

**Testimony before the
Committee on the Budget
United States Senate**

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Responsible Contracting: Modernizing the Business of Government for National Security

My name is Dr. James Jay Carafano. I am the Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and the Director of Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Thank you for the opportunity to appear before the committee today and address this vital subject. In my testimony I would like to (1) explain why getting contracting right is vital to the future security, freedom, and prosperity of the nation; (2) describe the vision for what government contracting for national security should look like; (3) identify what I believe are some of the key obstacles to achieving the vision; and (4) suggest the next steps in overcoming the systematic problems that plague modernizing government contracting processes.

My responsibilities at The Heritage Foundation include supervising all the foundation's research on public policy concerning foreign policy and national security. In recent years, the impact of government contracting on matters related to national security, primarily concerning defense acquisition but also in support for expeditionary operations, has been a subject of special interest for Heritage.

Getting contracting right is a fundamental responsibility of good governance—essential to the practice of limited government and fiscal responsibility. It is particularly important in regard to contracting in support of national security activities. Our men and women in uniform who enter harm's way to protect our liberties and freedom deserve the best support we can give them.

Since defense contracting represents a significant category of discretionary spending, it is especially vital that Washington get this part of federal spending right. Furthermore, I believe many of the attributes of good national security contracting are applicable to other government business practices.

The research team at Heritage that I represent is uniquely qualified to examine this issue. Our analysts have observed contracting and military operations worldwide, from bases in Afghanistan to factory floors here in the United States. They have conducted substantive research on most aspects of defense and homeland security. Heritage analysts also serve on a variety of government advisory efforts, including the Board on Army Science and Technology, the U.S.-China Economic and Security Review Commission, the Congressional Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities After Certain Incidents, the Quadrennial Homeland Security Review Advisory Committee, and the Quadrennial Defense Review Independent Panel. Our research programs are non-partisan, dedicated to developing

policy proposals that will keep the nation safe, free, and prosperous. The results of all our research are publicly available on the Heritage Web site at www.heritage.org.

The Past and Future of Contracting for National Security

The capacity to conduct effective contracting is a potential key competitive advantage for the modern nation-state. The emergent role of contractors in all aspects of national security on and off the battlefield reflects a deeper and deeply significant transition in the nature of armed conflict, a significant rebalancing of the roles the private and public sectors play in war. This change is the most significant upheaval in the nature of warfare since the rise of the nation-state in the 17th century. It represents a transformation started long before the invasion of Iraq and, absent a dramatic change in the evolution of the global marketplace, the role of the private sector in public wars will continue to increase, regardless of the course of American domestic politics. At the same time, dealing with the challenge of harnessing the growing capacity of the marketplace to supply combat capabilities creates new and daunting responsibilities for government that cannot be addressed by business-as-usual practices. Government will have to change to keep up.¹

Before the emergence of the modern nation-state, the public sector had authority but little power to mobilize resources for warfare. This led to what are now commonly and often pejoratively known as mercenaries, or “soldiers who fought for profit and not in the cause of their native land or lord.”² Monarchs throughout Europe employed mercenaries to fight wars, improve logistical support, and wield the power of the private sector to better advance their strategic interests.

The expansion of the private sector’s role in conflict helped initiate the transformation to the second great age of war when the public sphere came to dominate military operations. States took over the business of violence, turning wars from a largely private enterprise into an almost (albeit not) exclusively public operation.

Today, the world has entered a new age in warfare which is rebalancing the relationship between the public and private spheres. Globalization and the evolution of the private sector dramatically affect combat. Just as globalization appears to be an unstoppable force, the reliance on the private sector in war is also probably irreversible. Unlike the public sector, the private sector is bred for efficiency: Left to its own devices, it will always find the means to provide services faster, cheaper, and more effectively than will governments. With the assets of a modern, liberal society—a well-established judicial system, legitimate legislative branch, independent press, active community of public interest groups, and enabled citizenry—the United States is well positioned to effectively balance the public and private spheres in supporting national security.

Working through the legal, ethical, and practical issues surrounding military contracting will improve America’s ability to prepare for this third age of combat. The private sector’s increasing role in public wars can be a good thing for American security if the United States can learn to

¹ James Jay Carafano, *Private Sector, Public Wars: Contractors in Combat—Afghanistan, Iraq, and Future Conflicts* (Westport, Conn.: Praeger, 2008), pp. 11-12.

² Michael Mallet, “Mercenaries,” in *Medieval Warfare* (Oxford: Oxford University Press, 1999), p. 209.

create a strong partnership between each sector that enforces accountability and uses America's competitive edge to its advantage.

A Vision for the Future

To turn government contracting from a liability into a competitive advantage requires a transformation in Washington's businesses practices. It will be easy to know when government gets contracting right.

- The government will be supported by an experienced, capable, and empowered corps of contracting officers. They will have all the education and training, support tools, and authorities they need to do their job.
- The work of the contracting officer and the contractors will be overseen by qualified teams of auditors and inspectors general who each stick to their own job while providing real oversight and accountability, but at the same time do not interfere with the ability of the force to do its job.
- Inspectors and auditors will be accompanied by criminal investigators in sufficient numbers and with sufficient support to go after the bad apples in any barrel.
- The work of all the members of the "contracting" team in the administration and the Congress will be part of a system that provides visibility and transparency so that everyone who needs to understand what is being done and why has access to the information they need.
- And, most important, the contracting team will be supporting a U.S. team that is trained, organized, equipped, and led to get the job done right.

That is what contracting in the 21st century ought to look like. Turning that vision into a reality starts by abandoning unrealistic expectations and deeply flawed assumptions.

Obstacles to Overcome

It would be naïve to conclude anything but that the subject of government contracting has become over-politicized. Contracting controversies during "wartime," from the American Revolution to the Cold War, are a constant theme in American history. Separating fact from fiction is important. Parsing unsubstantiated allegations, prejudices, political judgments, and unfounded assumptions from real problems is part of meeting the challenge of harnessing the private sector for public wars, keeping the United States competitive, and overcoming anti-competitive practices that could well hamstring America's ability to effectively prepare for and fight future conflicts.

Some criticisms that are considered "common knowledge" have become real obstacles to reform and have to be set aside. They include:

- *A bad assumption that “fraud, waste, and abuse” are the root cause of government inefficiencies.* Eliminating misspent government dollars is frequently cited as a remedy for reducing spending. Such proposals ignore the fact that eliminating fraud, waste, and abuse has historically proven to be a relatively modest source of savings compared to the overall budget. While government should, of course, take every responsible measure to ensure it is a good steward of our tax dollars and provide the best support for our men and women in uniform, procedures to guard against waste should not be so restrictive that they undermine efforts to buy equipment and services and innovate and adapt to national security challenges.³
- *The wrong-headed notion that the efficiency and effectiveness of government business contracting practices should be judged by the standards of private-sector business practices.* The budgeting and regulatory oversight processes for government operations operate under different regimes than the private sector and always will. If the standard for government contracting is the private sector, the government processes will always be found wanting.⁴
- *An erroneous belief that some types of contracting vehicles are inherently more “virtuous” than others.* Types of contracts, such as cost-plus and sole-source, and award standards like “best-value” or “least-cost” are all established under the Federal Acquisition Regulations for a reason: Under the right conditions they provide the best services to the government.⁵
- *An unsupportable idea that inherently governmental is a usable standard for determining the division of responsibility between the public and private sectors.* The guide to all government actions ought to be the Constitution of the United States. While the Constitution establishes “providing for the common defense” as a core mission of the federal government, beyond the broad responsibilities it assigns to the executive and legislative branch it left to the wisdom of elected officials to determine how to best meet these responsibilities. Thus, beyond its responsibilities and the oversight of executing those responsibilities, no good or service is inherently governmental. The determination of what goods and services should be provided by the public or private sector should be determined by the conditions and the mission, not by an arbitrary belief that some functions are always best performed by government employees or wage-earning contractors.⁶
- *Dangerously believing that more regulations, more centralization, and more oversight best ensure the government’s interests.* As my colleague at Heritage Baker Spring has noted, “[c]umulatively, congressional legislative and oversight activities have sought to centralize acquisition functions because Congress sees centralization as increasing its power to control the acquisition process and specific acquisition decisions. This perception is an illusion because the acquisition bureaucracy responds with a risk-averse

³ James Jay Carafano and Eric Sayers, “Defense Spending Fraud, Waste, and Abuse: Hype, Reality, and Real Solutions” Heritage Foundation *Backgrounder* No. 2212, November 20, 2008, at www.heritage.org/Research/Reports/2008/11/Defense-Spending-Fraud-Waste-and-Abuse-Hype-Reality-and-Real-Solutions.

⁴ Baker Spring, “Congressional Restraint Is Key to Successful Defense Acquisition Reform,” Heritage Foundation *Backgrounder* No. 1885, October 19, 2005, at www.heritage.org/Research/Reports/2005/10/Congressional-Restraint-Is-Key-to-Successful-Defense-Acquisition-Reform.

⁵ *Ibid.* See also, Carafano, *Private Sector*, pp. 81-82.

⁶ See, for example, the discussion of the A-76 process in Carafano, *Private Sector*, pp. 72-78.

mindset that undermines accountability. In this mindset, the bureaucracy moves reflexively to protect itself by adding more bureaucracy to diffuse responsibility. Ultimately, Congress gets more bureaucracy and less accountability out of the acquisition system. Further, the excess bureaucracy is itself wasteful and slows the acquisition process.”⁷

- *Flawed thinking which holds that the root of the problem is the profiteering of the private sector.* More often than not the root of government’s problem is that government is not a very good customer—ill-defining requirements, under-funding programs, or ineptly managing contracts.

Washington will never get contracting right if it sticks to believing untruths that will lead to the kinds of “reforms” that make government contracting worse rather than better.

Modest Proposals for Moving Forward

Government contracting is massive and multifaceted. It is unrealistic to believe that there are “silver-bullet” solutions that will significantly improve performance across the entire government enterprise. As with most complex, non-linear problems, the best solutions will probably focus on decentralization and putting decisions in the hands of responsible officials who have the skills, knowledge, attributes, and capabilities to do the right thing.

Building the right federal enterprise for the conduct of contracting might start with the following initiatives.

- **Get Oversight Right.** Both the auditing and inspector general functions are vital to good governance. These functions, however, must be correctly performed and be kept distinct from one another. For example, a recent Defense Department policy has established that when a contracting officer disagrees with a Defense Contracting Auditing Agency (DCAA) finding the case is immediately referred to the Inspector General. This policy will have adverse “chilling affect” on contracting officers, unduly blurring the line between auditing and investigating. Reports by the Government Accountability Office and the Defense Business Board have cited weaknesses in auditing including emphasizing quantity over quality. DCAA must provide high-quality fiscal audits.⁸ Getting DCAA’s mission focus, procedures, and resources right is important.
- **End Micromanagement.** The trend toward excessive over management, particularly from the Congress, must come to an end. As my colleague Baker Spring notes, “while no single measurement can completely describe the level of micromanagement that

⁷ Spring, “Congressional Restraint Is Key to Successful Defense Acquisition Reform.”

⁸ Gregory D. Kutz, “Defense Management: Widespread DCAA Audit Problems Leave Billions of Taxpayer Dollars Vulnerable to Fraud, Waste, Abuse, and Mismanagement,” Government Accountability Office, GAO-10-163T, October 15, 2009; Defense Business Board, “Independent Review Panel Report on Defense Contracting Audit Agency,” Report FY09-1, October 2008, at [dbb.defense.gov/pdf/Independent_Review_Panal_Report_of_the_Defense_Contract_Audit_Agency_\(Final_Report\).pdf](http://dbb.defense.gov/pdf/Independent_Review_Panal_Report_of_the_Defense_Contract_Audit_Agency_(Final_Report).pdf) (July 7, 2010).

Congress imposes on the DOD through the legislative process, the length of the annual defense authorization bill is a good general indicator.”⁹ In 1973, the Defense Authorization Act for Fiscal Year 1974 was 19 pages long. In 2004, the authorizations act ran 388 pages. Excessive management drives up cost, creates more bureaucracy, creates a risk-averse environment, and stifles innovation and adaptability.

- **Measure Risk Right.** While the Federal Acquisition Regulations (FAR) correctly assign risk as a key metric in determining the right contract vehicle, adding more specific guidelines to acquisition regulations and guidelines leading to prescriptive solutions that are not sufficiently flexible to keep up with changing operational requirements, advances in technology, or the verities of the marketplace may not be the right answer. Rather, the capacity to assess and framework to assess risk should be built into contractor decision-making. One methodology has been suggested by analysts at the RAND Corporation.¹⁰
- **Treat Expeditionary Contracting Differently.** Shifting preferences to low-cost, fixed-price contracts and reducing the size of awards among multiple contractors have not resulted in improving efficiency or effectiveness. In expeditionary environments where lives are on the line, it is particularly vital that the government get the best services available for the mission. In October 2009, the Commission on Wartime Contracting specifically endorsed best-value contracting practices.¹¹
- **Get the Work Force Right.** In October 2007, a commission set up by the Secretary of the Army issued its findings in a study titled “Urgent Reform Required: Army Expeditionary Contracting.” Chaired by former Undersecretary of Defense Jacques S. Gansler, the commission found that almost every component of the institutional Army, from financial management to personnel and contracting systems to training, education and doctrine and regulations, needed to be beefed up to handle the volume of work experienced by military operations in Afghanistan and Iraq.¹² The strength of this report was that it focused on building the human capital and contracting officer support system as the key to improving the efficiency and effectiveness of contracting. In particular, is important that skilled and trained contracting personal have extended assignments to ensure continuity of program management.
- **Think Smarter.** There is also a way to seriously de-politicize even the most divisive political decisions and that is making clear that the requirements are driven by military necessity. The military actually had a great tool for doing that, but like a lot of other great

⁹ *Ibid.*

¹⁰ Frank Camm and Victoria A. Greenfield, *How Should the Army Use Contractors on the Battlefield? Assessing Comparative Risk in Sourcing Decisions* (Santa Monica, Calif.: RAND Corporation, 2005), p. 11, at www.rand.org/pubs/monographs/2005/RAND_MG296.pdf (April 17, 2009).

¹¹ Commission on Wartime Contracting, “Lowest-Priced Security Not Good Enough for War-Zone Embassies,” CWC Special Report No. 2., October 1, 2009, at www.wartimecontracting.gov/docs/CWC_SR2-2009-10-01.pdf (April 7, 2010).

¹² Commission on Army Acquisition and Program Management in Expeditionary Operations, “Urgent Reform Required: Army Expeditionary Contracting,” October 2007, www.army.mil/docs/gansler_commission_report_final_071031.pdf (April 7, 2010).

attributes of the force it got washed away in the great downsizing after the Cold War. During the “good” war, the U.S. military discovered a great tool for improving the efficiency of some military operations. It was actually a tool that had long been in use in the private sector, exploiting an emergent field of math to determine new ways of achieving business efficiencies by analyzing complex systems, discovering critical paths that determined productivity, and adjusting the allocation of resources to boost production. A robust corps of operational research analysts would be ideal for evaluating and determining the private-sector needs of the military in future operations. Developing and maintaining this corps of professionals ought to be a Pentagon priority.¹³

Learning Lessons, Looking Forward

There are good lessons to be learned from failure. In respect to government contracting, no experience has more to tell than the recent U.S. experience in wartime contracting. In the end, the single greatest shortfall in contracting practices in Iraq and Afghanistan was that Washington lacked the capacity to oversee the unexpected massive volume of contracts it handed out. As the Special Inspector General for Iraq Reconstruction noted, “the shortage of personnel (and the widespread lack of required skill and experience among those available) affected all facets of reconstruction assistance.”¹⁴ With the value of hindsight it is clear that fixing that problem would have resolved the majority of serious difficulties encountered in managing contracts. Even the most partisan critics would have had a hard time finding something to complain about. All the controversy might have been avoided if the military were a better customer. But it was not and will not be in the future either if we learn the wrong lessons—continuing to hamstring not just expeditionary contracting, but government acquisition and service contracting across the federal enterprise with more ineffective oversight and excessive rules that make little sense.

Getting the job done right hardly sounds as compelling a challenge as battling an evil military-industrial complex or unmasking a political conspiracy, but nevertheless it is the heart of the problem. If Washington seriously wants to deal with the real problems of government contracting then they will have to start to deal with the real problems that cause them.

Thank you for the opportunity to participate in this hearing and I look forward to answering your questions.

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¹³ Carafano, *Private Sector*, pp. 200-201.

¹⁴ Special Inspector General for Iraq Reconstruction, *Hard Lessons: The Iraq Reconstruction Experience*. (Washington, D.C.: US Independent Agencies and Commissions, 2009), p. 25.

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