personnel could also provide senior-level oversight by filling key billets at the General Officer level to provide the proper mentorship and reinforce the culture of following established procedures.

**Doctrinal and Training Initiatives:** DoD also made doctrinal changes to address the lack of training and lack of qualified acquisition personnel. The Army established the Army Acquisition Basic, Intermediate, and COR Courses, and multiple other training initiatives including multi-level contracting certifications to mitigate the inadvertent or

inappropriate contracting techniques associated with untrained CORs. The Army training initiatives implemented new doctrinal changes, policies and regulations such as the CERP, MAAWS, FOO, and COR Handbooks. These changes addressed proper techniques and approaches for contractors and contracts, created a Lessons Learned Program to codify best practices and insights for future acquisition personnel, and added contracting injects into the programs of instruction within the Defense Contracting University and within the general officer education system of Intermediate Level of Education at the Command and General Staff College (Campbell 2010, 1-11). These initiatives are clear and tangible, but are they effective? Of course, how effective they were determined how much of an impact DoD's initiatives had against FWA.

#### Effectiveness?

DoD has mitigated those factors thought to contribute to FWA. The initiatives addressed the various agencies recommendations. The U.S. Army has had the greatest impact, but the impact could only be measured within the last three years by investigative agencies such as SIGIR, SIGAR, the DoD Panel and the Congressional CWC.

The DoD established the CWC after DoD implemented changes to address the previously identified areas that encumbered contracts and contributed to FWA. The CWC spent the last three years reviewing wartime contracts in contingency operations. Although the Commission's 2011 Report contained some slight variations, overall, it identified similar systemic areas that still need improvement. The CWC also concluded that DoD faced a new threat of over-reliance on contracts that put current and future contracts at risk. The CWC findings included an over-reliance on contractors for contingency operations, the lack of appropriate guidance regarding the use of contracts in

contingencies, inattention to government contracts looming sustainment costs, acquisition has not been institutionalized as a core function, ineffective interagency coordination, and ineffective contract competition, management and enforcement. The SIGIR, SIGAR and the DoD Panel drew similar conclusions.

The 2011 SIGAR audit focused on contract management and oversight. Approximately 86 percent of SIGIR's investigations were on contract and procurement fraud alone. The latest audit covered a period of 18 months. The Special Inspector General for Afghanistan, Major General (Retired) Arnold Fields, identified six broad areas of contracting that were still vulnerable to FWA. The systemic problems laid within adequate contract and program management similar to the 2006 GAO study, the 2007 Gansler Report, and the more recent 2011 CWC.

The current findings are mixed. Military contractors are performing better and auditors have recovered millions in restitution, but a few of the systemic problems are still occurring. The indicators in chapter four suggest that contract surveillance is still an issue. DoD, and especially the U.S. Army, have made numerous policies, regulation, and governmental rule changes to help govern contracts more closely. However, recent audits show that many CORs who are directly responsible for contract oversight are still not complying. Personal interviews with CORs where inadequate surveillance did occur suggested that 40 percent lacked training (SIGIR 2011, 12). Other indicators suggest that the reason is simply not enough qualified personnel in theater to manage the number of contracts already in place. With the number of contracts on the rise, this gap should increase. Either way, contract surveillance is not effective and the lack of it is still making government contracts vulnerable to FWA.

## Recommendations

Recommendation 1 (Build Internal Sustainment Capability). DoD has emphasized the need for a capable acquisition force. The new Army Contracting Command is a direct result of one of DoD's initiatives. However, DoD should also consider building the capability of the military's internal logistics in order sustain and maintain its military force for future contingency operations. The intent is to reduce the vulnerability of over-reliance on contracts. The research suggests that contracts have grown and expect to continue to grow beyond DoD's ability to effectively manage and maintain them. One way to reverse the inadequate sustainment capability is to address it in the next Quadrennial Defense Review. The Department of the Army's G4 with assistance from G5, and G7 should conduct a capability gap study within the Total Army Analysis (TAA) to determine if the sustainment force structure needs an overhaul to develop the necessary capability from scratch or simply a shift in the forces that we already have within the Modularity Brigades. The TAA analysis is designed to provide a qualitative and quantitative review of the operating and generating forces outlined in the QDR. I expect to find that the Army has swung the pendulum too far and cut too many military sustainment personnel. An increase in the military's ability to conduct self-sustainment may be an augmented solution to problem of over-reliance in contracts.

Recommendation 2 (Develop Quality Assurance and Quality Control). DoD and especially the Department of the Army have already initiated multiple training and certification programs to address inappropriate contracting techniques and approaches. Although improvements have been noted, many CORs and other acquisition personnel are not compliant. Historically, the number of contingency contracts has increased as the



contingency operation continues. Quality Assurance and Quality Control (QAQC) programs could incorporate senior-level acquisition personnel to monitor contracts within designated and delineated regions as the increase occurs. The intent is to place oversight with emphasis on inexperienced CORs and high-risk contracts. The intent is to address inappropriate techniques and approaches. Another approach could be augmentation. Combat Commanders are responsible for their assigned areas and the contracts within their areas. This would imply that select non-acquisition personnel should also be trained to understand the roles and responsibilities of the CORs in their assigned areas. Non-acquisition staff members are offered procurement classes and training under DoD's 3C training initiative in order to support their units and commanders, but they place little emphasis on the actual leadership. The commanders could provide better oversight, enforce compliance, and help augment oversight if they were more familiar with the acquisition process.

This method could also address the systemic issue of inefficient oversight. Senior-level acquisition and non-acquisition personnel could attach subordinate CORs within their rating chain for the period of the contract and therefore hold people accountable for the respective contract throughout the life of the contract. This recommendation could augment the DoD Panel's 2010 recommendation. It addressed how senior acquisition leaders need to find ways to communicate and demonstrate ethical decisions. Management and enforcement of the established contracting regulations has the potential to address this and other systemic issues the CWC, DoD Panel, Gansler, GAO and Defense Science Board Reports identified.

Recommendation 3 (Conduct Subcontract Reviews). DoD often awards primary contracts after an extensive analysis and review of the overall type of contract to be acquired, statements of work, negotiated price, and much more. This has not been the case for subcontracts. Too often subcontracts received awards that were sole-sourced and therefore skipped the entire bidding process and adequate price competition.

Investigations found that some contractors issued several purchase orders to break up the overall cost in order to circumvent monetary thresholds. Some companies received subcontract awards that DoD had already barred. Realizing that DoD has established Subcommittee 13 with a charter to address better competition, it should expand its charter to include subcontract reviews. Reviewing subcontracts before awarding them can also be added to the Defense Acquisition University curriculum.

APPENDIX A  
CRITICAL CONGRESSIONAL AND DOD AGENCIES

Government Accountability Office

The Government Accountability Office (GAO) was founded in 1921 as a Congressional agency designed to investigate federal spending to ensure that Congress is meeting the responsibilities of taxpayer dollars. The GAO is an independent non-partisan agency which is directed by the Comptroller General of the United States. Because of this role, the GAO is often referred to as the “congressional watchdog.” The GAO provides Congress oversight through investigations of illegal and improper activities, audits of inefficient spending, government policies and programs, and offering legal opinions and advice for congressional consideration. Their work has been directly linked to saving taxpayers thus far \$49.9 billion or \$87 for every \$1 invested in GAO (GAO 2011).

Defense Science Board

The Defense Science Board (DSB) was established in 1956 from the recommendation of the Hoover Commission. Its original charter was concerned with the advance technology and weapons research within the DoD. Currently, the Board is the advisory to the Secretary of Defense through the Assistant Secretary of Defense. It is made up of 32 members and chairmen from the Army, Air Force, Navy, as well as chairmen from the Defense Intelligence Agency, Defense Business Board, and Policy. The members are chosen based on the fields of science, but, they include: engineering, manufacturing, military operations, and acquisition process. The Board forms Task Forces designed to address specific tasks within the acquisition’s process with written

finding, reports, and recommendations for implementation of future strategies to the Secretary of Defense through the office of the Under Secretary's Acquisition, Technology, and Logistics' department. The intent was to develop an agency that would look internal at DoD's procurement system and mitigate the cost and schedule overruns, performance failures that have plagued the military since the Continental Army was formed (Schwartz 2011).

#### Special Inspector General for Iraq Reconstruction

The Office of the Special Inspector General for Iraq (SIGIR) was established by Congress in 2004 under Public Law 108-106 to replace the Coalition Provisional Authority Office of Inspector General CPA-IG). SIGIR was established to continue the oversight for Iraq reconstruction programs and operations. SIGIR continues to report directly to the Secretary of the State and Defense. The agency responsibility include: independent, objective audits and investigations; provide recommendations to promote efficiency, prevent and detect FWA; review legislation and other agencies that provide oversight; inform Congress, Secretary of State and Defense of problems, abuses, deficiencies, or any violations of the law; and submit quarterly and semi-annual reports to Congress (Special Inspector General for Iraq Reconstruction 2011).

#### Gansler Commission

The Gansler Commission was established by the Secretary of the Army in 2007 as a bipartisan committee of senior subject matter experts who reported to the Secretary of Defense. Their objective was to review the lessons learned from the recent contingency operations and make recommendations that would achieve greater efficiency,

effectiveness, and transparency in order to properly equip future expeditionary or contingency operations. The commission reported to the Secretary of Defense through the Defense Science Board as a subcommittee. The commission was explicitly designed to review the Army Acquisition Program and its management processes. The commission was also asked to review the number of personnel, skills and their related training; oversight capabilities and management authority; visibility of army assets within the Army acquisition program; acquisition controls, budget, and financial management procedures (Gansler 2007).

#### Panel on Contracting Integrity

In 2007, the John Warner National Defense Act directed DoD to establish a panel composed of senior leaders who represented a cross- section of 19 military departments and agencies within DoD to address contracting integrity. The DoD Panel's specific purpose was to eliminate vulnerabilities that contributed to FWA. The DoD panel had two goals The first goal was to review DoD's progress on its initiatives to eliminate previously identified vulnerabilities that contributed to FWA. The second goal included an annual summary of its findings and recommended changes in "law, regulations, and policy to eliminate" vulnerability in the future (Assad 2010, 1). In 2010, the DoD Panel issued its fourth report which identified 25 recommendations and actions to be implemented in 2011. Today, the Panel on Contracting Integrity continues to report on the assessment or completion of all previous recommendations (Assad 2010, 12).

### Special Inspector General for Afghanistan Reconstruction

The Special Inspector General for Afghanistan Reconstruction (SIGAR) was established by Congress under The National Defense Act of 2008 in accordance with Public Law 110-181. SIGAR was established to continue the oversight for Afghanistan reconstruction programs and operations. SIGAR reports directly to the Secretary of the State and Defense. SIGAR is responsible for conducting audits and investigations to prevent and detect fraud, waste, and abuse of taxpayer dollars SIGAR's mission is to prevent FWA through "criminal prosecutions, civil actions, forfeitures, and monetary recoveries." SIGAR is also a member of the International Contract Corruption Task Force. Membership is significant because SIGAR is the only agency that has cross-agency jurisdiction with the single focus of U.S. reconstruction funds (SIGAR 2011).

### Commission on Wartime Contracting

The Commission on Wartime Contracting (CWC) was mandated by the National Defense Authorization Act for FY 2008. Congress directed the Commission to study federal agency contracting. The areas of focus were on reconstruction, logistical support, and security functions in Iraq and Afghanistan. The Commission was directed to assess factors related to FWA and mismanagement of wartime or contingency contracts. CWC culminated its study in August 2011. CWC's most recent report to Congress captured three years of observations, investigations, findings, and recommendations organized in a 240 page book titled *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (CWC 2011). The final report summarizes 15 over-arching recommendations that were addressed within the analysis of chapter 4 of this thesis.

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