



**TESTIMONY
of
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**Before the
Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations**

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Introduction

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Stan Soloway, president of the Professional Services Council (PSC). PSC is the principal national trade association representing companies providing services of all kinds to virtually every agency of the federal government. Our membership is uniquely diverse in both company sizes and areas of specialization. Nowhere is this diversity more evident than in Iraq, where thousands of employees of numerous PSC member companies, large and small, are working day in and day out to support our military, rebuild the country, and provide vital economic, health and other developmental assistance and support.

Indeed, it is the very diversity of PSC member company involvement in Iraq that highlights the single most unique, but all too often ignored, aspect of the Iraq experience. In Iraq, we are in the midst of the largest sustained military operation since Vietnam. We are also simultaneously engaged in the physical reconstruction of the nation's infrastructure and a wide range of development assistance activities, from financial systems to education, from the rule of law to agriculture and health systems. Normally, these missions would be sequential in nature, but in Iraq they are being performed concurrently and often occur in the very same physical space. This situation has created the unprecedented and necessary presence of contractors and helped to sharply define some of the overarching contracting and business-related issues we are here to discuss today.

I want to note at the outset that, by their very nature, "lessons learned" often focus constructively on mistakes and problems that need to be fixed. My testimony today will be no different. But I offer this testimony in the context of extraordinary admiration for our men and women in uniform and for the thousands of contractor employees who, at

great personal risk, are in Iraq today supporting the military and working to help that country on the road to a sustainable economy and democracy.

Overall, the quality and professionalism of military and non-military operations in Iraq has been very high. This is especially true given the overwhelming surge requirements, operational tempo, scope of operations, and dollars involved. Certainly, there have been some very visible issues, but given the scope of the concurrent operations, those issues have been relatively few and some turned out to be far less significant than initial impressions suggested. This is a testament to both the government's acquisition community and the commitment they bring to their jobs and, to the companies involved, the vast majority of which have long histories of strong, focused, and exceptional mission performance, often in areas of conflict and high risk.

It is estimated today that some 300 contractor employees have been killed in Iraq, primarily as a result of the insurgency. Unfortunately, Iraq is not unique in this sense. Just two weeks ago, five employees of one of our member companies working on a project in Afghanistan were gunned down by radical elements there—incidents that receive far less attention and coverage than do the tragic daily events in Iraq.

Finally, it is important to remember that while some might try to use the Iraq experience as an excuse to make broader political points about the relative roles of contractors and government civilians, that debate is not relevant in Iraq. For the most part, the roles being played by contractors in Iraq are not new, but are consistent with the manner in which the U.S. government has utilized contractors around the globe for decades. The bulk of the work being performed by contractors in Iraq is simply not work that would or could otherwise be performed by the military or by U.S. government civilians. This is particularly true of the reconstruction and development initiatives but it is also true of contractors supporting the military. For reasons of cost and mission focus, for nearly two decades the military has increasingly been focusing its resources on its core warfighting mission and turning a wider array of support functions over to private sector performance.

Since several months prior to Operation Iraqi Freedom, the Professional Services Council has been deeply immersed in the acquisition issues and other challenges faced by companies under contract to support one or more of the concurrent operations in Iraq. We have held numerous meetings with our member companies to learn from their experiences and help them sort through the issues where possible. We have conducted more than a dozen briefings for members of Congress and staff to provide context and perspective surrounding the issues that have been prominently raised since the advent of the war. We have also worked closely with the oversight community, particularly the Government Accountability Office and Mr. Bowen's staff at the CPA-IG, now SIGIR, to share information, observations, and insights. In addition, at the request of the then-Commander of Army Materiel Command, PSC conducted a joint Iraq contracting lessons learned initiative with AMC and other Army and DoD representatives. We have also maintained close and continued communications with our colleagues at USAID and the State Department.

Through all of our work on Iraq contracting, the messages and lessons have been remarkably consistent. PSC has not spent a lot of time directly on the Development Fund for Iraq issues. We have found, however, that the lessons and observations that have emerged from our other work are common across companies and agencies, and believe that they have relevance to your deliberations here and for future deliberations by the Congress.

Overview: Understanding the Environment

It is important to understand the environment which the U.S. and its coalition partners immediately encountered following the fall of Saddam Hussein's regime. For it is only in the context of that actual environment that we can understand fully the business and contracting challenges we have faced.

The Iraq the U.S. moved into two years ago was a nation with little or no infrastructure and no market economy. Every branch of each of the country's banks operated as an independent company. There were no inter-bank transfers and no credit cards. Checks were virtually non-existent and all payments for materials and labor were, and still mostly are, in cash. Communications were almost impossible—indeed, even today, less than 15% of Iraq's population of over 27 million people has phone service. There was no internet, and the electrical grid was designed to provide limited electricity to only selected and favored locations. The challenges associated with these limitations and inadequacies have been further complicated by a constantly changing threat environment which itself drives costs and continually evolving security requirements.

The point is simple: nothing most of us have experienced is like what those in Iraq are experiencing on a daily basis. Not only is this an environment that is completely alien to our domestic or even normal international marketplace expectations, but it may also be the most difficult environment in which, collectively, we have ever attempted to do the work of reconstruction and development. As such, our traditional norms of measuring progress, costs, and more, are not adequate. We must assess Iraq on the basis of the realities on the ground, rather than using our preconceived notions of what should happen there or has happened elsewhere at a different time.

It has thus been most dismaying to many of us in this field--in both government and industry--to see some of the Iraq contracting issues become such political footballs. Mr. Chairman, the effect of this dynamic has been to create an environment in which, frankly, mission focus has been too often supplanted by fear; an environment in which one government contracting officer told us people are not only afraid of making a mistake, they are afraid of making a decision. This is not a healthy environment.

As such, if there is one plea I would make to the committee today it is this: oversight is crucial and congressional oversight is a fundamental element of our system of checks and balances. But please be mindful that Iraq was and is not a "normal" business environment; that our traditional measures of effectiveness and success often do not work

there, and that we need an acquisition community -- in both government and industry -- ready and willing to be innovative and do hard work in the harshest of environments. Mistakes are inevitable. Yet few rise to the level of intentional abuse or fraud. Unfortunately, in the current environment, just the opposite assumption seems to be the norm. This is a disservice to the committed professionals in both government and industry who are doing their best in the most difficult of circumstances, and it has a very harsh effect on our acquisition system. This subcommittee can play a major role in helping distill the debate and ensure a more balanced approach to the issues before us.

Applying Traditional Procurement Rules in a Most Non-Traditional Environment

The decision in 2003 to apply all traditional U.S. procurement and other related laws to contracts utilizing appropriated U.S. dollars was far more significant than most people realize. This decision was intended to ensure good stewardship of taxpayer dollars during a time of rapid and expanding expenditures. By adopting traditional U.S. standards, the decision was also designed to help ensure that the U.S. acted appropriately while in another country.

I am not here to either support or criticize that seminal decision, but given the reality of the Iraq environment, it is critical to understand the consequences, costs, and unavoidable limits connected to it. Indeed, a significant portion of the issues and concerns raised by this committee and others can be traced to that decision.

Let me offer one example. We all remember the controversy surrounding the price of fuel in Iraq shortly after the fall of the regime. While cost analyses continue, several facts have been largely ignored in the public debate about those costs as compared to potential, alternative sources of supply. Of course, the certainty of availability of those alternative sources was a major concern, but here we are focused solely on the cost comparison.

First, for security reasons, the U.S. required its contractor to utilize American drivers for its fuel tankers. That requirement alone drove labor costs up by orders of magnitude. Second, the U.S. required the contractor to only utilize trucks that were compliant with U.S. Occupational Safety and Health Administration requirements, as opposed to local vehicles that were not subject to such rigorous standards. That drove equipment costs up. Finally, in keeping with its commitment to be a good steward and visitor, the U.S. required that the contractor carry third party liability insurance on its fuel trucks. Stop for a moment and think about the costs of liability insurance for a 32 thousand gallon fuel tanker in a war zone.

Was the decision to require insurance correct? That is a decision only the U.S. government can make. But when such acquisition or requirements decisions are among the most significant root causes for cost build-ups, it is wholly unfair to ignore those facts when assessing the costs charged by the contractor. This example is but one of scores we have seen where the imposition of our traditional federal procurement rules surrounding business responsibility, subcontracting goals, accounting, auditing, and more, have come

into direct conflict with the realities on the ground. Unfortunately, we have watched with significant dismay as departures from the norm such as this are too often unfairly treated as major scandals.

In addition to overlaying traditional procurement and accounting rules in an environment that simply might not be able to support them, there also remains a lack of clarity and alignment around the flexibility that the rules provide. This lack of clarity has led to numerous disputes and disagreements, even among and between government entities. Moreover, those disputes and disagreements have often been most sharp when they involve individuals or organizations that are on the ground in Iraq trying to reconcile issues with those who have remained stateside.

For example, it is wholly unrealistic for companies to be required to track, with traditional granularity, all of the spending by its first, second and third tier subcontractors. In fact, Iraq, like many other countries, does not follow generally accepted cost accounting standards. Nor is it reasonable to expect companies to always get multiple competing written bids for work in an environment where the market economy differs sharply from our own and in which written bids are quite rare. Yet acquisition policy requirements in these areas have frequently sparked sharp differences of opinion between the companies, their contracting officers, and the government's auditors or other oversight personnel. One cannot blame the auditors—they are simply following the rules, as they exist. Nor should one blame the companies or their contracting officers, for they are simply trying to do the best they can to execute their missions in a highly volatile, very non-traditional environment.

This is just a sampling of the often complex and difficult conflicts between our traditional rules -- and expectations -- and the environment in Iraq. In many cases, these differences have been at the root of congressional and others concerns, but have not achieved the level of understanding we think is so important.

Acquisition and Contracting Infrastructure Challenges

The training and preparation of the acquisition workforce has, in many areas, been wholly inadequate for these missions. This is less true of the acquisition personnel directly supporting the immediate military contingency operations—many of whom specialize or have experience in this area. But it has often been proven true in the cases of otherwise capable and committed acquisition personnel who were assigned to the mission with far too little advance preparation or training. It has also continually been an issue with various oversight personnel.

The situation is exacerbated by a limited acquisition infrastructure. While much attention has been paid to the Army's logistics support contracts and alleged issues with their management and oversight, the irony is that most of the people we worked with on our assessments agree that there are problems of acquisition infrastructure. In reality, they were far less pronounced in the Army's direct troop and logistics support operations than was the case for other requirements, whether they were contracted for by the Army Corps

of Engineers, the CPA, State, USAID, or other entities. For example, at one point only about a dozen of the 120 contracting billets in the CPA had been filled. Not too long ago, it was reported to us by government acquisition officials that there were more oversight personnel in Baghdad than warranted contracting officers.

The House of Representatives has begun to focus on this issue through the proposed creation of a “Contingency Contracting Corps” as set forth in the House version of the FY06 National Defense Authorization Act. PSC does not believe the creation of a new organizational entity is the right answer. The Army and others are already adjusting their personnel structures to meet the needs of the field; but the real problems with the acquisition infrastructure have not been on the contingency side, but on the sustainment and support side for ongoing reconstruction and development activities—which is not addressed by the legislation. We believe the answer lies more in reviewing and adjusting personnel policies, including the hazardous duty benefits that might accrue to civil servants called on to deploy, rather than creating new, potentially overlapping organizational structures or trying to artificially segment continuous work between contingency and maintenance.

In addition to the overall acquisition infrastructure, many concerns arose relative to the even more limited in-country presence of the acquisition community. Many contracts, including the Army and Air Force primary logistics support contracts, are administered stateside where the awareness of immediate needs and pressures and the on the ground realities are simply not as acute. Time, distance, and communications challenges greatly complicated mission execution. Indeed, where program managers and contracting officers were co-located in country, these problems were significantly reduced.

Moreover, time and distance challenges also created a real lack of clarity around lines of authority. Simply put, in what circumstances and through what process could the combatant commander (CoCom) on the ground simply redirect his or her support—military or contractor—to meet an immediate need? It might seem obvious that the CoCom is the authority in charge, but in fact this is not recognized in the current acquisition regulations. DoD has recently issued some new acquisition regulations designed to address this issue. Those regulations are helpful but remain incomplete, are inconsistent with other departmental policies, and are applicable only to DoD, even though many federal agencies and their contractors now have a presence “on the battlefield.”

This leads me to the first recommendation that emerged from our lessons learned initiative last summer. We must immediately create a team of experts from DoD and the military departments, State, USAID, GAO, the Defense Contract Management Agency, the Defense Contract Audit Agency, the relevant Inspectors General, AND INDUSTRY, to review all of the current acquisition and auditing rules and regulations relating to contracting on what is essentially a battlefield, and come to agreement on a concise set of rules and guidelines for everyone to follow. If we can gain consensus on the acquisition rules and the requirements process, we can and will be able to better focus scarce

resources, heighten our ability to conduct appropriate oversight, and avoid many future problems and disputes.

The Role of Private Security Forces

Beyond the immediate acquisition and contracting challenges, there is also a set of issues involving personnel deployment, security and insurance that I would like to briefly address. Personnel security is a paramount concern for contractors operating in the region and has been the focus of a lot of discussion, and occasional misinformation, in Congress, the media, and the agencies. The threat in Iraq has created an unprecedented private security requirement, principally because it is wholly impractical, and possibly inappropriate, for the military to provide force protection for the thousands of non-military reconstruction and development support projects underway.

For the most part, the military is directly providing the requisite security for its contractors. Meanwhile, companies performing under USAID, CPA, State, or other U.S. government contracts, or contracts let by other countries or entities, including the U.N., are generally required to provide their own security. It is here that the unprecedented nature of the situation in Iraq—the three concurrent operations—has one of its most obvious impacts. Was this a traditional, sequential process, security needs on the ground would not be nearly as acute as they are today. This is in no way a criticism of that decision, to undertake reconstruction and development operations without delay, but we must recognize that the decision underpins the need for such large contingents of private security, and the numerous ways in which the current security environment impacts mission, cost and performance.

In addition, the threat environment has been continually changing. The insurgency has used a wide array of tactics that require constantly changing security plans and procedures. Security procedures have also slowed daily work or added many hours to a working day -- depending on the security situation on a given day. As a result, the pace of reconstruction and development is dramatically impacted. Furthermore, the security environment itself has created major tensions and disputes in cases where company personnel have to “stand down” for days at a time due to the threat environment. Under normal circumstances, the company would only be paid for hours actually worked. But when security factors halt work, the workforce, particularly non-Iraqi workers deployed to the country, MUST still be paid. Here, too, the application of our traditional rules remains in conflict with the security realities on the ground.

With regard to the costs and role of private security, PSC’s members are the companies that, for the most part, are procuring private security to protect their workforces in Iraq. Those companies generally report positive experiences with the security companies they have utilized. Among our nearly 190 member companies, only a couple offer private security services as a line of business. Nonetheless, it is significant to note that there is fairly clear consensus among the security companies with whom we have worked, and other PSC members operating in Iraq about the key issues involved in contractor security.

First, there is concern among the established security companies, as well as the contractors procuring security services, that there is not a clear set of standards and qualifications required across the board for security companies operating in Iraq. Recognizing this as an emerging issue, PSC recommended to DoD two years ago that the Department do one of three things to facilitate and ensure the quality of security services:

- (1) Create a multiple award contract managed by the Department of Defense through which contractors could procure their needed security services on a reimbursable basis;
- (2) Create a qualified bidders list from which companies could select their security providers; or
- (3) At a minimum establish a set of standards and qualifications against which security providers could be measured.

Regrettably, none of these actions have been taken. We are pleased that legislation is pending in the House Armed Services Committee that identifies this as a key area for attention and would require the establishment of such standards. It is important to stress that the strongest push for standards is coming from the established security firms themselves, in concert with the companies procuring those security services.

Second, although it has improved in recent months, the communications and coordination between the military and private security forces is still not what it should be. Until recently, there was essentially no ongoing means by which private security providers could coordinate intelligence or threat information with military commanders. Over time, the military has become more adept at pushing information out to the contractors' security community, but there has never been a truly effective two-way communications process. As such, we have recommended the creation of joint security planning and coordination teams and processes that would enable this pressing issue to be addressed. We applaud the House for adopting this approach as part of the FY06 National Defense Authorization Act.

Third, a number of issues have arisen with regard to other contractor force protection needs. Cases have come to our attention in which contractors arrived in country to perform work on DoD contracts without the knowledge of the combatant commanders who were responsible for their security. The coordination and flow of such information is essential and the lack of such coordination and flow at times created significant problems on the ground.

Here, too, Congress is beginning to step in through provisions in the House version of the FY06 National Defense Authorization Act. The bill would require contractors to, in effect, register all of their in-country personnel with the combatant commander, and would require the combatant commander to develop a force protection plan based on those inputs.

There is no question that combatant commanders need to know how many people are in their Area of Operations. However, we oppose the overly detailed reporting requirements

in this provision because creating a direct reporting system to the CoComs from potentially scores of contractors with data and information that changes daily will likely be more complicated and confusing than it is helpful.

Rather, PSC recommends that the relevant agency contracting activities assume the responsibility to notify CoComs of contracts that are being let, the estimated number of contractor personnel involved, their likely locations and duration in country, etc. This will provide CoComs with a steady flow of consistent and necessary information without requiring the creation of what could be a most confusing and ineffective reporting process. It will also greatly facilitate the formulation of requisite force protection policy and plans for the contractors “on the battlefield.”

Further, there are cases in which contractors performing under military contracts have been required to procure their own security services, despite a policy that states otherwise. It may make eminent sense for the contractors to be given that responsibility in certain cases, but DoD policy must be written in such a way as to acknowledge such departures from the norm.

Finally, with regard to security, we recognize that there are a number of unresolved issues surrounding such things as arming civilians, U.S. criminal jurisdiction abroad, and civilians in Iraq. The Congress appropriately sought answers to a number of predicate questions in this area through last year’s defense authorization bill. The reports are due to Congress shortly, therefore it would be premature for Congress to take any additional action until they are delivered and fully assessed.

A number of key steps have already been taken to address the issues of criminal jurisdiction, contrary to the claims of some people that civilians operate in Iraq with impunity. Last year, Congress enacted amendments to the Military Extraterritorial Jurisdiction Act to provide expanded criminal jurisdiction over civilians performing on any DoD contract. The State Department has continued what is known as CPA Order 17, essentially a surrogate Status of Forces Agreement, which declares that non-Iraqi civilians can be remanded to their home country and prosecuted under their home country criminal laws for acts committed in Iraq. Order 17 will, we hope and trust, be incorporated into a formal Status of Forces Agreement with the Iraqi government—an agreement that could not be entered into prior to June 28, 2004, because there was no sovereign government in the country.

On the issue of arming civilians, we are also aware that there has been a significant unofficial change in DoD policy. During the conflicts in the Balkans and as recently as two years ago, it was virtually unheard of for civilians to be authorized to carry weapons. Today, such authorizations are routine. However, based on our discussions with our member companies, the State Department, USAID and DoD, it appears that very few companies have actually acted on this authority, since doing so creates a whole new set of challenges and liabilities for both companies and the government. We have urged DoD and other agencies to ensure that their procurement rules and contract clauses are consistent in this area.

Insurance: Issues of Cost and Access

There are a number of key issues regarding insurance. First and foremost, it is important to recognize that under the Defense Base Act any U.S. civilian performing on a U.S. government contract anywhere overseas must be provided with basic workers compensation coverage. For many companies, this coverage has been both expensive and sometimes very difficult to obtain. In addition, the basic coverage includes numerous exclusions under standard war risk hazards provisions that must be made up somewhere. The government through the War Hazards Act assumes some of those exclusions. But for circumstances deemed by the risk community to amount to a war risk, but not declared as such by the government, the gap remains and filling it is both difficult and expensive.

Several years ago, both the State Department and USAID established their own DBA insurance programs that utilize bulk buying to keep costs low and participation is available to all of their contractors and subcontractors. DoD does not have such a program. This alone has driven substantial costs for the Department. By way of illustration, the guaranteed worldwide rates for basic DBA coverage for the USAID program is fixed annually, now at about \$2.15 per hundred dollars of payroll; at the State Department the fixed rate is slightly higher at closer to \$4 for most work and \$5 for construction contracts which, by nature involve greater workers compensation challenges. For contractors having to buy basic DBA coverage on the open market, rates are routinely in double figures, and have gone as high as \$25 or more per hundred of payroll. Regardless of the existence of these department-wide insurance programs, it should be clear that some access and cost issues continue to be present by virtue of the usual war risk hazard exclusions and the evolving threat environment. Even with guaranteed rates for basic DBA coverage, overall insurance coverage is adjusted substantially upward when exclusions are imposed and supplemental coverage is required. In some cases, the very availability of coverage comes into question.

PSC has recommended that DoD consider creating a program for its contractors similar to that currently in place at State and USAID. We understand that the Army Corps of Engineers is attempting to do just that for its contractors. We believe that in establishing such a program, over the long run the Department or Defense's and the government's overall interests will be best served.

Beyond DBA coverage, there are numerous other insurance issues with which companies must contend. Their ability to attract and retain the right people with the right skills to some extent requires that they be able to provide those individuals and their families with at least reasonable and competitive protections. Among these protections would be coverage that we generally consider routine, such as AD&D, and others that are anything but routine, like kidnap/extortion coverage. For work in Iraq, both are very expensive. Yet these are costs of doing business that are well outside the control of the contractors. We have worked with the Defense Contract Management Agency (DCMA) on these issues over the last two years and appreciate the degree to which DCMA is trying to reconcile seemingly huge costs with on-the-ground realities. However, disconnects and

disputes continue between other oversight entities that question these costs and contractors who have little choice but to respond to the market as it currently exists.

Other Personnel Policy/Practice Challenges

Similarly, there have been numerous disputes over the application of contractors' workforce policies. One example is the permissibility of vacation or leave. Because of the intensity of the environment, a number of companies try to give their workforce more frequent opportunities for rest and relaxation than is their norm under state-side contracts. Clearly, such breaks are vital to morale and performance and help limit turnover. But all too often the oversight community challenges these practices because they are contrary to some interpretations of our "traditional" rules as they are applied to work performed under "normal" circumstances.

Contrary to what some believe, while hazardous duty pay is clearly the norm for civilians deploying to Iraq, it is almost never so significant that those individuals can spend a year in country and then return home to retire. For these people, such incentives, including appropriate insurance, are not unimportant, but their service is far more often tied to what they see as their professional role in life.

Finally, all civilians deploying to Iraq must have all requisite vaccinations and be given Personal Protective Equipment (PPE) including a Kevlar vest, helmet, chem-bio suits, etc. However, particularly early in the operations, vaccines and some of the needed PPE were simply not available. Frankly, some contractors thus could simply not comply with the contractual and situational requirements. In addition, while all contractor employees are required to process through Civilian Relocation Centers, or CRCs, en route to Iraq, the general consensus is that much work remains to be done to ensure that the CRCs are providing contemporaneous information and an efficient processing system. As I stated earlier, it is our hope that better advance planning and coordination between all affected government organizations and the contractor community will help alleviate some of these differences, inconsistencies, and difficulties.

Conclusion

Mr. Chairman, I have only touched on some of the major, and very difficult, issues that we all grapple with when dealing with contracting in Iraq. The issues are complex, highly nuanced, and in many cases unprecedented. No one should be surprised that in a mission this large, in such a difficult environment and involving tens of billions of dollars in expenditures, errors will be made. The sheer complexity, tension and pace of the concurrent missions are such that mistakes are inevitable. Moreover, the nature of this kind of operation and work mandates that, even as we rightfully demand ethical behavior and overall integrity on the part of government and contractor personnel alike, we recognize the limitations and costs associated with our traditional views of stewardship and accountability.

The Professional Services Council would welcome the opportunity to continue to work with you, the members of this committee and your staff as you continue to explore these and the many other issues associated with contracting in Iraq. Thank you again for the opportunity to appear here today. I would be happy to answer any questions.