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**STATEMENT BY  
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**BEFORE THE  
COMMISSION ON WARTIME CONTRACTING  
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## **Introduction**

Chairman Thibault, Chairman Shays, and members of the Commission:

I am honored to appear today before the Commission on Wartime Contracting to discuss DynCorp International's approach to awarding and managing subcontracts in support of U.S. government contracts in Afghanistan and Iraq.

In past testimony, DynCorp International witnesses have discussed the defense, development, and diplomacy solutions that we provide to the U.S. government under programs for training and mentoring, logistics, platform support, security and contingency operations. As a prime contractor to the U.S. government, we stand up high-performance teams anywhere around the world to execute programs in support of our customers. Our goal is superior performance, compliance and conduct based on our core values: We Serve, We Care, We Empower, We Perform, and We Do the Right Thing.

While our preference is to self-perform as much work as possible, subcontracts are an important tool to increase agility and responsiveness to the customer, encourage regional involvement in the success of a project, and develop local expertise, often while decreasing cost to the U.S. government. Whether the contract is for construction services or translators with specialized local language skills, to source local food items for dining facilities or to transport goods through hostile territory, subcontractors are a significant part of the team that supports the coalition troops in Iraq and Afghanistan.

### **The Value and Challenges of Subcontracting**

Given the diverse areas where we operate, the value of engaging local subcontractors is significant. One of the U.S. government's goals when operating in an area like Iraq or Afghanistan often is to develop local capacity to assume the responsibilities carried out by U.S. government and contractor personnel.

Local and regional involvement reduces the U.S. footprint, while developing the capacity of the Iraqi and Afghan people to take the lead in securing their communities, stabilizing their economies, and developing their infrastructure. Vendors and subcontractors who speak the native language and understand the local culture can also help gain community acceptance for and improve mission performance on projects. In addition to the high-level mission objectives that are achieved by engaging host country businesses is the issue of cost; there can be clear cost advantages to using local personnel rather than U.S. or third country employees.

However, managing subcontractors in war zones is challenging and engaging local personnel and companies is not always possible given serious security concerns and performance requirements. In addition, the U.S. government frequently places specific

restrictions on what positions can be filled with local nationals and in what locations those individuals can work, often preventing locals from working on U.S. bases where much of the work is performed. Vetting of host country employees to ensure that they do not support insurgents, will not divert funds to insurgent causes, or pose a threat to U.S. and allied personnel is very difficult.

In screening and vetting potential subcontractors, DynCorp International uses a comprehensive protocol. For example, with respect to export controls, in addition to using an internal approval matrix and public records assessment, we use Visual Compliance, a web-based service search engine which provides comprehensive search capabilities including the Excluded Parties List System (EPLS), and access to classification and export information. Visual Compliance streamlines and standardizes the vetting of vendors, subcontractors, employees and potential team members as it has the most extensive grouping of lists compiled by the U.S. government's Departments of Commerce, State, Treasury, and Justice, Federal Register, foreign governments, and Interpol.

DynCorp International requests background information from the Embassy Regional Security Officer (RSO) and Commercial Counselor and researches financial background on the subcontractors. We also rely on our own past experience with subcontractors in our evaluation. The Commission may want to consider recommending the establishment of consolidated approved/disallowed foreign subcontractor database to further streamline the screening process and to prevent the hiring of poor performing or corrupt subcontractors.

To ensure high performance, compliance and conduct we have corporate policies, procedures and practices in place to require the right actions by our subcontractors including compliance with the Foreign Corrupt Practices Act (FCPA), International Traffic in Arms Regulations (ITAR) and Combating Trafficking in Persons (TIP). We believe our approach to subcontracting provides the U.S. government with the best value available. We tailor oversight procedures on each subcontract to monitor and if need be, to correct weaknesses of our subcontractors. Unfortunately, not all of our subcontractors live up to DynCorp International standards and in those cases we aggressively manage shortcomings to achieve appropriate corrective action. In extreme cases, DynCorp International has and does exercise its rights to termination.

### **DynCorp International's Major Contracts in Afghanistan and Iraq**

DynCorp International supports U.S. government agencies on a number of contracts in Afghanistan and Iraq. Our largest five contracts in each country are:

In Iraq:

1. Department of State Civilian Police (INL CIVPOL Iraq Civilian Advisor Support Task Order);
2. Department of State Worldwide Protective Services (WPPS);
3. Department of State INL Air Wing;
4. U.S Army CENTCOM MNSTC-I Advisors;
5. U.S. Army Life Cycle Contractor Logistics Support (LCCS)

In Afghanistan:

1. U.S. Army LOGCAP IV (AOR South Task Order);
2. Department of State Civilian Police (INL CIVPOL Afghanistan Civilian Advisor Support task order);
3. Department of State INL Air Wing;
4. U.S. Army Corps of Engineers Construction;
5. Department of State Weapons Removal and Abatement (WRA)

To provide all required services, to ensure competitive costs, and to be able to draw on local expertise, there are times where it is beneficial to subcontract portions of the work. In addition, from time to time, we form joint ventures as we did when DynCorp International and McNeil Technologies joined to compete, win and perform the U.S. Army INSCOM Linguist contract. In Afghanistan and Iraq, DynCorp International subcontracts for services including satellite communications, fuel delivery, shipping, and helicopter transportation.

As the Commission is aware, one of our largest subcontracts companywide is on our LOGCAP IV contract with CH2MHill, which is also participating in today's hearing. The combined experience and subject matter expertise of both companies, applied with a single point of accountability, supports our ability to meet the challenging, frequently evolving contract requirements. The relationship includes provisions where DynCorp International executes all construction subcontracts managed by CH2MHill, and CH2MHill bills only its costs and derives its entire profit from the government's award fee earned at the prime contract level. Benefits from this integrated partnership include reducing indirect costs, incentivizing our subcontractor's performance and ensuring that the prime contractor is directly responsible for all subcontractors.

### **Management of Subcontractors**

Controlling the performance and financial risk to DynCorp International and our customers is an important factor in the selection and management of subcontractors. Due to the nature of contingency subcontracting, one of the most effective contracting mechanisms we use is competitively awarded fixed unit price subcontracts which we use wherever possible. Fixed unit price subcontracts reduce price risk and lower the cost and complexity of monitoring and auditing cost contracts – especially important as

many subcontractors lack DCAA-auditable business systems. Currently, DynCorp International has only two cost-type subcontracts, one of which is with our primary LOGCAP subcontractor, CH2MHill. This is feasible because CH2MHill's business systems are DOD approved.

Following commercial best practices, we use standard subcontract templates modified to include all prime contract flow-down provisions. We also restrict the subcontractor's ability to further subcontract work without our specific approval. Subcontract work is normally co-located with our work, providing our management representatives with a 24-hour view of subcontractor progress and performance.

A benefit of our practice of awarding primarily competitively awarded fixed unit price subcontracts is ensuring that subcontracted services are delivered even when local subcontractors lack U.S. government-validated Estimating and Cost Accounting Systems. DynCorp International focuses on verification or validation methods to confirm receipt of the "variable" in fixed unit priced subcontracts, which is typically the quantity received of the fixed priced unit. Thus the challenge is to develop and incorporate into the subcontract an explicit method by which the validation or verification occurs. An example would be food service subcontracts. The price of a meal served is typically fixed, the quantity is the variable. A method of validation of the quantity served is a "muster sheet" or a Common Access Card (CAC) reader at the dining facility. The data obtained allows DynCorp International to verify the accuracy of the invoicing of meals actually served.

### **Differences in Subcontracting between Peacetime and Wartime Operations**

As the Commission looks to improve subcontracting in Iraq, Afghanistan and other conflict zones, we have several thoughts for consideration:

The key distinguishing factor in contingency warzone contracting is the government's requirement for rapid response. When changes to existing Federal Acquisition Regulation (FAR) guidelines are considered, the immediacy of on-the-ground needs must be of paramount concern. In addition, many contract and subcontract performance problems stem from procurement systems that treat war-zone contracting with a peacetime mentality. As oversight agencies audit warzone contracting, they must recognize that they are evaluating a "cold file," distant from the heat or urgency operative during the time of the placement.

Contingency contracting authorities should take into consideration the following:

- There is very limited time to develop acquisition documentation.
- Subcontractors that are able to respond to requests for proposals in time and are willing to work in combat zones are limited and difficult to vet.

- Expedited subcontract consent processes are needed to avoid delays in obtaining the services and supplies needed by commanders on the ground.
- Indigenous subcontractors typically do not have approved or even recognized business systems that are auditable for cost accounting, estimating and pricing, billing or invoicing.

Small business contracting requirements should also be examined. Small Business requirements, while vital to supporting small and disadvantaged businesses, can sometimes force us to engage subcontractors when it would otherwise not make business sense. While we fully support the Small Business policies in the continental U.S., we believe that the Commission should examine the appropriateness of applying Small Business requirements – especially when based on a percentage of total contract value – to contingency contracts to be performed in foreign countries. Further, when Small Business goals are considered necessary, the goals should be expressed in terms of a percentage of the dollar value of total subcontracting. Otherwise, contractors will be forced to subcontract when they would otherwise not, introducing inefficiencies and potentially added cost to the project or program. In addition, we have found that most U.S. small businesses have neither the experience nor the resources to work outside the U.S., much less in a war zone.

The Commission asked how the government might improve oversight of subcontractors. We believe that if key flow-downs are complied with and the prime contractor has developed a robust methodology for verification and validation of delivery prior to payment, additional government oversight of subcontractors is unnecessary. The prime contractor is responsible and accountable for performance and compliance of the entire contract, no matter whether the work is done by the prime or sub. The contracting focus is and should remain on speed and flexibility, support to the war-fighter and attendant operations. Specifically on cost-type contracts, the government already has authority to examine the subcontractor's accounts.

Notwithstanding the issue of privity of contract, unintended project impacts could include delays, disruption, and cost growth. Recent efforts by the government to increase the size of and capabilities of the government contract management workforce are already placing increased responsibility and accountability pressure on prime contractors, incentivizing contractors to be even more diligent in the awarding and management of subcontracts. Our recommendation is that flow-down requirements be focused on those of highest USG priority.

### **A Mini-FAR for Contingency Contracting**

Consistent with previous discussions before the Commission, DynCorp International supports the development and implementation of a streamlined Federal Acquisition Regulations (FAR) specifically focused on contingency contracting and subcontracting. In reality, most foreign subcontractors operating in austere or third world locations are

not sufficiently sophisticated to absorb the many requirements of typical U.S. government contracts and resultant subcontracts.

In a number of areas, the FAR expressly states applicability to subcontracting. In practice, however, the FAR is often applied to subcontracts beyond where it is explicitly prescribed in the regulations. An unintended consequence can be unrealistically imposing on contractors that are dealing with subcontractors in developing countries, the same requirements of contracting officers dealing with sophisticated U.S. contractors that have approved business systems.

For example, because it assumes a contracting officer is working with a contractor that has approved systems, the FAR requires Cost Analysis that is feasible and even efficient by virtue of a contractor's standard, auditable systems. When working with an Afghan or Iraqi subcontractor that lacks U.S.-validated estimating and cost accounting systems, however, Cost Analysis is not practical and necessitates that Price Analysis be used.

## **Conclusion**

With our extensive experience in supporting the U.S. government's services requirements in Afghanistan, Iraq and other hostile locations, we know that managing subcontracts is challenging and we thank the Commission for exploring ways that contingency subcontracting can be improved.

Providing superior performance, compliance and conduct is our standard. We owe it to our customers, the war fighter, and to the U.S. taxpayer. This is not only the right way to operate; it is also in our own best interest. The best way to secure business in the future is to meet the high standards we set for ourselves and deliver outstanding services today.

Each day, we work side-by-side with American and allied soldiers, U.S. and international civilians, and our subcontractors in some of the most difficult and dangerous places in the world. We are proud of the dedication of our employees and we are equally proud of the dedication exhibited by our subcontractors. In discussions about and coverage of our work worldwide, the important contributions of our subcontractors are often forgotten. Their contributions and sacrifices are just as important and as vital to our overall success in supporting U.S. foreign policy and national security objectives, we thank them for that support.

Thank you again for the opportunity to testify on this important matter and I stand ready to answer any questions.