

## 6. *The Department of Defense Lacks Effective Oversight of Its Supply Chain and Private Security Contractors in Afghanistan*

**Finding:** The Department of Defense has little to no visibility into what happens to the trucks carrying U.S. supplies between the time the trucks leave the gate to the time they arrive at their destination. Despite serious concerns regarding operations, no military managers have ever observed truck operations on the road or met with key security providers. The Department of Defense’s regulations, promulgated in response to direction by Congress, require oversight of all private security companies working as contractors or subcontractors for the U.S government. These requirements include ensuring that all private security company personnel comply with U.S. government and local country firearm laws, that all private security company equipment be tracked, and that all incidents of death, injury, or property damage be fully investigated. The Department of Defense is grossly out of compliance with applicable regulations and has no visibility into the operations of the private security companies that are subcontractors on the HNT contract.

The HNT contract is worth \$2.16 billion and covers 70 percent of the supply chain for the U.S. effort in Afghanistan. The contract is critical to the basic survival of U.S. troops stationed throughout the country in remote and dangerous areas. By any measure, a contract of this significance would seem to demand exacting oversight by the Department of Defense. Both military and HNT contractor personnel reported that such oversight was virtually nonexistent.

### **The Military Contract Overseers Had “Zero Visibility”**

The 484<sup>th</sup> Joint Movement Control Battalion was responsible for managing and overseeing HNT missions from May 2009 (when the contract started) to February 2010. According to Lieutenant Colonel David Elwell, the commander of the 484<sup>th</sup>, no one in the battalion ever personally witnessed trucking operations ‘outside the wire’ – outside of the major airfields and forward operating bases where supplies are uploaded and downloaded. The 484<sup>th</sup> did not have the “force structure, the equipment, or the security” to put eyes on the road. “It would have been a combat mission.”<sup>186</sup>

Several other members of the 484<sup>th</sup> confirmed that they were unable to effectively oversee the operations of the HNT contract. According to Major Valen Koger, the officer responsible for technical oversight of the contract, his battalion had “zero visibility” into the subcontractors

operating under the contract. During his almost one-year tour in Afghanistan, he rarely left Bagram Airfield, and he stated that he could not verify any reports of what was actually happening on the road. Major Koger expressed concern that, as the person responsible for oversight on behalf of the contracting office, he could not actually oversee many aspects of the HNT contract.<sup>187</sup>

The Battle Captain, whose job it was to monitor incidents and track incident reporting, stated that it was difficult to verify incidents that occurred on the roads. Although he heard rumors that contractors had to bribe “warlords” to get through certain areas, he did not know who these men were and did not have any visibility into their identities beyond what was reported to him by the prime contractors.<sup>188</sup>

The contracting office at RCC-Bagram was equally unaware of the operations of the subcontractors used by the HNT prime contractors. The contracting office was responsible for vetting the contractors and awarding the HNT contracts.<sup>189</sup> Once operations began, the contracting officers were responsible for ensuring that all provisions of the HNT contract were being followed by the contractors.<sup>190</sup> Two former contracting officers stated that they communicated regularly with the prime contractors, but did not have a direct way to check on their operations. Both of these contracting officers relied exclusively on reports from the 484<sup>th</sup> and the HNT prime contractors for information regarding whether the contractors were in compliance with the contract. Neither ever went out on the road themselves to observe these operations.<sup>191</sup>

For information about the HNT operations, the 484<sup>th</sup> largely relied on reports from the HNT prime contractors themselves. Very few of the prime contractor representatives (the Western expats who interface with the military) have ever seen a trucking mission first-hand, however. Instead, most of the HNT representatives rely on their Afghan trucking subcontractors to tell them what happens on the road. This information is often less than reliable. Frequently, the HNT prime contractors’ subcontractors further subcontract out the missions without the knowledge of the primes. Although they claim to have their own trucks, many of the principal subcontractors are nothing more than brokerages for tribal trucking firms or owner-operators.<sup>192</sup>

Thus, the military officials responsible for oversight and management of the HNT contract have no reliable way of knowing what is actually happening on the road.

### **Required Oversight of Private Security Contractors**

In 2008, following widespread media reports of severe misconduct by private security contractors working for the U.S. military in Iraq and Afghanistan, Congress included a section in the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA)<sup>193</sup> that required

the Department of Defense and the Department of State to promulgate regulations to improve oversight and accountability of private security contractors (PSCs). Congress mandated that the regulations include, *inter alia*, processes for:

1. Registering, tracking, and keeping records of personnel working for PSCs or otherwise providing private security services;
2. Authorizing and accounting for weapons used by such personnel;
3. Registering military vehicles used by PSCs;
4. Mandatory reporting by PSCs of all incidents in which PSC personnel discharge a weapon, PSC personnel are killed or injured, and others are killed or injured, or property is destroyed, as a result of actions by PSC personnel;
5. Independent review and investigation, where practicable, of any reported incidents as well as any allegations of misconduct by a PSC; and
6. Training and qualifying PSC personnel.

Congress also mandated that all contracts for private security contractors include a clause requiring the companies to comply with Department of Defense regulations as well as applicable local and U.S. law. While these regulations are limited to private security contractors operating in areas of combat as designated by the Secretary of Defense, Congress included language to ensure Iraq and Afghanistan would be included.

Department of Defense Instruction 3020.50, *Private Security Contractors Operating in Contingency Operations*, which was signed on July 22, 2009, lays out the policy and regulations pursuant to the requirements of the FY08 NDAA. The Instruction policies apply to “DoD [Department of Defense] PSCs and PSC personnel performing private security functions during contingency operations outside the United States” and “U.S.G.-funded PSCs and PSC personnel performing private security functions in an area of combat operations.” The Instruction defines the term “contractor” as “the contractor, subcontractor, grantee, or other party carrying out the covered contract.” In other words, private security contractors working under the HNT contract are covered by this Instruction.

In addition to the main provisions, noted above, that are required by the FY08 NDAA, the Instruction includes extensive provisions related to the arming of private security contractor personnel. Under these regulations, the companies must verify that their personnel meet the legal, training, and qualification requirements to carry a weapon under the contract and local law. Requests to arm private security contractor personnel are to be reviewed on a case-by-case basis by a Staff Judge Advocate. All such requests must include, *inter alia*, a communication plan for how information about threats will be shared between private security contractors personnel and the U.S. military, and how the military will provide assistance to private security contractors who

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become involved in hostile situations. Private security contractors must acknowledge in writing that, among other things, they can only carry U.S. government-issued and/or -approved weapons and ammunition.

While the Department's Instruction does not appear to assign the responsibility of monitoring and enforcing compliance to any particular entity, the FY08 NDAA gives contracting officers, in addition to combatant commanders, the power to direct contractors to remove noncompliant personnel, and to terminate contracts for repeated violations.

Finally, section (i) of the Joint Contracting Command - Iraq/Afghanistan clause 952.225-001 instructs that "all arming requests and authorizations for contractor or subcontractor employees under this contract shall be limited to U.S. Government-approved weapons and ammunition."<sup>194</sup> The clause defines "U.S. Government-approved weapons and ammunition" as "M9, M4, M16, or equivalent (e.g. .45 CAL, AK-47)."<sup>195</sup> An August 2009 JCC-I/A Policy Directive instructed that this clause "shall be included in all contracts with performance in Iraq or Afghanistan that require arming of contractors."<sup>196</sup>

### **No Oversight of HNT Private Security Contractors**

Despite Congress's clear intention that the Department of Defense monitor, account for, and, when necessary, discipline private security contractors, the security providers working on the HNT contract are not subjected to any meaningful oversight by the U.S. military. The Department has even less visibility into security operations on the road than it does on the trucking missions themselves. For security reasons, private security contractors for HNT missions are not allowed 'inside the wire' with the trucks they are guarding. In most cases, the security providers and the trucks meet up many miles outside the base, or even in separate provinces. As such, none of the military's HNT managers or overseers ever witness security operations in action. As with the trucking operations themselves, HNT managers rely on the prime contractor representatives to tell them who provides security for Department of Defense's supplies and how that security is provided. Most of the prime contractors dutifully provide what they know, but that information is rarely comprehensive or fully accurate.

Lieutenant Colonel Elwell confirmed that the 484<sup>th</sup> had "very little visibility" into the security operations of the HNT contractors. He stated that the 484<sup>th</sup> regularly emphasized the security requirements to the carriers, but there was very little that the 484<sup>th</sup> could do to verify that proper licensing and vetting of guards was actually taking place since security elements could not come 'inside the wire.' Once the trucks left the bases and met up with security, the 484<sup>th</sup> had no direct way to verify that security was actually continuing with the trucks, or if that security was licensed.<sup>197</sup>

## **The Armed Contractor Oversight Directorate**

Since 2008, the Armed Contractor Oversight Directorate (ACOD) has been responsible for regulating and overseeing private contractors employed under U.S. contracts in Afghanistan, including those working as subcontractors. Despite being charged with tracking private security contractors, the former Director of ACOD, who left Afghanistan in December 2009, reported that ACOD was unable to oversee the private security contractors working on the HNT contract. He found that, in most cases, the prime contractors subcontracted out security, and those security subcontractors further subcontracted out security operations. He knew, for example, that Watan Risk Management provides security to several HNT contractors, but he had no knowledge of how Watan operates. He said that “anyone who is receiving DoD dollars should be tracked,” but ACOD had not been able to do so.<sup>198</sup>

The current Director of ACOD, Colonel Son Le, also agreed that ACOD does not have visibility into the operations of HNT security providers. He stated that he relied on the prime contractors to ensure proper security operations were being carried out.<sup>199</sup>

### **Few HNT Prime Contractors Know What Happens on the Road**

Because the military contract officials do not have direct oversight into the security operations on HNT missions, they rely on reports by the prime contractors. However, in many cases the prime contractors themselves have little knowledge of the actual security arrangements for their convoys. For security reasons, most of the prime contractor representatives are unable or unwilling to travel out on the roads. One HNT program manager stated that he has no direct knowledge of how security operations for his company’s missions are conducted because his company’s personnel do not travel with convoys or interact directly with the security elements.<sup>200</sup> A former country manager for another HNT contractor stated that he never went out on the roads due to the danger of doing so and that he did not interact with the company that provided security for his company’s convoys.<sup>201</sup>

Several contractors leave it entirely up to their trucking subcontractors to arrange for convoy security.<sup>202</sup> A country manager for one contractor confirmed that his trucking subcontractor generally coordinates all security operations for convoys.<sup>203</sup>

As an illustration of prime contractors’ lack of knowledge about their own operations, in response to questions by the 484<sup>th</sup> and the contracting office regarding security operations on its convoys, one contractor sent two e-mails in the same month that identified two different sets of security providers used by the company’s subcontractors. In a December 2, 2009 e-mail, a program manager for the contractor identified its security providers as “Rohulla Escort,” “Afghanistan Naveen,” “Rahim Escort,” and “Commander Mansoor Escort.”<sup>204</sup> In a December 23,

2009 e-mail, another program manager for the same company identified the security providers as “Com Malik,” “Rohullah,” “Habibullah,” “Naween Security Company,” and “Zadran Security Company.”<sup>205</sup>

### **Higher Command**

The 143<sup>rd</sup> Expeditionary Sustainment Command sat above the 484<sup>th</sup> on the contract management chain of command. The 143<sup>rd</sup> was consulted on many of the HNT challenges and assigned an HNT program manager, Lieutenant Colonel Todd Lewis, to help perform oversight on the contract. Although he tried to figure out what was happening ‘outside the wire,’ Lieutenant Colonel Lewis was never able to successfully do so. He could not get authorization to go to key highways to witness trucking operations first hand because such a trip would require too much security. He called his inability to get information on HNT trucking and security operations the single biggest frustration from his service in Afghanistan.<sup>206</sup>

The 484<sup>th</sup> also worked with the Principal Assistant Responsible for Contracting-Afghanistan (PARC-A).<sup>207</sup> Colonel Daniel Cottrell, the PARC-A, stated that it was the responsibility of the prime contractors to ensure that security was properly provided.<sup>208</sup>

Subcommittee staff traveling with a congressional delegation in January 2010 met with several other senior military officials, including Major General John MacDonald and his team of senior military logistics officers, regarding the HNT contract. Major General MacDonald admitted that the Department of Defense did not have visibility into the operations of the trucking companies or their security providers and that this was an issue of concern.<sup>209</sup>

In summary, neither the critical importance of the HNT contract, the significant value of the contract (especially in relation to the economy of Afghanistan), nor the legal and regulatory requirements have been sufficient to prompt the Department of Defense to devote the resources necessary to properly oversee the contractors, subcontractors, and private security providers who operate the supply chain.