

Testimony of Stan Soloway
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Before the

Wartime Contracting Commission

“Are Private Security Contractors Performing
Inherently Governmental Functions?”

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Introduction

Chairmen Thibault and Shays, members of the commission, thank you for the invitation and the opportunity to testify this morning. I am Stan Soloway, President and CEO of the Professional Services Council, the nation's largest association of companies that provide services to the federal government. Our nearly 350 member firms are leaders in information technology, engineering, social science, consulting, operations and maintenance, contingency support, international development and other services. Together, they provide services of all kinds to every agency of the federal government. Our membership is also uniquely diverse and includes companies of all sizes from small start ups to well-established major corporations. Our membership includes some firms that provide security services to the government and many more who are implementing partners with the U.S. Agency for International Development, the State Department, DoD, and other federal agencies in the delivery of development assistance, logistics and other critical overseas needs. These firms, like their not-for-profit colleagues, often must procure private security to enable them to perform their important work in hostile areas.

The issue before the commission today is an important one and I am pleased to have the opportunity to present our perspective on the role of private security; challenges associated with management, coordination and oversight; and ways in which the government can improve its use of such firms. At the outset let me suggest two principal tenets. First, we should not use labels because labels tend to oversimplify matters and cause us to avoid more meaningful analyses. Second, it is important to clarify why the role of private security in the Iraq theater has been so significant, since I believe the answer to that question helps inform the broader discussion.

The Nature of Private Security

The term "private security" has become synonymous with images of the mercenaries of literary fiction. Moreover, too many believe that the firms providing vital security services are undisciplined and unconstrained. As I hope the commission acknowledges, both perceptions are false.

Despite the challenges that may exist and incidents that have occurred, the record of private security firms in Iraq, Afghanistan and elsewhere is actually very impressive. The vast majority of firms and their employees have demonstrated continuous professionalism, discipline, and expertise. There have been literally hundreds of thousands of security personnel who have cycled through the Iraq theater of operations since the onset of "shock and awe." Measured against the number of inappropriate incidents or even alleged unlawful actions, it is clear that their record is far better than the public understands or the firms get credit for. Indeed, their record is very similar to other public or private sector partners working in theater.

This is not to suggest that problems have not occurred or to whitewash any issues that have arisen, or to in any way suggest that security firms and their personnel, like anyone else operating in a war zone, should not be held fully accountable for their performance and actions. However, it is to suggest that, on balance and in context, that private security firms in the war zone have overall performed at a high level of propriety and professionalism. And regrettably, many of them have paid with their lives.

This perspective comes not from assumptions but from looking carefully at the record and talking with the firms and government entities that have been the primary procurers of security services. As you know, the vast majority of private security personnel are not providing protection to embassies or defense department assets; rather, they are providing security and protection for the thousands of reconstruction and development projects across Iraq and Afghanistan. They perform a valuable and essential service that is a prerequisite for those missions. Indeed, without security, there is no reconstruction and no economic or other development.

It is also important to avoid labels because private security has so many different meanings and occurs in many different places and environments. It includes facility security and guards, convoy protection, personal protection, and more. Private security is a standard feature in the private sector and for many government buildings and activities in the U.S. and overseas. It is also a standard feature in dangerous areas where the U.S. has launched development assistance initiatives executed by both non-governmental organizations and companies. Thus, in any meaningful discussion of private security, we must be careful to define the types and nature of the security being provided, as well as where and under what circumstances.

The Need for Private Security Is Driven by the Missions

Finally, for purposes of this hearing, we must also remember that the unprecedented presence of private security personnel in Iraq and Afghanistan was not the result of any political ideology or policy. Rather, it is the direct result of the nature of the missions being performed, the situational environment, and the human capital assets available and needed to execute those missions.

The Iraq and Afghanistan missions are unprecedented by any measure. Even today, the U.S. Government is simultaneously executing three missions: (1) active warfare and peacemaking; (2) physical reconstruction; and (3) economic and other development. Historically, those missions have been approached sequentially; in the Iraq theater of operations, the leadership made the decision to move quickly and aggressively with the reconstruction and development missions even before security reached the levels normally achieved prior to launching those latter two missions. Right or wrong, that decision immediately created the largest private security requirement demand we have ever seen. There was, and today still is, no realistic way for the U.S. or coalition forces to provide the necessary levels of force protection for the thousands of projects and tens of thousands of American, Iraqi, and third country personnel performing the reconstruction and development missions. In fact, the Federal Acquisition Regulation (FAR) explicitly provides that contractors performing contracts outside the U.S. other than in direct support of the U.S. military are required to provide their own security.

Moreover, and equally importantly, particularly in the international development community, there has long been deep concern about the implications of having active duty military provide security during development program execution. As such, around the world, U.S. government-funded development projects and programs—whether under contract, grant or other financial arrangement—provide their own security through contracts with experienced security firms rather than rely on the military.

Therefore, while it is easy to assume that the enormous private security presence in the warzone resulted from some intentional policy of “privatizing war,” in truth it resulted directly from the nature and scope of the multiple missions being undertaken. Whether that was the correct decision is for others to decide. But given that decision, it was and remains wholly impractical and impossible for the U.S. troops or coalition forces to meet the security demand.

Private Security is NOT Per Se “Inherently Governmental”

This leads me to address the principal question of this hearing—are security contractors performing inherently governmental functions? Since the term “private security” encompasses so many different functions, the simple answer is no. There is nothing inherently governmental about providing security, even in a warzone. The question comes down to the nature of the specific work being performed. To my knowledge, no private security personnel have been involved in offensive military operations—which would clearly only be appropriate for performance by U.S. military forces. However, at home and abroad, it is not at all uncommon to have armed security protecting governmental and non-governmental

assets. By definition, if a security officer is armed, there is the recognition that he or she may at some point be required to use lethal force to respond to a threat and the FAR rules I mentioned earlier clearly address and provide for this potential. Thus, it would be inappropriate to define all such security work as inherently governmental.

Here I believe the March 2010 Office of Federal Procurement Policy's proposed policy letter on "Work Reserved for Performance by Federal Government Employees," and the predecessor OMB July 29, 2009 guidance on "Managing the Multi-sector Workforce," provide a helpful construct. Within those proposed policy documents, OMB has essentially categorized work on behalf of the government into three separate but sometimes overlapping categories: inherently governmental; closely associated with inherently governmental; and critical positions. While we believe the March 2010 OFPP proposal creates too much confusion and needs to be significantly simplified to ensure effective compliance, the general concept OMB has posited is reasonable: if a function is inherently governmental it must be performed by federal employees in all but the most extreme cases; if work is closely associated with an inherently governmental function or is critical in nature, it can be performed by either government or non-government personnel as long as the government maintains an adequate core capability to ensure proper management, oversight, and mission and operational control. According to OMB's proposed policy, within those latter two categories, cost and other key decision factors must be considered for the portion of work that is identified as being appropriate for either federal or non-federal performance, as should be done in any smart sourcing effort.

As I said, providing personal or facility security is not, de facto, an inherently governmental function. Thus, the question to be asked is: what is the appropriate workforce balance and, perhaps more significantly, what are the oversight and management regimes necessary to ensure proper agency management, compliance and performance? It is in these areas that the commission could have the most important impact.

It is also in that area that I believe John Nagl's recent monograph on contracting in contingency environments is helpful. Dr. Nagl proposes the concept of "core competencies," which involve work that may not be inherently governmental but which are so essential that, to the extent practical and possible, should be performed by government employees. That concept is very consistent with comments PSC submitted to OMB on the March 2010 policy letter in which we recommended OMB combine the term "critical positions" with the obtuse term "closely associated with inherently governmental" activities into a single category called "critical functions" and to clearly segment the coverage between functions and positions.

With regard to the application of this concept to private security, it is instructive to review history. In June of 2003, PSC had the opportunity to brief DoD acquisition officials on a number of emerging issues associated with the advent of the conflict in Iraq. At that briefing we suggested that, in light of the clearly unprecedented need for private security that would be driven by the three concurrent missions involved, it would be highly beneficial for the department to capitalize on its expertise and take the lead, if not outright control, over the security requirement.

At that time, our preferred approach for DoD doing so was for the department to award a multiple award contract for security services from which those needing such services could buy. In our view, DoD's expertise in this area was essential and adopting such a process would help ensure that only the most qualified firms were in a position to perform such services in that theater. Recognizing that DoD would be reticent to take on that degree of responsibility for a number of reasons, we suggested two other alternatives: the department could qualify security firms through a rigorous process and create the

equivalent of a qualified bidders list – essentially a “DoD seal of approval” – that firms needing private security could solicit and contract with independently. Absent that, and at a minimum, we recommended that DoD issue a set of clear standards that all security firms must meet and against which those in need of such services could measure the capabilities of different firms. Regrettably, DoD did not adopt any of those three proposals.

We continue to believe that, for future conflicts, DoD can and should take the lead role where private security is concerned, in concert with the State Department’s Bureau of Diplomatic Security. Doing so would require that additional acquisition resources, with special expertise and experience in contingency environments and security, be made available. As with so many other aspects of contracting in contingency environments, additional, trained and experienced acquisition personnel may be the single most important and value-added investment the government could make.

Further, again using the OMB proposed policy as a guideline, it is important for federal agencies to perform more detailed human capital and mission assessments to ensure that the available federal assets—be they military or civilian—are made available on a prioritized basis to those most sensitive areas where one would prefer that government personnel, rather than private personnel, provide security.

Even as we recognize the reality and critical need for private security assets, the government has the responsibility to ensure that whatever organic capabilities it has and can deploy are hierarchically assigned to the most sensitive areas. It is not clear that this has occurred to date. And while such an exercise will not likely result in massive shifts of personnel, it would help ensure that the government has, as OMB recommends, adequate capabilities to effectively execute and oversee its missions.

This would also require a careful evaluation of the types of skills that are available organically and the provision of the additional training and professional development resources to ensure that where it is determined that government assets should be utilized, those assets have the special expertise required to perform the work.

In simple terms, whether one adopts Dr. Nagl’s terminology or ours, for something like private security the core competencies or critical positions needed to meet the test established by the OMB proposed policy lie in two areas: First, carefully aligning available assets first and foremost with the most sensitive needs; and, second, resourcing, training and empowering professionals in the acquisition community to ensure they have the skills and experience needed to effectively award, manage and oversee the procurement and management of private security contracts.

Oversight and Compliance

This concept also extends directly and obviously to the question of oversight and compliance. For instance, some are concerned that some private security personnel lack adequate training. None of us on this panel can say with any certainty whether that is true or how common the problem is. But to the extent it exists, it can be effectively dealt with through clear government standards applied to the private sector through the acquisition process. Not only would the specific personnel requirements be clear and incorporated in hopefully unambiguous terms in a contract, but, equally important, other disincentives that might drive companies to the wrong decision can be directly addressed through the contract as well. For example, ensuring that the private security forces are of the highest quality means that one not only has to set clear standards, but that acquisition strategies and acquisition officials must be empowered and supported to make awards to firms other than the lowest bidder.

Using the OMB proposed policy letter as a basis yet again, it is also important to note that where work does not have to be performed by government employees, cost must be considered in any sourcing decision. This is a significant issue with regard to private security. Recent studies from GAO, the Congressional Budget Office, and the State Department have clearly documented that when all associated lifecycle costs are accounted for, performing security functions using government civilian personnel can be millions of dollars more expensive than performing the work through a contract with a private firm. The results of those analyses surprise many people, especially given the attention that has been paid to the costs associated with private security. But the analyses are highly instructive and relatively comprehensive. And, when comparing the cost of private security to performance by the military using a similar true, total cost analysis, a similar picture emerges.

Moreover, as General Petraeus told the Congress, if he had to replace the approximately 15,000 private security contractors that were protecting DoD assets in Iraq with soldiers, he would need an additional five or six brigades, since soldiers are not available on a 24/7, 365-day basis; backfill is generally not provided for soldiers called away to other duties; and soldiers are routinely called away for training or other needs or types of leave. It goes without saying, that it would be highly impractical to provide those five brigades, let alone the forty or fifty brigades that would likely be needed to fully replace all of the private security personnel in the Iraq theater, even if doing so was desirable.

As noted earlier, in some cases, it may make sense for DoD or the State Department to replace some private security assets with military or civilian government personnel in the most sensitive roles. But on balance, the bigger and more impactful challenge is addressing the core capabilities—principally in acquisition—needed to provide adequate management and oversight. And there, the issues of cost and resource availability are central.

This is not a trivial issue. When dealing with matters of this level of sensitivity, one should not make decisions on the cheap. Not only is it a matter of responsibility to assess the total cost to the taxpayer when making such decisions, but one must also consider the impact on mission. For example, if the State Department were required to replace a substantial number of private security personnel with Diplomatic Security personnel, the cost impacts would be enormous and money would inefably be drawn away from funding the underlying reconstruction or development missions. In other words, there is a correlation between the cost of security and available funds for mission execution. This was made eminently clear in the reports of the Special Inspector General for Iraq Reconstruction which documented that security needs, driven by the threat environment, had been a significant factor in reducing the amount of funds available for actual mission execution. And while it is fashionable in some quarters today to simplistically dismiss the “third parties” that theoretically stand between effective and ineffective mission performance, the truth is that substantial portions of the money that was intended for reconstruction or development but which did not lead to direct mission results was necessarily directed to critical security needs. The more such funds have to be redirected, the mission impact will, of course, be even greater.

Some Lessons Have Been Learned

Since PSC first became involved in the issues associated with Iraq contracting in early 2003, the threat and contracting situations have changed substantially. Some of the lessons identified in work we did with the Army Materiel Command, as well as some of the lessons contained in the extensive reports of the SIGIR, have actually been learned and have led to changed behaviors and actions. Indeed, we had the privilege of participating in each of the SIGIR’s lessons learned teams and, in key areas including contracting, significant improvements have been made. Specific events and government contracting actions have also led to changes being made in operational plans and in contracting practices. But more

needs to be done.

Specifically with regard to private security, we, and many of the best security companies themselves, including some who are testifying before you next week, continue to believe that more needs to be done to establish and enforce standards for the industry. Just two weeks ago, the House passed its version of the Fiscal Year 2011 National Defense Authorization Act that included a requirement for the Defense Department to develop standards for private security companies operating in a combat environment. Previous legislation has contained at least an implicit requirement to do so, but this year's bill is explicit.

We also continue to believe it would be valuable if DoD or a joint DoD/State activity were to formally manage the private security requirement. But absent that, there remains a need for standards as well as formal and informal encouragement to, and support for, both companies and government activities buying private security services to focus heavily on quality and not be bound by the kind of low bid mentality that continues to vex so much of federal procurement. It does not appear that that mentality has been prevalent in the government's procurement of security services for its needs; but if the overall security acquisition responsibility does not shift to the government, a focus on and support for value and quality is vital. In too many cases involving Iraq and Afghanistan contracting, we have seen far too many companies questioned by auditors when they have selected a firm other than the lowest bidder for a range of activities. Here, the old adage that you get what you pay for is most apt. When that mentality is dominant, there can be little doubt that it serves generally as an inhibitor to identifying and accessing the best capabilities in any area.

Finally, while communications and coordination have clearly improved, more formal and continual processes for information exchanges are still needed. When we first looked at this issue in 2003, it was clear that no such processes existed, that threat assessments were often out of date, and that when private security firms were in the field they developed important intelligence and threat information but had no feedback loop to ensure the information got to the right military officials. While that situation has improved, it appears to be more the result of maturing personal relationships and acculturation rather than from legislative mandates or the kind of continuous operational process improvement that is needed.

Conclusion

Members of the Commission: private security is not, by definition or practice, an inherently governmental function. But the sensitivity and nature of the work requires that the government have access to the best, most professional providers of such services. Given the massive scope of private security involvement in Iraq and Afghanistan, the majority of firms providing these services have performed in just that manner. But we can and should do better. The reality is that the government and many of the not-for-profits and contractors who partner with the government in foreign assistance and other overseas nation-building and support activities will continue to need these firms and their services. It is in all of our interests that we work together to ensure we have a process and management regime that works to ensure optimal performance—rather than merely assign labels and allow misperceptions to drive policy.

Thank you again for the opportunity to be here today. I look forward to your questions.