

The seal of the Office of the Special Inspector General for Iraq Reconstruction is a large, circular emblem in the background. It features an eagle with wings spread, holding an olive branch and arrows. The eagle's chest is covered by a shield with vertical stripes. The seal contains text in both English and Arabic. The English text reads "INSPECTOR GENERAL" at the top and "RECONSTRUCTION" at the bottom. The Arabic text reads "مفتش العام" at the top and "إعادة إعمار العراق" at the bottom.

**OPPORTUNITIES TO IMPROVE
PROCESSES FOR REPORTING,
INVESTIGATING, AND REMEDIATING
SERIOUS INCIDENTS INVOLVING
PRIVATE SECURITY CONTRACTORS
IN IRAQ**

**SIGIR 09-019
APRIL 30, 2009**



SIGIR

Special Inspector General for Iraq Reconstruction

April 30, 2009

OPPORTUNITIES TO IMPROVE PROCESSES FOR REPORTING, INVESTIGATING, AND REMEDIATING SERIOUS INCIDENTS INVOLVING PRIVATE SECURITY CONTRACTORS IN IRAQ

Summary of Report: SIGIR-09-019

Why SIGIR Did This Audit

This report responds to a congressional mandate that audits be conducted of the incidents involving private security contractors (PSCs). It focuses on the Department of Defense's (DoD's) oversight of serious incidents (such as attacks, death, injury, and property damage) involving PSCs in Iraq. The report examines DoD's (1) policies, procedures, and practices for reporting, investigating, and remediating those incidents and (2) efforts to identify trends and lessons learned. Because some Department of State (DoS) PSCs report their serious incidents through DoD channels as well as DoS channels, SIGIR reviewed pertinent DoS policies and procedures related to that reporting.

Congressional concerns about the adequacy of the U.S. government's oversight of PSCs in Iraq increased after a serious incident involving a DoS contractor, Blackwater, that resulted in the death of 17 Iraqi civilians. As a result of the incident, DoD and DoS agreed on core standards, policies, and procedures for accountability and oversight of PSCs. DoD delegated its implementation of the agreement to Multi-National Force-Iraq (MNF-I), which established Contractor Operations Cells (CONOC) and an Armed Contractor Oversight Division (ACOD) to manage serious incidents involving PSCs. DoS delegated its implementation to the U.S. Embassy's Regional Security Office (RSO).

What SIGIR Recommends

SIGIR makes a number of recommendations to the Commanding General, Multi-National Force-Iraq, and the U.S. Ambassador to Iraq to improve the serious incident reporting, investigating, and remediating processes.

Based on management comments and additional information provided by MNF-I and the U.S. Embassy, SIGIR deleted two draft recommendations from the final report. MNF-I and the Embassy generally agreed with the remaining recommendations.

What SIGIR Found

The U.S. military and the U.S. Embassy have improved their information sharing concerning PSC operations and serious incident reporting. They have established policies for reporting serious incidents and have assigned responsibility to specific organizations for overseeing that serious incidents are reported and investigated. Although these improvements are significant, SIGIR identified a number of opportunities to improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents. These specific improvements in these areas should help DoD and DoS achieve their overall program goals and objectives:

- The CONOC and RSO databases do not capture all reported serious incidents and do not present a complete picture of the serious incidents they are tasked to track. This could be caused by database management problems or the failure of PSCs to follow reporting requirements.
- ACOD judgmentally decides which incidents to track even though it is responsible for ensuring that all serious incidents received by the CONOC are reported, tracked, and investigated. ACOD is applying a more limited definition of a serious incident than the definition contained in MNF-I guidance.
- MNF-I guidance has a more expansive definition of a serious incident than in Embassy guidance.
- ACOD and CONOC have established their own databases even though they are supposed to be tracking the same incidents, although for different purposes. As a result, information for the same incidents is inconsistent, which raises questions about information accuracy.
- ACOD has performed analyses but has not developed formal lessons learned even though it is responsible for lessons learned. The limited incidents that ACOD tracks do not represent a complete picture of what PSCs are reporting, and its limited analyses may be impacting its ability to develop lessons learned.
- No organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes.
- DoD and DoS have different approaches and policies for condolence payments to Iraqis for the same types of incidents. Consequently, the United States is not presenting a uniform approach to the Iraqi people and government.

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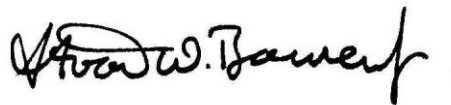
MEMORANDUM FOR U.S. AMBASSADOR TO IRAQ
COMMANDING GENERAL, CENTRAL COMMAND
COMMANDING GENERAL, MULTI-NATIONAL FORCE-
IRAQ
COMMANDING GENERAL, MULTI-NATIONAL CORPS-
IRAQ
COMMANDER, JOINT CONTRACTING COMMAND-
IRAQ/AFGHANISTAN
DIRECTOR, DEFENSE CONTRACT MANAGEMENT
AGENCY

SUBJECT: Opportunities To Improve Processes for Reporting, Investigating, and
Remediating Serious Incidents Involving Private Security Contractors in Iraq
(SIGIR 09-019)

We are providing this report for your information and use. It primarily pertains to the Department of Defense's oversight of serious incidents involving private security contractors in Iraq. Because some Department of State private security contractors report their serious incidents through both Department of Defense and Department of State channels, we examined pertinent Department of State policies and procedures related to that reporting. The audit was conducted by the Special Inspector General for Iraq Reconstruction (SIGIR) as project 9008 under the authority of Public Law 108-106, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978. It is also in response to a requirement in the National Defense Authorization Act for 2008 (Public Law 110-181) that requires audits of the reporting, documenting, investigating, and prosecution (where appropriate) processes for incidents involving private security contractors in Iraq.

We considered written comments on a draft of this report from the Multi-National Force-Iraq, the U.S. Embassy's Regional Security Office, and the Department of State's Bureau of Diplomatic Security when finalizing this report. The comments on the recommendations are included in Appendix E. Technical comments were also provided and are addressed in the report where appropriate.

We appreciate the courtesies extended to the SIGIR staff. For additional information on the report, please contact Glenn Furbish, Principal Deputy Assistant Inspector General for Audits, (703) 428-1058/ glenn.furbish@sigir.mil, or Nancee Needham, Deputy Assistant Inspector General for Audits (240-553-0581/ nancee.needham@iraq.centcom.mil).



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Inspector General

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Opportunities To Improve Processes for Reporting, Investigating, and Remediating Serious Incidents Involving Private Security Contractors in Iraq

SIGIR 09-019

April 30, 2009

Executive Summary

Introduction

This report primarily focuses on the Department of Defense (DoD) oversight of serious incidents (such as attacks, deaths, injuries, and property damage) involving private security contractors (PSCs) in Iraq. It examines DoD's (1) policies, procedures, and practices for reporting, investigating, and remediating those incidents and (2) efforts to identify trends and lessons learned. Because some Department of State (DoS) PSCs report their serious incidents through DoD channels as well as DoS channels, SIGIR reviewed pertinent DoS policies and procedures related to that reporting.

The report responds to a mandate in the National Defense Authorization Act for 2008 (Public Law 110-181), which requires audits of the processes used to report, document, investigate, and prosecute (where appropriate) incidents involving private security contractors in Iraq.

The U.S. government has relied extensively on PSCs in Iraq to protect personnel, supplies, and facilities. Although issues have surfaced over the years concerning the oversight, control, cost, and legal status of PSCs, the Blackwater incident in September 2007, during which 17 Iraqi civilians were killed, brought to the forefront concerns about the U.S. government's oversight and control of the PSCs. In December 2007, DoD and DoS signed a memorandum agreeing that they would jointly develop, implement, and follow core standards, policies, and procedures for the accountability, oversight, and discipline of PSCs in Iraq. Their objective was to reduce the number and impact of serious incidents. DoS assigned responsibility for implementing its part of the agreement to the U.S. Embassy, which in turn delegated responsibility to its Regional Security Office (RSO). DoD assigned its responsibility to the Multi-National Force-Iraq (MNF-I). MNF-I established Contractor Operations Cells (CONOC)¹ to coordinate PSC missions and to gather, assemble, and distribute information on serious incidents involving PSCs. MNF-I also established the Armed Contractor Oversight Division (ACOD) to ensure that all serious incidents are reported, tracked, and investigated.

RSO is responsible for coordinating DoS Tier 1 missions, which are defined as missions that directly support the Chief of Mission. For example, Tier 1 missions involve transporting DoS personnel, ambassadors, other diplomats, and congressional delegations. Missions that do not

¹ The CONOC was established by Multi-National Corps-Iraq, a subordinate command to MNF-I.

directly support the Chief of Mission, such as transporting contractor personnel supporting DoS contracts, are categorized as Tier 2 missions.² PSCs on Tier 1 and Tier 2 missions are to report serious incidents to the RSO. In addition, DoS PSCs on Tier 2 missions and DoD PSCs are to report serious incidents through the CONOC to ACOD.

Results

The U.S. military and the U.S. Embassy have improved their information sharing on PSC operations and serious incident reporting. They have established policies for reporting serious incidents and have assigned responsibility to specific organizations for ensuring that serious incidents are reported and investigated. These improvements are significant; nevertheless, SIGIR identified a number of opportunities to improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents. These specific improvements should help DoD and DoS achieve their overall program goals and objectives:

- The CONOC and RSO databases do not capture all reported serious incidents and do not present a complete picture of the serious incidents they are tasked to track. This could be caused by database management problems or the failure of PSCs to follow reporting requirements.
- ACOD judgmentally decides which incidents to track even though it is responsible for ensuring that all serious incidents received by the CONOC are reported, tracked, and investigated. ACOD is applying a more limited definition of a serious incident than that contained in MNF-I guidance.
- MNF-I guidance has a more expansive definition of a serious incident than Embassy guidance.
- ACOD and CONOC have established their own databases even though they are supposed to be tracking the same incidents, although for different purposes. As a result, information for the same incidents is inconsistent, which raises questions about information accuracy.
- ACOD has performed analyses but has not developed formal lessons learned even though it is responsible for lessons learned. The limited incidents that ACOD tracks do not

² The Department of State's Bureau of Diplomatic Security objected to SIGIR's use of Tier 1 and Tier 2 missions. The Bureau states that DoS considers contractors providing services to DoS under the Worldwide Personal Protective Services contract to be Tier 1 contractors regardless of the nature of the missions these contractors are performing and all other DoS affiliated PSCs to be Tier 2 regardless of the missions being conducted. SIGIR could find no formal definition of Tier 1 and Tier 2. It chose to describe Tier 1 and Tier 2 in terms of missions in the report because a CONOC document shows that PSCs under the Worldwide Personal Protective Services contract—Blackwater, Triple Canopy, and DynCorp—can perform both Tier 1 and Tier 2 missions with the distinction being that Tier 1 PSCs perform mission that directly support the Chief of Mission whereas Tier 2 PSCs perform missions that indirectly support the Chief of Mission. Moreover, an RSO representative provided the following distinction: All U.S. government direct hire employees and certain others that fall under the Chief of Mission authority and are not under the security responsibility of MNF-I are transported as Tier 1. U.S. Agency for International Development, Department of State, and other DoS contractors, grantees, and other employees that do not fall under the Chief of Mission authority are transported under Tier 2. Consequently, we made no change to the final report on this issue and noted Diplomatic Security's position here and in the management comments section.

represent a complete picture of what PSCs are reporting, and its limited analyses may be impacting its ability to develop lessons learned.

- No organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes.
- DoD and DoS have different approaches and policies for condolence payments to Iraqis for the same types of incidents. Consequently, the United States is not presenting a uniform approach to the Iraqi people and government.

Recommendations

To improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents, SIGIR recommends that the Commanding General, MNF-I, and the U.S. Ambassador to Iraq take the following actions as they relate to their respective responsibilities:

1. Require CONOC and RSO to institute a process to periodically compare serious incident data on Tier 2 missions to identify PSCs that may be unaware of, confused about, or not complying with the dual reporting requirements.
2. Require ACOD and RSO to jointly establish a standard definition of serious incidents and incorporate that definition in guidance for their PSCs.
3. Require ACOD and RSO to jointly establish or use an existing contractor working group to share information with PSCs and to solicit their views and concerns.
4. Require CONOC and ACOD to establish a joint database for serious incidents that both can use to capture the information they need to fulfill their responsibilities.
5. Require ACOD to track all serious incidents, include data on all incidents in its analyses, perform more extensive analyses of serious incidents, and develop lessons learned from those analyses.
6. Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DoD and DoS contracts.
7. Task contract audit organizations to periodically review the prime contractors' oversight of subcontractor PSCs' compliance with incident reporting requirements.

Lessons Learned

Over time, DoD and DoS have learned important lessons in Iraq pertaining to PSCs. Those lessons have been applied incrementally to improve oversight of PSCs and coordination between MNF-I and the U.S. Mission. In other contingency operations, where extensive use is made of private security contractors, such as Afghanistan, the overarching lesson learned is that DoD and DoS need to establish core standards, policies, and procedures early in the contingency. Specific lessons related to that action include the need to develop:

- a memorandum of agreement to jointly develop, implement, and follow core standards, policies, and procedures regarding PSCs

- a common definition and common reporting requirements for serious incidents
- mechanisms to share information on incidents between the U.S. Embassy and the military command
- a common approach to condolence payments
- audit mechanisms to ensure that PSCs at all levels understand and comply with incident reporting requirements

Management Comments and Audit Response

SIGIR received management comments from MNF-I, the U.S. Embassy’s Regional Security Office, and the Department of State’s Bureau of Diplomatic Security. MNF-I concurred with seven recommendations, partially concurred with recommendation 5 and non-concurred with recommendation 9. With regards to recommendation 5, MNF-I stated that the Armed Contractor Oversight Branch³ reviews all serious incidents it receives from the CONOC and forwards serious incident reports needing further attention to requiring activity commanders. It further stated that ACOD developed fragmentary orders throughout its tenure in response to lessons learned. Moreover, the Branch, in partnership with the U.S. Embassy RSO, will endeavor to develop joint “lessons learned” of general applicability to all PSCs operating in Iraq. MNF-I did not concur with recommendation 9. It stated that DoD is legally prohibited from making condolence payments on behalf of contractors and that is the reason for the perceived lack of a common policy for condolence payments in Iraq. Moreover, it states that PSCs are generally required to possess liability insurance by the terms of their contracts and that the insurance premiums on “cost type” contracts are reimbursed as long as the charge is reasonable, allocable, and allowable.

With regard to MNF-I’s comments on recommendation 5, the report recognizes ACOD’s position that it used lessons learned to produce fragmentary orders. SIGIR continues to believe that ACOD needs to track all serious incidents, include data on all incidents in its analyses, perform more extensive analyses of serious incidents, and develop lessons learned from those analyses. Concerning recommendation 9, MNF-I said that although it is prohibited from making condolence payments directly, it is indirectly paying for those costs by reimbursing contractors for liability insurance. Based on MNF-I’s position, we did not include the draft recommendation in the final report. We continue to believe that DoD and DoS should have a common approach to condolence payments as noted in SIGIR’s lessons learned.

The Embassy RSO concurred with recommendation 1, concurred in principal with recommendation 2, and did not concur with recommendations 3, 8, and 9. With regards to recommendation 2, the RSO stated that establishing a standard definition of a serious incident should be accomplished at the Washington, D.C. level by appropriate DoS and DoD legal and contracting experts, with input from the Embassy and MNF-I. Although it non-concurred with recommendation 3, the RSO stated the recommendation could be best accomplished through the Embassy/DoD Contractor Working Group which could ensure that cross cutting information and actions are properly shared and coordinated within the context of ongoing U.S. government and

³ In April 2009, ACOD became the Armed Contractor Oversight Branch under the MNF-I Protection Division.

Government of Iraq bilateral efforts to resolve issues and problems with U.S. government affiliated contractors in Iraq. With regards to recommendation 8, the RSO stated that a joint group to study the installation of video recording equipment in PSC vehicles is unnecessary. Instead, confirmation that video recording equipment is a Government of Iraq requirement is sufficient for incorporating this requirement into contracts and grants and other agreements. Concerning recommendation 9, the RSO stated that the recommendation is not feasible due to funding requirements and foreign policy concerns. It stated that the Embassy's condolence program is funded by DoS funds for *ex gratia* payments determined to be necessary to further foreign policy objectives and that a common inter-agency policy for condolence payments in Iraq may not always comport with the Embassy's foreign policy concerns. Moreover, DoS and DoD private security contractors do not always perform similar functions, and a common inter-agency policy is untenable for this reason as well.

With regards to recommendation 3, SIGIR recognizes that an existing working group of U.S. government officials and contractor representatives could accomplish the objectives of the recommendation. Our final recommendation reflects this change. Concerning recommendation 8, SIGIR received confirmation on April 23, 2009, that the Government of Iraq, Ministry of Interior, will require that cameras be placed on all vehicles of a PSC convoy. As a result of this requirement, SIGIR deleted the draft recommendation from the final report. Concerning recommendation 9, SIGIR believes the foreign policy implications of serious incidents involving death, serious injury, or property damage by DoD PSCs can be as significant as those involving DoS PSCs. Also, some DoD PSCs do perform the same types of missions as those performed by DoS PSCs. However, SIGIR recognizes that funding may be an issue since MNF-I states that it is legally prohibited from making condolence payments whereas DoS has funds for such payments. As stated above, SIGIR's draft recommendation is not included in the final report. However, the report does include a lesson learned related to this issue.

The Bureau of Diplomatic Security provided a number of technical and clarifying comments. Concerning recommendation 6, the Bureau stated that it is already discussing with the Department's Office of Acquisition Management the need to identify all PSC subcontractors that support DoS contracts and grants. According to the Bureau, this effort is to ensure the Bureau identifies 100% of the Tier 2 PSCs and is a follow-on effort to several data calls conducted by the U.S. Embassy Baghdad over the last 6 months, which are also designed to identify these firms. Most of the other comments relate to the definition and use of the terms Tier 1 and Tier 2. The Bureau states that the term Tier applies to PSCs as opposed to missions. Specifically, the Bureau states that DoS considers contractors providing services to DoS under the Worldwide Personal Protective Services contract to be Tier 1 contractors regardless of the nature of the missions these contractors are performing. All other DoS affiliated PSCs, including subcontractor PSCs, are considered by DoS to be Tier 2 contractors regardless of the missions being conducted. SIGIR could find no formal definition of Tier 1 and Tier 2. It describes Tier 1 and Tier 2 in terms of missions in the report because a CONOC document shows that the three PSCs under the Worldwide Personal Protective Services contract—Blackwater, Triple Canopy, and DynCorp—can perform both Tier 1 and Tier 2 missions and that Tier 1 PSCs perform missions that directly support the Chief of Mission whereas Tier 2 PSCs perform missions that indirectly support the Chief of Mission. Moreover, in commenting on SIGIR's description of Tier 1 and Tier 2, an RSO representative provided the following distinction: All U.S. government direct hire employees and certain others that fall under the Chief of Mission

authority and are not under the security responsibility of MNF-I are transported as Tier 1. U.S. Agency for International Development, Department of State, and other DoS contractors, grantees, and other employees that do not fall under the Chief of Mission authority are transported under Tier 2. Therefore, we continue to believe describing Tier 1 and Tier 2 in terms of missions of the contractors is appropriate.

Introduction

The U.S. government has relied extensively on private security contractors (PSCs)⁴ to perform a number of functions in Iraq to include protecting personnel movements, supply convoys, and facilities. Although issues have surfaced over the years concerning the oversight, control, costs, and legal status of PSCs,⁵ a watershed event that occurred in September 2007 brought to the forefront concerns about the U.S. government's oversight and control of the PSCs' actions. That event involved Blackwater, a PSC under contract with the Department of State (DoS), and the death of 17 Iraqi civilians. Subsequently, the Department of Defense (DoD) and DoS took actions to improve their coordination and oversight of PSCs involved in serious incidents (such as attacks, death, injury, and property damage).

This is a follow-on report to the Special Inspector General for Iraq Reconstruction (SIGIR) report in which we discuss Aegis's reporting of serious incidents while under DoD contracts.⁶ This report pertains to the DoD process for recording, investigating, and remediating serious incidents involving its PSCs. It also includes information and analyses pertaining to serious incidents involving DoS contractors to the extent those contractors are required to report their incidents through the military process. The report responds to a mandate in the National Defense Authorization Act for 2008, Public Law 110-181, which requires audits of the reporting, documenting, investigating, and prosecution (where appropriate) processes for incidents involving private security contractors in Iraq.⁷

Background

In December 2007, DoD and DoS signed a memorandum agreeing that they would jointly develop, implement, and follow core standards, policies, and procedures for the accountability, oversight, and discipline of PSCs in Iraq. Their objective was to "reduce the number and strategic impact of serious incidents involving PSCs by thorough and impartial investigations of these incidents, transparent information and intelligence sharing, close coordination of PSD [personal security detail] operations, and joint engagement with the Government of Iraq (GOI)."

Responsibility for implementing the agreement was assigned by DoS to the U.S. Embassy Baghdad and by DoD to the Multi-National Force-Iraq (MNF-I).⁸ Within the Embassy, responsibility for coordinating PSC missions with coalition and Iraqi forces and tracking and investigating serious incidents was delegated to the Regional Security Office (RSO).⁹ MNF-I

⁴ PSC refers to companies, rather than individuals, performing under contracts with those companies.

⁵ Issues have been raised in reports by the U.S. Government Accountability Office; the U.S. Department of State, Office of Inspector General; the Congressional Research Service; and the Congressional Budget Office. A list of reports is included in Appendix A in the prior coverage section of the scope and methodology.

⁶ *Oversight of Aegis's Performance on Security Services Contracts in Iraq with the Department of Defense* (SIGIR-09-010, 1/14/2009).

⁷ *Section 842, Private Security Contractor Audit Plan as of October 17, 2008.*

⁸ MNF-I is a subordinate command to the U.S. Central Command.

⁹ Included are PSCs under contract with DoS, the U.S. Agency for International Development, and any federal agency under Chief of Mission authority.

established Contractor Operations Cells (CONOC)¹⁰ to coordinate PSC missions and gather, assemble, and distribute information on serious incidents involving PSCs.¹¹ It also established the Armed Contractor Oversight Division (ACOD) to receive serious incident reports from the CONOC and ensure that all of them are reported, tracked, and investigated.¹² The RSO is responsible for coordinating DoS Tier 1 missions, which are defined as missions that directly support the Chief of Mission.¹³ For example, Tier 1 missions involve transporting DoS personnel, ambassadors, other diplomats, congressional delegations, and other government employees. Missions performed by DoS PSCs that do not directly support the Chief of Mission, such as transporting DoS contractor and grantee personnel, are categorized as Tier 2 missions.¹⁴

All Tier 2 and DoD PSC missions are to be coordinated through the CONOC. DoS Tier 1 and 2 PSCs involved in serious incidents are to report on them to the RSO. In addition, DoS PSCs involved in serious incidents while conducting Tier 2 missions and all DoD PSCs on missions are to report serious incidents to the CONOC, which is to forward them to ACOD. Figure 1 presents an overview of the serious incident reporting process described in DoS and MNF-I guidance.

¹⁰ The CONOC was established by the Multi-National Corps-Iraq, a subordinate command to MNF-I.

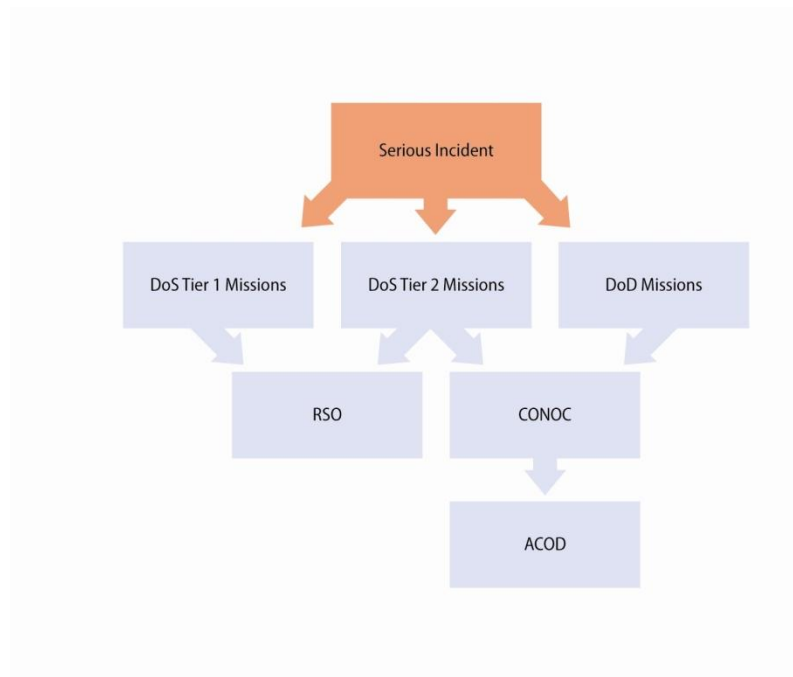
¹¹ Cells were established at Headquarters, Multi-National Corps-Iraq, and five major subordinate commands' operations centers located throughout Iraq. The CONOC achieved full functional capability in February 2008.

¹² According to an ACOD official, although ACOD became operational in May 2008, it took awhile for the new organization to learn the PSC industry and fragmentary order system, get personnel trained on their new responsibilities, and develop the tools and processes to track serious incidents.

¹³ The Department of State's Bureau of Diplomatic Security objected to SIGIR's use of Tier 1 and Tier 2 missions. The Bureau states that DoS considers contractors providing services to DoS under the Worldwide Personal Protective Services contract to be Tier 1 contractors regardless of the nature of the missions these contractors are performing and all other DoS affiliated PSCs to be Tier 2 regardless of the missions being conducted. SIGIR could find no formal definition of Tier 1 and Tier 2. It chose to describe Tier 1 and Tier 2 in terms of missions in the report because a CONOC document shows that PSCs under the Worldwide Personal Protective Services contract—Blackwater, Triple Canopy, and DynCorp—can perform both Tier 1 and Tier 2 missions with the distinction being that Tier 1 PSCs perform mission that directly support the Chief of Mission whereas Tier 2 PSCs perform missions that indirectly support the Chief of Mission. Moreover, an RSO representative provided the following distinction: All U.S. government direct hire employees and certain others that fall under the Chief of Mission authority and are not under the security responsibility of MNF-I are transported as Tier 1. U.S. Agency for International Development, Department of State, and other DoS contractors, grantees, and other employees that do not fall under the Chief of Mission authority are transported under Tier 2. Consequently, we made no change to the final report on this issue and noted Diplomatic Security's position here and in the management comments section.

¹⁴ Three DoS PSCs—Blackwater, Triple Canopy, and DynCorp—can perform both Tier 1 and Tier 2 missions.

Figure 1–Reporting Chain for Serious Incidents



Source: SIGIR developed from DoS and MNF-I guidance (3/2009).

Contract and Legal Provisions Governing Contractors’ Conduct

The Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) requires that all DoD PSC contracts include standard provisions pertaining to the conduct of contractors and their personnel.¹⁵ For example, all contracts are to include a provision requiring contractors, their subcontractors, and their personnel to comply with all existing and future U.S. and host nation laws, federal and DoD regulations, and U.S. Central Command orders and directives, including rules on the use of force, which is applicable to personnel in Iraq. Contractor and subcontractor employees are to provide written acknowledgement that they understand the penalties for noncompliance. Such penalties could include criminal and civil actions, revocation of weapons authorization, and contract termination.

JCC-I/A also requires that all contracts exceeding \$25,000 with contractors operating in the U.S. Central Command’s area of responsibility but not authorized to accompany U.S. armed forces deployed outside the United States¹⁶ include provisions requiring the contractors and their employees to comply with (1) U.S. and host country laws; (2) treaties and international agreements; (3) U.S. regulations, directives, instructions, policies, and procedures; and (4) force protection, security, health, or safety orders, directives, and instructions issued by the Combatant Commander.

¹⁵ Requirements are specified in the *Contracting Officer’s Guide to Special Contract Requirements for Iraq/Afghanistan Theater Business Clearance* (11/12/2007).

¹⁶ Contractors that are not subject to the Defense Federal Acquisition Regulation Supplement 252.225-7040.

In addition to the administrative penalties available under the contracts, contractors may be subject to criminal actions for serious offenses under both Iraqi and U.S. law. Under Coalition Provisional Authority Order 17, PSCs were generally immune from the Iraqi legal process for acts performed under the terms and conditions of their contracts. As of January 1, 2009, Order 17 was suspended by resolution of the Iraqi Council of Representatives, Iraq's main legislative body.¹⁷ Consequently, U.S. contractors and their personnel became subject to Iraqi laws and, as a result, lost civil, criminal, and administrative immunities previously granted by the Order.¹⁸

Additionally, U.S. contractor personnel who committed criminal acts in Iraq were potentially subject to prosecution under U.S. laws before CPA Order 17 was suspended, and that remains the case. Examples of such laws, including some recent legislative changes, are discussed in the following paragraphs.

Jurisdiction of certain federal statutes extends to U.S. nationals at U.S. overseas facilities that qualify as part of the special maritime and territorial jurisdiction of the United States. This jurisdiction includes "premises of the United States diplomatic, consular, military, or other United States government missions or entities in foreign States" as well as "residences in foreign States ..., irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities."¹⁹ Criminal statutes that apply within this jurisdiction include maiming,²⁰ assault,²¹ kidnapping,²² murder,²³ and manslaughter.²⁴

Military personnel who commit crimes in the United States or abroad are subject to the Uniform Code of Military Justice. Traditionally, contractor personnel have been subject to the Code if serving with or accompanying an armed force in the field during wartime, or if they are retired members of a regular component of the armed forces who are entitled to pay. In 2006, Congress extended the Code's jurisdiction to persons serving with or accompanying an armed force in the field during "contingency operations" as well as during a declared war.²⁵ Thus, U.S. personnel performing under DoD contracts in support of U.S. military operations in Iraq may be subject to prosecution in a court-martial, and at least one such prosecution occurred (resulting in a guilty plea).²⁶ However, as a matter of policy, DoD has stated that it will give the Department of

¹⁷ Resolution of 21 December 2008, Iraq Council of Representatives (37th Sess. 2008). See also the U.S.-Iraq Security Agreement, *Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq* (entry into force 1/1/ 2009); Article XII affirms Iraq's primary jurisdiction over U.S. contractors to DoD even though it gives the United States primary jurisdiction over U.S. armed forces and their civilian components in specified situations.

¹⁸ Order 17, as revised June 27, 2004, Section 4.

¹⁹ 18 U.S.C. § 7(9).

²⁰ 18 U.S.C. § 114.

²¹ 18 U.S.C. § 113.

²² 18 U.S.C. § 1201.

²³ 18 U.S.C. § 1111.

²⁴ 18 U.S.C. § 1112.

²⁵ *John Warner National Defense Authorization Act for Fiscal Year 2007*, Public Law 109-364, § 552, codified at 10 U.S.C. § 802(a)(10).

²⁶ For a general discussion of that case and related matters, see *Contractors' Support of U.S. Operations in Iraq*, Congressional Budget Office, U.S. Congress, Pub. No. 3053 (2008); Elsea, Jennifer K., and Nina M. Serafino, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, CRS Report for Congress

Justice an opportunity to prosecute in federal district court any alleged federal criminal offenses by civilians and will not initiate court-martial charges if the Department of Justice elects to prosecute those offenses.²⁷

DoD contractor personnel could also be subject to the Military Extraterritorial Jurisdiction Act of 2000. The act extends the jurisdiction of U.S. courts to anyone who commits a felony outside U.S. territory while employed by or accompanying the Armed Forces outside the United States. The term “employed by the Armed Forces outside the United States” means civilians and contractors (a) of DoD, or (b) of any other federal agency or any provisional authority to the extent their employment “relates to supporting the mission of the Department of Defense overseas,” and (c) who in each case are present or residing outside the United States in connection with their employment and are not nationals of, or ordinarily resident in, the host country. If the host country has prosecuted or is prosecuting a person covered by the act, the person cannot be prosecuted under the act unless the Attorney General or Deputy Attorney General personally approves.²⁸

Under the War Crimes Act,²⁹ as amended by the Military Commissions Act of 2006,³⁰ U.S. nationals may be fined, imprisoned, or put to death for war crimes prohibited by several international conventions. Such crimes include murdering or maiming an individual taking no part in hostilities, intentionally causing serious bodily injury, and rape, among others.

Objectives

SIGIR’s overall objective was to examine DoD’s oversight of serious incidents by PSCs in Iraq. Specifically, we examined DoD’s (1) policies, procedures, and practices for reporting, investigating, and remediating those incidents and (2) efforts to identify trends and lessons learned. Because DoS PSCs on Tier 2 missions are required to report serious incidents to both the RSO and CONOC, we reviewed pertinent DoS policies and procedures related to that reporting and made comparative analyses when we noted differences.

For a discussion of the audit scope and methodology and a summary of prior coverage, see Appendix A. For a list of acronyms used, see Appendix B. For a list of incidents reported by contractors, see Appendix C. For the audit team members, see Appendix D. For management comments, see Appendix E.

RL32419, Congressional Research Service (2007). Prosecutions of civilians under the Code, however, have been challenged on constitutional grounds. *Ibid.*

²⁷ “UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractors, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” Memorandum from the Secretary of Defense to Secretaries of the Military Departments, et al. (3/10/2008).

²⁸ 18 U.S.C. §§ 3261-3267. Members of the Armed Forces subject to the Uniform Code of Military Justice may not be prosecuted under the act, except in narrow circumstances specified by the act. See 18 U.S.C. § 3261(d).

²⁹ 18 U.S.C. § 2441.

³⁰ P.L. 109-366.

Database, Reporting, and Analysis Weaknesses

Both MNF-I and the U.S. Embassy have separately issued guidance pertaining to the reporting of serious incidents. The guidance pertaining to reporting timeframes and what should be reported are very similar, but the definitions of serious incidents are different. MNF-I's definition is more expansive.

The CONOC, ACOD, and RSO maintain separate databases of serious incidents. Our review found that (1) the CONOC and RSO databases do not agree on incidents that should be reported to both organizations, (2) the CONOC database does not, as required, include all incidents reported by PSCs, and (3) the ACOD database includes only the incidents that ACOD judgmentally decides to track even though it is responsible for ensuring that all serious incidents are reported, tracked, and investigated. ACOD's judgmental selection process has the effect of narrowing the types of incidents it tracks and applying a narrower definition of serious incidents than that contained in the MNF-I guidance.

ACOD has developed trend analyses using its data, but those analyses are limited in terms of the incidents reported. ACOD officials stated that they have not done more analyses because they had been asked to do only one analysis. The limited analyses may be impacting its ability to develop lessons learned.

Although the serious incident database maintained by the CONOC is not complete, it is the most comprehensive information on serious incidents reported by PSCs and is useful in identifying frequency and trend data. For example, our analysis of the data shows that for the period February 24, 2008, through February 28, 2009, two contractors reported about 50% of the recorded serious incidents. In addition, graduated force responses³¹ and small arms fires generally decreased while road traffic accidents became the most frequent over time.

Serious incident reporting by PSC subcontractors that support DoD and DoS contractors and grantees appears to be a problem. A recent audit by the U.S. Agency for International Development's Office of Inspector General found that PSCs supporting implementing partners (contractors and grantees) were confused about the requirements for providing serious incident reports. Officials of various organizations told us they have no visibility of reporting other than that of prime PSCs.

Serious Incident Reporting Process and Requirements

MNF-I guidance for DoD PSCs' reporting of serious incidents has been provided in various fragmentary orders. The most current Fragmentary Order (09-109) was issued in March 2009 and replaces earlier orders.³² Although other requirements in the orders have changed, the

³¹ A graduated force response begins with nonlethal force measures (e.g., giving verbal warnings, showing weapons with intent to use them) and possibly escalates to lethal measures (e.g., using deadly force to remove the threat).

³² Fragmentary Order 07-428, Overarching Order for Requirements, Procedures, Responsibilities for Control, Coordination, Management, and Oversight of Armed Contractors/DoD Civilians and PSCs (first issued 12/2007). Fragmentary Order 08-575, DoD PSCs and Armed Contractors – Serious Incident Reporting Procedures (11/2008). Fragmentary Order 09-109, Overarching FRAGO for Requirements, Communications, Procedures, Responsibilities

definition of a serious incident and the basic incident reporting requirements have remained the same. A serious incident is defined as any incident that includes, but is not limited to, “any damage of equipment or injury to persons, attacks, any weapons discharge, criminal acts, traffic accidents, and any incident believed to have possible strategic or operational impact. Incidents where aggressive personal behavior and share the road policies are violated shall be reported.” PSCs are required to report to the CONOC all serious incidents that they observe, suspect, or in which they are participants. PSCs are to immediately alert the CONOC of a serious incident, submit an initial report within 4 hours, and conduct an internal investigation of the incident and submit a final incident report within 96 hours. PSCs are also to report serious incidents to the immediate commanders of the units to which they are assigned and the contracting officer representatives and contracting officers responsible for the contracts under which they are performing. The incident reports are to include such information as who, what, when, and where of each incident; the contract number; and contact information on the contracting officer representative.

Incident reports can also be submitted to the CONOC by other sources. Fragmentary Order 09-109, as with previous orders, requires military units in the area that observe incidents involving PSCs to report those incidents through their military channels to the CONOC. ACOD has established contacts with the Iraqi Ministries of Interior and Defense to share information concerning incidents involving local nationals.

The U.S. Embassy’s guidance for its PSCs is specified in its Policy Directives for Armed Private Security Contractors in Iraq, dated May 2008. The directive defines as serious “An incident involving the use of deadly force, the discharge of a weapon (other than in training or into a clearing barrel), and/or an incident that resulted in death, serious injury, significant property damage (even if a weapon is not involved), and other serious consequences.” According to the directive, PSCs must provide notification, either verbally or in writing via e-mail, of any serious incident to the RSO tactical operations center and to the CONOC (if the missions are coordinated by the CONOC) as soon as practical, but not later than 1 hour after the incident. A follow-up comprehensive written report of events surrounding the incident must be provided within 96 hours unless otherwise directed by the RSO. Such reports must also be submitted to supervising contractors and to cognizant contracting/grant officer representatives. The incident reports are to include information on who was involved, what happened, where it happened, when it happened, impact on operations, and actions required.

In accordance with the December 2007 DoD/DoS agreement, the CONOC and the RSO have assigned liaison officers to their respective operations centers. The liaisons are to facilitate the monitoring, recording, and timely dissemination of pertinent information related to DoD and DoS PSCs operating in Iraq. If an incident occurs involving a Tier 2 mission, the CONOC is to notify the RSO liaison officer, who in turn is to relay that information to the RSO operations center. Likewise, if a PSC on a Tier 1 mission has an incident that could affect DoD PSCs or any military operations, the RSO liaison is to notify the CONOC and the relevant military commander in the area.

for Control, Coordination, Management, and Oversight of Armed Contractors/DoD Civilians and Private Security Companies (3/2009).

Problems with Incidents Reported and Recorded

The CONOC, ACOD, and RSO maintain separate databases of serious incidents. Our review found that (1) the CONOC and RSO databases do not agree on incidents involving DoS PSCs on Tier 2 missions even though these PSCs are to report all incidents to both organizations, (2) the CONOC database does not include all incidents DoD PSCs and DoS PSCs on Tier 2 missions say they reported even though the CONOC is to track all such incidents, and (3) the ACOD database does not track all serious incidents received from the CONOC even though it is responsible for ensuring that all serious incidents are reported, tracked, and investigated.

CONOC and RSO Databases Do Not Agree on Tier 2 Incidents

The CONOC maintains a database of incidents reported to it, including incidents reported by DoS PSCs on Tier 2 missions. The RSO also maintains a database involving Tier 2 missions. To test the completeness of the CONOC and RSO databases for incidents involving DoS PSCs on Tier 2 missions, we obtained serious incident data from one PSC that performs Tier 2 missions. We found the incidents provided by the contractor and the information provided to us by the RSO and CONOC for that contractor did not agree. There were differences for 5 of 13 incidents. For example, the RSO data show that an incident occurred on March 8, but neither the contractor nor CONOC have it on record. Also, the contractor and RSO data show an incident on April 8 that the CONOC does not have recorded in its database. Table 1 compares the serious incidents reported by the contractor to the data for that contractor in the CONOC and RSO databases.

Table 1—Serious Incidents Reported by a Tier 2 Contractor and Incidents in the CONOC and RSO Databases (3/1/2008–2/3/2009)

Date of Incident	Contractor Data	CONOC Database	RSO Database
03/08/08	No record of incident	No	Graduated Force Response ^a
03/16/08	Road traffic accident	Yes	Yes
03/17/08	Graduated force response	Yes	Yes
03/22/08	Graduated force response	Yes	Yes
04/08/08	Road traffic accident	No	Yes
04/10/08	Graduated force response	No	Yes
04/23/08	Road traffic accident	No	Yes
05/20/08	Graduated force response	Yes	Yes
06/10/08	Small arms fire	Yes	Yes
09/12/08	Negligent discharge ^b	No	No
12/01/08	Road traffic accident	Yes	Yes
12/11/08	Negligent discharge	Yes	Yes
02/03/09	Improvised explosive device	Yes	Yes

Notes:

^a A graduated force response begins with nonlethal force measures (e.g., giving verbal warnings, showing weapons with intent to use them) and possibly escalates to lethal measures (e.g., using deadly force to remove the threat).

^b Contractor stated it reported the incident to the RSO but not to CONOC.

Source: SIGIR developed from contractor, CONOC, and RSO data.

To further test the completeness of the CONOC and RSO databases for incidents involving Tier 2 missions, we compared the incidents in both databases for seven PSCs performing Tier 2 missions. As Table 2 shows, we found differences for five of the seven PSCs.

Table 2—CONOC and RSO Serious Incident Data for Selected Tier 2 Contractors (2/24/2008–2/28/2009)

PSC	CONOC Database	RSO Database	Difference
A	1	1	0
B	5	8	3
C	1	0	1
D	1	1	0
E ^a	28	17	11
F	6	7	1
G	9	14	5

Note:

^a Contractor also has contracts with the Government of Iraq and DoD.

Source: SIGIR developed from CONOC and RSO data.

CONOC Database Does Not Agree With DoD PSC Incidents

The CONOC database is to include all serious incidents reported by DoD PSCs. In addition, the fragmentary orders encourage PSCs supporting coalition forces, nongovernmental organizations, corporations, and others to report their serious incidents to the CONOC. To test the completeness of the CONOC database for incidents involving DoD PSCs, we obtained serious incident data from six DoD PSCs. We found differences between the incidents the PSCs told us they reported and the CONOC database. Table 3 compares the serious incidents reported by one of the DoD PSCs to the incidents for that contractor in the CONOC database. It shows that the contractor reported six more incidents than recorded in the CONOC database. We noted similar results for three other contractors.

Table 3—Serious Incidents Reported by a DoD Contractor and Incidents in the CONOC Database (3/1/2008–2/18/2009)

Incident Type	Contractor Reported	CONOC Database	Difference
Improvised explosive device ^a	4	4	0
Negligent discharge	2	1	1
Road traffic accident	22	20	2
Small arms fire	7	4	3
Other	20	20	0
Total	55	49	6

Note:

^a Explosive formed projectile incidents are included in this category.

Source: SIGIR developed from contractor and CONOC data.

A CONOC official was uncertain why the incidents in the CONOC database differed from the incidents reported by the PSC; however, he indicated that it is possible the PSC never reported the incidents to the CONOC.

ACOD Database Does Not Track All Serious Incidents

ACOD also maintains a database of serious incidents. Although it is to receive all incidents reported to the CONOC, we found considerable differences between the incidents in the CONOC’s and ACOD’s databases. We were told that some of the differences could be because ACOD became operational in May 2008, whereas the CONOC became fully operational in late February 2008. However, even adjusting for this timeframe difference by excluding incidents reported to the CONOC prior to May 2008, the ACOD incident data are far more limited than the CONOC incident data.

Specifically, ACOD’s database had only 264 of 618, or 43%, of the serious incidents recorded in the CONOC database during the period May 1, 2008, through February 28, 2009. ACOD officials told us the reason for the difference is that ACOD has decided to track only incidents that could have strategic impact on the PSCs’ missions. To identify those, it reviews the incidents received from the CONOC in four principal categories and judgmentally decides which incidents to track. The four principal categories of incidents are: graduated force responses, negligent discharges of weapons, road traffic accidents, and small arms fires.

As a result of its judgmental selection process, ACOD did not track 354, or 57%, of the serious incidents reported to the CONOC from May 1, 2008, through February 28, 2009. Table 4 shows the difference in numbers of incidents in the CONOC and ACOD databases for the types of incidents.

Table 4—Serious Incidents in CONOC and ACOD Databases (5/1/2008–2/28/2009)

Incident Type	CONOC Database	ACOD Database	Difference
Checkpoint incident	16	14	2
Graduated force response ^a	80	61	19
Indirect fire	21	2	19
Improvised explosive device ^b	77	8	69
Negligent discharge	44	37	7
Other	177	38	139
Rocket propelled grenade	3	0	3
Road traffic accidents	149	82	67
Small arms fire	46	22	24
Complex attack ^c	5	0	5
Total	618	264	354

Note:

^a A graduated force response begins with nonlethal force measures (e.g., giving verbal warnings, showing weapons with intent to use them) and possibly escalates to lethal measures (e.g., using deadly force to remove the threat).

^b Includes suicide vest improvised explosive device and vehicle-borne improvised explosive device incidents.

^c Complex attacks include multiple forms of attacks, such as an improved explosive device, followed by small arms fire.

Sources: SIGIR analysis of CONOC and ACOD databases.

Since ACOD does not have written criteria for selecting the serious incidents it tracks, we reviewed the 354 serious incidents that were not in ACOD’s database to determine whether any appeared to meet the selection factors (incidents that could have strategic impact on the PSCs’ missions and were in the four principal categories it focuses on) used by ACOD officials to track incidents. We found that 122 serious incidents appeared to meet those factors. Table 5 shows the 122 serious incidents by type.

Table 5—Serious Incidents That Appear to Meet ACOD Selection Factors but Are Not in Its Database (5/1/2008–2/28/2009)

Incident Type	Number of Incidents
Road traffic accident	68
Small arms fire	23
Graduated force response	19
Negligent discharge	7
Complex attack	5
Total	122

Source: SIGIR analysis developed from CONOC and ACOD databases and reporting criteria.

We discussed the list of 122 incidents with ACOD officials, who provided the following explanations: 27 were included in their database but under a different date or contractor than shown in the CONOC database for the incident, 45 were not recorded and considered irrelevant,

9 were received but not recorded for various reasons, and 41 were probably received but dismissed by ACOD. After further review of the 41 incidents, ACOD officials judged that 38 were not significant enough to track but that 3 should have been tracked because of their significance. The fact that 122 incidents we identified could meet ACOD's selection factors and it dismissed three significant incidents that meet those factors illustrates the subjectivity in ACOD's incident screening process.

ACOD's judgmental selection process has the effect of narrowing the types of incidents it tracks and applying a narrower definition of serious incidents than that contained in the fragmentary order.

In commenting on a draft of this report, MNF-I stated that ACOD reviews all serious incidents it receives from the CONOC; however, not all serious incidents are sufficiently "serious" to merit the attention of the requiring activity or MNF-I. Also, MNF-I said that ACOD has maintained the following general criteria for elevating a serious incident to the requiring activities' or MNF-I's attention: any interaction between a PSC and an Iraqi resulting in physical injury/property damage; any time a PSC fires shots downrange; and significant injury to PSC personnel as a result of PSC site security/convoy operations. Moreover, MNF-I stated that these criteria remained unwritten but they see the benefit of having written criteria. Lastly, MNF-I said it will work with the RSO to develop joint criteria for use in identifying "serious" incidents.

ACOD Developed Trend Analyses With Limited Data and No Formal Lessons Learned

From the limited incidents it tracks from the CONOC database, ACOD develops certain trend analyses for internal purposes only and others that are shared with members of the Joint Incident Review Board.³³ We reviewed the analyses performed by ACOD that are shared with the Review Board and found that they do not present a complete picture of the incidents in its database. For example, ACOD's analysis for the February 2009 meeting shows no mobile graduated force response incidents for the October through December 2008 period; however, the ACOD database shows two mobile graduated force responses and ten responses involving static guards for that period. The following example is drawn from incident reports of graduated force responses excluded from ACOD's analyses.

In November 2008, a graduated force response incident occurred between a PSC convoy and a vehicle driven erratically behind the convoy. That particular vehicle overtook other vehicles which had been requested by the PSC convoy to slow down by the use of hand signs and flags. As the other vehicles slowed down to a safe distance from the convoy, the driver in the erratically driven vehicle continued to ignore the hand and flag signals made by the PSC. As a warning, the PSC fired a mini flare in front of the vehicle. As a result of this action, the vehicle immediately slowed and kept its distance. There were no injuries or casualties. Although the PSC determined that no further action was needed, ACOD requested that the requiring activity review the PCS's internal report to determine if the PSC's action was appropriate. After further review, the requiring activity and the Staff Judge Advocate concurred that no further investigation was required.

³³ The Board was established by the DoD and DoS Memorandum of Agreement (December 2007) to share information and issues concerning serious incidents. It meets on a quarterly basis.

We asked ACOD why it has not shared more of its analyses and were told that only JCC-I/A had requested an analysis pertaining to graduated force responses. We were also told that ACOD had not developed formal lessons learned even though the fragmentary orders state that ACOD will use serious incident reports to develop lessons learned. An ACOD official stated that the seven fragmentary orders produced in the past ten months were a product of captured lessons learned. The official also stated that ACOD's ability to perform its missions was impacted by its limited staffing and the organization could have grown to three times its size, however, about the time efforts were made to expand the organization using contractors, the situation improved in Iraq.

In commenting on a draft of this report, MNF-I stated that ACOD lessons learned were identified, analyzed, and incorporated through fragmentary orders. It cited trend analysis of road traffic accidents which resulted in the publication of Rules of the Road for PSCs operating in Iraq. The rules are part of Fragmentary Order 09-109 issued in March 2009. According to MNF-I, following the publication of this fragmentary order, a statistically measurable decrease in mobile graduated force responses and traffic accidents were noted.

Serious Incident Frequency and Trends

Although CONOC's serious incident database is not complete, it contains the most comprehensive information on serious incidents reported by PSCs and is useful in identifying frequency and trend data. Our analysis of the CONOC data from February 2008 through February 2009 shows that (1) the most frequent recorded incidents involved road traffic accidents, improvised explosive devices, and graduated force responses; (2) two contractors reported about 50% of the recorded serious incidents; (3) graduated force responses and small arms fires generally decreased while road traffic accidents became the most frequent over time; (4) there was less than 1 incident per 117 missions; and (5) the Baghdad area accounted for over half of the recorded serious incidents.

The CONOC recorded 784 serious incidents during the period February 24, 2008, through February 28, 2009. Table 6 shows these by type of incident. As the table shows, incidents involving road traffic accidents, improvised explosive devices, and graduated force responses were the most frequently recorded.

Table 6—CONOC Recorded Serious Incidents (2/24/2008–2/28/2009)

Type of Incident	Recorded Incidents
Road traffic accident	171
Improvised explosive device ^a	105
Graduated force response	93
Negligent discharge	56
Small arms fire	53
Indirect fire	35
Complex attack	17
Checkpoint incident	13
Rocket-propelled grenades	3
Other ^b	238
Total	784

Note:

^a Includes vehicle-borne and other improvised explosive devices.

^b Includes such incidents as personal injuries, deaths by natural cause or suicide, assaults, abductions, and security breaches.

Source: SIGIR developed from CONOC data.

Table 7 shows the serious incidents recorded by the CONOC for the 10 PSCs with the greatest number of serious incidents for the period February 24, 2008, through February 28, 2009. The table also shows the total obligations for the contractors under contracts or subcontracts with DoD, DoS, and the U.S. Agency for International Development since 2003. The top two PSCs with a combined total of 395 serious incidents accounted for about 50% of the 784 recorded serious incidents. Appendix C shows the recorded serious incidents for all PSCs in the CONOC database.

Table 7—Contractors with the Greatest Number of Serious Incidents (2/24/2008–2/28/2009) (\$ millions)

Contractor	Recorded Incidents	Obligations^a
Aegis Defence Services, Limited	224	\$697.2 ^b
EOD Technology, Inc.	171	\$328.7
ArmorGroup	63	\$137.6
Hart Group	58	\$26.3
Special Operations Consulting-Security Management Group	41	\$271.9
Threat Management Group	40	\$.5
Olive Group FZ LLC	37	\$17.6
Sabre International Security	28	\$284.5
Reed Incorporated	17	\$9.2
Falcon Group	15	\$29.3

Note:

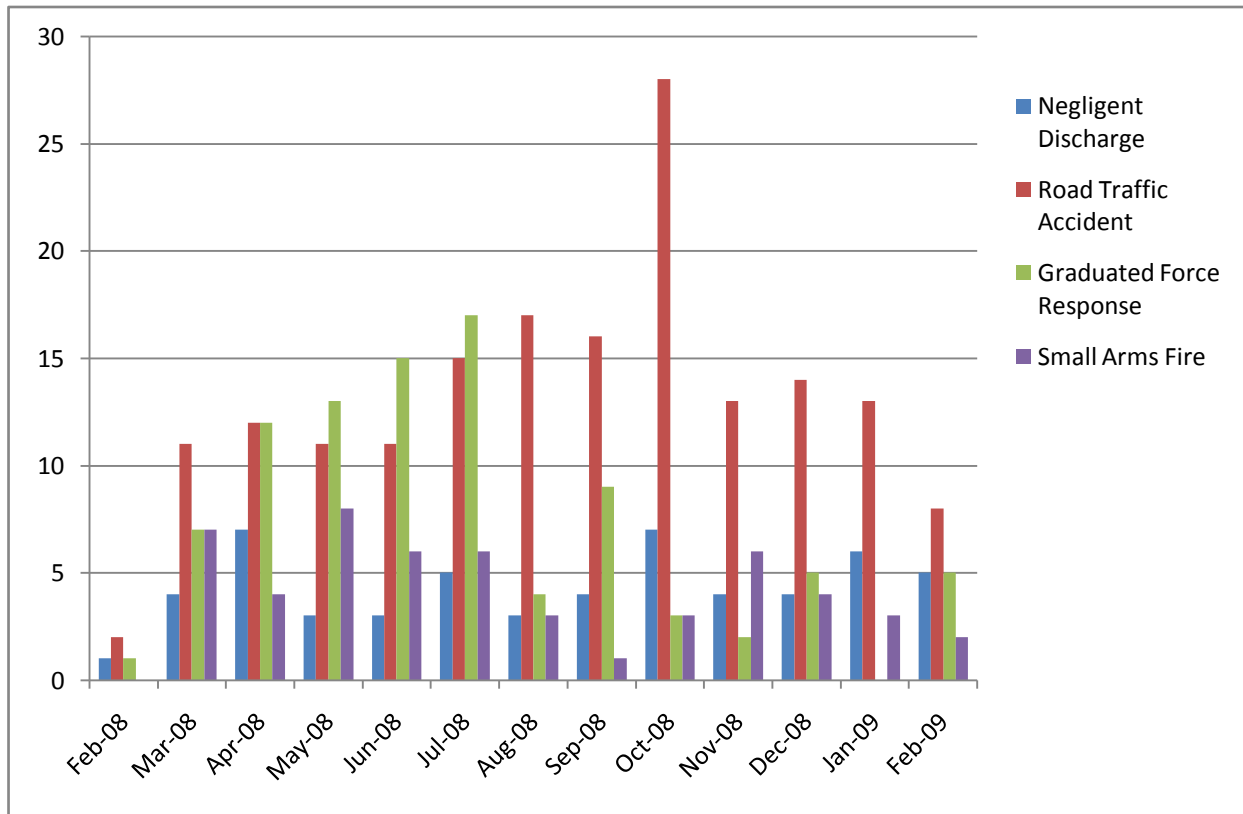
^a Unless otherwise noted, obligations are as reported in *Agencies Need Improved Financial Data Reporting for Private Security Contractors* (SIGIR-09-005, 10/30/2008).

^b As reported in *Oversight of Aegis’s Performance on Security Services Contracts in Iraq with the Department of Defense* (SIGIR-09-109, 1/14/2009).

Source: SIGIR developed from CONOC data and SIGIR reports.

Figure 2 shows the primary types of incidents tracked by ACOD (graduated force response, negligent discharge, road traffic accidents, and small arms fires) recorded by the CONOC by month. As the figure shows, graduated force response and small arms fire incidents have generally decreased from February 2008 through February 2009. The figure also shows that road traffic accidents have become the most frequent incidents. An RSO official indicated that road traffic accidents may be increasing because more Iraqi drivers are on the road, PSCs are reporting more of their traffic accidents, PSCs are using warning signals less frequently since the issuance of share-the-road guidance, and a growing number of Iraqi nationals are working for PSCs.

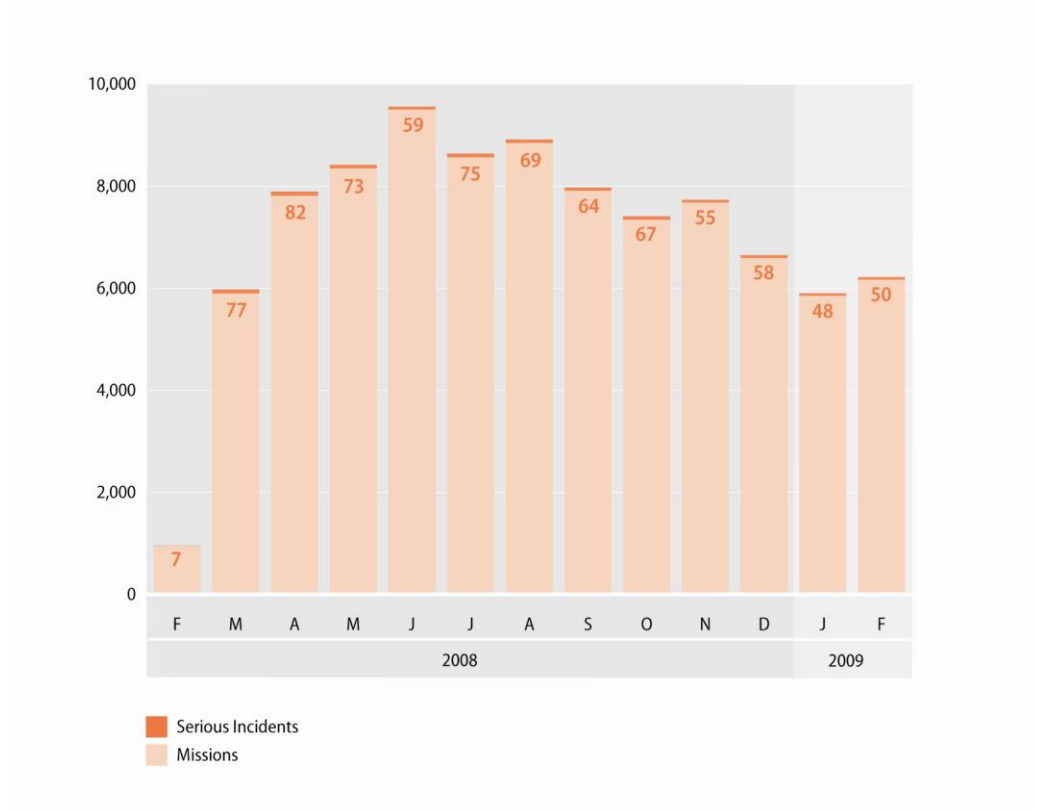
Figure 2–Serious Incidents by Type and Month (2/2008 through 2/2009)



Source: SIGIR compiled from the CONOC database.

Figure 3 compares the total number of serious incidents reported to the PSC missions by month. Over the period February 2008 through February 2009, 784 serious incidents and 91,481 missions, or less than 1 incident per 117 missions, were recorded. The figure for incidents per mission includes incidents involving security guards at installations (static guards). Although the static guards do not participate in missions, we could not segregate these type incidents to exclude them from our analysis.

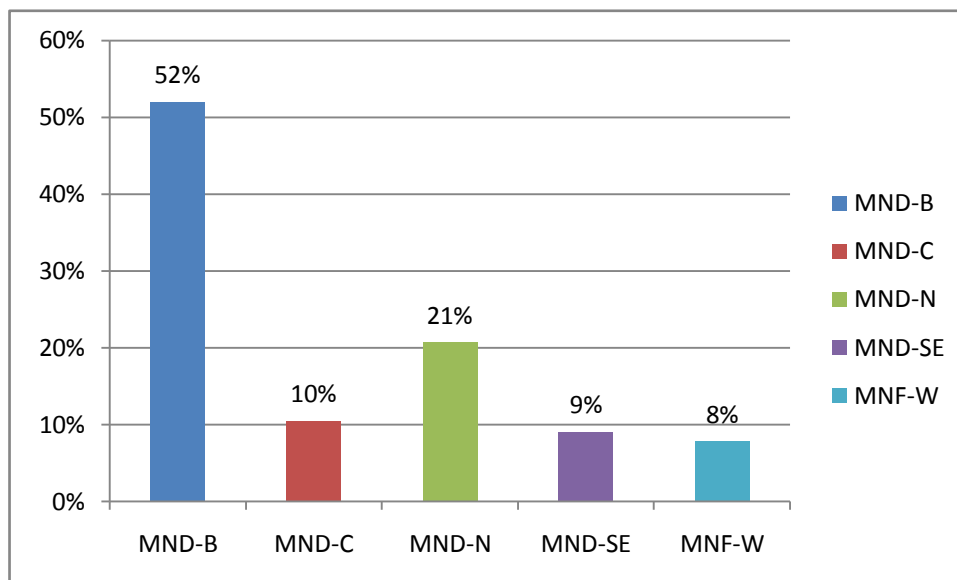
Figure 3–Serious Incidents During PSC Missions by Month (2/2008 through 2/2009)



Source: SIGIR compiled from the CONOC database.

Figure 4 shows the serious incidents by multi-national division (MND) or multi-national force (MNF). As the figure shows, the MND-B region, which includes Baghdad, accounted for over half of the incidents during the period February 24, 2008, through February 28, 2009.

Figure 4–Serious Incidents by Multi-National Division Region (2/24/2008–2/28/2009)



Notes:

MND-Baghdad–Baghdad and past Falluja.
MND-Center–All provinces south of Baghdad except Basrah.
MND-North–All provinces north of Baghdad except about half of Ninewa.
MND-South East–Basrah Province.
MNF-West–Anbar and the other half of Ninewa.

Source: SIGIR compiled from CONOC database.

Potential Gaps in Subcontractor Reporting

There appears to be a problem in serious incidents reporting by PSC subcontractors that support DoD and DoS contractors and grantees. The U.S. Agency for International Development (USAID) Office of the Inspector General recently reported that in some instances PSCs working for contractors and grantees did not always understand the serious incident reporting requirements.³⁴ We were told of other instances where PSCs may be confused about reporting requirements. Officials with ACOD, RSO, JCC-I/A,³⁵ and the Defense Contract Management Agency³⁶ told us they have no visibility of PSCs who may be performing as subcontractors to other PSCs, reconstruction contractors, grantees, and others.

In a March 2009 audit report, the USAID’s Office of Inspector General noted that USAID’s implementing partners (contractors and grantees that implement USAID programs) had not adequately overseen the reporting of serious incidents by their PSCs. The report also stated that PSC staff did not always understand the reporting requirements. As a result, the PSCs were not

³⁴ *Audit of USAID/IRAQ’s Oversight of Private Security Contractors In Iraq*, Office of Inspector General (Audit Report No. E-267-09-002-P, 3/4/2009).

³⁵ According to Fragmentary Order 09-109, Annex A, if arming of contracted employees in Iraq is contemplated, the Command is responsible for including in all contracts a requirement for contractors to ensure that all subcontractors and their employees at any tier comply with the Fragmentary Order.

³⁶ The Agency performs audits of the contractors’ compliance with the requirements of the Fragmentary Order.

reporting all serious incidents, were not reporting all serious incidents to appropriate authorities, or were not reporting all incidents within required timeframes. For example, the report showed that one PSC had 10 serious incidents during the period March 1, 2008, to September 30, 2008; however, the key offices that are to receive reports of those incidents had only the following number on file: implementing partner-4, CONOC-5, ACOD-4, and RSO-3.

According to an ACOD official, some DoD PSCs had reported serious incidents to the Logistics Movement Coordination Center rather than the CONOC. The Center falls under the U.S. Army Corps of Engineers, Gulf Region Division, and is responsible for managing logistics movements. One of its functions is to coordinate convoy movements with Coalition Forces, a function similar to that performed by the CONOC. The official identified three contractors that had reported their serious incidents in early 2009 to the Center. The incidents were later reported to the CONOC. Fragmentary Order 09-109, issued in March 2009, specifically states that PSCs are to report directly to the CONOC and not to the Logistics Center. The new Order should help address this specific reporting problem. However, as noted below, gaps in reporting could remain.

Because of the problems expressed in the Office of the Inspector General report cited above, we asked officials with ACOD, RSO, JCC-I/A, and the Defense Contract Management Agency if they had visibility of subcontractor PSCs who may be providing protective services to grantees, reconstruction contractors, or other PSCs. These officials said that they have no visibility of the subcontractors in those arrangements.

The Defense Contract Management Agency audits contractors for which they have oversight responsibility. Agency officials said that they audit the contractors' compliance with requirements in fragmentary orders but not whether the contractors are appropriately overseeing their subcontractors.

Some Serious Incidents Involving Department of Defense Private Security Contractors Are Not Being Investigated

MNF-I requirements specify a process military commanders are to use to review and investigate serious incidents. ACOD is to ensure that commanders are fulfilling their responsibilities. We found that requirements are not being followed for the most serious of incidents—those involving death, serious injury, and property damage over \$10,000. According to an ACOD official, ACOD decides what incidents to investigate based on its interpretation of the intent of the fragmentary order rather than the stated requirements in the order.

The RSO is responsible for investigating serious incidents involving DoS PSCs. We did not review the RSO process but did learn that the RSO had conducted five investigations of serious incidents of Tier 2 contractors from January 1, 2008, through December 31, 2008.

Multi-National Force-Iraq Serious Incident Investigation Process Not Working As Required

PSCs involved in serious incidents are to conduct internal investigations and submit their reports to government entities. The government organization receiving the PSC's services, hereafter referred to as the requiring activity, is to determine whether the PSC's investigation sufficiently documents the relevant facts and whether further investigation is necessary. ACOD is responsible for ensuring that the requiring activity is fulfilling its responsibilities. From the CONOC database, we identified 47 serious incidents that required investigations because they involved deaths, serious injuries, or property damage over \$10,000. We compared the 47 to the ACOD database and found only 21 in the database. Seven of the 21 indicated no action taken. An ACOD official indicated that ACOD determines what level of investigation is necessary based on the type of incident.

Multi-National Force-Iraq Serious Incident Investigation Process

MNF-I Fragmentary Order 09-109, Annex E, provides the requirements, procedures, and responsibilities that military commanders are to use to review and investigate serious incidents.³⁷ Under Annex E, the PSC involved in a serious incident is to conduct an internal investigation and submit its final report within 96 hours to the CONOC and the contracting officer and the contracting officer representative for the contract. The contracting officer representative is to provide a copy of the PSC's final report to the requiring activity. The requiring activity is to determine whether the PSC's final report sufficiently documents the relevant facts and whether further investigation is necessary. If the final report is sufficient, the requiring activity must determine whether any disciplinary or corrective action is needed and report the results to ACOD. If the contractor's final report is insufficient, the requiring activity must appoint an investigating officer or refer the matter to an investigative authority. The requiring activity must

³⁷ The process is basically the same as that described in the prior Fragmentary Order 07-428.

request an Army Regulation 15-6³⁸ investigation if the incident involves death, serious injury, or property damage over \$10,000. If the PSC's final report, the inquiry by the requiring activity commander, or the 15-6 investigation suggests a felony, the requiring activity commander is to notify and consult the Multi-National Corps-Iraq Staff Judge Advocate. The investigative results and any corrective, disciplinary, or criminal actions are to be reported to ACOD. ACOD is responsible for ensuring that the requiring activity is fulfilling its responsibilities to promptly and thoroughly review and/or investigate all serious incidents and to initiate corrective actions, as appropriate.

Investigation Process Not Working As Required

Since ACOD tracks less than half of all serious incidents reported to the CONOC, we could not determine the full extent to which the process described in the fragmentary order is or is not working as intended. However, we were able to determine that the requirement that the most serious of incidents—those involving death, serious injury, or property damage over \$10,000—be investigated is not working as described in the fragmentary order. To test whether the required Army Regulation 15-6 investigations are being conducted for those type incidents, we reviewed the CONOC database to identify incidents that appeared to meet the most serious incident criteria. We identified 47 serious incidents involving casualties (as a result of road traffic accidents, negligent discharge, small arms fire, and other incidents such as personal injuries, suicide, and electrocution) and/or property damage from May 1, 2008, through February 28, 2009. We reviewed the ACOD database for the 47 incidents and found 21, or less than half. The database indicated the following status for the 21 incidents: 7, no further action; 8, commander reviewed and endorsed; 2, Army Regulation 15-6 investigation; 1, letter sent to PSC; 1, forward a copy of report to the Defense Contract Management Agency; 1, DoS action; and 1, criminal investigation.

We asked ACOD for an explanation and an ACOD official told us ACOD does not require investigations of incidents that are caused by the enemy, which do not involve local nationals and/or result in minor injuries. The official further stated that ACOD provides no oversight of incidents caused by enemy action unless the PSC did not follow requirements. The official described an incident where the PSC exchanged fire with Iraqi Army and Iraqi police at an Iraqi check point after an improvised explosive device attack on their convoy. As a result of the PSC's actions, ACOD directed a commander's inquiry and issued a letter of concern to the PSC.

In our review of ACOD's database, we also found that nine Army Regulation 15-6 investigations and four criminal investigations had been completed from May 2008 through February 2009.

Differing Use of Security Cameras

Although DoS PSCs performing Tier 2 missions are to report serious incidents to the CONOC, any incident investigations are the RSO's responsibility. The May 2008 Embassy policy directive states that the RSO will generally investigate incidents involving (1) a confirmed or likely death or serious injury or (2) possible criminal misconduct. According to an RSO official, incidents involving the use of deadly force, property damage, injury, death, or an indication of a

³⁸Army Regulation 15-6 is used as the basis for many investigations that require detailed facts to be gathered and analyzed and recommendations to be made based on those facts.

law violation are automatically investigated. Other incidents may be investigated based on a judgment call. Investigations are performed by the Force Investigation Unit within the RSO. The Unit was established in response to a recommendation by the Kennedy Panel,³⁹ a special panel tasked by Secretary of State Condoleezza Rice to review DoS's security practices in Iraq following the Blackwater incident. According to data provided by the RSO, five investigations were done from January 1, 2008, through December 31, 2008.

Although we did not review the RSO serious incident investigation process, we noted that the Kennedy panel also recommended that the RSO be provided with video equipment for each security vehicle. In December 2008, the U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Middle East Regional Office, reported on the status of the recommendations.⁴⁰ The report, which provides DoS's response to the recommendations, states that as of July 2008, video recording systems had been installed in 191 mission vehicles throughout Iraq and the remaining installations had been funded and were planned for completion by December 2008. The Office of Inspector General reported that the benefit of the cameras and tracking systems is broader in scope than documenting shooting incidents. The Embassy has used mission tapes to determine whether vehicles cited by Iraqi officials as being involved in traffic accidents were or were not physically present or involved. According to the RSO, the video equipment was installed in government-owned vehicles used by the three contractors that perform Tier 1 missions—Blackwater, Triple Canopy, and DynCorp.

However, the equipment is not installed in vehicles used by these same contractors that perform Tier 2 missions. We also noted that MNF-I's fragmentary order has no requirement for DoD PSCs to use security cameras in their vehicles. One Tier 2 contractor we spoke with said that they have installed the equipment in their vehicles and have found it very helpful in documenting incidents for internal investigative reports. In late April 2009, we were informed that as of April 1, 2009, the Government of Iraq requires that PSCs place cameras on all vehicles in convoys.

³⁹ The Panel was headed by Ambassador Patrick F. Kennedy and thus is referred to as the Kennedy panel.

⁴⁰ *Status of the Secretary of State's Panel on Personal Protective Services in Iraq Report Recommendations* (MERO-IQO-09—01, 12/2008).

The Department of Defense Incident Remediation Process and the Different Approaches to Payments for Serious Incidents

For incidents involving wrongful death, injury, or serious property damage to Iraqis, MNF-I requires PSCs involved pay an appropriate amount as soon as possible. According to ACOD officials, MNF-I's Office of Staff Judge Advocate has determined that PSCs are responsible for such payments. DoD provides no guidance on what would constitute an appropriate amount of payment. In contrast, the Embassy is authorized to make payments of \$10,000 for death, \$5,000 for injury, and \$2,500 for property damage. An RSO official said that he is not aware of payments being made for incidents involving Tier 2 PSCs.

As stated earlier, DoD PSCs are to conduct internal investigations of each incident, take corrective actions when needed, and submit their final reports within 96 hours. In an earlier report on DoD's contracts with Aegis Defence Services, Limited,⁴¹ we presented the following examples of two serious incidents involving traffic accidents for which Aegis took corrective actions:

- In March 2008, the lead vehicle in an Aegis mission attempted to overtake a slow-moving vehicle, and the driver either lost control or struck the median, which resulted in the death of the driver, injury to two passengers, and the loss of the government-provided vehicle valued at over \$170,000. The Aegis board of inquiry found that the vehicle driver was speeding, the decision to overtake the other vehicle was unwarranted, the vehicle driver was not wearing a helmet and possibly not a seat belt, and the team leader's supervision was poor. In response to the accident, Aegis inspected equipment and systems for failures, reemphasized existing procedures regarding requirements to wear protective equipment and devices, and terminated the contracts of both the vehicle commander and team leader.
- In April 2008, an Aegis-driven vehicle hit a civilian truck as it was passing, which would likely cause the government-provided vehicle, valued at over \$170,000, being removed from the fleet and replaced. Aegis found the driver negligent, relieved him of his driving duties until he executed a supervised driver assessment, and fined the driver and his team leader five days' pay. Aegis was not required to pay for the vehicles from this and the March accident, despite the negligence, because the contract does not require the contractor to reimburse the government for the lost vehicle.

When the requiring activities' commanders or ACOD consider the actions insufficient to remedy the situations, they can request the PSC to take further action or impose penalties. Such penalties may include temporary or permanent withdrawal of arming authorizations or corrective action reports to the PSCs requiring them to take action.

⁴¹ *Oversight of Aegis's Performance on Security Services Contracts in Iraq with the Department of Defense* (SIGIR-09-010, 1/14/2009).

An ACOD official explained that the arming authorization is withdrawn if an individual is involved in a negligent weapons discharge incident. Fragmentary Order 09-109, Annex H, provides policies and procedures pertaining to reported negligent weapons discharges by armed contractors. The guidance states that an individual's arming authority will be withdrawn for a negligent weapons discharge. The guidance also states that the authorization may be restored if a subsequent investigation finds that a weapon malfunctioned or for a reason other than fault of the individual. After 6 months, the arming authorization may be reinstated at the PSC's request in cases of a simple negligence; however, after an employee's second negligent weapons discharge, the arming authorization will be permanently revoked. Our review of the ACOD database found nine negligent weapons discharge incidents for which ACOD revoked individuals' arming authorization. The following examples illustrate actions taken in a few negligent weapons discharges:

- On October 22, 2008, a guard at a military camp was in a perimeter tower and waiting for the shift change. He cleared his weapon while in the guard tower instead of at a clearing barrel and discharged his M4 weapon. The bullet missed another perimeter tower by 2 feet. No injuries or fatalities occurred, but the incident was considered a negligent discharge. The PSC stated that the guard did not adhere to standard practice, as guards are instructed and trained to clear their weapons properly at a clearing barrel. The PSC took corrective action by terminating the guard's contract and began retraining the tower guard force on the proper handling of weapons and clearing procedures. ACOD's records indicate that an arming revocation letter was issued to the PSC for the negligent guard.
- On October 18, 2008, two guards were changing shifts with two additional guards inside a guard shack. As one guard exchanged a fully loaded weapon with a replacement guard, two rounds were fired into the ground because the guard had not properly cleared his weapon. The PSC terminated the guard at fault, and the Defense Contract Management Agency investigated whether the weapons exchange process that was used was a contractual violation. On October 19, 2008, ACOD issued an arming revocation letter to the PSC for the two guards.

Other incidents may result in wrongful death, injury, or serious property damage to Iraqis. According to a PSC representative, the Arabic culture usually requires expressions of regret and sorrow, and a payment for blood--called "Fidia"-- is usually expected. In such instances, MNF-I requires that the PSCs involved pay an appropriate amount as soon as possible. According to ACOD officials, MNF-I's Office of the Staff Judge Advocate said that PSCs are responsible for such payments. According to ACOD officials, their only role in the process is to encourage the PSCs to make the payments as soon as possible after an incident occurs. ACOD does not follow up to determine whether the payments were made. An ACOD official noted that ACOD forwards to the Iraqi Ministry of Interior the information concerning a PSC's involvement in an incident that involves damage or injury to an Iraqi. We were told by ACOD officials that PSCs negotiate directly with the families regarding solatium⁴² payments. According to an ACOD official, PSCs have paid for various incidents, and the payments were made either on the spot or within a day or two depending on the facts of the incident. We were told of one incident

⁴² A compensation given as solace for suffering or loss.

involving a PSC and the son of an affluent Iraqi. The son was injured and the father sued the PSC for wrongful action. According to a PSC representative, the PSC eventually paid \$50,000 in compensation from company funds. The negligent driver's contract was terminated as a result of the incident.

In contrast to the MNF-I guidance, DoS has a Claims and Condolence Payment Program in Iraq to address the issue of PSCs involved in incidents where Iraqis have been killed or injured or where property has been damaged. The program was approved in August 2005 to make *ex gratia* payments⁴³ where payment to an individual is determined to be necessary for urgent foreign policy reasons, regardless of fault or legal liability. According to Embassy standard operating procedures for condolence payments,⁴⁴ the Embassy is authorized to make payments of \$5,000 for death, \$2,500 for injury, and \$2,500 for property damage.⁴⁵ However, for two high profile incidents involving Tier 1 PSCs that occurred on August 13, 2007, and September 16, 2007, the Embassy authorized an increase in payments to \$10,000 for death, \$5,000 for injury, and \$2,500 for property damage. An RSO official said that he is not aware of condolence payments for incidents involving Tier 2 PSCs.

⁴³ Payments made when there are no obligations or liabilities to make them.

⁴⁴ The procedures were approved in September 2008.

⁴⁵ In December 2008, the amounts for death and personal injury were increased to \$10,000 and \$5,000, respectively.

Conclusions, Recommendations, and Lessons Learned

Conclusions

The U.S. military and the U.S. Embassy have improved their information sharing on PSC operations and serious incident reporting. They have established policies for reporting serious incidents and have assigned responsibility to specific organizations for ensuring that serious incidents are reported and investigated. These improvements are significant; nevertheless, we identified a number of opportunities to improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents. These specific improvements should help DoD and DoS achieve their overall program goals and objectives:

- The CONOC and RSO databases do not capture all reported serious incidents and do not present a complete picture of the serious incidents they are tasked to track. This could be caused by database management problems or the failure of the PSCs to follow reporting requirements.
- ACOD judgmentally decides which incidents to track even though it is responsible for ensuring that all serious incidents received by the CONOC are reported, tracked, and investigated. ACOD is applying a more limited definition of a serious incident than that contained in MNF-I guidance.
- MNF-I guidance has a more expansive definition of a serious incident than Embassy guidance.
- ACOD and CONOC have established their own databases even though they are supposed to be tracking the same incidents, although for different purposes. As a result, information for the same incidents is inconsistent, which raises questions about information accuracy.
- ACOD has performed analyses but has not developed formal lessons learned even though it is responsible for lessons learned. The limited incidents that ACOD tracks do not represent a complete picture of what PSCs are reporting, and its limited analyses may be impacting its ability to develop lessons learned.
- No organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes.
- DoD and DoS have different approaches and policies for condolence payments to Iraqis for the same types of incidents. Consequently, the United States is not presenting a uniform approach to the Iraqi people and government.

Recommendations

To improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents, SIGIR recommends that the Commanding General, MNF-I, and the U.S. Ambassador to Iraq take the following actions as they relate to their respective responsibilities:

1. Require CONOC and RSO to institute a process to periodically compare serious incident data on Tier 2 missions to identify PSCs that may be unaware of, confused about, or not complying with the dual reporting requirements.
2. Require ACOD and RSO to jointly establish a standard definition of serious incidents and incorporate that definition in guidance for their PSCs.
3. Require ACOD and RSO to jointly establish or use an existing contractor working group to share information with PSCs and to solicit their views and concerns.
4. Require CONOC and ACOD to establish a joint database for serious incidents that both can use to capture the information they need to fulfill their responsibilities.
5. Require ACOD to track all serious incidents, include data on all incidents in its analyses, perform more extensive analyses of serious incidents, and develop lessons learned from those analyses.
6. Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DoD and DoS contracts.
7. Task contract audit organizations to periodically review the prime contractors' oversight of subcontractor PSCs' compliance with incident reporting requirements.

Lessons Learned

Over time, DoD and DoS have learned important lessons in Iraq pertaining to PSCs. Those lessons have been applied incrementally to improve oversight of PSCs and coordination between MNF-I and the U.S. Mission. In other contingency operations, where extensive use is made of private security contractors, such as Afghanistan, the overarching lesson learned is that DoD and DoS need to establish core standards, policies, and procedures early in the contingency. Specific lessons related to that action include the need to develop:

- a memorandum of agreement to jointly develop, implement, and follow core standards, policies, and procedures regarding PSCs
- a common definition and common reporting requirements for serious incidents
- mechanisms to share information on incidents between the U.S. Embassy and the military command
- a common approach to condolence payments
- audit mechanisms to ensure that PSCs at all levels understand and comply with incident reporting requirements

Management Comments and Audit Response

SIGIR received management comments from MNF-I, the U.S. Embassy's Regional Security Office, and the Department of State's Bureau of Diplomatic Security. MNF-I concurred with seven recommendations, partially concurred with recommendation 5 and non-concurred with recommendation 9. With regards to recommendation 5, MNF-I stated that the Armed

Contractor Oversight Branch⁴⁶ reviews all serious incidents it receives from the CONOC and forwards serious incident reports needing further attention to requiring activity commanders. It further stated that ACOD developed fragmentary orders throughout its tenure in response to lessons learned. Moreover, the Branch, in partnership with the U.S. Embassy RSO, will endeavor to develop joint “lessons learned” of general applicability to all PSCs operating in the Iraq. MNF-I did not concur with recommendation 9. It stated that DoD is legally prohibited from making condolence payments on behalf of contractors and that is the reason for the perceived lack of a common policy for condolence payments in Iraq. Moreover, it states that PSCs are generally required to possess liability insurance by the terms of their contracts and that the insurance premiums on “cost type” contracts are reimbursed as long as the charge is reasonable, allocable, and allowable.

With regards to MNF-I’s comments on recommendation 5, the report recognizes ACOD’s position that it used lessons learned to produce fragmentary orders. SIGIR continues to believe that ACOD needs to track all serious incidents, include data on all incidents in its analyses, perform more extensive analyses of serious incidents, and develop lessons learned from those analyses. Concerning recommendation 9, MNF-I said that although it is prohibited from making condolence payments directly, it is indirectly paying for those costs by reimbursing contractors for liability insurance. Based on MNF-I’s position, we did not include the draft recommendation in the final report. We continue to believe that DoD and DoS should have a common approach to condolence payments as noted in SIGIR’s lessons learned.

The Embassy RSO concurred with recommendation 1, concurred in principal with recommendation 2, and did not concur with recommendations 3, 8, and 9. With regards to recommendation 2, the RSO stated that establishing a standard definition of a serious incident should be accomplished at the Washington, D.C. level by appropriate DoS and DoD legal and contracting experts, with input from the Embassy and MNF-I. Although it non-concurred with recommendation 3, the RSO stated the recommendation could be best accomplished through the Embassy/DoD Contractor Working Group which could ensure that cross cutting information and actions are properly shared and coordinated within the context of ongoing U.S. government and Government of Iraq bilateral efforts to resolve issues and problems with U.S. government affiliated contractors in Iraq. With regards to recommendation 8, the RSO stated that a joint group to study the installation of video recording equipment in PSC vehicles is unnecessary. Instead, confirmation that video recording equipment is a Government of Iraq requirement is sufficient for incorporating this requirement into contracts and grants and other agreements. Concerning recommendation 9, the RSO stated that the recommendation is not feasible due to funding requirements and foreign policy concerns. It stated that the Embassy’s condolence program is funded by DoS funds for *ex gratia* payments determined to be necessary to further foreign policy objectives and that a common inter-agency policy for condolence payments in Iraq may not always comport with the Embassy’s foreign policy concerns. Moreover, DoS and DoD private security contractors do not always perform similar functions, and a common inter-agency policy is untenable for this reason as well.

With regards to recommendation 3, SIGIR recognizes that an existing working group of U.S. government officials and contractor representatives could accomplish the objectives of the

⁴⁶ In April 2009, ACOD became the Armed Contractor Oversight Branch under the MNF-I Protection Division.

recommendation. Our final recommendation reflects this change. Concerning recommendation 8, SIGIR received confirmation on April 23, 2009, that the Government of Iraq, Ministry of Interior, will require that cameras be placed on all vehicles of a PSC convoy. As a result of this requirement, SIGIR deleted the draft recommendation from the final report. Concerning recommendation 9, SIGIR believes the foreign policy implications of serious incidents involving death, serious injury, or property damage by DoD PSCs can be as significant as those involving DoS PSCs. Also, some DoD PSCs do perform the same types of missions as those performed by DoS PSCs. However, SIGIR recognizes that funding may be an issue since MNF-I states that it is legally prohibited from making condolence payments whereas DoS has funds for such payments. As stated above, SIGIR's draft recommendation is not included in the final report. However, the report does include a lesson learned related to this issue.

The Bureau of Diplomatic Security provided a number of technical and clarifying comments. Concerning recommendation 6, the Bureau stated that it is already discussing with the Department's Office of Acquisition Management the need to identify all PSC subcontractors that support DoS contracts and grants. According to the Bureau, this effort is to ensure the Bureau identifies 100% of the Tier 2 PSCs and is a follow-on effort to several data calls conducted by the U.S. Embassy Baghdad over the last 6 months, which are also designed to identify these firms. Most of the other comments relate to the definition and use of the terms Tier 1 and Tier 2. The Bureau states that the term Tier applies to PSCs as opposed to missions. Specifically, the Bureau states that DoS considers contractors providing services to DoS under the Worldwide Personal Protective Services contract to be Tier 1 contractors regardless of the nature of the missions these contractors are performing. All other DoS affiliated PSCs, including subcontractor PSCs, are considered by DoS to be Tier 2 contractors regardless of the missions being conducted. SIGIR could find no formal definition of Tier 1 and Tier 2. It describes Tier 1 and Tier 2 in terms of missions in the report because a CONOC document shows that the three PSCs under the Worldwide Personal Protective Services contract—Blackwater, Triple Canopy, and DynCorp—can perform both Tier 1 and Tier 2 missions and that Tier 1 PSCs perform missions that directly support the Chief of Mission whereas Tier 2 PSCs perform missions that indirectly support the Chief of Mission. Moreover, in commenting on SIGIR's description of Tier 1 and Tier 2, an RSO representative provided the following distinction: All U.S. government direct hire employees and certain others that fall under the Chief of Mission authority and are not under the security responsibility of MNF-I are transported as Tier 1. U.S. Agency for International Development, Department of State, and other DoS contractors, grantees, and other employees that do not fall under the Chief of Mission authority are transported under Tier 2. Therefore, we continue to believe describing Tier 1 and Tier 2 in terms of missions of the contractors is appropriate.

Appendix A—Scope and Methodology

Scope and Methodology

In January 2009, the Special Inspector General for Iraq Reconstruction (SIGIR) initiated Project 9008 to examine the Department of Defense's (DoD) oversight of serious incidents by private security contractors (PSC) in Iraq. Specifically, SIGIR examined DoD's (1) policies, procedures, and practices for reporting, investigating, and remediating those incidents and (2) efforts to identify trends and lessons learned. Because Department of State (DoS) PSCs on Tier 2 missions are required to report serious incident to both the Embassy's Regional Security Office (RSO) and DoD channels, we reviewed pertinent DoS policies and procedures related to that reporting. The U.S. Embassy's process for investigating serious incidents is addressed in the DoS Office of Inspector General report, *Status of the Secretary of State's Panel on Personal Protective Services in Iraq Report Recommendations*, MERO-IQO-09-01, 12/2008. SIGIR conducted its work from January through March 2009 in Arlington, Virginia, and Baghdad, Iraq.

This audit was performed by SIGIR under the authority of Public Law 108-106, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978. It was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To examine the DoD and DoS incident reporting process, we compared the incident reporting requirements in the fragmentary orders issued by the Multi-National Force-Iraq (MNF-I) and the policy directive issued by the U.S. Embassy. We discussed reporting procedures with officials in the Contractor Operations Cells (CONOC), the Armed Contractor Oversight Division (ACOD), and the RSO. To determine whether the reporting policies and procedures were being followed, we compared the serious incidents in databases maintained by the CONOC, ACOD, and RSO. Moreover, we obtained serious incident reports from seven PSCs and compared those reports to the serious incidents recorded in the CONOC's and RSO's databases. We requested evidence from PSCs, such as copies of emails, that their incident reports had been submitted. We also discussed with ACOD officials the reasons why fewer incidents are recorded in ACOD's database than the CONOC database.

To examine the DoD incident investigation process, we reviewed the appropriate fragmentary orders pertaining to incident investigations. We discussed the incident investigation process with ACOD officials to determine the criteria they use to identify incidents that require investigation. We compared ACOD's criteria with fragmentary order requirements to see if they were following the fragmentary orders. We also selected serious incidents from the CONOC database that appeared to meet the fragmentary order criteria for an Army Regulation 15-6 investigation and compared those to the incidents that were investigated. For incidents that were not investigated, we obtained ACOD's rationale.

To examine DoD's incident remediation process, we discussed the process with ACOD officials. We discussed with ACOD officials the actions they take if the contractors' actions are not sufficient and reviewed documentation supporting those actions. We discussed with ACOD officials MNF-I's policies regarding condolence payments to Iraqis. We obtained the U.S. Embassy's operating procedures for condolence payments and compared the Embassy's policy with MNF-I's policy.

To determine ACOD's efforts to identify trends with serious incidents and apply lessons learned, we asked ACOD for the trends noted and the lessons learned as a result of its analyses. We also reviewed the Joint Incidents Review Board's minutes for trends and lessons learned.

To analyze the serious incident trend data, we obtained a copy of the CONOC database and performed analyses of those data. We also obtained copies of the incident reports submitted by the PSCs. We compared the incident reports to the information in the databases. When we discovered inconsistencies between the database and reports, we sought to correct those data elements through discussions with CONOC and ACOD officials.

Use of Computer-Processed Data

We obtained serious incident data from databases maintained by the CONOC, ACOD, and RSO. When we found inaccuracies with the data we planned to use, we corrected those inaccuracies to the extent possible by using the actual incident reports or through discussions with knowledgeable individuals. The report discloses the weaknesses and limitations in those data. We also made recommendations for improving the databases.

Internal Controls

We reviewed the specific controls used in managing the serious incidents that are required to be reported through DoD channels. This included reviewing management controls related to the reporting, investigating, and remediating of incidents. The report focuses on weaknesses in those controls and provides recommendations for improving them.

Prior Coverage

We reviewed the following applicable reports issued by SIGIR; the U.S. Agency for International Development's Office of Inspector General; the Department of State and Broadcasting Board of Governors' Office of Inspector General, Middle East Regional Office; the Government Accountability Office; the Congressional Research Service; and the Congressional Budget Office.

Special Inspector General for Iraq Reconstruction

Oversight of Aegis's Performance on Security Services Contracts in Iraq with the Department of Defense, SIGIR-09-010, 1/14/2009.

Agencies Need Improved Financial Data Reporting for Private Security Contractors, SIGIR-09-005, 10/30/2008.

Compliance with Contract No. W911S0-04-C-0003 Awarded to Aegis Defence Services Limited, SIGIR-05-005, 4/20/2005.

U.S. Agency for International Development, Office of Inspector General

Audit of USAID/Iraq's Oversight of Private Security Contractors in Iraq, E-267-09-002-P, 3/4/2009.

U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, Middle East Regional Office

Status of the Secretary of State's Panel on Personal Protective Services in Iraq Report Recommendations, MERO-IQO-09-01, 12/2008.

U.S. Government Accountability Office

Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements, GAO-08-966, 7/31/2008.

Rebuilding Iraq: Actions Still Needed to Improve the Use of Private Security Providers, GAO-06-865T, 6/13/2006.

Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers, GAO-05-737, 7/28/2005.

Congressional Research Service

Private Security Contractors in Iraq: Background, Legal Status, and Other Issues, 8/25/2008.

Private Security Contractors in Iraq: Background, Legal Status, and Other Issues, 6/21/2007.

Congressional Budget Office

Contractors' Support of U.S. Operations in Iraq, 8/2008.

Appendix B—Acronyms

Acronym	Definition
ACOD	Armed Contractor Oversight Division
CONOC	Contractor Operations Cells
DoD	Department of Defense
DoS	Department of State
Gol	Government of Iraq
JCC-I/A	Joint Contracting Command-Iraq/Afghanistan
MND	Multi-National Division
MNF	Multi-National Force
MNF-I	Multi-National Force-Iraq
PSC	Private Security Contractor
RSO	Regional Security Office
SIGIR	Special Inspector General for Iraq Reconstruction
USAID	U.S. Agency for International Development

Appendix C—Serious Incidents Reported by Contractors (2/24/2008-2/28/2009)

Contractor	Number of Serious Incidents
Aegis Defence Services, Limited	224
EOD Technology Inc.	171
ArmorGroup	63
Hart Group	58
Special Operations Consulting-Security Management Group	41
Threat Management Group	40
Olive Group FZ LLC	37
Sabre International Security	28
Reed Incorporated	17
Falcon Group	15
Universal Security	11
Triple Canopy, Inc.	10
Blue Hackle Middle East	10
Unity Resources Group	9
Securiforce International	7
Safenet Security	7
Sallyport Global Holdings	6
DynCorp International, LLC	5
Sandi Group	4
Erinys International	3
SALRisk Group Ltd.	3
CSS Global Inc.	3
Osprey	2
Babylon Gates	1
Blackwater Worldwide	1
Tetra Tech	1
Motorola Joint Venture AIEE	1
Edinburgh International	1
ITAS	1
AISG	1
Military Professional Resources Inc.	1
CMSS	1
Garda World	1
Total	784

Source : SIGIR compiled from CONOC database.

Appendix D—Audit Team Members

This report was prepared and the review was conducted under the direction of David R. Warren, Assistant Inspector General for Audit, Office of the Special Inspector General for Iraq Reconstruction.

The staff members who conducted the audit and contributed to the report include:

Michael A. Bianco

Robert L. Pelletier

Nadia Shamari

Appendix E—Management Comments

Multi-National Force—Iraq

SIGIR DRAFT REPORT – DATED April 3, 2009
SIGIR PA-09-019

**“Opportunities to Improve Processes for Reporting, Investigating, and
Remediating Serious Incidents Involving Private Security Contractors in Iraq”**

MNF-I COMMENTS TO THE DRAFT REPORT

RECOMMENDATION

To improve the accuracy and consistency of the serious incident information, the analysis of that information, and the consistency of policies and procedures pertaining to investigating and remediating incidents, SIGIR recommends that the Commanding General, MNF-I, and the U.S. Ambassador to Iraq take the following actions as they relate to their respective responsibilities:

1. Require CONOC and RSO to institute a process to periodically compare serious incident data on Tier 2 missions to identify PSCs that may be unaware of, confused about, or not complying with the dual reporting requirements.
2. Require ACOD and RSO to jointly establish a standard definition of serious incidents and incorporate that definition in guidance for their PSCs.
3. Require ACOD and RSO to jointly establish a PSC working group to share information with PSCs and to solicit their views and concerns.
4. Require CONOC and ACOD to establish a joint database for serious incidents that both can use to capture the information they need to fulfill their responsibilities.
5. Require ACOD to track all serious incidents, include data on all incidents in its analyses, performs more extensive analyses of serious incidents, and develops lessons learned from those analyses.
6. Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DoD and DoS contracts.
7. Task contract audit organizations to periodically review the prime contractors' oversight of subcontractor PSCs' compliance with incident reporting requirements.
8. Establish a joint group to study the costs and benefits of installing video recording equipment in PSC vehicles that do not currently have such equipment.
9. Establish and issue a common policy for condolence payments in Iraq.

(SIGIR Draft Report, page 27)

MNF-I RESPONSE: MNF-I partially concurs with the information provided in this report.

Recommendations

1. **Recommendation #1:** Require CONOC and RSO to institute a process to periodically compare serious incident data on Tier 2 missions to identify PSCs that may be unaware of, confused about, or not complying with the dual reporting requirements.

(U) MNF-I CONCURS.

2. **Recommendation #2: Require ACOD and RSO to jointly establish a standard definition of serious incidents and incorporate that definition into guidance for their PSCs.**

(U) MNF-I CONCURS with this recommendation. ACOB has established initial coordination with the DoS RSO to develop "serious incident" criteria to be jointly-used by both the RSO and ACOB. ACOB will further nest serious-incident criteria within MNF-I Commander's Critical Information Requirements (CCIR.)

3. **Recommendation #3: Require ACOD and RSO to jointly establish a PSC working group to share information with PSCs and to solicit their views and concerns.**

(U) MNF-I CONCURS with this recommendation. Currently, ACOB and the RSO conduct a quarterly Joint Incident Review Board (JIRB) and participate in the Security Agreement Working Group, which includes a discussion of issues and concerns relating to PSC operations in Iraq. Additionally, ACOB is establishing contact with Private Security Contractors Association of Iraq (PSCAI), a professional business association established to promote PSC endeavors throughout Iraq.

4. **Recommendation #4: Require CONOC and ACOD to establish a joint database for serious incidents that both can use to capture the information they need to fulfill their responsibilities.**

(U) MNF-I CONCURS with this recommendation. There is only one SIR database, maintained by the CONOC. ACOB has not attempted to recreate the CONOC's database within ACOB. The CONOC forwards all the SIRs it receives to ACOB. ACOB reviews all SIRs and makes recommendations to the Requiring Activity Commander, as appropriate. ACOB will endeavor to increase the accuracy of the CONOC database.

5. **Recommendation #5: Require ACOD to track all serious incidents, include data on all incidents in its analyses, perform more extensive analysis of serious incidents, and develop lessons learned from those analyses.**

(U) MNF-I PARTIALLY NONCONCURS with this recommendation. ACOB reviews all SIRs it receives from the CONOC, and serves as a funneling-device to forward those SIRs needing Requiring Activity Commander awareness to the appropriate commander. The changes to then-ACOD-developed FRAGOs throughout its tenure have been in response to "lessons learned" during oversight operations. ACOB, in partnership with the U.S. Embassy RSO, will endeavor to develop joint "lessons learned" of generally applicability to all PSCs operating in the ITO.

6. **Recommendation #6: Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DoD and DoS contracts.**

(U) MNF-I CONCURS with this recommendation. ACOB will continue to coordinate with JCC-I/A and DCMA for greater visibility of PSC subcontractors. MNF-I FRAGO 091-09, Annex A, Required Contract Provisions, is specifically made applicable to both contractors and their subcontractors.

7. **Recommendation #7: Task contract audit organizations to periodically review the prime contractors' oversight of subcontractor PSCs' compliance with incident reporting requirements.**

(U) MNF-I CONCURS.

8. **Recommendation #8: Establish a joint study group to study the costs and benefits of installing video recording equipment in PSC vehicles that do not currently have such equipment.**

(U) MNF-I CONCURS. While ACOB has no objection to participating in a study group to assess the costs and benefits of installing video recording equipment in PSC vehicles, it is our belief that such action would not be cost-effective and would create no measurable improvement in PSC operations in the ITO.

9. **Recommendation #9: Establish and issue a common policy for condolence payments in Iraq.**

(U) MNF-I NONCONCURS with this Recommendation. According to the SIGIR Draft Report, since August 2005, DoS has operated a Claims and Condolence Payment Program in Iraq to address the issue of PSCs involved in incidents where Iraqis have been killed/injured or where property has been damaged. The DoS program allows for ex gratia payments where payment to an individual is determined to be necessary for urgent foreign policy reasons, irregardless of fault or legal liability.

(U) DoD maintains a similar program for condolence payments through the Commander's Emergency Response Program (CERP), which uses appropriated funds to "enable local commanders in Iraq. . .to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the indigenous population." Nineteen specific areas of expenditure are identified in the statute; one of which specifically authorizes condolence payments "to individual civilians for the death or physical injury resulting from U.S., Coalition, or supporting military operations not compensable under the Foreign Claims Act." Like payments made by the DoS, these payments are not compensation and are not based on an assignment of legal liability; rather, the payments are meant solely to express sympathy and to provide urgently needed humanitarian relief to the concerned family. Generally, condolence payments under CERP are limited to \$2,500.

(U) However, the terms of the statute limit CERP payments to death/physical injury resulting from "U.S., Coalition, or supporting military operations." Armed contractors are not military forces; they provide security services and do not engage in military operations. Engaging in military operations is an inherently governmental function performed by personnel in the direct employ of a sovereign. DoD is legally prohibited from making condolence payments on behalf of contractors. That is the reason for the perceived lack of a "common policy for condolence payments in Iraq."

(U) As a practical matter, PSCs are generally required to possess liability insurance by the terms of their contracts with federal agencies. The majority of PSC contracts are "cost type" as opposed to "firm-fixed price" contracts. These liability insurance premiums are "passed-through" the contract and reimbursed by the federal agency so long as the charge is "reasonable, allocable and allowable" to the contract under generally accepted accounting principles established by the Financial Accounting Services Board.

Management Comments

U.S. Embassy – Baghdad, Iraq



United States Department of State
U.S. Embassy Baghdad, Iraq

April 13, 2009

Glenn D. Furbish
Principal Deputy Assistant IG for Audit
Special Inspector General for Iraq Reconstruction

Dear Mr. Furbish:

We appreciate the effort and research that has gone into the SIGIR Draft Audit Report 09-019: *Opportunities to Improve Processes for Reporting, Investigating, and Remediating Serious Incidents Involving Private Security Contractors in Iraq*. Regional Security Office (RSO) Baghdad's responses to these recommendations are as follows:

1. Require Contractor Operations Center (CONOC) and RSO to institute a process to periodically compare serious incident reporting (SIR) data on Tier 2 missions to identify PSCs that may be unaware of, confused about, or not complying with the dual reporting requirements.

Response – Agree: RSO and CONOC will evaluate PSC reporting activity to determine how often periodic comparison/reconciliation of serious incident reporting should take place.

The RSO liaison officer to the CONOC will be the primary point of contact for accomplishing this task and will bring the results of the analysis of PSC serious incident reporting activity to the attention of RSO management.

2. Require Armed Contractor Oversight Division (ACOD) and RSO to jointly establish a standard definition of serious incidents and incorporate that definition in guidance for their PSCs.

Response - Agree in principle: However, establishing a standard definition of a serious incident should be accomplished at the Washington, DC level by

appropriate DOS and DOD legal and contracting experts, with input from Post, MNF-I and MNC-I elements.

3. Require ACOD and RSO to jointly establish a PSC working group to share information with PSCs and to solicit their views and concerns.

Response - Disagree: It is unclear from this recommendation what the purpose of this working group would be, i.e. focusing on serious incident reporting, or a broader range of PSC related issues. Also Embassy and DOD, both conduct periodic meetings with PSC representatives to discuss issues and concerns, and pass information.

Post believes that the already established Embassy/DOD Contractor Working Group (CWG) is best positioned to implement Recommendation 3. The CWG includes representatives from RSO and ACOD (which recently transitioned to the Armed Contractor Oversight Branch – ACOB), other Embassy and DOD stakeholders, and is chaired at the appropriate level by the Embassy Management Counselor. The last meeting of the CWG included a member of the PSC industry in Iraq who shared insights and anecdotal information with CWG members. Incorporating the intent of Recommendation 3 into the CWG also ensures that cross cutting information and actions are properly shared and coordinated within the context of ongoing USG – GOI bilateral efforts to resolve a number of issues and problems having to do with USG affiliated contractors in Iraq.

4. Require CONOC and ACOD to establish a joint database for serious incidents that both can use to capture the information they need to fulfill their responsibilities.

Response: Not a RSO Issue - CONOC and ACOD should respond to Recommendation 4.

5. Require ACOD to track all serious incidents, include data on all incidents in its analyses, perform more extensive analyses of serious incidents, and develop lessons learned from those analyses.

Response: Not a RSO Issue - ACOD should respond to Recommendation 5.

6. Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DOD and DOS contracts.

Response: Not a RSO issue - DS is not a contract support, management or audit agency. Identifying DOS/Embassy affiliated PSCs is already being accomplished through a periodic Embassy Front Office tasking requiring all DOS/Embassy/COM offices and agencies to report their prime and sub-contracted PSCs, including those providing security services to grantees and implementing partners.

7. Task contract audit organizations to periodically review the prime contractors' oversight of subcontractor PSCs' compliance with incident reporting requirements.

Response: Not a RSO or DS issue - The Department of State Office of the Procurement Executive, and USAID should respond to Recommendation 7. DS is not a contract audit or management agency.

8. Establish a joint group to study the costs and benefits of installing video recording equipment in PSC vehicles that do not currently have such equipment.

Response - Disagree: A joint group to study the installation of video recording equipment in PSC vehicles is unnecessary. Instead, confirmation that video recording equipment is a Government of Iraq requirement is sufficient for incorporating this requirement into contracts and grants, and other agreements.

9. Establish and issue a common policy for condolence payments in Iraq.

Response: Disagree:

This recommendation is not feasible due to funding requirements and foreign policy concerns. The Embassy's condolence payment program is funded by the Department of State K Fund, which permits *ex gratia* payments determined to be necessary to further the realization of foreign policy objectives. A common inter-agency policy for condolence payments in Iraq may not always comport with the Embassy's foreign policy concerns. Additionally, Department of State and Department of Defense private security contractors do not always perform similar functions, and a common inter-agency policy is untenable for this reason as well.

The Embassy issues condolence payments in amounts consistent with those paid by the Department of Defense. In December 2008, these amounts were increased to \$10,000 for death and \$5,000 for personal injury, without regard to fault or liability. Our increase was consistent with an increase in MNF-I's payment threshold to \$10,000. The Department of State also recognized that original payment amounts were sometimes insufficient to avoid adverse foreign policy

consequences of the underlying events. Condolence payments made for damage to property remain at \$2,500 and the Department of State retains flexibility to approve larger payment sums in exceptional circumstances, consistent with foreign policy objectives.

Sincerely,

A handwritten signature in cursive script that reads "Mark J. Hipp".

Mark J. Hipp
Regional Security Officer

Management Comments

Department of State – Bureau of Diplomatic Security

DS Comments to Special Inspector General for Iraq Reconstruction

SIGIR Draft Report

Report 09-019

Title

Opportunities to Improve Processes for Reporting, Investigating and Remediating Serious Incidents Involving Private Security Contractors in Iraq

Comments & Technical Corrections

DS Comment: The definition of Tier 1 and Tier 2 found on the first page of this report and throughout the report is inaccurate. DoS considers contractors providing services to DoS under the Worldwide Personal Protective Services (WPPS) and Baghdad Embassy Security Force (BESF) contracts to be Tier 1 contractors regardless of the nature of the mission these contractors are performing. WPPS contractors provide protective security services and limited fixed site security services, while the BESF contractor provides only fixed site security services. The Tier 1 designation reflects that these Personal Services Contractors (PSCs) have prime contracts with the Department of State to provide security for Chief of Mission (COM) personnel in Iraq. Other COM agencies generally do not have prime contracts with PSCs to protect their full-time personnel. Such personnel are protected by RSO assets, including WPPS contractors.

All other DoS affiliated PSC's including subcontractor PSC's are considered by DoS to be Tier 2 contractors regardless of the missions being conducted.

1. **Cover Page:** *“DoS PSCs that perform Tier 1 missions (those that directly support the Chief of Mission) are required to have video recording systems in government-provided vehicles. No such requirement exists for PSCs performing Tier 2 missions (those that do not directly support the Chief of Mission) and DoD PSCs.”* (Cover page – Bullet 7)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

DoS Tier 1 PSCs are required to have video recording systems in government-provided vehicles. No such requirement exists for DoS Tier 2 PSCs and DoD PSCs.

2. **Cover Page and Results:** *“No organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes.”* (Cover page and Page ii – Bullet 6)

DS Comment: This statement, repeated several times, reflects a misunderstanding of Tier 2 PSCs, which by and large are subcontractors to non-DoD contractors and grantees. Similarly, many of what are termed “DoD PSCs” are subcontractors to DoD prime contractors performing logistics or other functions. Thus, it is incorrect to state that no organization has visibility of these Tier 2 PSCs. If the comment is focused on PSCs subcontracted to other PSCs, then that would require more in-depth analysis than is presented in the report, as it is not clear the extent to which visibility is lacking over these PSCs.

3. **Introduction:** *“Missions that do not directly support the Chief of Mission, such as transporting contractor personnel supporting DoS contracts, are categorized as Tier 2 missions. PSCs on Tier 1 and Tier 2 missions are to report serious incidents to the RSO. In addition, DoS PSCs on Tier 2 missions as well as DoD PSCs are to report serious incidents through the CONOC to ACOD.”* (Page ii - Top of page)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

DoS Tier 1 and Tier 2 PSCs are required to report serious incidents to the RSO. In addition, DoS Tier 2 PSCs as well as DoD PSCs are to report serious incidents through the CONOC to ACOD.

4. **Results:** *“DoS PSCs that perform Tier 1 missions (those that directly support the Chief of Mission) are required to have video recording systems in government-provided vehicles. No such requirement exists for PSCs performing Tier 2 mission (those that do not directly support the Chief of Mission) and DoD PSCs.”* (Page ii – Bullet 7)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

DoS Tier 1 PSCs are required to have video recording systems in government-provided vehicles. No such requirement exists for DoS Tier 2 PSCs or DoD PSCs.

5. **Recommendations:** *“Require CONOC and RSO to institute a process to periodically compare serious incident data on Tier 2 missions to identify PSCs.....”* (Page iii - Number 1)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

Require CONOC and RSO to institute a process to periodically compare serious incident data for DoS Tier 2 PSCs to identify PSCs...

6. **Background:** *“The RSO is responsible for coordinating DoS Tier 1 missions, which are defined as missions that directly support the Chief of Mission. For example, Tier 1 missions involve transporting DoS personnel, ambassadors, other diplomats, congressional delegations, and other government employees. Missions performed by DoS PSCs that do not directly support the Chief of Mission, such as transporting DoS contractor and grantee personnel, are characterized as Tier 2 missions,”* (Page 2 - Paragraph 1)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

The RSO is responsible for coordinating missions by DoS Tier 1 contractors.

7. **Background:** *“In addition. DoS PSCs involved in serious incidents while conducting Tier 2 missions and all DoD PSCs on missions are to report serious incidents to the CONOC, which is to forward them to the ACOD”*(Page 2 - Paragraph 2)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

DoS Tier 1 PSCs report serious incidents to the RSO and DoS Tier 2 PSCs report serious incidents to both the RSO and the CONOC, which is to forward

them to the ACOD. All DoD PSCs report serious incidents to the CONOC, which is to forward them to the ACOD.

Footnote 11: *Three DoS PSCs – Blackwater, Triple Canopy, and DynCorp – can perform both Tier 1 and Tier 2 missions.* (Page 2)

DS Comment: Footnote 11 is inaccurate. The question is not whether Blackwater, Triple Canopy or Dyncorp “perform(sic) Tier 2 missions” if they have contracts outside of the WPPS or BSEF contracts with non-DoD contractors/grantees, then they would be Tier 2 PSCs for the purposes those contracts.

Serious Incidents: *Reporting Chain for Serious Incidents* (Page 3 - Figure 1)

DS Comment: There should be a two-way arrow between the RSO and CONOC to reflect the fact each has assigned liaison officers to their respective operations centers, who share data on serious incidents, as reflected in the text of the report.

8. **Contract and Legal Provisions Governing Contractors’ Conduct:** *“The act extends the jurisdiction of U.S. courts to DoD civilians and contractor personnel supporting DoD missions who commit a felony outside U.S. territory while accompanying U.S. forces.”* (Page 5 - Paragraph 2)

DS comment: This is not clearly worded. MEJA covers all DoD civilians and contractors, as well as non-DoD civilians and contractors “to the extent {their} employment relates to supporting the mission of the Department of Defense overseas.”

9. **Contract and Legal Provisions Governing Contractors’ Conduct:** *“The act applies only if the personnel have not been prosecuted by the host nation or under the Uniform Code of Military Justice.”* (Page 5 - Paragraph 2)

DS comment: This is not strictly true. A MEJA prosecution can still happen even if the host country is or has prosecuted, if the Attorney General or Deputy Attorney General personally approve.

10. **Objectives:** *“Because DoS PSCs on Tier 2 missions are required to report serious incidents to both the RSO and the CONOC ... ”* (Page 2)

DS comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

Since DoS Tier 2 PSCs are required to report serious incidents to both the RSO and the CONOC...”

11. Database, Reporting, and Analysis Weaknesses: *“The guidance pertaining to reporting timeframes and what should be reported are very similar, but the definitions of serious incidents are different. MNF-I’s definition is more expansive.”*(Page 6 - Paragraph 1)

DS Comment: The joint DoD/DoS MOA of December 2007 established core standards, including a definition for serious incidents that either agency could exceed in light of its mission and operations. DoDs definition of serious incident is broader than any of the Embassy definitions or the definition used in the MOA.

12. Serious Incident Reporting Process and Requirements: *“If an incident occurs involving a Tier 2 mission, the CONOC is to notify the RSO Liaison officer, who in turn is to relay that information to the RSO operations center. Likewise, if a PSC on a Tier 1 mission has an incident that could affect DoD PSCs or any military operations, the RSO liaison is to notify the CONOC and the relevant military commander in the area.”*(Page 7 – Last paragraph)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

If an incident occurs involving a DoS Tier 2 PSC, the CONOC is to notify the RSO Liaison officer, who in turn is to relay that information to the RSO operations center. Likewise, if a DoS Tier 1 PSC has an incident that could affect DoD PSCs or any military operations, the RSO liaison is to notify the CONOC and the relevant military commander in the area.

13. Problems with Incidents Reported and Recorded: *“Our review found that (1) the CONOC and RSO databases do not agree on incidents involving DoS PSCs on Tier 2 missions even though these PSCs are to report all incidents to both organizations, (2) the CONOC database does not include all incidents DoD PSCs and DoS PSCs on Tier 2 missions say they reported even though the CONOC is to track all such incidents....”* (Page 8 – Paragraph 1)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

Our review found that (1) the CONOC and RSO databases do not agree on incidents involving DoS Tier 2 PSCs even though these PSCs are to report all incidents to both organizations, (2) the CONOC database does not include all incidents DoD PSCs and DoS Tier 2 PSCs say they reported even though the CONOC is to track all such incidents....

14. CONOC and RSO Databases Do Not Agree on Tier 2 Incidents: *“The CONOC maintains a database of incidents reported to it, including incidents reported by DoS PSCs on Tier 2 missions. The RSO also maintains a database involving Tier 2 missions. To test the completeness of the CONOC and RSO databases for incidents involving DoS PSCs on Tier 2 missions, we obtained serious incident data from one PSC that performs Tier 2 missions.”* Page 8 – Paragraph 2)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

The CONOC maintains a database of incidents reported to it, including incidents reported by DoS Tier 2 PSCs. The RSO also maintains a database involving DoS Tier 2 PSCs. To test the completeness of the CONOC and RSO databases for incidents involving DoS Tier 2 PSCs, we obtained serious incident data from one DoS Tier 2 PSC.

15. Table 1: *“To further test the completeness of the CONOC and RSO databases for incidents involving Tier 2 missions, we compared the incidents for both databases for seven PSCs performing Tier 2 missions.”* (Page 9 – Last paragraph)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

To further test the completeness of the CONOC and RSO databases for incidents involving DoS Tier 2 PSCs, we compared the incidents for both databases for seven DoS Tier 2 PSCs.

16. Potential gaps in Subcontractor Reporting: *“ACOD, RSO, JCC-I/A, and the Defense Contract Management Agency told us they have no visibility of PSCs*

who may be performing as subcontractors to other PSCs, reconstruction contractors, grantees, and others.” (Page 19 – Paragraph 3)

DS Comment: Per the comment above, this is an incorrect statement and must reflect a miscommunication during interviews, as most DoS Tier 2 PSCs are subcontractors to reconstruction contractors, grantees, etc. DS is currently working toward comprehensively identifying this community of subcontractors employed by other PSCs, contractors, grantees, and others. DS maintains information on the majority of subcontractors providing such PSC services.

17.Potential gaps in Subcontractor Reporting: *“Because of the problems expressed in the Office of Inspector General report cited above, we asked officials if they had visibility of subcontractor PSCs who may be providing protective services to grantees, reconstruction contractors, or other PSCs.”* (Page 19 – Paragraph 3)

DS Comment: Again, this must be a miscommunication. The OIG report did discuss gaps in visibility over subcontracted PSCs by the USAID mission and its implementing partners (prime contractors/grantees), but CONOC and RSO have had visibility over these Tier 2 PSCs.

18.Some Serious Incidents Involving Department of Defense Private Security Contractors Are Not Being Investigated: *“The RSO is responsible for investigating all serious incidents involving DoS PSCs”.* (Page 20 – Paragraph 2)

DS Comment: This statement is too broad and is contradicted by the discussion in the report where it points out that RSO has discretion. There is no other externally-imposed requirement to perform all such investigations. It is also important to note that the RSO cooperates with Iraqi authorities, and other federal agencies as appropriate, in performing investigations.

19.Differing Use of Security Cameras: *“Although DoS PSCs performing Tier 2 missions are to report incidents to the CONOC, and incident investigations are the RSO’s responsibility.”* (Page 21 – Last Paragraph)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

Although DOS Tier 2 PSCs are to report incidents to the CONOC, and incident investigations are the RSO's responsibility.

20. Differing Use of Security Cameras: *“According to the RSO, the video equipment was installed in government-owned vehicles used by the three contractors that perform Tier 1 missions – Blackwater, Triple Canopy and DynCorp. (Page 22 – Paragraph 2, last sentence)*

However, the equipment is not installed in vehicles used by these same contractors that perform Tier 2 missions.” (Page 22 – Paragraph 3, first sentence)

DS Comment: This passage contains an inaccurate definition of Tier 1 and Tier 2; it should read as follows:

According to the RSO, the video equipment was installed in government-owned vehicles used by Tier 1 PSCs for WPPS missions.

However, the equipment is not installed in other government or contractor-owned vehicles used by these same contractors when performing non-WPPS missions.

Recommendation 6: *Task supporting organizations, such as the Defense Contract Management Agency, to identify all PSC subcontractors that support DoD and DoS contracts. (Page 27)*

DS comment: The Defense Contract Management Agency does not handle DoS contracts. DS is already in discussions with the Department of State Office of Acquisition Management to identify all PSC subcontractors that support DoS contracts and grants. This effort is to ensure DS identifies 100% of the Tier 2 PSCs, and is a follow-on effort to several data calls conducted by Embassy Baghdad over the last 6 months which is also designed to identify these firms.

Drafted: DS/IP/NEA-I – K Maloy
04/08/09, Ext. 4-3034

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