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THE COMPREHENSIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012 (S. 2139)

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

APRIL 17, 2012

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THE COMPREHENSIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012 (S. 2139)

TUESDAY, APRIL 17, 2012

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:32 a.m., in Room 342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Portman.

Senator MCCASKILL. I want to welcome everyone to this hearing this morning.

I know that Senator Portman will be arriving shortly. I did not want to keep our first witness waiting.

My colleague, Senator Jim Webb, is here to give testimony about our subject today. As a brief introductory remark, I am not going to go into who he is and why he is here because I think most people know who he is. But I do want to say just about why he is here.

When I came to the Senate in 2007, Senator Webb and I quickly found that we had a place we wanted to work on, and that was contracting and contingencies. His background in the military was a great asset to us as we put together the War Contracting Commission legislation, and he and I worked on it together and succeeded back in the day. Before Senator Warner had retired, Senator Warner, as the Ranking Member of the Armed Services Committee was a tough sell. I mean, people need to remember the context that this legislation was brought forward in. It was when President Bush was still President, and I think there was a fear that this Contracting Commission was a political exercise. And, of course, it was far from that. It was something that was really needed to take a hard look at what had gone wrong with contracting and contingencies and to build a body of work that could change the culture around contracting and contingencies for the long haul.

I want to thank him for his friendship and his hard work on this issue and look forward to his comments today as we look at legislation trying to implement the recommendations of the Commission that we worked hard to create together.

Senator Webb.

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TESTIMONY OF HON. JIM WEBB,[1] A UNITED STATES SENATOR FROM THE STATE OF VIRGINIA

Senator WEBB. Thank you very much, Madam Chairman and Ranking Member Portman and other Members of the Subcommittee. I know you have two full panels. I will be brief here. I would ask that the full written testimony that I have would be included at the end of my brief oral remarks.

Senator MCCASKILL. Without objection.

Senator WEBB. Thank you. I am here to basically express the strongest support possible for the movement of this legislation that you, Madam Chairman, and I have worked on in different capacities for now, I guess, 5 years. At a time when the Senate is continually bogged down in symbolic votes rather than issues of governance, I am very proud of what we have been able to do on this issue since 2007. I would say it has been one of the great pleasures of being in the Senate, to have been able to get this legislation into place, the first round of it with the Wartime Contracting Commission and hopefully with this recommendation that will be implementing some of the findings of that Wartime Contracting Commission.

As the Chairman mentioned, she brought a strong background in auditing to the Senate. I spent 5 years in the Pentagon in different capacities, including 4 years on the Defense Resources Board. One of my eye openers coming to the Senate was sitting on the Foreign Relations Committee in 2007 when we had a hearing on Iraq reconstruction programs with the State Department and they mentioned in their testimony that they had $32 billion in Iraq reconstruction programs that had been appropriated and were in some form of being put into play. And I asked, in a way that I would normally have asked if I were in the Pentagon years before, to see the contracts and the amount and who the contractor was and what the state of implementation was on these different contracts and they could not tell us. We worked with them for months and they could not tell us where $32 billion had been spent in a specific way where we could evaluate the results.

That was one of the motivations that caused me to start working as avidly as I did, along with Chairman McCaskill, to see if we could not have the management structures in place, catch up with the realities of what had happened in the post-9/11 environment of military commitments overseas. This is a particular problem in the State Department and the United States Agency for International Development (USAID). I do not think they had anticipated these sorts of programs before the situation that existed once September 11, 2001 occurred.

We were very lucky, as Chairman McCaskill mentioned, to have the support of Senator John Warner when we were advancing this legislation through the Senate. He was my senior Senator, was a Republican. I had worked with him when I was a young Marine, my last year in the Marine Corps, when he was Secretary of the Navy. I had followed him as Secretary of the Navy. And he, by stepping forward and demonstrating that this was an issue with wide concern and from people like himself who had spent time in

[1] The prepared statement of Senator Webb appears in the appendix on page 39.

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management positions in the Pentagon, really helped us push this over the threshold and into reality.

We had a bipartisan Wartime Contracting Commission. I think they did a really fine job. I personally will say I am very disappointed that a lot of the findings have been sealed up for 20 years. But the overall recommendations, I think, are something that we will be able to work on in terms of implementing legislation that get into management, policies, and how we bring rigor to the process.

And I would like to emphasize here, as I did in our press conference earlier, that I believe, and I want to acknowledge that the great majority of the contractors who participated in this process since September 11, 2001, are not only reputable, but they have really done a very fine job in an environment that a lot of people had not anticipated. So this is not a piece of legislation nor was it a major goal of this process simply to bash wartime contractors. We cannot get along without them. This has been an effort to put the right kind of structure into place so that we can have efficiently run, well managed, and effective wartime contracting and operational contingencies now and in the future.

So I was very pleased to have worked in detail on this legislation as it was developed. It has my strongest support and I thank Senator McCaskill for her untiring efforts here in order to bring good governance into this body.

Thank you, Madam Chairman.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Senator Webb.

I will make a brief opening statement and then turn it over to my colleague, Senator Portman, for a brief opening statement, and then we will ask our first panel of witnesses to come to the table.

On August 31, 2011, the Commission on Wartime Contracting (CWC) in Iraq and Afghanistan presented its final report to Congress. On February 29, 2012, Senator Webb and I introduced S. 2139, the Comprehensive Contingency Contracting Reform Act of 2012. This legislation is based on the findings and recommendations of the Commission.

This morning, I have the honor of hearing the distinguished representatives of the Defense Department (DOD), State Department, USAID, and respective agencies' Inspectors General (IG) present their views on this important legislation. Based on their contributions and what we have heard from many of the stakeholders with whom I and the Subcommittee staff have met with over the last few months, and on the input of other Senators, we will revise the legislation and introduce a new version for consideration by the Homeland Security and Government Affairs Committee (HSGAC). This legislation will increase accountability for wartime contracting and transform the way the Federal Government awards, manages, and oversees wartime contracts. It will help ensure that the waste, fraud, abuse, and mismanagement that we saw in Iraq and Afghanistan will never happen again.

I want to make a few points about today's hearing. First, we are here today to seek input from the Executive Branch agencies and Inspectors General because we want to get this right. The Sub-

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committee has previously met with contractors and other stakeholders regarding this legislation. However, major portions of this bill deal with accountability and responsibility for the government, and that is by design. Therefore, I encourage you to share any suggestions you have to improve this legislation.

Second, this legislation builds on existing structures and rules to solve the problems identified by the Commission. S. 2139 requires each agency responsible for wartime contracting to establish clear lines of authority and responsibility for all aspects of contingency contracting. It requires the Department of Defense, the State Department, and USAID to improve their training and planning for contract support and contingencies. The legislation reduces reliance on noncompetitive contracting practices and restricts subcontracting practices that have resulted in a lack of transparency and visibility.

The legislation requires agencies to conduct risk analyses before relying on private security contractors (PSC) and to terminate unsustainable reconstruction and development projects. It also strengthens tools to combat human trafficking. This approach is pragmatic and will reduce the potential for waste, fraud, and abuse in future wars.

Many of the witnesses today have already testified numerous times before this Subcommittee about lessons learned in Iraq and Afghanistan. I commend the Departments, particularly the Defense Department, for recognizing that they have shortcomings in implementing changes. However, the Commission concluded in its final report that, quote, "meaningful progress will be limited as long as agencies resist major reforms that would elevate the importance of contracting." I want to put you all on notice today that such resistance is no longer acceptable.

Today and in the weeks and months to come, we have an opportunity to make a real change in the way government spends money during wartime. It is not too late to prevent further waste in Afghanistan, and it is not too late to prevent the problems in Iraq and Afghanistan from occurring in the next war, whenever and wherever that may be.

Everyone knows that contracting in a wartime environment is not going to go away. It will be here with our Nation in the future. It is imperative that we no longer make excuses, rationalizations, or hide behind existing structures to defend the gross inadequacies that our government has displayed during contracting processes in Iraq and Afghanistan. We must fix these problems now while the memory is fresh, while the memory of these failures are fresh, and before the harsh lessons of Iraq and Afghanistan are forgotten.

I remember on my first trip to Iraq on contracting oversight, I remember being accompanied by a general, a high-ranking general in the Army, and I remember the conversation where it was said, "You know, we did a lessons learned after Bosnia. I just do not know what happened to it." I want to make sure that those same sentences are not uttered during the next contingency as we face contracting in the most difficult environment that contracting occurs, and that is when our men and women are putting their lives on the line for our security and our freedom.

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I thank the witnesses for being here today and I look forward to their testimony.

Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Madam Chair. I appreciate your comments and I am pleased that our witnesses are experts who can give us some input, as you say, and it was good to hear from our colleague from Virginia, Senator Webb.

It is an incredibly important hearing and it is an opportunity to examine the lessons we have learned from wartime contracting, from our experience over the last decade, 10 years in Afghanistan, 9 years in Iraq. And it is a chance to hear from witnesses on some of these reforms that are necessary to improve the stewardship of our taxpayer dollars in some very challenging environments.

This past August, as was noted, the Bipartisan Wartime Contracting Commission issued their final report on its investigation of our government's use of contractors in Iraq and Afghanistan. In my view, the Commission came to a very troubling bottom-line conclusion. It was estimated by the Commission that out of the $206 billion we spent on service contracts in Iraq and Afghanistan, which includes everything from building military installations to training election workers, between $31 billion and $60 billion was lost to what they termed to be avoidable waste. So out of $206 billion spent on service contracts, between $31 and $60 billion lost to avoidable waste.

It is a difficult environment. Winston Churchill once famously said, "The only thing certain in war is that it is full of disappointments and also full of mistakes," and it is true. It is a tough environment. But when it comes to wartime contracting, we certainly have a responsibility to look back and understand what reforms are necessary to avoid making more costly mistakes.

And this is not just a retrospective exercise, of course, because contractors are still very much engaged, particularly in Afghanistan, where the United States still has, as we count them, over 100,000 private contractors. Even in Iraq today, after the last U.S. troops returned home in December, the Departments of Defense and State maintain roughly 30,000 private contractors. At this time of serious fiscal challenges and trillion dollar deficits, we must do all we can to avoid waste and to get the best possible value out of the taxpayers' dollar.

The Wartime Contracting Commission along with a long series of Inspector General reports identified some of the issues we should be focused on. The challenges range from improving the use of reliable price information, which we will talk about today, to ensure that the government is getting a fair deal, to tightening restrictions on the use of non-competitive contracts, to strengthening oversight of subcontractors, who are too often insulated from direct accountability.

In addition, looking ahead, one of my principal concerns is that of sustainability, and by that I mean how do we ensure that our work, reconstruction, development work, and so on, will last and be carried on by the Afghan and Iraqi government and the people of those countries. The issue is critically important because it is about

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making sure that our good investments do not go bad. That means we have to consider not only, for example, how many additional schools and health clinics we can construct, but who is going to sustain them. Do they have the medical professionals and the teachers to be able to sustain them and keep them going? On this issue, the Wartime Contracting Commission was not very optimistic, and I will look forward to hearing from our panel on what steps are needed to reduce this risk of future waste or, again, lack of sustainability.

Of course, beyond ensuring that wartime contracting is fiscally sound, we have also got to ensure it is performed consistently with our deeply held values as Americans. On that score, it was concerning to see the Commission's report on what they called the tragic evidence of the recurrent problem of trafficking in persons (TIP) by labor brokers or subcontractors of contingency contractors. The report said that existing prohibitions on such trafficking have failed to suppress it. Labor brokers or subcontractors have an incentive to lure third-party nationals into coming to work for U.S. contractors, only to be mistreated or exploited.

One of the Commission members, Dov Zakheim, a former Reagan and Bush Administration defense official, testified before the Armed Services Committee here in the Senate that these findings were, in his view, just the tip of the iceberg. And both DOD and State Department IGs have told us that we lack sufficient monitoring to have clear visibility into labor practices by contractors and subcontractors.

As many of you know, that is why we introduced legislation recently. Senator Blumenthal and I are the original sponsors, but it is bipartisan legislation. We have been joined by Senator McCaskill, the Chair here this morning, as well as Senator Rubio, Senator Lieberman, Senator Collins, Senator Franken, and it is intended to strengthen the existing protections against human trafficking directly in connection with overseas government contracts.

Broadly defined, human contracting means forced labor and other coercive labor practices that contribute to trafficking. It includes recruiting workers to leave their home countries based on fraudulent promises, confiscating passports to limit the ability of workers to return home, charging workers recruitment fees that consume more than a month's salary, and many other forms of abuse that were mentioned in the Commission's report.

We should be clear that the overwhelming majority of U.S. contractors and subcontractors are law abiding and reputable and they are doing a good job in a difficult situation. They have made it a priority to ensure that abusive labor practices play no role in this challenging work they are doing in Iraq and Afghanistan.

Our proposal is designed to ensure that the best practices adopted by those contractors become standard practice for all contractors, and they include requiring contractors to have a compliance plan in place and reporting and monitoring requirements to ensure that credible evidence immediately triggers an investigation and giving contracting officers more tools to hold violators accountable. I am hopeful we can work to make these commonsense and bipartisan reforms the law of the land.

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We have invested heavily to achieve the goal of building up civil institutions, functioning economies, and stable constitutional governments in both Afghanistan and Iraq, and our military men and women have done everything they have been asked to do and more in Iraq and Afghanistan. They perform with extraordinary skill and bravery under the toughest of circumstances. Getting this overseas contracting right, especially in the area of reconstruction and development, is critical to consolidating the hard-won gains that they have achieved.

Madam Chair, again, thanks for holding this hearing. I look forward to hearing from our witnesses today.

Senator MCCASKILL. Thank you, Senator Portman.

If our first panel of witnesses would come forward, and while you are doing that, I will introduce you.

Richard Ginman assumed the position of Director of Defense Procurement and Acquisition Policy (DPAP) in June 2011. Mr. Ginman retired as a Rear Admiral from the U.S. Navy after 30 years of service in 2000. Prior to assuming his current position, he served as Principal Deputy to the Director from 2008 until 2010, and Deputy Director, Contingency Contracting and Acquisition Policy, from 2010 until assuming the position as Director.

Patrick Kennedy has served as Under Secretary for Management for the United States Department of State since 2007. He has been with the Department of State for 39 years and has held positions including Director of the Office of Management Policy, Rightsizing and Innovation, Assistant Secretary for Administration, U.S. Representative to the U.N. for Management and Reform, Chief of Staff of the Coalition Provisional Authority in Iraq, and Deputy Director of National Intelligence for Management.

Angelique Crumbly is the Acting Assistant to the Administrator for the Bureau of Management for the United States Agency for International Development. She is a member of the Senior Executive Service (SES) with more than 20 years of Federal service and has held several key positions at USAID, including Senior Deputy Assistant Administrator in the Bureau for Management and Director of the Office of Management, Policy, Budget, and Performance.

It is the custom of the Subcommittee to swear in all witnesses that appear before us, so if you do not mind, I would ask you to stand.

Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KENNEDY. I do.

Mr. GINMAN. I do.

Ms. CRUMBLY. I do.

Senator MCCASKILL. Let the record reflect that all the witnesses have answered in the affirmative. Please be seated.

We will be using a timing system today. We would ask that your oral testimony be no more than 5 minutes. Your written testimony will be printed in the record in its entirety.

I am told that we have committed a protocol gaffe, Mr. Kennedy. That under the hierarchy of Under Secretaries versus Directors and Assistant Administrators that you should be first in the pecking order at this hearing, so we will call on you first for your testi-

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mony concerning your input into this legislation from the perspective of the Department of State.

TESTIMONY OF PATRICK F. KENNEDY,[1] UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF STATE

Mr. KENNEDY. Madam Chairman, I certainly defer to the Chair and you may please call upon the witnesses in whatever order you wish.

Senator MCCASKILL. It is fine. You can go ahead, Secretary Kennedy.

Mr. KENNEDY. Thank you. Chairman McCaskill, Ranking Member Portman, thank you for inviting me to discuss the Comprehensive Contingency Contracting Reform Act of 2012. We share your desire to strengthen contingency contracting. Our review of the bill continues and we very much welcome, Madam Chairman, your request that we work with you. We have met with your staff once and we very much appreciate your invitation. We look forward to continuing to do so.

This legislation builds on the important work of the Commission on Wartime Contracting, an independent, bipartisan panel that you, Chairman McCaskill, created with Senator Webb. The Department worked continuously with the Commission from its formation in 2008 until its sunset, gaining valuable insight. We have taken many steps to improve our contingency contracting based on the work of the CWC and other oversight entities and our own lessons learned. We are now engaged with the Government Accountability Office on its review of the Iraq transition, contingency contracting, and the CWC's final report. We have learned much from the Iraq transition, working closely with DOD, USAID, and interagency partners.

On April 3, Secretary Clinton, addressing cadets at the Virginia Military Institute, described the Iraq transition as the largest military to civilian transition since the Marshall Plan. We are now taking the lessons learned in Iraq and applying them to contracting planning and execution in Afghanistan.

State's centralization of acquisitions for goods and services in our Acquisitions Management Office, which together with its two regional procurement support offices handle over 98 percent of our contracted dollars. This centralization of acquisitions obviates the need for the extensive additional policy guidance and oversight in a dispersed acquisition organization. We have hired 103 additional acquisition management staff since 2008 using our working capital funds, 1 percent fee on all procurements. This has enabled us to devote 37 contracting officers and support personnel to Iraq and Afghanistan, and we have trained and deployed more contracting officer representatives, with 1,080 certified contracting officer representatives (CORs) in 2011 and 1,200 total projected by the end of this year.

To elevate accountability for contracting as called for in the Secretary's Quadrennial Diplomacy and Development Review, the requesting bureau must now ensure that adequate resources are identified early in planning. The cognizant Assistant Secretary

[1] The prepared statement of Mr. Kennedy appears in the appendix on page 44.

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must certify that planning and oversight is adequate for every service contract valued at an annual expenditure of over $25 million and also verify annually that oversight continues to be sufficient.

We have also increased accountability by mandating that contract oversight work elements include in performance appraisals of technical personnel with contract management responsibilities. All CORs and government technical monitors (GTMs) must now complete a 40-hour training course, which we updated to be more interactive, skills based, and adult learning focused. A separate class session has been tailored for diplomatic security CORs who deal with local guards and other security programs overseas. All Department CORs supporting DOD-issued contracts for our Iraq mission take additional DOD training in the contingency environment and any other specialty training related to that specific contract. This ensures that State personnel managing DOD contingency contracts meet the DOD standard.

To improve our suspension and debarment efforts, we have issued detailed procedures and provided training to grants officers and contracting officers. Suspension activities increased from no suspension in 2009 to five each in 2010 and 2011 and 19 actions halfway into fiscal year (FY) 2012. Debarment activity increased from no debarments in 2009 to six issued thus far halfway through 2012. This increase is due to more active coordination between the Department and our Office of Inspector General (OIG) investigators, stronger referral activity, and improved processes and focus within the suspension and debarment office (SDO).

Contingency contracts now require special vigilance against trafficking in persons, and initiatives have been undertaken at State to address TIP contracting issues. Contracting officers and CORs are trained as our front line in preventing contractor TIP and worker abuses. Contracting officers tailor specific oversight requirements on local, service, and contract type. Contracting officers travel overseas to monitor performance at the site and enforce TIP programs. In some locations, we have hired a direct hire program manager or a contracting officer representative lives onsite with construction and security staff at their housing areas. New solicitation language regarding recruitment includes recruitment plans, and submission of agreements has been developed to prevent maltreatment of workers. We continue to strive for zero tolerance of trafficking in all our contracts.

The Department has taken a significant number of positive steps to improve our contracting function. As the CWC recommended, we have strengthened contract administration in conflict affected States through hiring and training adequate Federal personnel to provide strong governmental oversight of contractors.

The bill you have introduced, S. 2139, has many positive elements and we look forward to working with you on contingency contracting.

Thank you very much, and I look forward to your questions.

Senator MCCASKILL. Thank you very much.

I apologize for mispronouncing your name. Mr. Ginman, we will take your testimony now. Thank you.

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TESTIMONY OF RICHARD T. GINMAN,[1] DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. GINMAN. I have learned to respond to almost any pronunciation.

Senator MCCASKILL. I know the feeling. [Laughter.]

Mr. GINMAN. Chairman McCaskill, Ranking Member Portman, I welcome this opportunity to discuss the proposed Comprehensive Contingency Contracting Reform Act of 2012, the impact the legislation would have on the Department of Defense.

I have addressed the Department's position on each of the provisions in the proposed bill in my written testimony, so I am not going to repeat that now.

Senator McCaskill, you and Senator Webb also cosponsored the legislation that created the Commission on Wartime Contracting, and I would like to thank both of you for your leadership on this important topic. The Commission's efforts spanned 3 years, and their August 2011 final report recommendations are the basis for many of the provisions of this bill.

The Department maintains a scorecard to manage our progress against all of the Commission's recommendations. The Government Accountability Office is currently evaluating the Department's implementation of the Commission's recommendations and we have been actively providing information on our progress to them.

The Department has been and continues to be focused on improving operational contract support. It has been a journey and we believe we are making good progress. The bill we are here to discuss today is another positive step in that journey.

The Department of Defense concurs with many of the provisions of the bill, but we do have some concerns and we would like to work with the Subcommittee to resolve those.

We are committed to enhancing contingency contracting and is in favor of legislative efforts to augment the ongoing Departmental initiatives to oversee contingency operations. We are especially appreciative of the 2012 National Defense Authorization Act (NDAA) coverage of no contracting with the enemy, access to subcontractor records in an overseas contingency operation (OCO), and the increased authorities provided to the reachback cell that supports the joint theater support contracting command.

In closing, I wish to reiterate the Department's appreciation for your continued commitment to improving operational contracting. Like you, the Department is focused on meeting the warfighters' current and future needs while judiciously managing DOD's resources and balancing risk. Much has been accomplished, but, of course, challenges remain.

Thank you for the opportunity to provide you the Department's reactions to this bill. I ask my written testimony be submitted for the record and I welcome your questions.

Senator MCCASKILL. Thank you, Mr. Ginman. Ms. Crumbly.

[1] The prepared statement of Mr. Ginman appears in the appendix on page 56.

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TESTIMONY OF ANGELIQUE M. CRUMBLY,[1] ACTING ASSISTANT TO THE ADMINISTRATOR, BUREAU FOR MANAGEMENT, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Ms. CRUMBLY. Chairman McCaskill, Ranking Member Portman, thank you for the opportunity to discuss the potential impact of the Comprehensive Contingency Contracting Reform Act on the U.S. Agency for International Development. I will briefly summarize my remarks and ask that my full statement be entered into the record.

Madam Chairman, Senator Portman, as you know, more than 9,000 men and women of the USAID work to provide effective economic development and humanitarian assistance in support of U.S. foreign policy goals. How we improve our contracting practices, including in contingencies, directly impacts the success and sustainability of our mission. Accountability to Congress and the U.S. taxpayer for the funds we use is a duty and it is a duty that we take very seriously.

In November 2011, when USAID Administrator Rajiv Shah asked me to lead the Bureau for Management, he did so because he knew that I was a career civil servant with more than 20 years of experience making things work at the Agency. Throughout my career, I focused on making our business practices more efficient and effective with the overall goal of enhancing performance while reducing unnecessary cost, so I understand the motivation behind this legislation very well. It addresses many of the management challenges highlighted in the report of the Commission on Wartime Contracting that you, Senator McCaskill, created along with Senator Webb. It also addresses some of the most important issues in our current engagements in Afghanistan and Iraq and those we could contend with in future contingencies.

USAID has already begun to implement the lessons learned from Iraq and Afghanistan. Over the past 2 years, Administrator Shah has instituted one of the most comprehensive reform packages I have seen in my time with the agency. Our USAID Forward Reforms, as we have named them, are designed to ensure that we provide a more effective business model and deliver more sustainable and results driven development programs.

Implementation and procurement reform is a key element of USAID Forward, and I want to note that this reform agenda is complementary to many of the recommendations of the CWC, so USAID has already made great strides in enhancing the oversight and accountability for our acquisition and assistance portfolio.

For example, we are increasing transparency. We have been working actively with our Department of State colleagues to make foreign assistance data available to the American public. As a result, anyone can view USAID spending, including overseas contingency operations, online at foreignassistance.gov.

We have been actively engaged in strengthening our oversight. In February 2011, we stood up a Compliance Division within the Bureau for Management's Office of Acquisition and Assistance (M/OAA) to serve as the central repository for any and all referrals of administrative actions, including suspension and debarment. In just one year, the Division has issued 102 administrative actions

[1] The prepared statement of Ms. Crumbly appears in the appendix on page 81.

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and recovered nearly $1 million in taxpayer funds, compared to eight such actions between 2003 and 2007.

We are promoting enhanced competition. In 2010, we established a Board for Acquisition and Assistance Reform (BAAR). In its first year alone, the Board's recommendations resulted in a 31 percent increase in prime awardees, from 29 to 38. This is significant because it means we are broadening our partner base and reducing dependence on any single organization.

USAID has instituted several cost saving measures and our acquisition savings plan has yielded approximately $171 million in cost savings or cost avoidance since 2010.

While we have had some difficult challenges in Iraq and Afghanistan, we have also achieved some significant successes. As Administrator Shah noted before the CWC, in Afghanistan, we have put more than 2.5 million girls back in school, helped rebuild the Afghan civil service, aided farmers in growing legitimate crops, and assisted in dramatically improving health care, particularly among women. In Iraq, we have made significant contributions toward diversifying the economy and promoting women's participation in the market.

With regard to your legislation, my written statement details comments and concerns that we have on specific provisions of the bill and I am happy to address any particular section that you wish. But I would like to take this opportunity to compliment you and your staff for your leadership on this issue and your willingness to engage in a dialogue because we all share the same goal, enhanced accountability in overseas contingency operations.

Again, thank you for the opportunity to be here today and for your support of USAID. I look forward to our discussion.

Senator MCCASKILL. Thank you.

I am going to really try to make an effort today to take off my typical hat in this Subcommittee, where I am kind of tough on folks and try to point out inadequacies and make a point by using the power of almost a cross examination, and I am going to really try—because I really do want this to be about how we can get this legislation in a place that it is not going to be just something that is ignored or that is checking a box that we are completing the work of the Wartime Contracting Commission. I really want this legislation to be a framework that is workable for your agencies.

And so I want to underline my sincerity about getting your input, and whether it is today in the give-and-take of this hearing or whether it is by members of your staff sitting down and slogging through the difficult process of going through phrases and going through sections of the bill and double-checking. What I do not want to have happen is for us to get this legislation passed, in its entirety or partially, and then have a hearing several years down the line and realize that nobody paid much attention to it.

So this is your opportunity, and with that will come the danger that I hope I or somebody who will sit in this chair will not let you off the hook or your agencies off the hook in a few years when you say that legislation just was not workable. I do not want those words to ever come out of the mouth of you or your successors in yours jobs as it relates to improving contracting.

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So with that, let me get started on what is one of my—I have several overarching concerns about this, but in the interest of time, I am going to hone in on some of my, quote-unquote, "favorites," and I mean that sarcastically.

Let me start with debarment and suspension. I think the Air Force has provided such a good role model for everyone as it relates to suspension and debarment. I was interested to hear in your testimony, Ms. Crumbly, about how you all have really stepped it up in terms of looking at performance on contracts and whether or not a suspension or debarment is something that should be considered.

Just to give you some big numbers, according to the Defense Department, over a 5-year period, we had—let me get the exact numbers, because I want to make sure I get it right—in 2011, the Defense Department found that over a 10-year period, the Department had awarded $255 million to contractors who were convicted of criminal fraud, and $574 billion to contractors involved in civil fraud cases that resulted in a settlement or judgment against the contractor, many of whom were never suspended or debarred. In 2011, the General Accounting Office (GAO) reported that the State Department had only had six suspension or debarment cases with over $33 billion in outstanding contracts. Now, look at Air Force. Air Force had 367 suspension or debarment actions in a single year last year. The State has had six in 5 years.

The Air Force suspension and debarment officer is independent from the acquisition chain. So somebody who is involved in acquiring stuff is not involved in determining whether or not there should be a suspension or a debarment. The State Department SDO does not have those attributes. The State Department's suspension and debarment officer has other duties involved especially also in acquisition.

Why do you not speak to that, Secretary Kennedy, about any resistance or reluctance you might have to separating out the suspension and debarment officer from any duties particularly related to acquisition. It is kind of hard to be in charge of buying something or buying services and then turning around later and say, I really screwed up and gave it to a bad guy. It seems to me that separating that duty makes so much commonsense, and I am curious as to your input on that.

Mr. KENNEDY. Senator, I fully agree with you, but I believe that is the process that we have in place at the State Department now. We have a head of contracting activity, a senior career Senior Executive Service civil servant, who is responsible for all of our contracting activities. It is her responsibility to buy and it is her warranted contracting subordinates who do all our buying.

We have a separate Senior Executive Service career civil servant who we call our Procurement Executive. He has no responsibilities to actually buy anything. He sets the policies and the practices of the State Department but does not engage in buying. He is in charge of the suspension and the debarment activity.

So we fully agree with you, Senator. We believe that it is absolutely correct to split the duty of buying from, in effect, the duty of oversight with due respect to our Inspector General, who also has the larger oversight framework. And so it is our Procurement Executive who is the debarment official and who, thanks to his

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good work, we have increased the number of suspension and debarments significantly, as I outline in my testimony. So we agree with you, Senator.

Senator MCCASKILL. So in our briefing, we were told that Corey Rindner is in the Office of Procurement Executive (OPE), an office that also assists State in contracting for supplies and services. That is incorrect?

Mr. KENNEDY. He writes the policies, ma'am. He does not buy anything. He is a warranted contracting officer, yes, but he does not procure any goods or services for the State Department. We have hired—and it was actually my predecessor who hired him—someone with wide and deep experience in contracting, because who would better know how to set policies and to discover when you should suspend or debar someone if you do not have that background. But he does not engage in procurement activities.

Senator MCCASKILL. Would it make sense for you to have somebody full-time just on suspension and debarment? With the amount of money that is being contracted by State, would it not be better to have someone whose full responsibility was just suspension and debarment?

Mr. KENNEDY. He has staff assisting him, and that staff is a professional staff, and so we believe that we have constructed a pyramid in the Procurement Executive of professionals who know how to write the regulations so that we can hold contractors responsible, and then implement a full-fledged suspension and debarment program should it become necessary for us to take that action. So we believe that we are complying with both the letter and the spirit of what you put forward because we agree with you. It is our responsibility to ensure that every single taxpayer dollar is administered and used to the best interest of the national security of the United States.

Senator MCCASKILL. OK. I am hoping that we can get you to have somebody that is at the top of the organization of suspension and debarment. I do not know whether you need assistance under him, but who has just that responsibility, because we think it is that important in terms of setting the tone. But we can talk about that going forward.

Another one of my big problems is sustainability in terms of projects, and I have a—we tried to do our greatest hits list here for this hearing and this is examples of waste, fraud, and abuse on projects in Iraq and Afghanistan. I think if I asked all of you to guess three or four of the projects that would make this list, I am hopeful that you would know what they were without me reminding you, because it is not good. And I think that the notion that we have actually done a full-bore sustainability analysis is just not borne out by the results of many of these projects and I think it is very important that this legislation include something that requires a certification on sustainability.

I know under the Foreign Assistance Act, USAID is required to have a certification. That is because AID traditionally has been the one doing these projects, and as we know, it is a whole new world out there with Afghanistan Infrastructure Fund (AIF) and with, what I call the Commander's Emergency Response Program (CERP) and Son of CERP and, the way CERP has morphed into

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something far beyond what was explained to me when I first arrived in the Senate.

In a report by the International Security Assistance Force (ISAF), which I previously discussed, there is no persuasive evidence that the commander's emergency response program has fostered improved interdependent relationships between the host government and the population, arguably the key indicator of counterinsurgency success. This legislation would impose a much more rigorous review of these projects, and I have circled several of them.

I have a USAID project in Afghanistan which is the power plant, $300 million power plant. Clearly whatever certification was required, it was flawed, because that is not sustainable. I've got the Khost and Gardez Road in Afghanistan. I have the water treatment plant that the State Department did in Iraq, it was almost $277 million that we know the Special Inspector General for Iraq Reconstruction (SIGIR) found was operating at only 20 percent of capacity because of the failure of the Iraqi folks to knowing how to operate or maintain it. I have the Fallujah water waste treatment system, which was a State Department-Defense Department joint project.

Is there any argument or push-back from any of you on the sustainability front that this has been a failure and that even going—as we speak, we are building things in Afghanistan that will not and cannot be sustained?

Mr. GINMAN. So clearly, at least from the Defense Department perspective, we have not always covered ourselves in glory on this area, and you have listed those examples.

In August, we did create the Afghanistan Resource Oversight Council (AROC). I think we are in our fourth or fifth meeting of that. It has been chaired by Alan Estevez, the Assistant Secretary of Defense for the Logistics and Material Readiness (L&MR) and basically filling in just as the principal deputy. Mike McCord is the principal Deputy and the CFO. And by Jim Miller, who, in his current acting role, has continued to be the Chair. And sustainability has clearly been on the topic and the agenda in each of those meetings for what we can do or not do.

I think when Mr. Kendall testified before the Senate before with General Bash, they expressly talked about what we had attempted to do, to go in, particularly in the Corps of Engineers when we were evaluating projects, to ensuring the sustainability. It was an issue that was discussed and addressed.

And I know as the CERP projects currently come through and are reviewed at the OSD level, over $1 million, we are asking the question up front, what is the sustainability.

So have we done it well in the past? No, Senator. Are we attempting to do a significantly better job as we go forward? Yes. Do I think we have put the structures in place to ensure that we can do a better job? I think we have done that, as well.

Senator MCCASKILL. I guess my biggest problem with this is that I know and understand that our military is the best in the world, because there is nothing—there is no mission they cannot accomplish if we set our minds to it and put the power of the resources of this country behind it.

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And it feels like, to me, that in some room somewhere there is not an acknowledgement that we are using fairy dust to really justify what this country can do when we leave and what they are capable of doing when we leave. Now, I am not even talking about the security forces. I am not even talking about creating an army for a country that has never had a centralized army. I am not even talking about creating police forces that are capable of sustaining the rule of law after we leave. I am just talking about who is going to pay to fix the roads. I am just talking about who is going to operate power plants. I am just talking about who is actually going to have the technical expertise on these water projects.

It is just hard for me to imagine, with the gross domestic product (GDP) of this country, once you take out the huge influx of American dollars, they do not have any money. I mean, is somebody being brutally honest about going forward with these reconstruction projects as it relates to the reality of what this country is once we are gone?

Mr. GINMAN. So again, from the ARPC perspective, I mean, those three individuals are consciously looking at what are the current projects that are there, what do we think the long-term tail is. CSTC–A/NTM–A, the people who are, in fact, overseeing the training of the military forces and the ability to do it, are participants in that discussion. I mean, from my standpoint, I think we have the right people together to, in fact, attempt to address that question and can we, in fact, afford it, and then how is it going to be paid for in the future.

Senator MCCASKILL. We are building highways for a country that does not even have a highway department. I mean, they do not even have any revenue to support their highways. They have no—there is no fuel tax. There is no tax out there that would sustain a highway, and it is just—I just think that this certification included in this—what about the others in terms of sustainability, and then I will turn it over to Senator Portman. Is there anything that you want to add on the sustainability? And, Ms. Crumbly, how did this power plant get built? I mean, who decided a dual-fuel $300 million power plant was a good idea in Tarakhil? I know that is not what it is typically called. I do not know if I am pronouncing it right.

Ms. CRUMBLY. I call it Kabul power plant.

Senator MCCASKILL. Yes. I always say it is in Kabul somewhere, so——

Ms. CRUMBLY. Exactly. In essence, it was an interagency decision to move forward with the power plant. And I do want to note that the power plant is working in terms of performing at peak or surge capacity. I know we were talking——

Senator MCCASKILL. Yikes. Three-hundred million dollars for—that is one expensive generator in an emergency.

Ms. CRUMBLY. No, I understand, and we have turned it over to what they call DABS or the Afghan utility portion of the government. So we are looking at how that can be sustainable in the long term. So it is meeting some needs in the country.

You noted that the Foreign Assistance Act requires that we focus on sustainable development, and we do that in USAID programs.

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It is a key factor for consideration whenever we are developing program or projects.

I would say that we have had some work to do and we have taken seriously the CWC recommendations and, in essence, we have put together a sustainability policy in Afghanistan. And actually, I was talking with the Deputy Director of our Office of Acquisition—I am sorry, Afghan and Pakistan Affairs, and he noted that when he was out in Afghanistan recently, they are implementing the sustainability policy at the provincial reconstruction team level. So we are taking it seriously. We are, indeed, putting policies into place and we are looking at the longer-term sustainability in Afghanistan.

Senator MCCASKILL. Anything from State, Secretary?

Mr. KENNEDY. I would agree that there, clearly, are issues. We have tried to do a lot in very difficult environments, and obviously we have not succeeded completely. I think my two colleagues have addressed that.

The major State Department activity in this regard is our police program. We are working very carefully with both the government of Iraq and the government of Afghanistan to ensure that we are providing them the kind of training that they need and the kind of training that will have a long-term positive impact in their police programs. We have a senior State Department officer who is assigned in both Iraq and Afghanistan as the coordinator for foreign assistance to make sure that we are focusing on sustainability.

Senator MCCASKILL. OK.

Mr. KENNEDY. But it is just as the Admiral said. There is a lot that we can do better and I believe we have learned our lessons.

Senator MCCASKILL. OK.

Mr. KENNEDY. And we welcome the dialogue, as you suggest, on how we can ensure that sustainability is institutionalized and carried forward.

Senator MCCASKILL. Let me know if there is anything about the sustainability portions of this legislation that you think are not sustainable.

Secretary Portman—Senator Portman. [Laughter.]

Senator PORTMAN. I have had a lot of titles. I cannot keep a job. But it has never been Secretary yet. [Laughter.]

First of all, thanks for getting into the sustainability issue. I did not get to hear the entire dialogue, but I think that is a critical part of what needs to be done, as we talked about in the opening remarks. I know you also talked about enforcement, suspension, debarment, and other ways to have enforcement play a more credible role.

I want to talk a little about database of pricing information, which is something that is in Senator McCaskill's bill and it has also been talked about by the Wartime Contracting Commission, and a number of the IG reports have talked about it, as well. It is basically how do you get a fair price, and competition, I think, is the best way. But another way, of course, is to ensure that we have a database of pricing information that is transparent, that is accessible, and that is one that the agencies and departments can rely on.

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One dramatic example is a report that came out of the Special Inspector General's office in July last year which found that one Department of Defense contractor was charging $900 for a control switch that was worth $7. In some cases, the IG found contractors overloading the government with markups ranging from 2,300 percent to 12,000 percent. So we have, again, had plenty of examples of this brought forward by IG reports and by the Commission itself. And again, enhanced competition is a powerful tool, but I would like to hear from our witnesses about the feasibility of a more systemic way to approach this issue, tracking pricing information to ensure that contracting agencies are getting a good value.

Mr. Ginman, if we could start with you, that would be great. I understand DOD has established a pilot program under the Director of Defense Pricing, and the notion here is to create a more transparent and accessible, again, accurate database on prices. Can you talk about the status of that program and whether you think it is working? Is it producing savings?

Mr. GINMAN. Certainly. So I will start out that the Department agrees unequivocally that competition is the best way to get good pricing. The pricing database, or the pricing effort pilot that is under the Director of Defense Pricing is born from, frequently, we do not have good competition, and it is an effort to—what is it we need to do to be able to put into the hands of contracting officers when they are negotiating with companies the information they need.

So examples I would give, the Director, from his former life he speaks, he frequently, when he would negotiate missile buys with the Army, Navy, and Air Force, he would be the one person at the table that, in fact, understood what the entire Department was doing because the Army, Navy, and Air Force did not speak with each other well and understand. So the thought process behind the information that we are gathering is to put in one place, so when a Navy contracting officer is doing a missile buy or buying a ship, whatever, for that particular company, they can turn to this database and find what was the last negotiation that was done, what were the overhead rates that were there. They can turn to the Defense Contract Management Agency (DCMA) again in one place from an overhead rate structure.

It is interesting when I know that an overhead rate for a company is 20 percent this year, 21 percent the next year, 22 percent the following year. What I really want to know is, so tell me how they executed to that rate, so that if, in fact, not a 20, 21, or 22, what they actually executed was 18, 19, and 20, I would like the contracting officer to understand when they are negotiating the contract that, in fact, they under-executed what their rate is that they are bidding, so that you are putting the contracting officer on at least fair footing with equal knowledge that is there.

We have created, it is called the Contractor Business Analysis Repository (CBAR), and I apologize that I cannot do the acronym, but it is a database where we will put up all of the business clearances that are done. We will put up all of the pricing information, all of the rate information that is available to us so that when you are negotiating with any of the major defense contractors, you will be able to go to this one place and see what has everybody else

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done before you. What did they actually negotiate? What were their examples?

I would say, from the way the legislation is written, and asking in ways that it be changed, that we are a little leery that the way it is read is that this is, tell us pricing information. So if I am buying, port-a-potties, what was the price we paid for port-a-potties? I do not think that is what you are intending. So that what we are attempting to do is when we do not have the forces of competition behind us, what we will have is the ability to provide the contracting officers with tools. We are going to make it available—we have agreed that we will make it available to the Office of Federal Procurement Policy (OFPP) and to any other agency that is dealing with those that has the appropriate need to be able to see this information.

We believe—let me step back. When I started doing this as a Lieutenant JG in 1973, we expected contracting officers to be skilled pricers. Probably in the—about 1990 coming forward, as we downsized within the Department, we more or less gave away the pricing capability within the contracting community. So while today we have pockets of people in various commands, we do not have a strong skill set.

So one of the other parts of the pilot project that is there is creating in DCMA groups of people that are experts in pricing and knowledgeable of the specific major companies so that when the different contracting officers are negotiating, they can turn to this group of experts to help.

We have also, not part of the legislation, but we have also reintroduced what we call mid-level training courses to get the 1102 community to again regain the skills that are necessary to be able to adequately price contracts. It is not——

Senator PORTMAN. Admiral, let me interrupt you just for a second. We have a vote in 5 minutes and have to run over there. Although the Chair and I are very fast, we are going to have to take off here in a minute.

If you could get back to us in writing with how you think the pilot is working, it sounds like you have three or four good ideas that are agency-wide that have potential, but tell us how you actually think it is working, that would be helpful.

And then to the other panelists, any thoughts, obviously, on this issue of the pricing database and how to be sure that we are getting a fair price, as was talked about by the Commission.

And then, second, on the trafficking bill with regard to the provisions in the McCaskill bill, if you could get back to us in writing, just give us any comments you have.

And again, I apologize. I am going to run to the floor to vote. I appreciate you being here today and I thank the Chair for holding the hearing.

Senator MCCASKILL. And what I will do is I will ask you all to hold. I will run over, vote quickly, and come right back. I just have a little bit more for this panel and then we have the remaining panel of the IGs. I will be right back. [Recess.]

I would like to look at subcontracting as an area that I would like your input on. There has been—and especially, I would like you to speak before you all leave the stand about whether or not

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you think any of the limitations we have put in here on suspension and debarment or on limitations on subcontracting, if you think they are workable in a contingency. Do they cause you pause, especially if you consider the waivers that we—the provisions that we have in there, the 6-month lead time before any of these requirements would go into effect, the noncompetitive requirements that we have in here.

Let me start with that. Do any of those cause you all problems as it relates to contracting in wartime?

Mr. GINMAN. So, Senator, the one tier, I think is a problem, and I think what the Commission on Wartime Contracting was really trying to get to was why were we unable to break out work that was under the Logistics Civil Augmentation Program (LOGCAP) expressly and to go through that, and I think that is a good question. But then the translation of that to one tier, from our perspective, in any scenario, wartime or not, is just simply unworkable. I mean, I cannot imagine a situation with almost anything we do that I could get to a single tier of subcontracts in doing it. So we think there are ways that can be rewritten that will get to what I believe the Commission was really trying to get to and the objective that would help, and we are happy to work with the staff to come up with those words.

Senator MCCASKILL. Well, as you know, we had a Tamimi problem in the LOGCAP contract where we have kickbacks with KBR, and that is one of those large duration wartime contracts that is kind of the poster child for contracting gone badly. The Khost Trucking contract, with the multiple layers of subcontracts, really had a security risk associated with it as it related to where the money was going. And clearly, we figured out that some of the money was going to the bad guys.

So what we are looking for here is we do not want to get away from the efficiencies that subcontracting might provide, but we have to really get to a much more transparent situation.

Mr. GINMAN. So expressly with Tamimi, and in my opening oral statement, the legislation that the NDA gave us in 2012 that grants this as an overseas environment for access to subcontractor records, where they refused to provide records, that legislation should open the door for us to be able to go and demand those records and get them. Task Force 2010, which is really the group that is trying to follow the money and get there, they really wanted that legislation and we very much appreciate the Senate's help in providing that legislation to us. So I am hopeful that we will not face Tamimi again, at least from a standpoint of not being able to get the records, that legislation has now given us the authority to go get it.

Senator MCCASKILL. And what about the recompeting contracts more frequently?

Mr. GINMAN. Well, I think the Department's position writ large is we prefer shorter length periods of contract. But in all instances, it depends. What is the scenario I am in? What is the frequency with which we want to turn over contracts? I mean, the express example I gave in my written testimony was as we were pulling out of Iraq and we were looking at recompeting some task orders, the Combatant Commander came in and said, I mean, I can focus us

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on getting out of Iraq or I can focus on transitioning contractors. I would much prefer to focus on getting us out of Iraq. Could you please just leave the contractors in place? So we did that.

Senator MCCASKILL. Would that not be a waiver situation under this?

Mr. GINMAN. I think——

Senator MCCASKILL. Is that not envisioned with the waiver? I would think that would be just custom tailored for a waiver situation, when you would document that there was an either/or here and that moving people out was more important than recompeting at that particular juncture.

Mr. GINMAN. Yes. I mean, we have basically said for all our contracts, particularly in those where the technology moves quickly, we do not want contracts that exceed 3 years. I mean, that has been the Department's position. If we are in sole source contracts, we would like to find ways to get the competition. But if I am in a scenario where I cannot get the competition, I am going to have a lot of waivers. I mean, if I really am in a situation of sole source, it is going to be sole source for an extended period of time, then you would see a lot of waivers to go do that.

I mean, the waiver provision certain provides the out, but I think that length of term of a contract is truly dependent. Tell me where I am. Tell me what the opportunities are. Tell me the technology of what I am buying. And then tell me how well I can price it.

The other issue we have with long contracts is it is difficult to price effectively for a long period of time at a fixed price. So we look for shorter contracts.

Senator MCCASKILL. You just know——

Mr. GINMAN. Yes.

Senator MCCASKILL [continuing]. That if a contract is more than 3 or 4 years old, that someone is on the bad end of it.

Mr. GINMAN. Yes.

Senator MCCASKILL. Now, in some instances, it may be the contractor. Unfortunately, not often enough. I mean, I should not say that. I do not want the contractor to be on the bad end of it. I am focused on saving the government money, so I think that the more frequent recompetes—and I know that there is a culture that kind of weighs against recompeting because it is a pain to compete. This is not like an exercise that everyone looks forward to, either the ones bidding or the ones running the competition.

And clearly, I mean, the notion that KBR was a noncompete came from Bosnia. Everyone then turned to Halliburton KBR because they had done it in Bosnia. And it was, like, everybody is sitting around, who can do it? Well, we know they can. They were in Bosnia and they got it noncompete and made a huge amount of profit off that contract, much more than they needed to make had we been more aggressive about overseeing it.

Mr. KENNEDY. Senator, if I may——

Senator MCCASKILL. Yes.

Mr. KENNEDY. We are in favor, absolutely, of full and open competition, and all the points that you made are absolutely correct. But if I could just posit one scenario. The State Department has put out, in effect, competitively bid, a number of master contracts and then we issue recompetitively bid task orders once we have

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qualified a group of companies. We would want to make sure that nothing in the exact legislation could be interpreted to mean that we would have to back away from that activity. We go out. We note something either on food service or security service or whatever, go to a number of major companies, competitively bid, then award and put them on the master list, and then we award them task orders.

We would not want this limitation to say, well, since that contract is, in effect, over 2 years old, you cannot then issue a task order that is valid for more than 1 year. That would set us back, because we are trying, as you have put forward almost in the preamble of your legislation, to make sure that we have planned. And so one of the steps that we are taking to plan for the future is to have master contracts in place, competitively bid, that then we can utilize them, having obtained the best price, and issue task orders.

Senator MCCASKILL. I am curious, how long do you envision the master contracts being in place?

Mr. KENNEDY. Five years, ma'am. And then we issue task orders that would run the duration.

Senator MCCASKILL. And was the security contract a master contract at the embassy in Kabul?

Mr. KENNEDY. No. That is one of the steps we have taken since then, to put this into place.

Senator MCCASKILL. OK. So there was not a master contract with subs——

Mr. KENNEDY. No. Those were individually bid.

Senator MCCASKILL. OK.

Mr. KENNEDY. So we want competition. We want to do the best. But we want to make sure that our planning that has led to a contract in place would e available to us given a fluid situation.

Senator MCCASKILL. OK. Ms. Crumbly, could you speak—in response to a report by the Senate Foreign Relations Committee, your administrator wrote, in Afghanistan, quote, "now includes a subcontractor clause in new awards that permits USAID to restrict the number of subcontract tiers and requires the prime contractor to perform a certain percentage of the work." Have these changes been implemented?

Ms. CRUMBLY. Yes, they have.

Senator MCCASKILL. And so they are in every contract now in Afghanistan?

Ms. CRUMBLY. That is correct and the limitations are to a two-tier subs, so——

Senator MCCASKILL. Two tier?

Ms. CRUMBLY. Two tiers, exactly. We found that is what works operationally best in Afghanistan——

Senator MCCASKILL. And have you found any problem with having the two-tier requirement? Is there anything that you think that, in terms of value of competency, that you have sacrificed for a two-tier limitation?

Ms. CRUMBLY. I would say not as yet, but we need time to see the implementation——

Senator MCCASKILL. How long has this been in place?

Ms. CRUMBLY. I want to say within the last 6 months? Mm-hmm, 6 months.

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Senator MCCASKILL. Kudos, and I would be very anxious to see if you hit any bumps——

Ms. CRUMBLY. OK.

Senator MCCASKILL [continuing]. Because that seems reasonable to me——

Ms. CRUMBLY. Mm-hmm.

Senator MCCASKILL [continuing]. That you can restrict the number of tiers and requires the prime to do something other than taking a cutoff the top.

Ms. CRUMBLY. Right.

Senator MCCASKILL. We have a lot of those around, too many prime contractors that just take a cutoff the top. That just means that they are managing the contract because we are not in a position to manage it ourselves. I would like to see those kinds of contracts go away.

Let me now turn to a broad-based question. What is not in this legislation that you think should be? Should we go further in any places? Have we adequately addressed training? I worry that we have not gone far enough on training. Obviously, we hollowed out the acquisition force in the 1990s and paid a dear price. Think of the money that we lost because we had nobody minding the store in contracting. It is just mind boggling.

I mean, this is what is so hard about funding our government, because what sounds good in the short run, in a budget cycle, we do not have a tendency to think in decade-long implications. And I think that we have to be very careful as we go toward a much leaner government, which we must do, and toward a Defense Department where DOD does not get everything it asks for, in fact, is looked upon to find savings many places.

I think I know the concerns. Your staffs have visited with us. We know where your concerns are. Is there any place that you would like to see us go further than we have or to clarify something that is in the legislation that you do not think is clear? And if you do not have anything for the record today, I certainly will take it in a followup after the hearing.

Mr. GINMAN. Well, so things that particularly concern me is in the area of past performance, not giving—when the Commission made this recommendation, we objected to it then and it is in the legislation—not giving contractors an opportunity to rebut negative past performance. We use the past performance for other contractors to make decisions when they award going forward. Anything that is negative requires the contracting officer in that competition to go out and ask industry, explain to me this negative past performance. So I can do it one time up front or I can have 10 people afterwards do it. So from my standpoint, not giving the contractors an opportunity, if there is negative past performance, to rebut it is only setting us up downstream where a contracting officer fails to do what they are supposed to do and go ask. It becomes a protest risk and we would do much better to give them an opportunity up front, and particularly if for whatever reason it was an unfair statement. Letting one level above the contracting officer to have the authority to say, all right, I have looked at what the contractor said, looked at what the contracting officer said, this is what I think the final answer should be, it just makes sense to us.

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Senator MCCASKILL. Secretary Kennedy.

Mr. KENNEDY. I think that there are two issues that I think I would like to see in the bill and one that I have some doubts and will communicate that to your staff.

But on the two that I would like to see, at times, lowest price is not the best value for the American taxpayer. And so we have had some legislative exceptions from time to time allowing us to award contracts on the basis of best value, because the best value over time actually does result in a lower price than just the first bid and that. And so that is something we would be interested in discussing with you and your staff.

The second is that the ability to use direct hiring authority, to hire 1102s, to hire professional contracting officers, that authority legislatively expires on the 30th of September. As we are trying, as you rightly say, to regrow the contracting community, anything that would enable us to bring in a new generation and get them trained up as fast as we can is of very great interest to us.

The one issue that we will be discussing with your staff that we are concerned about is in the section on security contracting, there is a statement that the Combatant Commander in the theater has the final say on all security activities. That is of great concern to us because that substitutes the judgment of the Combatant Commander for that of the Secretary of State in determining what is the best way to ensure that the diplomatic and consular and assistance programs are protected as opposed to the Combatant Commander, who is focused on protecting the troops and engaged in force projection rather than force protection. And so that is the remaining large item of concern.

Senator MCCASKILL. OK. So you have a sincere fear that the Combatant Commander would perhaps view the protection of the State Department's personnel as not mission specific enough in terms of his decision—his or her decisionmaking power?

Mr. KENNEDY. That is correct.

Senator MCCASKILL. OK.

Mr. KENNEDY. And the charge of the Secretary of State in what is usually known as the Inman legislation, the Omnibus Diplomatic Security Act——

Senator MCCASKILL. Right.

Mr. KENNEDY [continuing]. That vests the responsibility for protecting of civilian employees overseas in the Secretary of State.

Senator MCCASKILL. And I want to followup on a previous statement you made. It is my understanding that the State Department's worldwide protective services umbrella contract is 10 years, not 5 years.

Mr. KENNEDY. There is a base contract and then we award these task orders for no more than 5 years.

Senator MCCASKILL. OK, but the umbrella contract that they can be awarded under is not 5 years, it is actually 10 years, correct?

Mr. KENNEDY. Yes. Right, but the task orders are 5 years.

Senator MCCASKILL. That seems like a long time.

Mr. KENNEDY. Because the pricing, as my colleague, and as you both referred to, you want to make sure that the price is always best. The price is determined in the task orders that are awarded, and so that is where we ensure that the quality is still there and

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the price is in the best interest of the government. And so you have the master. You have qualified the firms to compete for the task order.

Senator MCCASKILL. Well, and this is getting a little far afield and I will not go too far in the weeds on this, but I would love to spend more time, your staff with the staff of the Subcommittee, working on this, because I, frankly, I am not sure that we should ever not have private security forces at embassies in a contingency. I mean, I think there is a strong argument that can be made, if we are in a country where we are fighting a war, that the security of that embassy should be by our military and not by Third World nationals that are being hired by a subcontractor under a 10-year umbrella contract. I mean, obviously, we had bad things happen in Kabul, as was a subject of a different hearing here. And I am not saying that is a fault of the contracting that went on, but I just think that if we are in a contingency, I think that the people of that embassy could be best protected by American military.

Mr. KENNEDY. We would certainly, and we benefit greatly now and over time with cooperation from our military colleagues. But we also know that the U.S. military is exceedingly stretched. And when I first served in Iraq in 2003, the U.S. military was protecting the civilian contingent. But over the course of time, as the demands on the U.S. military increased, they could not and did not have the resources to protect us.

I have less than 2,000 diplomatic security special agents and officers for the entire world, 285 embassies and consulates, plus their responsibilities for security protection of foreign dignitaries in the United States. And so I am caught in a bind here. I am required to ensure that we can continue diplomatic and consular operations, not only in war zones or zones of conflict, but also everywhere else in the world, and the ability to do that is constrained by my internal resources and the resources that the DOD is able to put at my disposal. And the compromise there is to do, I think, the better job that we are now doing with more training and these master contracts that will have a better quality control so that we avoid the problem that you alluded to in Kabul 2 years ago.

But I would note, just as an aside, the U.S. Embassy has been attacked twice in the last 6 months and it is that same security personnel who have done heroically in defending the U.S. Embassy against both the attacks, both the one this past Sunday and the one several months ago.

Senator MCCASKILL. But that is a new contractor.

Mr. KENNEDY. No, it is the same one.

Senator MCCASKILL. I thought EODT was terminated.

Mr. KENNEDY. EOD has been terminated, but EOD never started. The previous contractor that was involved with a small unit of specific people, those individuals were replaced, the upper level management replaced. The company is still there and will be there until the new contractor arrives.

Senator MCCASKILL. I did not realize that. So Armor is still there under the British contract.

Mr. KENNEDY. Yes, ma'am.

Senator MCCASKILL. OK. And, Ms. Crumbly.

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Ms. CRUMBLY. I would like to support the points raised by my fellow panel members, but I also want to note, as Under Secretary Kennedy mentioned, he has a working capital fund that is able to supply a steady stream of resources to support his acquisition assistance workforce. We, too, are requesting that authority. So if there is a way to go further and have support for that working capital fund authority for USAID so we have that steady stream, I think that is important for us.

One other thing I did want to correct, in terms of the subcontracting, while we are at the two tier, we do have the flexibility or an approval process where the Assistant Administrator for the Bureau would approve it if you go beyond those three. So we do still want some flexibility on subcontracting, so I did want to note that, as well.

Senator MCCASKILL. Yes, and I think we have—every place that we have said, this should be the rule, we put in waivers. And so what we are looking for is a change in what is the primary conduct of contracting and contingencies. And, obviously, because it is a contingency and stuff happens, there are going to be times that waivers will be necessary. But at least if waivers are necessary, that means you are going to get documentation, which is one of the challenges we have had in this area.

Well, I want to thank all three of you. I know that in some ways I have been a broken record on this subject for 5 years, but I have a tendency—I am going to try to be kind to the institution that I am lucky to serve in. Sometimes this place has the attention span of a kindergarten class, and I have noted that things like this, once they move off the front pages, have a tendency to fall through the cracks. And so I have really tried to stay on this and want to get this across the finish line in terms of getting these changes into law and monitoring the continued progress as we cleanup contracting and contingencies.

One thing I would let you know, Mr. Ginman, is that I did have an amendment to pull all the AIF funds out of Afghanistan and have them to into the United States Highway Trust Fund. People did not think I was serious. I was serious, and the reason I am serious is the projects that are now on the board for AIF, which is the morphing of CERP into infrastructure by the Defense Department as opposed to AID, that has traditionally done all this work, is that the projects we have ongoing now are not going to be completed until 2014.

So if we are adding additional resources for the next fiscal year, that means we are starting new projects. And I have not yet gotten from the Defense Department what they are envisioning what these new projects would be. And what I am envisioning is if we are starting new infrastructure projects in Afghanistan as we are trying to pull out of Afghanistan, then we may end up with that reality that I think is very hard for Americans to understand, that our military would, by and large, be gone from Afghanistan, but we would have a full force of contractors that we would be paying on the ground for years to come on projects that we really would struggle to provide the security necessary for completion under that scenario.

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So I continue to wait to find out what this new $400 million that has been requested is supposed to be building in Afghanistan over the next 2, 3, 4, 5, 6 years, and hope you can spread the word over there that I am drumming my fingers waiting for that information.

Mr. GINMAN. Yes, ma'am.

Senator MCCASKILL. OK. Thank you all very much for being here. [Pause.]

I will introduce these witnesses. The first witness is Lynne Halbrooks. She became Acting Inspector General for the Department of Defense in December 2011. She joined the Department of Justice as an Assistant U.S. Attorney in 1991 and has served as General Counsel for the Special Inspector General for Iraq Reconstruction, and General Counsel for the DOD Inspector General. Prior to her appointment as Acting Inspector General, she served as the principal Deputy Inspector General.

Harold Geisel has served as the Deputy Inspector General for the State Department since June 2008. He has more than 25 years of experience with the State Department and previously served as Acting Inspector General in 1994.

Michael G. Carroll has served as Deputy Inspector General for the U.S. Agency for International Development, USAID, since February 2006. Mr. Carroll is a member of the Senior Executive Service with more than 26 years of government service. Prior to his appointment, Mr. Carroll served as the Director of Administration for the Bureau of Industry and Security in the Department of Commerce.

It is the custom of this Subcommittee to swear all witnesses that appear before us. If you do not mind, I would ask you to stand.

Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. HALBROOKS. I do.

Mr. GEISEL. I do.

Mr. CARROLL. I do.

Senator MCCASKILL. We will ask you to try to hold your testimony to 5 minutes. I must say that the attention you will get today is much less than your colleague Brian Miller will get this week, but that is probably a good thing. I am not sure that we will have any injuries of TV cameramen trying to follow you down the hallway. If you are going to talk about Las Vegas, warn me ahead of time because—and I joke about this, but I must say, every once in a while, something happens in the world of Inspectors General that highlights your work. And for most of the time, your work is done in the shadows. No one pays a whole lot of attention. Unfortunately, sometimes the agencies do not pay a whole lot of attention.

It is very important to me that we get this legislation right from your perspective because you are the front line. And while there may be a hit every once in a while that gets the bright glare of camera, you toil away most of the time in relative obscurity. Most Americans have no idea what Inspectors General are and they do not realize the work you do. They do not understand the capacity you have to look after your interests. And they certainly do not get to watch those small but important battles that you wage every

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day with people who lead your agencies toward a goal of more accountability, transparency, and saving the taxpayers money.

So as I always try to say to Inspectors General that I am honored to deal with in these hearings, thank you for your many years of service in this area. You are great examples of public servants that are painted with a broad brush, overpaid, underworked, too many of you. There are not enough of you and you will never hear me say that you are underworked or overpaid. So thank you, and we will begin with you, Ms. Halbrooks.

TESTIMONY OF LYNNE M. HALBROOKS,[1] ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE

Ms. HALBROOKS. Thank you, Chairman McCaskill, and thank you for your appreciation for the IG community's work. That means a lot to us. Thank you today for inviting me to express our views on the Comprehensive Contingency Contracting Reform Act of 2012.

As the Acting Inspector General at the Department of Defense, oversight of contingency operation remains my No. 1 priority. I am committed to continually refining and improving our oversight approach.

Last week, I was in Afghanistan and had the opportunity to observe firsthand how the oversight organizations currently plan, coordinate, and deconflict audits and assessments. At the most recent Shura oversight meeting that I attended, IG staff from Defense, State, USAID, the Special Inspector General for Afghanistan Reconstruction (SIGAR), the GAO, and local command IGs discussed critical oversight challenges and exchanged information in a productive and collaborative manner.

I also met with senior commanders there to determine how the DOD IG can continue to provide the best independent and objective oversight of contingency operations in Afghanistan. The senior commanders understand the need for transparency and oversight, and the men and women serving deserve to know that every dollar spent for their health, safety, and security is spent efficiently and effectively. I believe that the organizations that do oversight and the commands are working well together to make this happen.

To make this effort even more effective, we at DOD IG have a special Deputy Inspector General for Southwest Asia (SWA) who functions as the authoritative source to plan, coordinate, deconflict, and facilitate effective oversight. He also serves as Chairperson of the Southwest Asia Joint Planning Group, which is the principal Federal interagency forum to promote coordination and cooperation for comprehensive oversight. This group meets at least quarterly, and is comprised of representatives from over 25 DOD and Federal oversight agencies, functional components, and command IGs.

We as an oversight community have developed considerable experience in conducting timely and relevant audits, inspections, and investigations of overseas contingency operations. At DOD IG, we have the capacity to deploy anywhere in the world and are prepared to respond effectively, of course, in coordination with other

[1] The prepared statement of Ms. Halbrooks appears in the appendix on page 98.

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Federal agencies and internal DOD oversight offices, to address future contingency operations overseas.

With this background, I would now like to discuss the Comprehensive Contingency Contracting Reform Act of 2012. Overall, I support the legislation and, in general, support the provisions of Section 103 of the bill, which calls for a lead IG in overseas contingency operations.

Based on the strong working relationship that has evolved between the Department of Defense, State, and USAID IGs, I do not believe there is a need, as the bill is currently written, for the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) to designate a lead IG in a contingency. Given that the bill defines a contingency operation as, quote, "a military operation outside the United States and its Territories and possessions," I believe the legislation should recognize the Department of Defense Inspector General as the lead IG. Alternatively, a determination of the lead IG could be made based on the amount of funding appropriated to the respective agencies.

Congress mandated in Section 842 of the National Defense Authorization Act of fiscal year 2008 that the DOD IG, in conjunction with multiple Federal IGs and DOD oversight agencies, issue an annual comprehensive oversight plan for Southwest Asia. I recommend the Subcommittee consider similar requirements to develop a joint oversight plan under the direction of the lead IG that would include a focus on strategic issues and contingency operations oversight.

I would also like to work with the Subcommittee further to refine the reporting requirements in the proposed legislation. While compilation of data on obligations and disbursements is primarily a management function, an IG can add value by independently analyzing this data. Therefore, we believe a requirement to compile the data should be assigned to each Department and the IGs should review the quality of that data as part of their oversight plan and use it to inform their work. We believe that a semi-annual or even annual reporting requirement would provide Congress with meaningful data and necessary transparency.

Finally, the provision in the bill authorizing the lead IG to employ annuitants and other personnel on a temporary basis will definitely enhance our ability to move the right people in country quickly to establish an immediate overseas presence. However, I believe the special hiring authorities would be most effective if they are not time limited.

With the few changes that I have outlined above, plus a funding mechanism to resource the hiring of additional staff, the proposed legislation would be an efficient, effective way to ensure independent and comprehensive oversight of future overseas contingency operations.

Thank you for your support of the community. I appreciate the opportunity to testify today and express our views and look forward to answering any questions you might have.

Senator MCCASKILL. Thank you. Mr. Geisel.

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TESTIMONY OF HAROLD W. GEISEL,[1] DEPUTY INSPECTOR GENERAL, U.S. DEPARTMENT OF STATE

Mr. GEISEL. Thank you, Chairman McCaskill, for the opportunity to discuss our views on strengthening oversight of government contracts during contingency operations. I ask that my full testimony be made part of the record.

We commend the Subcommittee for its leadership and tenacity in developing this critical legislation. Madam Chairman, we believe that S. 2139 is a positive effort to ensure that statutory IGs have the tools needed to provide efficient and effective oversight in the most challenging overseas environments.

The effect of the bill's provisions on OIG would be broad, positive, and certainly manageable. OIG agrees with and supports Sections 101 and 103 in the bill with three suggested revisions. First, we recommend a small but important revision to Section 101. We suggest an automatic percentage-based funding mechanism be included in the operations budget for IG oversight. IGs will need immediate additional funds to offset the unforseen and unbudgeted costs of doing business in a contingency environment. A model for these mechanisms can be found in the American Recovery and Reinvestment Act, where funding for all of the involved IGs was provided to oversee the Act's significant new appropriations.

Second, Section 103 of the bill would mandate that the Chair of the Council of Inspectors General on Integrity and Efficiency designate a lead IG for the contingency operation and resolve conflicts of jurisdiction between the participating IGs. We suggest that at the onset of a contingency operation, the relevant IGs would first determine which agency is expected to have the largest share of the operation's funding and that agency's IG would become the lead IG. It would then follow that the agency with the next highest level of funding would become the operation's associate IG.

In recent years, the statutory OIGs worked well together to oversee contingency operations. For example, conflicts on jurisdiction and work deconfliction have been resolved efficiently by both the Southwest Asia Joint Planning Group and the International Contract Corruption Task Force for work in Iraq, Pakistan, and Afghanistan. These groups, which are comprised of all IGs working in these countries, meet quarterly and have been a success. This approach would save time and simplify the process during the hectic period at the onset of the contingency operation.

Last, we support the provision for semi-annual IG reporting. We do suggest one adjustment, that this reporting be scheduled to coincide with the IG's semi-annual reporting cycle. However, the quarterly reporting provision in Section 103 would mandate that IGs provide detailed financial data, specific obligations and expenditures, a project-by-project, program-by-program accounting of incurred costs, foreign investment revenues, seized or frozen asset information, agency operating costs, and detailed contract and grant financial information. All of this data resides in the Department or agencies, not in OIGs. We suggest the participating Departments provide a periodic stream of data to Congress and to the partici-

[1] The prepared statement of Mr. Geisel appears in the appendix on page 108.

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pating statutory IGs. We can use this information on a semi-annual basis to better plan and prioritize our oversight work.

Finally, our recent successes in OIG are a result of the increased confidence in our work and the resulting congressional funding increases appropriated since 2009. These increases have enabled our OIG to increase audit inspection reports by more than 56 percent. Similarly, suspension and debarment actions based on our referrals have increased dramatically, from zero in 2008 to 17 in 2011. And today, we are operating in five overseas offices, from Cairo to Kabul. So when Congress provides the necessary funding, we deliver good results.

That said, when you set out to rebuild an organization, take it to new regions, and modernize its approaches, it is not always about the money. That is why we appreciate your efforts to provide the new hiring authorities and the legal framework adjustments that support more effective law enforcement.

Thank you, Chairman McCaskill, for this opportunity, and I am prepared to answer your questions.

Senator MCCASKILL. Thank you very much. Mr. Carroll.

TESTIMONY OF MICHAEL G. CARROLL,[1] ACTING INSPECTOR GENERAL, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. CARROLL. Chairman McCaskill, thank you very much, and Senator Portman and distinguished Members of the Subcommittee. Thank you for inviting me here today.

You may recall my impassioned plea the last time I testified before you in November 2010 on behalf of the statutory IGs. I said then that you had what you needed right here and nothing in the last 18 months has changed my mind on that. So this is truly, I think, a step in the right direction, the legislation not only on behalf of the agencies for performance and accountability, but also giving us the resources and authorities we need to do our job in a contingency operation. So I really appreciate this opportunity today.

I would also like to thank you for the inclusive nature of the deliberative process, working with your professional staff on both sides. They have been really open to our suggestions and I would like to think that is reflected in the bill, that there are not a lot of major changes that we think need to be made. I think it is well down the road to be where it needs to be. We just have a couple of issues that we just want to nail down, if I could.

As it relates to Section 103, I agree with my colleagues that based on the way you have defined a contingency operation, it is clear that DOD IG—it is clear to me that DOD IG would be the lead IG in this particular case, and then whether it is AID IG or State IG on an associate IG basis. So we do not see a need for CIGIE. If, somehow, that came to pass that CIGIE was part of this equation, then we would hope that there would be some committee that the three of us participated in that would be able to inform the CIGIE committee on whatever needed to be done. But we do not think there is a need for CIGIE, a role for CIGIE in this process.

[1] The prepared statement of Mr. Carroll appears in the appendix on page 114.

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On the funding and the authorities, as you know, we are a foreign service organization and our auditors and investigators are stationed around the world. We just want to make sure that the authorities for rehired annuitants and dual compensation waivers not only address Title V employees, but address Title XXII employees, as well, retired Foreign Service Officers, so we could then reach back to our cadre of retired auditors and investigators to be able to do the job.

There is one aspect not in the legislation that I would like to propose, and I know you asked that question to the previous group of witnesses, and that is based on our experience in Pakistan, we have had great success with a national hotline on the Kerry-Lugar implementation, and I can share the stats we have and the successes we have had with you and your staff and I would like to possibly work with you to include something like that. I have talked to my colleagues. In principle, they agree. We could work through the jurisdictional issues and that sort of thing with no problems. But I think it would enhance the oversight of whatever the programs are in a contingency situation.

Related to the agency and the agency's oversight, on suspension and debarment, as it currently is written, there is an automatic trigger for suspension and debarment if there is an indictment and I would say that we should talk about that. I think there are times when an agency has demonstrated already that they have addressed the issues that we brought up in our investigations, even though they admit there may be an indictment on a criminal or civil referral. So I would ask that you just consider the possibility of that being a case-by-case basis rather than an automatic trigger.

And I think from an agency point of view—I am not here to advocate on behalf of the agency, but I do endorse what Ms. Crumbly said. I think the agency has made huge strides since our audit of 2009 that was borne out of a bit of frustration on our part about how the agency was proceeding with our referrals. So I think the AED case in Pakistan is a great example of the agency stepping up and being able to make the hard decisions, even when it impacts potential program implementation.

On TIP, which is very important to Senator Portman, I just wanted to let you know that, recently, we have met with the agency personnel responsible for trafficking in persons. We are attempting to, with our colleagues at State and DOD, to come up with a training package for our auditors and investigators because this is not in our sweet spot. We are contract procurement fraud investigators and auditors, and so this is different than what we normally do. So we want to create a training package that we could implement at the Federal Law Enforcement Training Center (FLETC) and at CIGIE, the IG Academy at CIGIE, that would train our auditors and investigators.

And I can also let you know that both for sustainability and TIP, they are standard audit provisions and audit objectives in each one of our audits, regardless of whether it is in Iraq, Afghanistan, Pakistan, Haiti, wherever. Those are two audit objectives we are always going to have in our audits.

So with that, I appreciate the opportunity again and look forward to answering any questions that you might have.

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Senator MCCASKILL. So it looks like that all three of you agree that in contingency, the three of you should work together with DOD as lead.

Mr. CARROLL. Yes.

Senator MCCASKILL. And there is no reason to do the CIGIE decision and all that, that both State and AID acknowledge that if it is contingency, then in reality, the vast majority of the resources that are going to be brought to bear are going to be coming out of the Defense Department. Therefore, in any kind of decision as to risk and work, it is all yours, Lynne.

Ms. HALBROOKS. Yes, ma'am. [Laughter.]

We are ready to step up and assume that responsibility. I think that the last few years have taught us all as an oversight community a tremendous amount about how to work well together, and I think we would be able to respond quickly and effectively.

Senator MCCASKILL. And let me just say, I think I should point out for the record that none of you are the official full-time appointed and confirmed IGs. I guess you are, Mr. Carroll.

Mr. CARROLL. No, I am not. I am acting right now——

Senator MCCASKILL. No, you are not, either.

Mr. CARROLL [continuing]. And my authority is running out——

Senator MCCASKILL. Yes. That is right. So we do not have SIGAR. We do not have DOD. We do not have State. And we do not have AID in terms of an appointed and confirmed Inspector General. And let me say, in case anyone is—let me disabuse anyone of the notion that I am not willing to criticize the White House. I find it appalling that these people have not been appointed. There is a long list of qualified people to hold these jobs, and I am sure that some of you are on those lists, if not all three of you. And I do not understand why this is taking so long. I mean, if you look at the world of Inspector Generals and the money that is being spent, how these positions can go vacant for this period of time is beyond me, and I am hoping that the White House gets busy and starts announcing the appointment of some Inspectors General.

Let me ask about suspension and debarment. As you know—I mean, what this legislation is trying to do is move a boulder, that there has been cultural reluctance on suspension and debarment. There has been cultural reluctance to not give performance bonuses in government as it relates to contracting and there has been a cultural predisposition to not suspend or debar, with the exception of the Air Force. I do not know what they are drinking at the Air Force, but I like it that they are aggressive about suspension and debarment.

So we are trying to encourage aggressiveness. Now, obviously, this is controversial, because several people have said they do not like the automatic suspension or debarment upon criminal indictment. Should we not, at a minimum, require an assumption that there would be a debarment that would trigger a requirement to document why not?

Mr. CARROLL. Yes.

Mr. GEISEL. Yes.

Senator MCCASKILL. Ms. Halbrooks.

Ms. HALBROOKS. Yes. I think memorializing the decisionmaking would be fine, yes.

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Senator MCCASKILL. I do not know, and I am not saying that we would change the legislation at this juncture as it related to that, but there clearly have been bad actors where there has not even been a ripple. It seems to me that a criminal indictment of a contractor should be an event that requires some folks in that agency to take a hard look, do some scrubbing, and figure out what the problem is, and if the problem is an isolated bad employee, that be documented thoroughly with some kind of formalized process. Do you envision you all being engaged in that process? Would it make sense to have a justification for non-suspension or debarment in light of criminal or civil fraud, that be forwarded to the Inspectors General?

Ms. HALBROOKS. I would want some time to consider that option in a little more detail, but it would definitely sort of change the culture of the suspension and debarment programs, which typically are not about punishment. They are about making business decisions and making sure the Department is working with responsible contractors.

I can say that I think in the case of a criminal conviction, at least from the point of view of our IG agents, the Defense Criminal Investigative Service, we do play a role in that we are the referring entity often for a potential suspension and debarment and we do not just wait until there is a criminal conviction. One of the remedies in our tool kit is to make a referral to the suspension and debarment authority.

I do not think that we need to play a role in management of that program. We should oversee it. We issued a report in July 2011 on the Service agencies and the Defense Logistics Agency (DLA); and DLA was actually fairly aggressive in the sample that we looked at in terms of taking the contracting officers' recommendations and proceeding. So I think that we have a role. I do not think it is oversight of the specific decisions that the SDO authority makes, but I do think that as a referring agency, we can help to ensure that the Departments are promoting the suspension and debarment program and training the contracting officials properly in the process and how to make those referrals, absolutely.

Senator MCCASKILL. What about limiting the amount of time for contractors to respond to past performance reviews? Do any of you believe that makes sense? Do you have any problems with that? That also has received some attention from folks, that they think that allowing contractors to respond to past performance reviews before they are submitted to the government's database, lowering that from 30 days to 14 days is unreasonable. Do you all have any view on that particular provision?

Ms. HALBROOKS. I do not have any view today, but we could certainly look at that in more detail and provide you our opinion.

INFORMATION FOR THE RECORD

We believe that 14 days should be a reasonable amount of time for the contractor to review and comment on the performance reviews that are done by the government contracting officer representative and should not place an undue burden on the contractor.

Mr. GEISEL. I would like to look, as well, and give you something in writing, but I would point out that you have used a word repeat-

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edly which I think is very useful, and—well, two words which mean the same, actually, and that is waivers and documentation. And that is really what we are looking for, yes. A good law will always have provisions for what are we going to do now, this is different, but it has to be documented. So many people are much more inclined to do the right thing if they have to sign their name to a piece of paper.

Senator MCCASKILL. Right. And besides that, it provides an audit trail, right?

Mr. GEISEL. Right. I like——

Senator MCCASKILL. I remember. I liked it when we found documentation. This is a good day for an auditor.

Mr. GEISEL. I like——

Senator MCCASKILL. When there is no documentation, it is a problem.

Mr. GEISEL. I like saying that to the former Auditor General of Missouri.

Senator MCCASKILL. There you go.

What about you, Mr. Carroll, on past performance problems and whether or not the contractor should be given time to respond before it goes into a database?

Mr. CARROLL. I think that they should. What the agency does with that information is up to them. I would think 14 days, 30 days, there is really not a material difference there and I do not think it would have a material impact on an agency, or on a contractor or an agency, so I think giving them the benefit of the doubt, giving them the extra 16 days, whatever it would be, I do not see a downside to that.

Senator MCCASKILL. OK. For the State Department, the State Department continues to say that it does not need the structural or organizational changes envisioned by this legislation. They have also said that they can meet any demands that arise in a contingency by relying on the working capital fund. Do you believe that they are correct, that they do not need any organizational or structural changes, from your position as the Inspector General for the Department?

Mr. CARROLL. I definitely feel that they need tweaking. One point that came out here that I would like to speak to them more about is, for example, whether they need a separate suspension and debarment official. What they have now, I agree with what Under Secretary Kennedy said, that the current person who is in charge of suspension and debarment does not have a role in the acquisition except in the most general way. But I think anything we can do to encourage the Department to focus on suspension and debarment is good, and we have seen progress. I think I would give the Department the benefit of the doubt, but I would hold them accountable.

Senator MCCASKILL. OK. You all mentioned this in your statements, and I assume that all of you think that it would be a good idea to have a percentage-based funding requirement for Inspector Generals in contingencies, just as we did for the American Recovery and Reinvestment Act (ARRA), that we would set aside sufficient resources to keep track of the money as we appropriate the money.

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Mr. GEISEL. Madam Chairman, I would point out that when I came to OIG on June 2, 2008, and since that time, thanks to what I assume is the good work we have done, Congress has doubled our resources. And as a result, we have been able to do a much better job. And the best way to ensure that we do not have what happened in Iraq, where there was a big delay until we got the resources, to have an automatic mechanism, I think serves everyone well. And it enables us to buildup, but it also forces us to go down again when the——

Senator MCCASKILL. Right. That is what I like about it, because it does not build the agency beyond the capacity that is needed permanently. It does it as it relates to the contingency, and it also allows you to really buildup a body of expertise in this area, which has always been the argument for SIGAR and SIGIR. I mean, I went around and around with some of you about this in the past, that having that body of expertise, having a special Inspector General for contingencies. But if you did that, some of the people you hire in connection with that are just by the nature of the agencies going to stay on and would be there with some kind of history as it relates to contingency contracting going forward. So I do think it makes sense.

And we all know that for every dime we spend on auditors, we get back a dollar——

Mr. GEISEL. More.

Senator MCCASKILL. Or more. I just use dime and dollar because it is safe and I am conservative because you have to be able to back it up, right? So that is why I think it is very important that we do not—as we cut the size of government and spend less money in government, we have to make sure that we maintain a robust oversight function in these agencies because, frankly, it would be very hard for us to do our work without you all. I do not think people realize that you are so many times the communication that provides the oversight that Congress performs.

Is there anything else that we have not addressed in the legislation that you all want to speak to before we close the hearing?

Mr. CARROLL. If I could just go back to suspension and debarment for a second, the IG by its very nature just loves independence. I think that is what makes us so effective. And so we do endorse—I know we are at odds with the agency on this, but we think that the S and D official should, in fact, be very independent of the political decisionmaking process in the agency.

Senator MCCASKILL. Yes. I mean, with all due respect to Secretary Kennedy, even if the person in charge of SDO at State is not buying anything, they are helping write the policies that are telling them how to buy it. So if those policies failed and allowed some bad actors to be included in contracting, I think it is harder sometimes to hold that mirror up. So I am going to continue to push for that independence in the Suspension and Debarment Office that I think that is dictated by the legislation and that makes sense in terms of functions of an SDO official.

Anybody else? Yes, Ms. Halbrooks.

Ms. HALBROOKS. I just wanted to add that while I agree with Acting Inspector General Geisel that funding is a critical element to ensure that we get started in oversight quickly on a contingency

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operation, I think that the parameters of the legislation that require coordination and coordinated planning and reporting by a lead IG will be effective, as well. As that funding takes a while to gear up, the DOD IG, because of our size, has the agility to immediately plug a trained group of auditors into a contingency. So while the funding is critical, the language in the legislation that I think in some ways documents the coordination and collaboration and the lessons learned in the past contingency operations oversight will go a long way to ensuring that there is no gap in oversight when one begins.

Senator MCCASKILL. Yes, Mr. Geisel.

Mr. GEISEL. I, of course, agree with my colleague from DOD. I would also point out that one other very important part of the legislation should be our ability to use Title V and Title XXII annuitants because they have just what you were talking about, that very necessary experience. And if we can get them quickly when we need them, it will be a great help to getting the right people who can do the job.

Senator MCCASKILL. OK. And I think Mr. Carroll mentioned that previously, that we needed to be able to get at that workforce, which makes sense.

Well, I want to thank all three of you for your great work and for being here today. I am continuing to work on this legislation. If anything else you think we need to be working on as we tweak it and adjust it and get it into final form that hopefully we can get at least part of it enacted in the defense authorization bill this year—that is our goal—so we continue to improve it. I think we have some great input from you today. I think it is very clear that we can make a change in terms of how we provide for the lead Inspector General in contingencies and I think that will work out very well.

So thank you very much for that, and onward. If you have good reports coming, do not forget to let us know. Thank you.

Mr. GEISEL. Thank you.

Senator MCCASKILL. The Subcommittee is adjourned.

[Whereupon, at 12:44 p.m., the Subcommittee was adjourned.]

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APPENDIX

Senator Jim Webb
Subcommittee on Contracting Oversight
Senate Committee on Homeland Security and Government Affairs
April 17, 2012

Madam Chairman, Ranking Member Portman, and members of the Subcommittee. Thank you for inviting me to appear before you today to discuss my views on the Comprehensive Contingency Contracting Reform Act of 2012. Following careful consideration and revision of an earlier draft of this bill, I was pleased to join Senator McCaskill as an original cosponsor in early March.

I wish to acknowledge and compliment my good friend and colleague Claire McCaskill for the diligence and resolute determination that she and her Subcommittee staff displayed in taking the lead to draft this bill over the past six months. She can be justifiably proud of this achievement.

The Congress faces a compelling requirement to respond affirmatively to the work and recommendations of the Commission on Wartime Contracting. It is my sincere hope that today's hearing will allow us to take the Comprehensive Contingency Contracting Reform Act of 2012 to the next level by identifying any needed modifications and developing broad-based bipartisan support for its passage this year—replicating our initial experience in 2007 that led to the creation of the Commission.

As the members of this Subcommittee know well, we cannot continue to tolerate the waste of billions of dollars in any future overseas military contingency operation.

As I noted earlier this year, this comprehensive legislation affirms the important work that has been done by the great majority of our wartime-support contractors. At the same time, however, it recognizes the necessity to improve government oversight, management, and accountability in the contracting processes that resulted in totally unacceptable costs, excessive waste, and substandard performance in far too many areas.

This comprehensive bill represents five years of collaboration with Senator McCaskill since we first introduced the legislation that led to the establishment of the independent and bipartisan

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Commission on Wartime Contracting. Our goals at that time were straightforward. In seeking to create a modern-day equivalent of Senator Harry Truman's special oversight committee of the 1940s, we saw a necessity to eliminate the many systemic deficiencies in wartime-support contracting … to root out waste, fraud, and abuse … and to hold accountable those found to be responsible.

The bill we have introduced is responsive to the findings and recommendations of the Commission's final report that was issued last year. We owe Commission Co-Chairs Michael Thibault and Christopher Shays, their fellow commissioners, and their professional staff our thanks for their exemplary three-year effort. They surpassed my challenge to them in 2009 to be aggressive in satisfying their ambitious statutory mandate. As I have said more than once, the Commission demonstrated the way congressional committee should work—bipartisan, independent, thorough, and totally committed to its task.
In addition to finding that at least $31 billion, and possibly as much as $60 billion, has been lost to contract waste and fraud during contingency operations in Iraq and Afghanistan, the Commission illuminated the additional costs of a number of major projects that can't be sustained, which will ultimately drive costs even higher. One of the Commission's principal findings is particularly telling. It concluded that poor planning, management, and oversight of contracts … damaged our defense, diplomatic, and development objectives.

Senator McCaskill and I brought varied backgrounds to the challenge of assessing such findings and others documented in the Commission's 240-page final report, its two interim reports and 25 public hearings. She drew extensively on her service as a state auditor. I relied on my years of experience in senior executive positions in the Pentagon to try to ensure the bill describes <u>what</u> federal agencies must do . . . not <u>how</u> . . . to correct such deficiencies as poor planning, vague contracting requirements, substandard contract management and oversight, weak interagency coordination, and substandard performance.

It was not always possible to adhere to this principle while writing this bill, however. Not all agencies have been equally diligent or responsive in addressing the Commission's past

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recommendations contained in its interim reports. I believe the Department of State and the U.S. Agency for International Development, for example, each require additional structural improvements to establish clear lines of authority and responsibility if they are to manage more effectively their contracts for services in support of overseas contingency operations. For this reason, several of the bill's provisions for multi-agency matters are more prescriptive than other sections.

The bill we introduced is, admittedly, complex and multifaceted, but it is framed to address not only the Commission's numerous recommendations, but other contracting deficiencies revealed during hearings conducted by full committee and subcommittees of both the Senate Armed Services Committee and the Homeland Security and Government Affairs Committee.

I believe the Congress is at a pivotal moment in our need to reassert good governance and improve our stewardship of taxpayer dollars. For this reason, major sections of the bill would strengthen contracting practices and improve accountability by:

- Elevating oversight responsibility, improving management structures, expanding planning requirements, and reforming contracting practices during overseas military contingencies. In this, the bill is carefully framed to be consistent with the definition of the term "contingency operation" stipulated in Title 10—an operation designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of our country or against an opposing military force.
- The bill will also require the federal government to identify how it will pay for military operations overseas. The President will be required to ensure that any request to Congress for funds in support of contingency operations includes information on all requested amounts by appropriation account, program, project, and authority. Specific information must also be provided on the proposed means to finance such operations, either by increases in revenues, decreases in other programs or activities, borrowing by the federal government, or other means. In the future, Congress must exercise its "power of the purse" more diligently to prevent such fiscally irresponsible practices as using large, so-called "emergency

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supplemental appropriations" to fund operations—as we did year after year in Iraq and Afghanistan.

- A number of provisions in the bill aim to improve contracting processes through greater transparency, competition, and professional education.

- Other provisions will institute additional measures to improve contractor accountability.

In developing this legislation, we sought to avoid imposing requirements that would lead to the creation of large, new bureaucratic organizations. The Commission, for example, recommended such measures as the development of deployable cadres for acquisition management and contractor oversight, creating a new directorate on the Joint Staff for contingency contracting, and creating a permanent office of inspector general for contingency operations.

While we appreciate the import of the findings that led the Commission to make such recommendations, we do not believe that creating larger bureaucracies is necessary. Inspectors general perform critical roles overseeing agency performance, for example, but we believe it is sufficient to build on the existing structure of the Council of Inspectors General on Integrity and Efficiency to strengthen IG functions during overseas contingency operations. Insofar as possible, we sought to avoid legislating burdensome provisions that would add more people to the ranks of the federal bureaucracy.

During the weeks since Senator McCaskill and I introduced our bill, our staffs have met jointly with a number of important stakeholders associated with overseas contingency contracting, including senior executives from defense companies and professional associations representing the interests of the contracting community. A number of provision in the bill, notably those relating to the evaluation of contractor performance and others tied to suspension and debarment, understandably raised a number of questions and some concerns in their minds.

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Their feedback and constructive recommendations will be helpful to us as we continue to refine this complex bill. Similarly, witnesses at today's hearing will provide important insights into the steps agencies have taken to date to implement the Commission's recommendations and what additional measures might be needed to address fully the Commission's substantial body of work. We also will benefit later this spring by the work of the Government Accountability Office when it completes its report for our consideration on the degree to which the Department of Defense, the Department of State, and US AID have or have not adopted the recommendations contained in the Commission's final report.

Again, thank you for inviting me to appear before you today.

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STATEMENT BY
Patrick F. Kennedy
Department of State, Under Secretary for Management

BEFORE THE
Homeland Security and Governmental Affairs Committee,
Subcommittee on Contracting Oversight
United States Senate

April 17, 2012

Good morning Chairman McCaskill, Senator Portman, and distinguished members of the subcommittee. Thank you for your invitation to appear here today to discuss Senate bill 2139, the Comprehensive Contingency Contracting Reform Act of 2012.

We share the Committee's desire to ensure that efforts continue to strengthen contingency contracting. S. 2139 raises a number of important issues. While our review of the bill is ongoing, we welcome the opportunity to discuss our initial views on the bill's provisions.

We understand that this legislation builds on the recommendations of the Commission on Wartime Contracting in Iraq and Afghanistan – an independent, bipartisan panel that you, Senator McCaskill, created along with Senator Webb in 2007. The State Department worked continuously with the Commission on Wartime Contracting (CWC) from when it was formed in early 2008 until it sunset last August, and gained valuable insight from the Commission's efforts. We have taken many steps to improve our contingency contracting over the past several years, based on the CWC's reports, recommendations from other oversight entities, and our own lessons learned.

The Department's participation in CWC's study was headed by the Office of the Under Secretary for Management and the Bureau of Administration. In addition to numerous meetings with the CWC, senior Department officials testified at seven formal CWC hearings.

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Although the CWC has sunset, we continue to work with our other oversight entities on our contracting program. Currently GAO is reviewing the Iraq transition, contingency contracting, and the CWC's Final Report in three separate engagements. We are taking GAO's input to heart, and will work to improve our contracting administration, including Interagency Agreements, and address other GAO findings.

We have also learned much from the Iraq transition, where we worked closely with DoD and other interagency partners. As recently as April 3, when Secretary Clinton addressed a class of cadets at the Virginia Military Institute, she stated that the Iraq transition was the largest military to civilian transition since the Marshall Plan. We can now take the lessons learned in Iraq and apply them to contract planning and execution in Afghanistan and future contingencies.

The Department has been involved in overseas contingency operations with DoD for 10 years in Iraq and Afghanistan. The U.S. Military launched Operation Enduring Freedom in Afghanistan in October 2001, and Embassy Kabul re-opened in 2002. Operation Iraqi Freedom began in March 2003, and Embassy Baghdad re-opened in 2004. DoD and State have worked closely together in these conflict areas since that time, and we continue to work closely on a daily basis. We have also counted on USAID's efforts to assist in stabilizing these societies.

The Department's contracting function has grown from $1.8 billion in 2001 to $8.8 billion in 2011, primarily due to programming growth since 9/11 and in support of State Department activities in Iraq and Afghanistan. As our contracting activity has increased, we have hired additional Acquisitions Management staff using funding in the Working Capital Fund, which is generated through a 1 percent fee on all procurements. The Working Capital Fund has provided sufficient funding and flexibility to allow us to hire 103 additional staff in the Office of Acquisitions Management since 2008.

Oversight by Inspectors General (Sec. 103)

State agrees that there must be independent, objective oversight of contingency operations, and we support the IG concept outlined in proposed Section 103. The oversight outlined by S. 2139 ensures that inspections are carried out by experts who understand the agency mission, policy, procedures, and

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operations, and provides an approach for the coordinated efforts of existing agency Inspectors General. We do observe that the reporting requirements are intensive, which would result in resource implications for the IGs, and would flow down to the agency program offices.

We note that this section requires publication of information on the Internet of potential offerors and potential grantees. We are concerned that such disclosure available to both the general public and hostile overseas elements of some of these organizations, companies, or individuals may endanger their safety and may reduce competition. We recommend that provisions be developed for retaining the confidentiality of some of this information based on determinations of danger or program impact.

State Adoption of DoD Management Structure for Services Acquisition (Sec. 111)

With regard to section 111, State has been working closely with DoD on contractual efforts in Iraq and Afghanistan. In Iraq we are receiving support from the LOGCAP program under a LOGCAP IV Task Order competed among LCIV contractors for life support services, and other DoD contracts for food, fuel, equipment maintenance, logistics, and information technology support.

We do not believe successful management of services acquisition requires that State's management structure mirror that specified in statute for DoD. Unlike DOD, State centralizes acquisition of goods and services in our Acquisition Management Office (AQM), which together with the two Regional Procurement Support Offices (RPSOs), handle over 98% of the contracted dollars. This centralization of acquisition in AQM obviates the need for extensive additional policy guidance and oversight of other acquisition organizations. There is no need to designate by statute a lead policy official since all State acquisition is already under centralized policy guidance and acquisition.

State further centralizes acquisition with special construction, security guard, and information technology branches. These contracting officers are de facto Commodity Managers by virtue of their acquisition expertise and their central role in purchasing their service commodities. We also have 37 contracting officers,

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specialists and support service personnel devoted to contracting efforts in Iraq and Afghanistan.

State develops and maintains policies, procedures, and best practices guidelines that address the procurement of contract services. We are examining the list in 10 U.S. Code 2330 to determine if additional policies applicable to State's operations should be developed.

We would note that the Department participated in Office of Management and Budget (OMB) working groups regarding the Office of Federal Procurement Policy's (OFPP's) efforts to clarify the definition of the term "inherently governmental." When the final definition was released in OFPP Policy 11-01, our regional and functional executive directors were briefed about the new definition and requirements.

In addition, consistent with OMB's guidance to identify areas that warrant priority attention (e.g., because they are at heightened risk of overreliance), the Department will annually analyze its largest contracts for the purpose of determining whether or not an overreliance on contractors exists and whether inherently governmental functions are being performed by contractors. Existing Department practices already include review of statements of work for inherently governmental functions, when we are procuring a service. However, the Department intends to strengthen this management practice by requiring a written pre-award determination and requesting the program office to ensure the statement of work does not include inherently governmental functions. We expect to implement this practice by the fall of 2012.

Suspension and Debarment (Sec. 112 and Sec. 113)

Currently our Office of the Procurement Executive (OPE) serves as our Suspension and Debarment Official (SDO). We have worked to improve our efforts, reviewing suspension and debarment processes to make them more effective. We have:

- Contacted other agencies to identify best practices in their suspension and debarment programs.
- Created a suspension and debarment log to track actions.

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- Established regular meetings with the Office of the Inspector General Investigations Office to ensure cases are dealt with expeditiously.
- Participate in monthly Interagency Suspension and Debarment Council (ISDC) meetings; participated in the website subcommittee and attended S&D training and conferences.
- Provided training on suspension and debarment to grants officers and contracting officers.
- Attended training on debarment and suspension to improve skills.
- Issued detailed debarment and suspension procedures including procedures to require a written determination on action taken regarding referrals for suspension or debarment from Contracting Officers and/or the Office of the Inspector General.

We believe that our Office of the Procurement Executive is capable of handling suspension and debarments with the necessary level of impartiality to consider and apply suspensions and debarment whenever necessary and, for this reason, are concerned with a requirement that would preclude a suspension and debarment official from being located within the Bureau of Administration of the Department. We will continue to look at the staffing of the suspension and debarment function as part of overall Department of State resource planning. We believe we do not need a separate SDO or staff as proposed in Section 112.

Suspension activity increased from no suspensions in FY2009 to five each in FY 2010 and FY2011 and 19 actions halfway into FY2012. Debarment activity increased from no debarments issued in FY2009 to six issued thus far in FY2012. This increase is due to more active coordination between the Department's OIG investigators, stronger referral activity, and improved processes and focus within the suspension and debarment office.

With regard to the automatic suspension provisions set out in proposed Section 113, we believe that the current, long-standing policy requiring a reasoned decision from the SDO based on a totality of information remains a sound approach, and would have concerns with a provision that imposes automatic suspension and debarment which will likely lead to due process challenges by the affected contractor community and potential court action that could delay necessary action in crisis situations.

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Reorganization of Contracting Function (Sec. 131)

We respectfully do not concur with the re-organization of our contracting function proposed in Sec. 131. Defining the acquisition organization of the Department of State in statute would reduce our flexibility and codify the structure, making future adjustments to support new 21st century challenges cumbersome and time consuming. Future legislation would have to be drafted and passed to allow the Department to adjust to the fast changing world of diplomacy, rendering the Department less agile and thereby potentially handicapping the Department's ability to respond to contingencies. Also, the proposed re-organization would constitute a bureau with not only the contracting function but logistics, motor vehicles, diplomatic pouch, household effects, shipping and storage. If a bureau were to be formed with only the contracting program, it would not be of sufficient size to warrant bureau-level status.

As noted earlier, the Department of State acquisition model uses a centralized contracting approach, with a primary Washington, D.C. based central office and two Regional Procurement Support Offices to provide additional forward deployed support. The Department centralized the acquisition of worldwide local guard services using this Washington, D.C. based approach with great success.

The Department's Chief Acquisition Officer (CAO) is the Senate confirmed, Assistant Secretary of Administration, an individual with worldwide experience with our acquisition needs and challenges, as well as experience working with our Department of Defense colleagues. The Head of Contracting Activity is a seasoned professional with a solid record of acquisition accomplishments. We also believe that the separation of the Office of the Procurement Executive from the Acquisitions Management Office (AQM) provides a decision making process removed from direct acquisition responsibility.

As Under Secretary for Management, I work hand in hand with the CAO on acquisition issues, especially contingency contracting. Major decisions on contingency contracting policy, such as how to strengthen private security contractor oversight, are made by me. Solutions to any acquisition issues are facilitated by the current flexible, well coordinated structure. Neither access nor authority is a problem under the current structure.

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The Department acknowledges that improvements are always possible in our contracting oversight and management, and we continue to strive to enhance accountability for contracting throughout our organization. The examples of contracting challenges cited by the CWC in its final report are not a function of the organizational location or strength of our acquisition staff, but rather of the need for more effective contract administration support.

As our contracting activity increased, we faced two challenges: 1) we needed additional acquisition personnel to support our procurement efforts; and 2) the requirements offices needed to better support our acquisitions with up front planning and contract administration oversight.

As noted above, we increased our acquisitions staff through the Working Capital Fund – hiring 103 staff since 2008, in line with CWC Recommendation 13. The increase in staff can be directly attributed to direct-hire authority being obtained for "1102s," the contracting specialist series in March 2010, and we will continue to augment our direct-hire staff. Our additional staff has improved operation of the office, decreasing the time to complete a simplified acquisition by 4.4 days or 23%.

As part of the implementation of the Secretary's Quadrennial Diplomacy and Development Review, which called for elevating accountability for contracting, the Assistant Secretary of a performing bureau now needs to ensure that adequate resources, both personnel and funding, are identified early in program planning to make certain contract administration is not an afterthought. Department guidance issued in a Procurement Information Bulletin in June 2011 requires the cognizant Assistant Secretary to certify that planning and oversight is adequate for every service contract valued at an annual expenditure of $25 million or more, and also to verify in their annual management control reviews that they have examined these contractual arrangements and judged oversight to continue to be sufficient. The guidance also highlights the appropriate use of contractor support in contract administration and discusses how to mitigate potential contractor conflicts of interest and violations of non-personal services requirements.

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The Department also increased accountability for contract oversight by mandating the inclusion of contract oversight work elements in performance appraisals of technical personnel with contract management responsibilities, creating an award to recognize outstanding contract administration by a Contracting Officer's Representative (COR), and by creating and maintaining a community for CORs to share experiences and best practices, including shared websites.

Contracting is a team effort at the Department with close relationships between acquisition and requirements personnel; collaboration is essential to anticipate upcoming requirements, allow sufficient lead time, consider various methods of procurement, and otherwise increase the efficiency of the acquisition process. The Contracting Officer from Acquisitions strives to appoint a COR as soon as a requirement is initiated, so that the COR can assist in the solicitation process. The Contracting Officer may appoint an additional individual—a U.S. government employee known as a government technical monitor (GTM)—to assist the COR in monitoring a contractor's performance.

Over the past few years, we have trained and deployed more CORs. In FY11 the Department had 1,080 employees certified to carry out COR duties and projects an increase to 1,200 by the end of FY12.

We believe our ability to increase our acquisitions staff through the Working Capital Fund, coupled with the steps taken to elevate accountability of the requirements offices for contracting – serves as a solid foundation for our contracting function at State.

QDDR / Contractor Readiness (Sec. 132)

As Secretary Clinton has noted, the QDDR is a valuable tool to provide us with short-term and long-term blueprints for how to advance our foreign policy objectives and our values and interests. We have seen tangible results from our first QDDR, such as the establishing of three new bureaus within the Department dealing with counterterrorism, energy, and civilian stabilization. We firmly believe that there should be a regular quadrennial review of this sort. We look forward to working with the Congress to institutionalize the QDDR.

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The Department's current acquisitions process awards to contractors who we believe are ready to carry out our national security needs. In conjunction with all the offices that support our expeditionary diplomacy, we put into place contracts that can be accessed on short notice. If contractor readiness falters during the term of the contract, we would take remedial action. When new requirements are anticipated, the Department conducts market research to determine the extent and capability of the potential contractor pool.

Training (Sec. 133)

The Department supports increased training for contract administration personnel. We have updated COR training to be more interactive, skills based and adult learning focused. All CORs and GTMs, both domestic and overseas, must complete a 40-hour approved training course. A separate COR class session has been tailored for CORs from the Bureau of Diplomatic Security to include special issues dealing with oversight of local guards and other security programs overseas. All Department of State CORs supporting DOD issued contracts for our Iraq mission take additional DOD training in the contingency environment and any other specialty training related to the specific contract. This ensures that Department of State personnel managing DOD contingency contracting programs meet the DOD standard.

Reduced Length for Contingency Contracts/ One-Tier Subcontracts (Sec. 201)

The Department objects to imposing contract term limits, as proposed in Sec. 201, that reduce contract performance periods for competitively awarded contingency contracts to three years. This limitation would require a continuous cycle of solicitation and contract award when resources are most constrained. Shorter contract periods may also reduce the amount of initial competition. Contracting Officers continually assess the need to exercise contract options to determine if continuing with an existing contractor represents the best decision for the Government.

Limitation of contractors to a single tier of subcontractors is not practicable for large contracts, and may require significant additional contracting and contract administration capability in contingency operations where these resources are most scarce. It may also result in prime contractors attempting to do more work

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themselves, regardless of cost or other efficiencies, to maintain a single subcontracting tier.

Private Security Contractors (Sec. 202)

The Department has a long history of using contract guards for protection of facilities and personnel stretching back to the 1970s, with enhanced capabilities in the 1990s. Private security contractors (PSCs) are critical to our readiness and capability to carry out American foreign policy under dangerous and uncertain security conditions. Maintaining this capability is particularly important when the Department is taking on expanding missions in contingency operations environments or areas that are transitioning from periods of intense conflict, such as in Iraq and Afghanistan.

That said, we appreciate the intent of section 202. We have sought to reduce risks associated with using contractors through robust oversight of our PSCs, as in CWC Recommendation 4. Contractors are operationally overseen and contractually managed by direct hire Department of State personnel, and we have instituted cultural training requirements, and contractor behavioral standards of conduct to ensure the professionalism of PSC personnel. The Department is staffed to properly oversee PSC compliance with these contractual requirements in Iraq and Afghanistan.

State strongly disagrees with the language of paragraph Sec. 202 (b)(1), which has the combatant commander determining whether performance of security functions by contractor personnel for the Department of State in overseas contingency areas is appropriate and necessary. This language is too open-ended and is not acceptable as it infringes upon the Secretary of State's primary role in leading and carrying out foreign policy. The Secretary of State and the Chief of Mission have statutory responsibility for the safety and security of personnel under Chief of Mission authority. We routinely discuss the security situation in-country with DoD and other agencies present at post; and in situations where U.S. military forces are present, that coordination is intensified and ongoing. We fully comply with OFPP's new Policy Letter on inherently governmental and critical functions, and our PSCs never engage in combat operations. We hope to work with you and your staff to find mutually acceptable language in this section.

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GSA Contracting Writing System (Sec. 211)

State supports the use of consistent, clearly written contracts; however we do not support the provisions of 211(a) calling for the Administrator of General Services to establish and maintain a single contract writing system applying to all Executive Agencies other than DoD. The Department of State spent considerable resources deploying our current contract writing system and, given the likely complexity of trying to create a single system, would be concerned about the expense and investment of resources needed to deploy another system.

Trafficking in Persons (Sec. 222)

The Department continues to support strengthening measures to combat Human Trafficking. State's Trafficking in Persons (TIP) office combats trafficking as a foreign policy mission, and we have also been vigorous in our efforts to ensure none of the contracts written by the Department are with contractors abusing their employees. We have identified contracting programs which may result in the hiring of unskilled or semi-skilled labor from third countries, including our facility construction and guard services. Major approaches/or initiatives undertaken at State to address these TIP contracting issues include:

- Training Contracting Officers and CORs as our front line in preventing contractor trafficking in persons and worker abuses. The Department worked closely with the Federal Acquisition Institute (FAI) and the Department of Homeland Security (DHS) to develop on-line training for Contracting Officers across the government, including at State.

- Oversight Recommendations - We have implemented many of the Commission on Wartime Contracting, GAO and OIG recommendations for contract oversight in Iraq and Afghanistan throughout our contracting program. Several Contracting Officers are collocated with bureau staff outside the contracting office to provide oversight, and Contracting Officers travel to overseas performance sites, as called for by CWC Recommendation 2. When Contracting Officers are on temporary duty in a region, they look at other programs in the area that use contractors, taking extra steps to monitor and enforce TIP programs. In some locations, this includes having a direct-hire Project Manager or COR living on-site with construction or

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security staff at their housing areas, and unannounced inspections of housing compounds for DS local guard programs.

- Procurement Information Bulletin, PIB 2011-9 on TIP (issued March 24, 2011) by State's Office of the Procurement Executive, is used by Contracting Officers to tailor specific oversight requirements based on locale, service, and contract type. New solicitation language regarding recruitment, including a recruitment plan and submission of agreements, has been developed for our contracts to prevent maltreatment of workers.

Contingency contracts require special vigilance against trafficking in persons. We continue to strive for zero tolerance of trafficking in all our contracts.

In conclusion, the Department has taken a significant number of positive steps to improve our contracting function. Because of our involvement in the Iraq and Afghanistan contingencies, and our reliance on support service contracts, we have increased the number of our contracting staff through the Working Capital Fund; improved our training; and enhanced our contract monitoring and oversight. As the CWC recommended, we have strengthened contract administration in conflict-affected states through the hiring and training of adequate federal personnel to provide strong governmental oversight of contractors. We also believe that S. 2139 has many positive elements that can be used to further strengthen our contracting program, and we look forward to working with you.

Thank you for providing me with this opportunity to appear before you and for your ongoing support for the Department of State. I will be pleased to answer any questions that you have.

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U.S. SENATE

WRITTEN STATEMENT OF

MR. RICHARD T. GINMAN
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY

BEFORE

U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
CONTRACTING OVERSIGHT SUBCOMMITTEE

ON

THE COMPREHESIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012

April 17, 2012

HOLD UNTIL RELEASED BY THE
U.S. SENATE

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Chairwoman McCaskill, Senator Portman, and distinguished members of the subcommittee, I welcome this opportunity to discuss the proposed "Comprehensive Contingency Contracting Reform Act of 2012," the associated Commission on Wartime Contracting recommendations, and the impact the legislation would have on the Department. You asked me to specifically discuss the legislation's requirements for the management of service contracts, suspension and debarment, lines of authority for contingency contracting support, inclusion of contract support in planning documents and professional training, use of risk analyses for private security contracting (PSC) functions, uniform contract writing systems, contractor performance evaluations, strengthened provisions to combat trafficking in persons, and sustainability analyses. These topics all correlate to a provision in the proposed Act, as shown in Table 1 below. Each is addressed in my testimony, in the relevant provision section.

Table 1. Subcommittee's Interest Areas from Invitation Letter.

Subject	Section
Management of Service Contracts	111
Suspension and Debarment	112/113
Lines of Authority for contingency contracting support	121
Contract Support in Planning and Professional Training	122/123
Risk Analysis for PSC Functions	202
Uniform Contract Writing System	211
Contractor Performance Evaluations	224
Combating Trafficking in Persons	222
Sustainability Analyses	231

I am the Director of Defense Procurement and Acquisition Policy (DPAP) in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), where I am responsible for Department-wide contingency contracting policy and functional leadership. I am a Career Civil Servant, with more than 40 years experience in government and commercial business in the fields of contracting,

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acquisition, and financial management. Before assuming DPAP duties in October 2006, I held several private sector positions including Vice President of General Dynamics Maritime Information Systems and Director of Contracts for Digital System Resources. I served in the United States Navy for 30 years, retiring as a Rear Admiral, Supply Corps. In addition to three tours afloat, I served in a variety of contracting and acquisition positions that included Commander, Navy Exchange Service Command; Deputy for Acquisition and Business Management in the office of the Assistant Secretary of the Navy, Research Development and Acquisition; and Deputy Commander for Contracts, Naval Sea Systems Command.

Before we get too far, I'd like to take a moment to acknowledge Senators McCaskill and Webb for their commitment to support of our troops. In addition to authoring the legislation we are here to discuss today, Senators McCaskill and Webb were also the co-sponsors of the legislation that created the Commission on Wartime Contracting (COWC), whose efforts spanned from 2008 to 2011 and whose August 2011 final report recommendations are the genesis for some of the legislative provisions in the Comprehensive Contingency Contracting Reform Act.

DoD Support of Commission on Wartime Contracting

The Department is determined to identify, correct, and prevent contracting efforts inconsonant with U.S. objectives in Iraq and Afghanistan and wasteful of U.S. tax dollars. The Department supported fully the Commission's independent study by providing them with personnel, data, interviews, and insights. Some examples of the Department's support to the Commission include:

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- DPAP served as the focal point to facilitate the Commission's efforts. The Department designated USD(AT&L) to serve in this role at the outset of Commission in 2008.
- The Department detailed subject-matter experts (SMEs) to augment the COWC's 40-member staff.
- The Department participated in 18 COWC hearings.
- The Department analyzed each COWC publication, including its June 2009 first interim report, February 2011 second interim report, and August 2011 final report, as well as their various flash reports.

In short, the Department interacted regularly with the Commission throughout its endeavors and continues to carry the torch to ensure improvements in the way ahead for addressing contracting challenges now, and in the future. We have made progress against the Commission's Final Report recommendations; for example—

- We have set annual competition goals for contingency contracts and will be reporting progress against them annually to Congress. This complies with Section 844 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 and comports with the Commission's final report recommendation 10.
- We are committed to the Department's "zero tolerance" policy for trafficking in persons. In November 2011, the Department published additional contract administration duties to maintain surveillance over contractor compliance with trafficking in persons requirements for all

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DoD contracts. This commitment to combating trafficking in persons echoes the Commission's final report recommendation 12.

- With Congressional help, we have protected the government's interests in two important ways: Sections 841 and 842 of the NDAA for Fiscal Year 2012 provide the Department with "no contracting with the enemy" remedies and access to subcontractor records. This aligns with the Commission's final report recommendation 13.

These are just a few examples of the initiatives we are embarked upon that relate to the Commission's recommendations. We maintain a scorecard to manage DoD progress against all the Commission's recommendations. We currently are working with the Government Accountability Office (GAO), which is engaged under job number 121042 in evaluating the Department's progress against the Commission's recommendations. We have provided GAO with a copy of the Department's scorecard.

DoD Reaction to Comprehensive Contingency Contracting Reform Act

Senators McCaskill and Webb introduced S.2139 on February 29, 2012, to "enhance security, increase accountability, and improve the contracting of the Federal Government for overseas contingency operations, and for other purposes." This "Comprehensive Contingency Contracting Reform Act of 2012" contains 23 provisions, 19 of which apply to DoD (the others apply only to State and/or USAID). The 19 DoD provisions are far-reaching. They fall under the purview of different DoD stakeholders, including the USD(AT&L), who serves as the DoD technical lead on the legislation; the Under Secretary of Defense (Comptroller); the Under Secretary of Defense (Policy); the DoD Inspector General; and the Chairman, Joint Chiefs of Staff. Since the bill was

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introduced just over a month ago, the various DoD stakeholders continue to analyze its provisions. Today, we offer high-level reaction to the provisions applicable to DoD.

Before embarking on a discussion of the bill's individual provisions, it is important to emphasize that DoD supports the legislation's goals to enhance security, increase accountability, and improve contracting for overseas contingency operations. The Department is committed to providing the leadership, policies, and innovative tools needed for contracting in support of our overseas contingency operations, as well as preparing for our future contingency endeavors. Legislation is often a necessary means of achieving this end, as evidenced by the provision recently provided in Section 842 of the NDAA for FY 2012 for access to subcontractor records. An example of a welcome provision in the Comprehensive Contingency Contracting Reform Act is the requirement that contractors certify they have not engaged in trafficking and have procedures to prevent such activities.

Title I—Organization and Management of Federal Government for Contracting for Overseas Contingency Operations

The Department understands the need to be well organized, trained, and equipped to manage any of our contracts; whether it be stateside or an overseas contingency operation (OCO). The USD(AT&L), USD(Policy), Joint Staff, USD(Personnel and Readiness) (P&R), Defense Contracting Management Agency (DCMA), Defense Contracting Auditing Agency (DCAA), Defense Logistics Agency (DLA), USD(Comptroller), and Major Commands—to name a few—jointly monitor planning, execution, and oversight of the funds appropriated by Congress. This is a true team effort. Each of these organizations brings their own unique subject matter expertise in

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oversight of contingency contracting that ties back to the resources and expertise of the acquisition system as a whole.

In the past, the Department was not properly organized and staffed to effectively manage contractors on the battlefield; we had a shortfall of acquisition oversight and lacked a program management approach to Operational Contracting Support (OCS). However, the Department has made great strides in the near-term leveraging the work of various task forces and senior level working groups to implement new policy, guidance, training, new initiatives to improve management of contractors on the battlefield and assisting the permanent planning function at Geographic Combatant Commander (GCC) level to ensure their contracting, logistics and materiel readiness needs are included both now and in the future.

Subtitle A—Government-wide Matters

Subtitle A contains four sections: Sections 101, 102, and 103, which apply to DoD; and Section 104, which does not apply to DoD.

Section 101 provides for responsibilities of the President regarding financing of OCO and requires funding requests to identify specific information. ***Section 102*** details responsibilities of the Director of the Office of Management and Budget (OMB) regarding OCO and requires OMB to provide cost estimates and annually report obligations and expenditures.

The provisions of Sections 101 and 102 appear aimed at ensuring proper planning, execution, and oversight of the funds appropriated for overseas contingency operations.

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Both of these provisions are matters over which the OSD Comptroller has cognizance for the DoD. The Department can meet most of the requirements of Sections 101 and 102, but defers to the OMB for comment since it has the insight into the budgeting and reporting capabilities of the rest of government. Some of the requirements of section 102, such as OCO estimates for "future costs" or "anticipated contracting costs," would be very difficult to accurately predict due to the dynamic, evolving nature of contingency operations. The DoD OCO budget is a bottom-up budget preparation each year, configured to support current national policy and military strategy, and Commander needs on the ground. Consequently, DoD estimates of future OCO requirements, even at the aggregate, could be inaccurate and even unhelpful. Lastly, the DoD has existing legislation for the quarterly reporting of OCO obligations and expenditures, and while the proposed legislation does not disagree, we would welcome the opportunity to work with the Committee to consolidate OCO reporting requirements.

Section 103 makes appointment of a designated lead Inspector General (IG) a requirement for any designated overseas contingency operation that exceeds 30 days. This recommendation falls within the purview of the office of the DoD IG. Ms. Lynne Halbrooks, Acting Inspector General, is also testifying today and therefore, I will defer to her comments on this provision of the legislation.

Section 104 expands responsibilities of the Chief Acquisition Officers (CAOs) of Federal Agencies to include oversight of contracts and contracting activities for overseas contingency operations. Although this is a provision for agencies other than DoD, which is specifically excepted from 41 USC 1702, I support the notion of having a CAO be

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responsible for OCO contracting issues. At DoD, the USD(AT&L) is the CAO responsible for oversight of contingency contracting.

Subtitle B—Multi-Agency Matters

Subtitle B contains three provisions, all of which pertain to DoD: section 111, 112, and 113.

Section 111 adds OCO in the definition of the types of services covered by Section 2330 of title 10, United States Code, and adds a reporting requirement on implementation, which applies to DoD, the State Department, and USAID.

The Department is focused on improving all services acquisitions. For example, we published a comprehensive architecture to guide the acquisition of services. This requirement is encapsulated in Department of Defense Instruction, DoDI 5000.02, Enclosure 9. In reviewing contracted services, we seek to ensure that the requirements are clear and well defined, the acquisition approach and business strategy are appropriate and that there are mechanisms in place to provide for proper oversight of contractor performance. More recently, in September 2010, USD(AT&L) embarked on a Better Buying Power Initiative, and one of its mandates was to "improve tradecraft in services acquisition." Among other things, the Under Secretary directed the Department to more aggressively manage the more than $200 billion it spends annually on services (such as information technology services, weapons-systems maintenance, and transportation) – more than 50 percent of the Department's contract spend. He also required the military departments and defense components to establish a senior manager for the acquisition of services at the General Officer, Flag, or SES level. These senior managers are responsible for governance in planning and execution of service contracts. Furthermore,

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the Department has established for the first time a common taxonomy of types of services to organize procurement of services into six portfolio categories to make fact-based decisions, facilitate the sharing of best practices and lessons learned, and institutionalize strategic sourcing.

Section 112 requires at least one suspension and debarment official (SDO) for each department or agency, specifies the SDO cannot be located or co-located within the acquisition office, and imposes limits on the SDO's duties. The Service SDOs have primary cognizance over this provision. In DoD, Service SDOs are independent of both acquisition and the IGs. This independence serves the Department well.

DoD components already have very mature suspension and debarment programs. While ensuring that our SDOs remain independent, we leave the construct of suspension and debarment programs to the Components. Air Force and Navy have dedicated SDOs who also handle fraud matters; the Army and DLA separate SDO duties from fraud matters. The Components have structured their programs to best fit their requirements from both effectiveness and efficiency perspectives. This autonomy has worked well. Annually the DoD SDO program leads the federal government in terms of the number of actions taken, and the DoD SDOs provide both informal and formal leadership in the various Suspension and Debarment-related forums, including the Interagency Suspension and Debarment Committee (ISDC), the DoD Procurement Fraud Working Group, and public-private professional associations, such as the American Bar Association's Section of Public Contract Law, Debarment and Suspension Committee. Rather than impose the proposed statutory "one size fits all" approach, we think it would be more appropriate for language to allow DoD the flexibility to continue to tailor its approach to unique

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component situations. We would welcome the opportunity to work with Congress on appropriate language.

Section 113 provides additional basis for suspension of contractors from contracting with the federal government, specifying circumstances where suspension would be automatic. Like Section112, the Service SDOs have primary cognizance over this provision.

There are severe consequences to a company when it has been suspended or debarred. However, the goal of the suspension and debarment process is not to be punitive, but to protect the government's interests and to ensure that in the future we only do business with reputable contractors. Our suspension and debarment process works as well as it does because it gives contractors the opportunity to defend themselves in response to allegations. If suspension and debarment is perceived by the contractor community to be unfair or automatic, that increases the chances that a suspension or debarment will be litigated in the courts rather than handled through a relatively quick and efficient administrative process. We believe each situation is best addressed through the current administrative process, which vests the SDO with discretion to carefully weigh the facts, consider the existence of mitigating facts and remedial measures, evaluate the contractor's present responsibility, and make a decision that is in the best interests of the government on a case-by-case basis. We do not believe that automatic suspension that denies contractors due process is in the government's interest. DoD opposes mandating automatic suspension because for the suspension and debarment process to have legitimacy and credibility, SDOs need independence, freedom of action, and discretion to exercise judgment regarding whether an exclusion is appropriate.

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Subtitle C—Department of Defense Matters

Subtitle C contains three provisions, all of which pertain to DoD: section 121, 122, and 123.

Section 121 would require the Secretary of Defense to prescribe the DoD chain of authority and responsibility for policy, planning, and execution of contract support for overseas contingency operations. This is a provision that invokes DoD-wide equities, from USD(AT&L) to USD(Policy) to the Chairman, Joint Chiefs of Staff. I support ensuring that the importance of OCS is inculcated throughout the Department and welcome efforts to assist the Department in eliminating waste, fraud and abuse in wartime contracting. In March 2010, USD(AT&L) created a permanent board to provide strategic leadership to the multiple stakeholders working to institutionalize OCS. The board includes all relevant OCS stakeholders, including USD(AT&L) who is responsible for OCS policy; Joint Staff who is charged with joint OCS planning and formulating doctrine; and the Combatant and Service Component Commanders who have the duty of OCS planning, and selecting organizational options for theater and external contract management and OCS execution. An ongoing GAO engagement 351692 is examining the Department's implementation of OCS initiatives. The results of this GAO engagement should help guide the way forward for this activity.

Section 121 also contains a reporting requirement that a combatant command report several elements of contract data upon commencement of a contingency operation that exceeds 30 days. While such a reporting requirement seems reasonable for long term operations, it is impractical to assume such data would be available or be of value in the

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very early phases of an operation. Therefore, DoD believes a more substantial time lag, perhaps six months, for the reporting to begin would be appropriate.

Section 122 requires the Chairman of the Joint Chiefs of Staff, in coordination with a number of other individuals to provide quarterly assessment of OCS capability to support current and anticipated wartime missions, and recommended resources required to improve/enhance support and planning for such operational contact support. This recommendation is primarily in the Military Services and Joint Staff's domain.

The Department already requires planning for contract support in its strategic planning guidance. While the Department supports increasing resources to meet new planning requirements, this provision to adjust CJCS functions appears unnecessary as those requirements will already be identified by the time legislation is enacted via a manpower study due out in the next month.

Section 123 requires inclusion of contingency operations matters in joint professional military education in senior and intermediate schools, and specifies curriculum: defining requirements, contingency program management, contingency contracting, and the strategic impact of contracting cost on military missions. The scope of this recommendation primarily belongs to the Joint Staff and military services.

We agree that OCS should be recognized in professional military education. The Joint Staff and military services have produced doctrine for OCS, which is the basis for professional military education. Further, the curriculum for each phase of joint and Service-specific professional military education should include OCS content appropriate for each phase of an officer's professional development and in a manner consistent with

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doctrine. This provision will help DoD and the Services focus on improving OCS coverage in professional military education.

However, we do not support having specific topics prescribed. Indeed, the appropriate content goes well beyond those areas specified so, as written, the provision is limiting. Additionally, the provision focuses only on joint professional military education, which affects a relatively small percentage of officers. A more holistic approach would include OCS education requirements for both joint and Service professional military education. We would like to work with the committee on this provision.

Subtitle D—Department of State and Related Agency Matters

Subtitle D contains three provisions, all of which do not pertain to DoD: sections 131, 132, and 133. Therefore, I will not comment on them.

Title II—Transparency, Sustainability, and Accountability in Contracts for Overseas Contingency Operations

Subtitle A—Limitations in Contracting

Subtitle A contains three provisions that all fall within USD(AT&L) purview: Sections 201, 202, and 203.

Section 201 limits contract periods to 3 years (competitive contract) or 1 year (non-competitive contract; and only one bid received); it also limits service contracts to a single tier of subcontractors. This falls under USD(AT&L) cognizance. While waiver provisions are offered, the provision unnecessarily constricts the needed flexibility during contingency operations.

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Reducing performance periods could have the unintended consequence of increasing workload of the contracting and oversight workforce, stressing the contractor accountability system (the Synchronized Predeployment and Operational Tracker, or SPOT), decreasing competition as overloaded contracting officers "sole source" contracts to sustain needed support, and increasing cost.

Management and oversight of contractors performing in deployed locations requires a cadre of military members and government civilians to perform Contracting Officer's Representative (COR) duties. CORs are the eyes and ears of the government to monitor contractor performance. The Department has recognized that inadequate surveillance of contracts has left us vulnerable to the potential that we are paying full price for less than full value. Therefore, over the past two years, we have developed COR certification and training standards to professionalize this vital function and instill rigor in the management and oversight process. On March 29, 2010, USD(AT&L) issued a memorandum to formalize standards for certification and training for our CORs. On March 22, 2012, the Department published the DoD COR Handbook, which addresses key aspects of contract quality surveillance and roles and responsibilities of the contracting officer, the COR, and the requiring activity. In addition, the Panel on Contracting Integrity developed a draft DoD Instruction to institutionalize these requirements for CORs. This DoDI is significant, not only because it will standardize COR functions, but also because it will require the Defense Components to plan and budget for COR requirements.

Contract options allow the flexibility in performance periods that is critical to providing requirements in fluid operations. That said, I agree, especially for services,

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that length of time for contracts and task orders needs to be tempered with the difficulty, in a warzone environment, of transitioning from one contractor to another. As an example, we extended many task orders and contracts supporting the Iraq mission, rather than recompete them, to allow leadership to focus on the drawdown through calendar year 2011 rather than focus on transitioning contract which would be of short duration when the period of performance ended on December 31, 2011.

Limiting service contracts to one subcontract tier to bolster accountability and improve transparency is unworkable. As an example, LOGCAP task orders today cover a wide range of base support services; if this provision is enacted, we would need to write multiple individual task orders for each service (e.g., food service, power distribution, water, fuel, and so forth). Even with this approach it is likely that one tier of subcontracting is not possible. The Department has been proactive in contracting strategies to ensure transparency. For example the Department recompeted and restructured the Host Nation Trucking contract utilizing fair opportunity, in order to eliminate layers of subcontractors and to allow more transparency into the contracted support that provides security for supply truck convoys.

Section 202 requires an OSD review, risk analysis, and Congressional report on the performance of security functions. It further requires a Combatant Commander review, risk analysis, and documentation of sourcing security functions, considering military, civilian or contractor performance. It prohibits the use of contractors to conduct such risk analysis. This falls under USD(AT&L) cognizance, with Logistics and Materiel Readiness (L&MR)/Program Support lead.

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I fully support efforts to strengthen planning, oversight, and accountability for Private Security Contractors (PSCs); however, Section 202 is duplicative from the Department's perspective, in light of existing DoD Instructions 3020.41 (Operational Contract Support) and 3020.50 (Private Security Contractors Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises). Additionally, Section 833 of the NDAA for FY 2011 requires business and operational standards that will enhance PSC planning, oversight, and accountability. Our efforts to implement this provision are ongoing. The Department of Defense has significantly increased its oversight of private security contractors in recent years, and we are working to implement Section 831 of the NDAA for FY 2011, which requires the Department to take further steps to assign sufficient personnel to oversee private security contracts. We will continue these efforts. At the same time, PSCs continue to be necessary to perform certain security functions.

Section 203 requires a justification and approval (J&A) for sole-source contracts under the unusual and compelling urgency exception to the requirement for full and open competition; it also specifies reporting to several Congressional Committees annually.

I agree that competition drives the best deal for the Government. This is a central tenet of the USD(AT&L) Better Buying Power Initiative. USD(AT&L) is focused on improving competition in Defense procurements, regardless of whether they occur in a conventional or contingency environment. To emphasize the importance of competition in the contingency environment, USD(AT&L) has established competition goals for Operation Enduring Freedom. The Department's progress in this area will be included in the annual DoD Competition Report.

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Section 203 is broader than contingency contracts. It requires a compilation and reporting of all J&As that use unusual and compelling urgency to limit competitive procedures.

I am concerned that Section 203 imposes an administrative burden to collect and report annually, particularly given the fact that J&As already are posted on the Federal Business Opportunities public webpage.

Subtitle B—Enhancements of Contracting Process

Subtitle B contains two provisions that all fall within USD(AT&L) purview: Sections 211 and 212.

Section 211 requires a uniform contract writing system for DoD and another for Federal agencies. This translates to a requirement for DoD to have one contract writing system for all agencies/components/departments. I believe this unnecessarily specifies a solution to a challenge that DoD is already addressing. A single system for all DoD activities is not workable.

DoD contract writing systems have to operate in a variety of surrounding system and organizational environments, each of which may have its own interfacing requiring systems and financial systems. Rather than specify a system-specific solution that may not be usable in all organizational operating conditions, DoD has mandated common output data formats, data sources, and internal controls that any DoD contract writing system must meet. This mandate will achieve the same goal without requiring a single system to operate in a range of environments beyond what is efficiently achievable. The Standard Procurement System, as a single system, was never fully successful. We are

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working with the Services and the Joint Staff on a common set of capabilities for use in contingency environments.

Section 212 requires the establishment and maintenance of a database of prices charged under government contracts to be used for monitoring price developments/trends, cost/price analysis and price reasonableness determinations, and source selections. It requires use of the Director, Defense Pricing pilot project, where appropriate. This initiative falls under the purview of USD(AT&L).

I support the idea of empowering our contracting workforce with pricing information so they can obtain the best deal for the government. While it would be helpful to have informed pricing for recurring purchases, pricing information for unique items and/or unique environments would benefit less from the database. Purchases made in a contingency environment typically yield different prices than those in a conventional environment. As Section 212 indicates, the Director, Defense Pricing is undertaking a pilot and the Department will certainly share information with the Office of Federal Procurement Policy and other appropriate organizations on this initiative. The Director, Defense Pricing together with the Defense Contract Management Agency, is exploring tools and other resources (such as establishing Defense pricing centers of excellence) to best build and equip the DoD pricing community.

Subtitle C—Contractor Accountability

Subtitle C contains four provisions that all fall within USD(AT&L) purview: Sections 221, 222, 223, and 224.

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Section 221 requires contractor (subsidiary, parent or successor entity, and subcontractors) consent to personal jurisdiction for civil actions on overseas contracts valued at greater than $5M.

We agree in broad terms that the Department of Defense needs to have remedies available to handle contractors who may not be subject to U.S. law. This provision is similar to that drafted by the Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight titled "LTC Dominic 'Rocky' Baragona Justice for American Heroes Harmed by Contractor Act."

Legal issues surrounding this provision are extremely complex and we would like to work with the Congress to develop an effective approach to ensuring contractors can be held accountable. Some local subcontractors will not consent to US jurisdiction—particularly in immature theaters—potentially leading to a lack of subcontractors to provide the essential logistics support to engaged forces, risking lives and the mission. Further, countries where we might have contingency operations and where judicial systems may be less objective and sophisticated, may insist on reciprocal provisions for U.S. contractors in their countries, which might limit U.S. contractor participation or increase their costs.

Civil jurisdiction is covered by treaty obligations, such as the Hague Convention, and various Executive level agreements such as Status of Forces Agreements (SOFAs) and stationing agreements (some of which are classified or otherwise not public). Where such agreement requires that host nation nationals be subject only to host nation law, operations would be severely impacted. Section 221 may complicate international

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negotiations related to contingency operations and may adversely affect the ability to support the warfighter engaged in a contingency operation.

Section 222 authorizes termination of contracts if a contractor/subcontractor engages in severe forms of trafficking. It also requires contractor certification that they have not engaged in trafficking and have procedures to prevent such activities. We would welcome legislative language requiring the contractor certification.

Section 222 would amend the Fraud in Foreign Labor Contracting Act to address "Work Outside the United States" to include trafficking in persons violations associated with recruiting, soliciting or hiring. With regards to Combating Trafficking in Persons (CTIP), we fully support the Federal Government and Defense Department's zero tolerance policy. USD(AT&L) works with the USD (Personnel and Readiness) who manages the DoD Trafficking in Persons Program required by the Trafficking Victims Protection Act of 2000 and subsequent Reauthorizations. AT&L ensures that contracting regulations and policy communicates this zero-tolerance message. To improve awareness and the effectiveness of DoD's CTIP Program within the DoD contracting community, USD(AT&L) has included information on CTIP in contingency contracting handbooks and issued brochures and business-type cards in seven different languages in the theater. DoD contracts performed in Iraq and Afghanistan contain clauses that provide contractors the guidance on required actions to take should alleged offenses by or against contractor personnel occur. We are in the process of expanding these clauses to make them applicable worldwide for contractors supporting all contingency, humanitarian or peacekeeping operations.

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Section 223 requires Federal Awardee Performance and Integrity Information System (FAPIIS) include information on any parent, subsidiary, or successor entities of the corporation. We do not have this information at this time. We support corporations explaining their corporate structure (e.g., the relationship between any parent, subsidiary, or successor entities (family tree)). We believe this information should be provided in the registration process for an identification number. Applications such as FAPIIS could then use the family tree information.

Section 224 impacts contractor performance evaluations and the Past Performance Information Retrieval System (PPIRS). Specifically, it terminates the regulatory requirement to submit an agency evaluation to the contractor, and to permit contractor response and to retain this response in PPIRS. This is under USD(AT&L) purview.

Section 224 would remove the right of the contractor to respond to performance evaluations and to have such evaluations reviewed at a level above the contracting officer. The COWC provided a similar recommendation to which the Department objected on the grounds that it removes due process. Allowing unadjudicated comments in the past performance system invites additional justification for protest when the information is relied upon for award decisions. The Department believes a contractor should have the ability to respond to a contracting officer's performance evaluation. We understand the importance of the government having timely access to past performance assessments. Section 806(c) of the NDAA for Fiscal Year 2012 (P.L. 112-81) would shorten the comment time from 30 days to 14 days, as a means to accelerate entries while

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still providing for due process. The Department is in the process of implementing this legislative mandate.

For many years, the FAR has required agencies to provide for review of agency evaluations at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. Some have raised concern that the appeal process increases burden on contracting officials without associated benefit. Others contend that the appeal process helps to ensure that evaluations are merit based. The FAR Council is considering the merits of modifying FAR requirements governing the appeal process and evaluate whether this change would improve or weaken the effectiveness of past performance policies and associated principles of impartiality and accountability. The Department would oppose removal of the regulatory appeal requirements unless this review concludes that such action is in the best interests of the government.

Subtitle D—Other Matters

Subtitle D contains one provision that falls within USD(Policy) purview: Section 231 on sustainability.

Section 231 mandates that new capital projects over $1 million, funded through the Commander's Emergency Response Program (CERP), the Afghanistan Infrastructure Fund (AIF), and the Afghanistan Security Forces Fund (ASFF), cannot begin until SECDEF and CDR USFOR-A certify Afghanistan capability; it also mandates that existing capital projects cannot continue without such certification. This provision falls under the purview of USD(Policy).

USD(Policy) is concerned about the provision's impact on the commander's flexibility, and unduly delaying an already arduous process for CERP and AIF projects

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which require Commander CENTCOM approval. Currently, the Office of the Secretary of Defense reviews all CERP projects over $1 million. In addition, the requirements for Secretary of Defense approval and congressional notification already exist for CERP projects over $5 million, and for all AIF projects. We do not think this provision is necessary.

From the AT&L perspective, I am an advisor for the Afghanistan Resources Oversight Council (AROC), which oversees funds appropriated to the ASFF. The Department chartered the AROC in August 2011, charging it with responsibility for ensuring proper planning, execution, and oversight of the funds appropriated for various projects associated with the current overseas contingency operations. AROC was established in accordance with the Senate Committee Report 111-295 to establish a council to oversee funds appropriated to the ASFF. The AROC is jointly chaired by USD(AT&L), USD(Policy) and USD(Comptroller). This council provides oversight for the ASFF, AIF, and CERP. Proper planning, execution, and oversight of the funds appropriated for these programs are essential for good stewardship of these resources. The Department continues to expand the AROC's focus to ensure the success of capital projects. Most recently, AROC has been charged with approving requirement and acquisition plans for ASFF, CERP, and AIF, within certain thresholds.

Conclusion

Finally, I wish to reiterate our appreciation for your continued commitment to improving contingency contracting. Like you, the Department is focused on meeting the warfighters' current and future needs while judiciously managing DoD resources and balancing risk. Much has been accomplished, but of course challenges remain. We are

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not complacent and acknowledge we still have more work to do. We appreciate the work of the Commission on Wartime Contracting and this Subcommittee in maintaining a focus on this critical area. We welcome Congressional interest in this topic, as evidenced by Senators McCaskill and Webb authoring the Comprehensive Contingency Contracting Reform Act. I thank you for the opportunity to provide you with the Department's reactions to this bill's provisions and I welcome your questions.

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STATEMENT BY
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BEFORE THE
Homeland Security and Governmental Affairs Committee
Subcommittee on Contracting Oversight
United States Senate

April 17, 2012

Chairman McCaskill, Ranking Member Portman, and distinguished members of the Subcommittee on Contracting Oversight, thank you for the opportunity to discuss the potential impact of Senate bill 2139 (S.2139), the Comprehensive Contingency Contracting Reform Act of 2012, on the United States Agency for International Development (USAID).

The more than 9,000 men and women of USAID work to provide effective economic, development, and humanitarian assistance in support of our U.S. foreign policy goals. How we improve our contracting practices, including our contingency contracting practices, directly impacts the success and sustainability of our mission. Accountability to Congress and the U.S. taxpayer for the funds we use to develop successful programs is our duty. And it is a duty that we take very seriously.

Therefore, USAID understands the significance and motivations behind this legislation. It addresses many of the management challenges that were highlighted in the report written by the Commission on Wartime Contracting (CWC), that you, Senator McCaskill, created along with Senator Webb. It also addresses some of the most important issues that we contend with through engagements such as Afghanistan, Iraq, and expect to contend with in a potential future contingency.

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USAID has supported the CWC's goals, provided access to our missions and data, testified at its formal hearings, and implemented its interim recommendations to the greatest extent practicable.

This legislation represents a measure to strengthen accountability on behalf of the U.S. taxpayer, and goes far in an effort to re-establish trust in the government's ability to manage its contracts portfolio undertaken as a result of contingency operations. USAID agrees we must institutionalize accountability in contingency contracting.

In the past two years, USAID Administrator Rajiv Shah instituted one of the most comprehensive reform packages I have seen in my 23 years of service in the federal government. Our USAID Forward reforms, as we have named them, target and challenge the status quo within the Agency, ensuring that we provide a more effective business model and deliver more sustainable and results-driven development programs.

Implementation and Procurement Reform is a key element of the Agency's overall operational USAID Forward reform agenda. This reform agenda is complementary to many of the recommendations of the CWC, and as a result, USAID has already made great strides in enhancing our oversight and accountability of the Agency's acquisition and assistance portfolio.

As the Acting Assistant to the Administrator, Bureau for Management, it is my responsibility to ensure that we take the practical and cost-effective steps necessary to improve our business processes and systems in order to achieve our broader development mission. In my capacity, I oversee the Agency's Chief Information, Financial and Senior Procurement Executive Officers as well as provide oversight of the Agency's almost $2 billion Operating Expense budget. My staff is intimately involved in instituting our

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operational reforms under USAID Forward. We are conditioned—and thereby are conditioning our overseas staff—to ask how we can improve the way we do business to produce better, more cost-effective and appropriate results.

Accountability and oversight require serious attention and resources—not just in designated contingency zones but wherever USAID works. Countries with weak rule of law, little or no infrastructure, war-torn social or governmental obstacles, or reduced economic capacity are where we work every day – and can test the most stringent oversight standards we put in place. It is no secret that contingency operations in Afghanistan and Iraq have tested USAID's capacity and capabilities beyond the norm. In those cases, we worked on development solutions in the midst of active military engagements. In many cases, we succeeded, but in some, we did not.

Today, I will provide some updates on the work that we have been doing to meet your, the CWC's, and our own expectations on improving management, oversight, and accountability at USAID. Following are some examples of enhanced accountability and stewardship of U.S. taxpayer dollars:

- **Committing to transparency:** The public can now view our spending, including spending on overseas contingency operations, through an on-line dashboard called ForeignAssistance.gov.
- **Strengthening oversight:** In February 2011, we stood up a Compliance Division within the Bureau for Management's Office of Acquisition and Assistance (M/OAA) to serve as the central repository for any and all referrals of administrative actions, including suspension and debarment actions. In just one year the Division issued 102 administrative actions and

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recovered nearly $1 million. Compare this to the eight (8) administrative actions issued between FY 2003 and FY 2007.

- **Promoting enhanced competition:** We established the Board for Acquisition and Assistance Reform (BAAR) in 2010. In its first year alone, the BAAR's recommendations resulted in a 31% increase (from 29 to 38 awardees) in the number of prime contract awards, representing a total combined ceiling of $15.9 billion. The mere presence of the BAAR has led to a significant increase in competition and a broadening of our partner base.
- **Instituting cost savings:** Initiated in 2010, our Acquisition Savings Plan yielded approximately $171 million in cost savings or avoidance.

USAID has learned some difficult lessons from Iraq and Afghanistan, but we have also achieved some significant successes. As Administrator Shah noted to the CWC last year, here are a few examples:

- **Afghanistan:** We have put more than 2.5 million girls back in school; integrated into the Afghan public sector 16,000 civil-service trainees; aided farmers transitioning towards growing legitimate crops; and helped dramatically improve health care, particularly among women.
- **Iraq:** Financing to more than 30,000 women has enabled $63 million in economic activity, and agribusiness programs have created 40,000 sustainable jobs.

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As you requested, I will now turn to offering my comments on the provisions that directly impact USAID within the proposed Comprehensive Contingency Contracting Reform Act of 2012.

Responsibilities of Inspector General (Sec. 103)

I defer to our USAID Office of Inspector General for comment.

Suspension and Debarment Officials (Sec. 112)

USAID agrees that the Suspending and Debarring Official (SDO) must maintain autonomy from the contracting agents to make the tough decisions. We do, however, have concerns with requirements that the SDO and his/her staff may not be located or co-located within the acquisition office. After our discussions with the CWC, and a review of the 2009 USAID Office of Inspector General report on suspension and debarment, we reviewed the management structures with the Bureau and determined that it was best to separate the duties for suspension and debarment cases into a dedicated unit within the Office of Acquisition and Assistance (M/OAA) – the Compliance Division that I described previously. Currently, this unit reports directly to the Director of M/OAA within the Bureau for Management, who also serves as the current SDO for the Agency.

Because USAID contracts are most often "cradle to grave" actions—requiring a contracting officer to manage the initial start up of an activity, oversee it through its lifespan, and then close out the contract activity—the Compliance Division in Washington, D.C. serves the important function of keeping worldwide records on partners and their performance across a wide range of contracts or grants.

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This Division is staffed by procurement analysts to maintain a necessary level of technical expertise for review of tips and information that come into the division via contracting officers, contractors, the USAID Inspector General, or another source. After receiving tips and actionable information that poor performance, waste, fraud, or abuse may be occurring under a USAID award, the Compliance Division collects and reviews the case, develops a recommendation, sends it to the General Counsel for approval, and then submits the recommendation to the SDO. The SDO performs a review of the case and issues a final decision. The duties and the interests of those who conduct the program with the affected contractor and those who recommend the case go forward remain separate from our current SDO.

Internally, the Division works closely with our Office of General Counsel; in fact, one member of the team is a General Counsel detailee. I also appreciate the work of the Office of the Inspector General (OIG) in supporting this Division and its efforts to provide relevant information for ongoing cases. The coordination offered by the OIG has played a critical role in allowing us to pursue the number of cases we have in this past year alone. By sharing relevant information from ongoing investigations, we are more able to address and correct situations immediately rather than waiting until an investigation ends and a report is issued. The Division also actively engages with the Interagency Committee on Debarment and Suspension, attending each meeting and weighing in on necessary activities to keep other agencies abreast of ongoing cases.

In addition, under the direction of our Administrator, we created the Suspension and Debarment Task Team, which is spearheaded by the USAID Deputy Administrator and directly engages the SDO and the Compliance Division. This task team triggers whenever

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an issue arises involving the potential waste, fraud, abuse, or poor performance of one of our major partners. It serves as a real-time vehicle to keep the Administrator's office well informed of the situation and abreast of any actions taken by USAID or by the contractor.

The intention of the legislation to improve the independent authority and role of the SDO is welcomed by USAID, and in fact we are already considering changing the SDO designation to a more senior level of Senior Deputy Assistant Administrator within the Bureau for Management. However, Section 112(b)(2) negatively impacts USAID in that we do not agree that the unit should be separated from M/OAA because we believe that the current structure has the necessary safeguards against conflicts of interest. We believe that a legislative mandate to separate the unit would negatively impact the unit from a technical as well as an efficiency perspective.

Automatic Suspension and Discretionary Authority (Sec. 113)

I understand the bill seeks to ensure that apparent cases of fraud, waste, or abuse are dealt with swiftly and appropriately. We agree with swift action when these situations are uncovered. We must take issue, however, with any mandate that removes the procedural protections for a case-by-case review of allegations, or reduces the discretionary authority of the SDO. USAID has learned a number of lessons from previous suspension and debarment cases where apparent actions appeared necessary, especially those in contingency situations, when in actuality they were not. We take seriously our role to stop fraud, waste, or abuse as soon as it is discovered. This means that we review all necessary administrative actions independent of the contractor's work with the Agency or the

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development programs that may be affected by any necessary administrative action. Simply stated, we do not play favorites.

One of the greatest lessons learned from our experience with suspensions and debarments in recent years is that information sharing early in the process is critical. Thus, we are engaging more actively with our OIG, as well as within the interagency, through our new Compliance Division as soon as potential fraud, waste, abuse, or other serious issues arise.

Reorganization of Contracting Function (Sec. 131)

We do not concur with the re-organization of our contracting function proposed in Sec. 131. While we appreciate the intention to elevate the acquisition function to the top-most level within our organization, we believe that USAID's current organizational structure already provides this elevation and the direct line of sight to the Administrator that goes with it. As an acquisition professional with more than 20 years of experience in public service, specifically at USAID, I am aware of its importance and have supported a dotted-line reporting relationship of the Senior Procurement Executive to the Administrator, as is the case with our Chief Information Officer and Chief Financial Officer.

In addition, codifying the acquisition organization of USAID in statute would reduce our flexibility to make future adjustments as the need arises. For a small, nimble agency with a mission that entails immediate response to unpredictable global circumstances, it is critical that we be able to rapidly adapt to changing circumstances.

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Finally, the acquisition function is integrally related to the other functions within the Bureau for Management, and they work together collaboratively. As a unified service Bureau focusing on helping employees carry out our development mission efficiently, effectively, and in compliance with the law, we bring together contracting, IT, finance, operational budget, and real property professionals.

Another point for reconsideration is the requirement under Section 131 (b) that the Director of M/OAA be appointed as a non-career employee. The Director of M/OAA effectively carries out the relevant duties of a Chief Acquisition Officer (CAO); and, in line with other key positions held by career employees within our Agency, including the Chief Financial and Information Officers, the Director of M/OAA is a career official. We have found that this Senior Foreign Service career designation affords the institutional expertise, overseas experience, and organizational continuity necessary and crucial for the position.

Finally, the annual reporting requirement under Section 131 appears to duplicate many other reports required by Congress. We would ask for consideration as to whether there is an opportunity for sharing data points from other existing reporting requirements.

Training (Sec. 133)

USAID supports increased training for contract administration personnel. One immediate improvement I look forward to kicking off this May is a large-scale acquisition and assistance training class for Mission Directors and Deputy Mission Directors who are the most senior officials for our overseas divisions. Responsibility for planning and execution of our specific overseas programs via contracts or grants remains with them. This

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executive course will help our senior staff to be more accountable for the types of awards we make in contingencies, as well as in non-contingency situations.

Reduced Length of Time for Contingency Contracts/One-Tier Subcontracts (Sec. 201)

USAID concurs with the spirit of this provision; however, we have some concerns about the practical aspects of its implementation and would welcome the opportunity to discuss this further. Though intended to promote competition, this requirement could ultimately cause unintended outcomes. Specifically, legislatively imposed time limits, subcontract tier requirements, and additional work requirements may not produce the results desired in terms of more competitors.

We certainly share the Subcommittee's goal of dealing with potentially inflated costs, limited competitions, and abuses that can arise during wartime contracting. In order to protect U.S. taxpayer investments, we have made a series of management improvements to shape the way we do business. In Afghanistan, for instance, we have:

- Instituted a policy to limit our Afghanistan awards to one-year mechanisms and smaller amounts in part to contend with reports of rising fraud and abuse;
- Included a subcontractor clause in all new awards since 2011 that permits USAID to restrict the number of subcontract tiers, requires the prime contractor to perform a certain percentage of the work and prohibits subcontract "brokering" or "flipping," which is when a subcontractor passes the work to someone else, which can increase the risk for corruption;

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- Established a joint program with the USAID Inspector General, for concurrent audits on all locally incurred costs of program-funded USAID contractors and grantees;
- Increased our contracting staff from three (3) Contracting Officers in 2007 to 19 Contracting Officers today with approximately eight (8) who are dedicated to administrative actions;
- Created new positions for On-Site Monitors at program sites in order to devolve project monitoring responsibilities to USAID personnel in the five regional commands.

In Iraq, we made a number of management changes to meet our mission's needs including modifying contracts to include more stringent reporting requirements. We also increased the number of Contracting Officer Representatives (CORs) in country and provided them with additional guidance on ensuring compliance related to reporting. As we have moved forward in Iraq and Afghanistan, we have found that the management and oversight of the awards remains the critical factor in protecting against, waste, fraud and abuse.

In some contracts, time limitations on an award may be suitable. But for the majority of USAID awards, longer timelines are necessary in order to achieve the needed development outcomes, as is the case for example with rule of law or health programs. This is one of the reasons we ask that time limits be set at the discretion of the contracting officer and those managing the program in country. They are the ones who know the market on the ground and the specific technical needs and can actively monitor the award

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process, reducing its time as needed. USAID has invested resources to integrate more rigorous development program planning into our training for the acquisition workforce which we believe will assist in limiting the longer, less clearly defined contract awards that we have seen in the past.

For these reasons, we do not support the legislation's proposal in Section 201(a)(2)(A) or (B) which requires a hard-stop of three-year contract periods during a contingency and imposes a requirement that a full and open competition which receives only one bid must be re-competed after one year's time.

We also have concerns regarding the legislation's limitations on the number of tiers under a prime contract. Based upon our experiences in Iraq and Afghanistan, USAID believes that we will need a requirement of no less than two tiers in the majority of cases. In fact, two tiers is the most common level we are implementing for new awards in Afghanistan.

The legislation does allow for the waivers, which we greatly appreciate to meet those situations where appropriate. However, rather than legislating a process that will potentially add to the administrative burdens of those working in war zones, USAID suggests that this language be revisited to better meet the realities of contingency contracting requirements on the ground.

Performance of Certain Security Functions in Overseas Areas (Sec. 202)

I defer to our Department of State colleagues. I can share with the members of this Subcommittee that USAID engages closely with State Department's Office of Diplomatic Security in Washington D.C. and with its Regional Security Officers overseas for

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appropriate guidance in contingency zones. We will continue to follow Chief of Mission guidance to address the security needs of our projects, contractors and grantees.

Justification and Approval for Sole Source Contracts of Unusual and Compelling Urgency (Sec. 203)

This section addresses one of the persistent concerns we have had throughout our engagements in Afghanistan and Iraq. In fact, our procurement reforms have helped to significantly expand competition for USAID awards and achieve the best value for the U.S. Government. Sole source awards are one option in a very large toolbox for acquiring necessary services and is also a tool that we may utilize during urgent and compelling situations. However, it should be noted that whenever possible, our policy is to limit these types of awards. As mentioned earlier, USAID chartered a new body in 2010 called the Board for Acquisition and Assistance Reform which reviews any proposed sole source award over $15 million. More importantly, Administrator Shah instituted a new policy where any sole source award (for contingency contracting) above $20 million that serves as a follow-on activity must be personally approved by him before award.

We agree with the additional approval requirements for sole source awards in this section, but are concerned about potential duplication of effort. Justifications and Approvals (J&As) are automatically posted online on the e-Gov website – FedBizOpps.gov. Any request for a J&A can be made directly to this existing resource. We are concerned that an additional annual reporting requirement places a heavier workload burden on our staff. Therefore, as a manager who strongly promotes efficiency, I request that the FedBizOpps solution be considered more closely.

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Uniform Contracting Writing System (Sec. 211)

USAID has spent considerable resources deploying our current contract writing system for our unique operational environment, which involves "cradle-to-grave" procurements in a wide variety of countries and situations around the world. It allows us to write, manage, oversee, and report on USAID awards from anywhere. This system, called the Global Acquisition and Assistance System (GLAAS), became fully operational for all USAID operating units, including Afghanistan and Iraq, this past fall. The system, which was an off-the-shelf product that we tailored to meet USAID contracting requirements, manages more than 80 percent of all USAID obligated funds, including contracts, grants, and cooperative agreements. We have consulted with both the Departments of State and Defense and found that our contract writing needs are different and unique. Therefore, we believe that retaining the GLAAS system would be the most efficient and cost-effective way to manage USAID's acquisition and assistance portfolio.

Database on Prices of Items and Service Under Federal Contracts (Sec. 212)

USAID agrees that Section 212: Database on Prices of Items and Service Under Federal Contracts could be a beneficial tool to the U.S. Government, particularly for those contractors who work across agencies via multiple awards. We have actively participated in the Office of Management and Budget's Acquisition Cost Savings Initiative, and we are utilizing shared tools, such as the GSA schedule, as much as possible. In many cases, however, USAID works with host country local awardees where services and fee structures

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do not meet the needs of a U.S. domestic agency. We would ask for consideration to be given to the type of information that would be required within this database.

I would like to share with the members of this Subcommittee our efforts to avoid future cost overruns or wasteful spending. As part of our own management structure improvements, we resourced a new team within M/OAA to serve as dedicated cost and price analysts to provide surge capacity and additional analytic capability to our contracting officers around the world. The unit will specifically focus on providing data and analysis for high level procurements, including those within a contingency operation as needed. We will use this new team to:

- Review and analyze cost and price data in contractors/subcontractor and recipient/sub-recipient proposals as required for field and Washington, D.C. procurements;
- Liaise, coordinate, and participate in Contractor Purchase System Reviews;
- Review advance and progress payments;
- Conduct pre-award audits and/or surveys as needed; and
- Review and/or assist with market surveys at project design stage and prior to exercising contract option periods.

Trafficking in Persons (Sec. 222)

USAID, along with the Department of State, continues to support strengthening measures to combat human trafficking, including the legislative remedies listed in S.2139. These measures are built into our GLAAS system, which contains provisions to punish awardees using U.S. government funds to engage in this activity.

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We take the issue of human trafficking to be a priority contracting concern. In February 2011, we implemented an Agency-wide Counter Trafficking in Persons (CTIP) Code of Conduct, which informs USAID employees about: 1) the due diligence protocol to be conducted prior to hiring contractors; 2) training for Agency personnel to recognize and report out on signs of abuse, in addition to fraud awareness training conducted by the OIG; 3) a standardized protocol for conducting investigations; and 4) development of legal sanctions for responding to abuses. USAID has been following the provisions as outlined in the Trafficking Victims Protection Act and would welcome clarification on Section 222 to determine if our current CTIP clause contained in all USAID awards will be appropriate to meet this legislation.

Contractor Comments in Past Performance Systems (Sec. 224)

USAID proposes that official responses still be received by contractors and become part of the permanent record within the Past Performance Information Retrieval System (PPIRS). Allowing contractors to present their side of the story, however, is a step we strongly believe maintains the integrity of the record and improves the accountability of USAID. We would welcome the opportunity to discuss this further with you or your staff.

Finally, it is easy to say that we will produce sustainable programs, be more accountable, and remain as transparent as possible. As you are well aware, sustainability is one of the greatest challenges we face during a time of war or conflict. In fact, last year the Administrator released detailed sustainability guidance for our programs in Afghanistan. USAID continues to internalize lessons learned in contingency operations in order to shape our future efforts. That is why the ongoing work of this Subcommittee, and our own

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USAID Forward reform efforts, informed by the CWC's study results, are so important. We applaud the emphasis that S. 2139 places on accountability and look forward to working with you to refine and implement the goals of the bill which are to enhance security, increase accountability, and improve contracting for overseas contingency operations.

Thank you for providing me with this opportunity to appear before you and for your ongoing support of USAID. I will be pleased to answer any questions that you have.

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April 17, 2012

Expected Release

10:00 a.m.

Lynne M. Halbrooks

Acting Inspector General
Department of Defense

before the

Senate Homeland Security and
Governmental Affairs Committee

Subcommittee on Contracting Oversight

on

"The Comprehensive Contingency
Contracting Reform Act of 2012"

Chairwoman McCaskill, Ranking Member Portman, and distinguished members of this Subcommittee, thank you for the opportunity to appear before you to present our views on S. 2139, the Comprehensive Contingency Contracting Reform Act of 2012, and the impact this proposed legislation would have for the Department of Defense Inspector General. I would also like to take this opportunity to thank the Subcommittee for convening a number of hearings to direct attention to the importance of maintaining strong and effective oversight of overseas contingency operations.

I am pleased to see the recommendation in the proposed legislation that would create a lead IG for contingency operations. This approach strategically leverages the existing structure, expertise, and interagency relationships of Department of Defense IG (DOD IG), Department of State IG (DOS IG), and U.S. Agency for International Development IG (USAID IG). The IG community has come a long way in integrating lessons learned over the past decade into our planning process and strategic oversight. The proposed legislation builds on the already strong interagency working relationships among the DOS IG, USAID IG and DOD IG. The Subcommittee's support and interest in this important area have contributed significantly to the achievements and progress that we have made. We look forward to working with the Subcommittee to refine the proposed legislation.

Last week I was in Afghanistan and I had an opportunity to observe first-hand how the oversight organizations coordinate and deconflict audits and inspections when I attended the most recent "Shura" oversight meeting. During this meeting, which included members from DOD IG, DOS IG, USAID IG, Special Inspector General for Afghanistan Reconstruction, GAO, and local command IGs, critical oversight challenges were discussed and information was exchanged. In addition, I met senior commanders to assess the overall level of oversight and its effects on the mission. We discussed areas where the DOD IG can assist commanders and received their input on areas where the DOD IG can continue to provide the best independent and objective oversight of contingency operations in Afghanistan. The input we received will help us in assisting the Subcommittee with this important initiative.

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Current DOD IG emphasis on Oversight of Overseas Contingency Operations.

As the Acting IG, oversight of overseas contingency operations in Southwest Asia (SWA) remains my number one priority. My predecessor, the Honorable Gordon Heddell instituted a number of organizational changes to the structure and focus of the work of the DOD IG, and significantly increased our in-theater presence of auditors, investigators, evaluators and support staff. As Principal Deputy Inspector General, I supported the changes started by Mr. Heddell, and I remain committed to continuously refining and improving our oversight approach to support the Department's efforts in SWA or wherever the next contingency operation takes place. I believe strongly that an in-theater presence is essential to engage with military and civilian leadership while conducting oversight. Our experience in SWA has been institutionalized at the DOD IG. The DOD IG is prepared to respond effectively and aggressively – in coordination with other Federal agencies and internal DOD oversight offices – to address future overseas contingency operations. Today we are an agile, flexible, and aggressive oversight organization with a capacity to deploy anywhere in the world, and we have developed considerable experience in conducting audits, investigations and assessments of overseas contingency operations.

Auditing. Our audits of SWA-related activities provide timely and relevant oversight in the areas of health and safety, acquisition, contract oversight and management, accountability of equipment, logistics, financial management, and sustainability. In FY 2011, our Audit component expended approximately 100 work years on audits for Southwest Asia.

In FYs 2010 and 2011, we issued 83 audit reports related to overseas contingency operations in Iraq and Afghanistan, including contracts for training and equipping the Afghan Security Forces and logistical support, force protection, health care, financial management, and asset accountability. These reports included 651 recommendations and identified a total of $4.98 billion in potential funds that could be put to better use. During this time we also issued 25 quick reaction memorandums on critical issues requiring immediate corrective action.

Assessments. Our Office of Special Plans and Operations (SPO) has been a key DOD IG asset in assessing the effectiveness of the mission to train and equip the security forces of Iraq and Afghanistan. Established in 2007, SPO significantly enhanced DOD IG capability by

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providing an expeditionary team capable of rapid deployment to SWA to conduct timely assessments of the military's efforts to train, equip, and mentor the Iraq and Afghan army and police forces.

SPO oversight work has had a significant impact in improving elements of the train and equip mission in both Afghanistan and Iraq. The SPO operational model stresses the rapid deployment of assessment teams comprised of experienced and highly professional civilian and military personnel, fortified by interdisciplinary and interagency SWA subject matter experts. The teams provide a thorough out-brief to field commanders before departing, which enables immediate and expeditious command corrective actions.

Additionally, SPO has provided important oversight of other SWA matters. These assessments include the accountability and control of sensitive equipment such as weapons and ammunition, night vision devices, medical equipment and supplies provided to the Iraq and Afghan security forces; the development of the logistics sustainment capability of the Iraq and Afghan security forces; U.S. security assistance and cooperation programs; the building of the operational effectiveness of the Iraq and Afghan army and police forces via partnering and mentoring by U.S., Coalition, and NATO forces; and the drawdown of U.S. Forces in Iraq.

Investigations. The Defense Criminal Investigative Service (DCIS) has also made investigations of significant fraud and corruption impacting SWA contingency operations its highest priority.

DCIS has a deployable workforce of criminal investigators prepared not only to take on the remaining challenges in SWA, but also are ready to effectively respond to the next contingency operation – wherever it may be. DCIS agents prepared for the challenges of a contingency operation environment by completing the four-week Deployment Readiness Program at the Federal Law Enforcement Training Center. Our commitment to this training program enables our agents to surge and deploy to expeditionary environments worldwide. DCIS recognizes the need to maintain a mutually beneficial relationship with our DOD "customers" and to constantly coordinate with our law enforcement partners to accomplish our core mission of combating fraud, waste, and abuse. These established relationships, combined

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with a highly trained, deployable workforce, have prepared DCIS and its investigative partners tc quickly and effectively address future contingency operations.

Over the last five years, DCIS SWA-related investigations have yielded 121 federal criminal indictments, 93 criminal informations, 105 arrests, and 81 felony convictions. These cases have resulted in 420 years of confinement, 301 years of probation, 150 entities debarred from contracting with the U.S. Government, 220 entities suspended from contracting, over $387 million paid to the U.S. Government in restitution, over $64 million in fines and other penalties, over $21.8 million in asset forfeiture, and almost $3 million in recovered government property.

The operational model the DOD IG is using to conduct timely and relevant audits, assessments and investigations of critical missions in SWA could continue to be used effectively in future contingency operations.

Effective and Efficient Federal and Departmental Coordination.

The DOD IG is responsible for providing oversight of defense programs and operations within the United States and around the world. In this role, DOD IG oversees and ensures there are no gaps in the stewardship of DOD resources. In furtherance of this responsibility, my office is committed to maintaining effective working relationships with other oversight organizations, including other federal agencies, to minimize duplication of effort and to leverage resources to provide comprehensive oversight. To best accomplish this important coordinating function, we have a Special Deputy Inspector General for Southwest Asia (SDIG-SWA), who serves as our senior executive level representative in SWA to coordinate and deconflict oversight efforts.

The SDIG-SWA is forward deployed to SWA, and continues to improve the communications within the DOD and Federal oversight community by functioning as an authoritative source to coordinate, deconflict, and facilitate effective oversight. The SDIG-SWA also serves as a liaison with DOD leadership and the supporting commands in SWA to identify oversight requirements, and to facilitate effective command interaction with oversight organizations.

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As one of the key coordinating efforts for SWA, the SDIG-SWA also serves as chairperson of the Southwest Asia Joint Planning Group, established in April 2007. This group, which was conceived and developed jointly by DOD, DOS and USAID IGs, is the principal federal interagency forum to promote coordination and cooperation among the member organizations toward the common objective of providing comprehensive SWA oversight. The Southwest Asia Joint Planning Group, which meets quarterly or more frequently as needed, is made up of representatives from over 25 DOD and Federal oversight agencies, functional components, and command IGs. The Southwest Asia Joint Planning Group compiles and issues the Comprehensive Oversight Plan for Southwest Asia in response to the FY 2008 National Defense Authorization Act. The group also deconflicts oversight projects that may overlap, and helps to ensure the least impact on operations.

Within the Department, DOD IG coordinates and works closely with other DOD oversight organizations. The Army Audit Agency, Naval Audit Service and Air Force Audit Agency provide critical oversight of operations. The Defense Contract Audit Agency (DCAA) also plays a critical oversight role not only for the Department but also for other Federal agencies such as Department of State and U.S. Agency for International Development as requested. The Service IGs also have a significant oversight role as does the Defense Contract Management Agency (DCMA), and the Defense Logistics Agency (DLA). As part of a comprehensive Department oversight community, the DOD IG coordinates and works closely with all of those oversight agencies.

Our Auditing and Investigations components collaborate extensively with their counterparts. My Deputy Inspector General for Auditing meets with the Service Auditors General and the Director of DCAA on a quarterly basis to discuss current issues within the Department, including coordinating, deconflicting, and identifying areas for oversight or impacting oversight. This collaborative effort provides a highly effective oversight approach which consists of a combined oversight force of 6,500 auditors within these five primary audit organizations. Similarly, DCIS uses task forces to coordinate their investigative efforts. The International Contract Corruption Task Force (ICCTF) combines the resources of nine investigative agencies, when there is overlapping investigative jurisdiction, to effectively and efficiently investigate, deconflict, and prosecute cases of fraud and corruption in SWA. DCIS

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also supports Task Force 2010 in Afghanistan, a military led task force that utilizes intelligence analysts, criminal investigators, auditors, and forensic financial analysts to focus on the flow of contracting funds in order to prevent the U.S. government from doing business with insurgents, corrupt officials, and criminal groups.

The DOD IG strives to ensure effective and efficient coordination and collaboration within the DOD and between other Federal oversight organizations. Within the Federal oversight community, the DOD IG has a well-deserved reputation for engaging in interagency collaboration with our Inspectors General colleagues. This includes critical efforts in export control, interagency purchases, Guam realignment, and numerous SWA-related activities. It is especially important to note that with regard to SWA-related efforts, the collaboration and coordination with the DOS IG and USAID IG remains particularly robust, and has been recognized by the Council of the Inspectors General on Integrity and Efficiency with an award for excellence.

A recent and highly successful example of interagency collaboration and coordination is the series of joint DOD IG/DOS IG audit reports on the Afghan National Police (ANP) Training Program. The DOD IG and the DOS IG determined that performing joint oversight of the building efforts of the ANP was essential to respond to the requirements of Section 1235 of the National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383. The law required, among other things, that the DOD IG, in consultation with the DOS IG, report to Congress within 180 days of the transition of ANP contract from the DOS to the DOD. As a result, a joint interagency team was formed to provide comprehensive oversight of the ANP training efforts that crossed agency authorities.

This joint team consisted of over 20 financial and performance auditors and management analysts. The team issued three reports and made 25 recommendations. The joint effort revealed that DOS officials did not appropriately obligate or return to DOD about $249 million of Afghanistan Security Forces Fund appropriations that were intended for the ANP training program. The joint team identified potential monetary benefits totaling more than $200 million that, when recovered, could be used for valid ANP training programs or other DOD requirements. If not corrected, obligations of approximately $75 million could result in potential

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Antideficiency Act violations. Also DOD and DOS had not developed a comprehensive plan or memorandum of agreement to guide, monitor, and assign transition responsibilities. Specifically, the report noted that the incoming contractor did not have 428 of the 728 required trainer and mentor positions in place, placing the overall mission at risk. DOD also did not have 136 of the 170 contracting officer representatives (COR) in place to provide the necessary review of contractors' activities. Based on information I gathered last week while in Afghanistan, DOD has made progress in filling these COR vacancies but still struggles to have well qualified CORs consistently in place.

Lead Inspector General for Overseas Contingency Operations.

I would now like to discuss S. 2139, the Comprehensive Contingency Contract Reform Act of 2012. I support the proposed legislation recently introduced by Chairwoman McCaskill and Senator Webb, and generally endorse the provisions of Section 103 of the bill, which call for a lead Inspector General for overseas contingency operations to provide effective, independent, and comprehensive oversight of overseas contingency operations in coordination with other agency Inspectors General.

We strongly support the goal of the proposed legislation. However, we do not believe it is necessary for the chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) to designate a lead IG for contingency operations. Given that the bill defines an overseas contingency operation as "a military operation outside the United States and its territories and possessions…," we believe the lead IG should be the DOD IG. Based on the strong working relationship and the history of coordination and cooperation between the DOD IG, DOS IG and USAID IG, including the CIGIE chair in the process would not be necessary to enhance the oversight of overseas contingency operations. An alternative approach could be to identify the lead IG based on the amount of funding appropriated for the contingency operation to the respective agencies. This would provide flexibility as the contingency operation evolves. Using Iraq as an example, the DOD IG would have served as lead IG, but DOS IG would become the lead IG as the majority of the funding transitions to DOS, as was the case in FY12.

Quarterly Reporting Requirement. We would like to work with the Committee further to refine the quarterly reporting requirement. Periodic reporting to Congress enhances

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transparency and oversight of contingency operations and is contingent on management providing sufficient reliable data. However, the compilation of data on obligations and disbursements is primarily a management function of each Department. To maximize the benefit of this reporting requirement, the data needs to be analyzed. An IG adds value by independently assessing the quality of the data and identifying trends. Therefore, the requirement for compilation of the data should be assigned to each Department, with a requirement for the IGs to review the quality of the data as part of the oversight plan.

Compilation and analysis of the data on a quarterly basis may also become overly burdensome. An annual or semiannual, rather than quarterly, compilation and reporting requirement would provide Congress with transparency and more meaningful data analyzed by the reporting IGs.

Development of a Comprehensive Oversight Plan. Congress mandated in Section 842 of the National Defense Authorization Act for FY 08, Public Law 110-181, that the DOD IG, in coordination with multiple federal IGs and DOD oversight agencies, issue the Comprehensive Oversight Plan for Southwest Asia. This plan includes the planned and ongoing oversight efforts of the IGs of the DOD, DOS, and USAID; the Special Inspector General for Iraq Reconstruction; the Special Inspector General for Afghanistan Reconstruction; and the ongoing efforts of the Government Accountability Office. The plan also includes the planned and ongoing audit work of the U.S. Army Audit Agency, Naval Audit Service, and Air Force Audit Agency. A similar requirement to develop a joint oversight plan under the direction of the lead IG would enhance Congressional oversight.

Using the existing cooperative planning model as a road map, we also believe Congress would benefit from an IG reporting requirement focusing on planning for, and identification of, oversight of relevant strategic issues for contingency operations oversight. This plan, developed through a joint planning group, would identify strategic issues for future projects, for example, reconstruction; the operations of U.S. forces; training, equipping, and capacity building; and security cooperation and assistance; and humanitarian assistance. The plan would include audits, evaluations, and inspections of U.S. government operations related to the particular overseas contingency operation. In fact, Congress has used this approach with respect to DOD

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realignment efforts involving Guam. The DOD IG is the chair of the Interagency Coordination Group of Inspectors General for Guam Realignment and produces an annual report detailing the oversight of Guam realignment efforts by various IGs, as required by Section 2835 of Public Law 111-84.

Special hiring authority. The provision in the bill authorizing the lead IG to employ annuitants and other personnel on a temporary basis, when necessary, is essential to provide for an oversight surge capability at the beginning of a contingency operation. Getting the right people in-theater as quickly as possible establishes an immediate and effective oversight presence and capability. However, we believe that for the hiring authority to be most effective there should be no time-limit associated with special hiring authorities. An imposed time limit on the hiring authorities will result in a disruption for the IGs, as their surged staff will need to find new employment opportunities prior to the expiration of the hiring authority. In addition, there should be a funding mechanism added to the bill to resource the hiring of additional staff.

I am confident that establishing the DOD IG as the lead IG for Overseas Contingency Operations will be an efficient, effective way to ensure independent and comprehensive oversight of future overseas contingency operations. The IG community has learned important lessons regarding oversight of contingency operations over the past 10 years, and we have incorporated those lessons into our strategic planning process.

Closing

The key to comprehensive oversight is planning and coordination among IGs with jurisdiction over the issues associated with a particular contingency operation. Within the Inspectors General community, as well as the Defense oversight community, we maintain close, effective cooperation, collaboration and partnership. We look forward to working with this Subcommittee and the Congress in refining and developing the use of the statutory Inspectors General community to provide effective oversight of contingency operations. We also note the importance of Congressional oversight. In closing, I would like to thank the Subcommittee for the opportunity to discuss our work, and I look forward to answering any questions you may have.

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TESTIMONY OF
HAROLD W. GEISEL
DEPUTY INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF STATE AND
THE BROADCASTING BOARD OF GOVERNORS

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

ON

EFFECTS ON INSPECTOR GENERAL OVERSIGHT OF S. 2139, THE
"COMPREHENSIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012"

APRIL 17, 2012

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Thank you, Chairman McCaskill, Ranking Member Portman, and Members of the Subcommittee, for the opportunity to discuss our views on strengthening oversight of government contracts during contingency operations.

We commend the Subcommittee for its leadership and tenacity in developing this critical legislation.

Madam Chairman, the Office of Inspector General (OIG) believes that Senate Bill 2139 is a positive effort to ensure, among other things, that statutory Inspectors General (IGs) have the tools needed to provide efficient and effective oversight in the most challenging overseas environments.

You have asked for our views on the legislation's impact on OIG, additional OIG responsibilities in these operations, the role of the Lead IG in coordinating the oversight effort, the congressional reporting provisions, and an enhanced hiring authority for IG personnel directly involved in these audits, inspections, evaluations, and investigations. You also requested our views on management of logistics contracts, strengthening the suspension and debarment process, clear lines of authority for contingency contracting support, and how that support finds its way into the planning and training regimes. Lastly, you asked for our views on the provisions addressing trafficking in persons.

The overall effect of this legislation on OIG is significant, positive and certainly manageable. OIG agrees with and supports Sections 101 and 103 of this legislation, with three suggested revisions, which we believe could make this new approach even more efficient and effective.

IG Funding for Contingency Operations

First, I suggest a revision to Section 101's funding request provisions to expressly require that each contingency operation funding request include an automatic, percentage-based funding allocation for inspector general oversight. Because the Inspectors General would not be directly involved in developing such contingency operations funding requests, this statutory reminder is necessary to ensure adequate OIG contingency funding is factored into any request submitted to Congress. Including OIG costs at this early stage would ensure that the resulting contingency appropriation funds the required OIG oversight, as was the case in the American Recovery and Reinvestment Act (ARRA, Public Law 111-5) where all of the involved IGs were appropriated a small portion of the overall funding to address new oversight needs associated with the expanded mission of overseeing ARRA programs.

Similar mechanisms have appeared occasionally in previous funding bills. Oversight of contingency contracting is clearly an instance where such a provision is warranted. Simply stated, the IGs performing the oversight of overseas contingency operations will need immediate additional funds to offset the unforeseen and unbudgeted costs of doing business in a contingency environment.

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The Lead Inspector General

Second, Section 103 of the bill would mandate that the Chair of the Council of Inspectors General on Integrity and Efficiency (or CIGIE) designate a Lead Inspector General for the Contingency Operation and resolve conflicts of jurisdiction between the Inspectors General involved in the operation.

We suggest an approach that might be more expeditious. At the onset of a particular contingency operation, the three Inspectors General should determine which of them will lead the oversight effort. One possible method for doing that would be to determine which agency will be appropriated the largest share of the overseas contingency operations (OCO) funding. It would follow that the agency with the next highest level of OCO funding would become the Associate Inspector General for the operation.

In recent years, statutory OIGs have worked well together to oversee agencies in contingency operations. For example, conflicts on jurisdiction and work de-confliction have been resolved efficiently and routinely in both the Southwest Asia Joint Planning Group and the International Contract Corruption Task Force for work in Iraq, Pakistan and Afghanistan. These working groups, which are comprised of all IGs working in these countries, meet quarterly and have been a success. This approach would save time and simplify the process, just at the right moment – during the hectic period at the onset of a contingency operation.

Periodic Reporting

We appreciate the cooperation of the Subcommittee on the provisions for semiannual IG reporting. OIG suggests a minor clarification to ensure that this reporting would be synchronized with the OIG's current semiannual cycle.

Regarding quarterly reporting, Section 103's amendment to the Inspector General Act by inserting a new Section 8L would, at paragraphs (d)(3)(E) and (d)(4)(A) through (F) of that new section, mandate the Lead IG report quarterly on a large amount of operational financial information, relating to all federal agencies, specifically including:

- Obligations and expenditures;
- A project-by-project, program-by-program accounting of incurred costs and projected cost for completion;
- Operation-related foreign investment revenues;
- Related seized or frozen asset information;
- Agency operating costs and;
- Detailed contract, grant or agreement financial information.

All of this information is resident within the respective department or agencies, not within the participating OIGs. OIG suggests that the affected Departments or agencies be mandated to provide a periodic stream of data to Congress and to the participating Departmental IGs in a format similar to the *List of Contracting Actions and Grants* data presentation produced by the

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special IGs in their periodic congressional reports. These lists are useful to plan and prioritize oversight work. They address, though not in complete fashion, the special IG mandates for reporting, which are identical to the quarterly reporting requirement in Section 103. The statutory OIGs can use this information, on a semiannual basis, to further their oversight mission.

Section 3161 and Rehired Annuitants

Regarding the provision for Section 3161 hiring authority, we appreciate the Subcommittee's intent to enhance our contingency oversight capacity by ensuring the IGs have the right tools to quickly and temporarily hire qualified people who are willing to work in these environments. Had the previous special IGs not had this authority, they would not have had the experienced staff that enabled them to be successful in their contingency oversight mission. This authority provides an OIG a surge hiring capacity which is essential to quickly staffing our oversight response to contingency operations. These additional hiring authorities are critical to conducting the contingency oversight mission and provide an OIG more flexibility and speed to hire for a contingency environment while simultaneously allowing OIG to retain focus on the rest of their important missions.

Acquisition Management Structural Changes and Lines of Authority

Section 111 proposes a new management structure for the procurement of contract services for a contingency operation. On face value, these provisions might achieve clearer lines of authority for contracting support. In our work over the last four years, we have found issues, conditions, and systemic problems that might have been avoided or lessened by clearer lines of authority in contracting support. In our previous work in Iraq and Afghanistan, including joint oversight work with other IGs, we have found serious contract management shortcomings and some critical internal control problems. The Department agreed with our recommendations, and we continue to monitor its record of compliance.

For example, our three joint audits, conducted in 2010 and 2011 with the Department of Defense Inspector General (DoDIG) on the Afghan National Police Training Program found numerous issues, such as a lack of planning for the transition in both Departments, contract oversight issues within the Bureau of International Narcotics and Law Enforcement, a lack of guidance for the transfer of contract administration from State to DoD, and internal control issues. In each case, both Departments agreed with our findings and recommendations.

As another example, OIG has found that the use of contractors to supplement staffing in support of acquisition management has increased risk. These acquisition staff contractors are not required to complete annual financial disclosure statements even though they are heavily involved in the procurement process and may have substantial personal conflicts of interest. Additionally, these contractors are not government employees, and therefore are not subject to prosecution under Federal conflict of interest statutes.

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The current bill contemplates significant changes to how contracts would be procured and managed during a contingency operation. Based on our previous work, OIG cannot say whether or not these proposed structural changes would be effective or efficient. We believe the bill could be improved with provisions to ensure an adequate number of properly trained contracting officer representatives (CORs) who are not contractors, but Government employees. OIG inspections, audits and reviews have noted the lack of properly training CORs as a vulnerability in ensuring proper monitoring of performance and costs incurred on contracts.

Changes to U.S. contracting management structures that are enacted should accommodate the broad differences that can be found from one contingency operation to the next. Contingency operations are not all alike. Providing security for U.S. personnel in Iraq, for example, differs from the way it is done in Afghanistan.

Suspension and Debarment Provisions

OIG supports a robust suspension and debarment system that protects the interests of the U.S. Government, is fair to all parties, and enhances effective enforcement. OIG believes the proposed legislation would strengthen the suspension and debarment system.

OIG believes Section 112 would generally enhance suspension and debarment by ensuring adequate resources are dedicated to this important function and by providing additional clarity regarding the organization, roles and responsibilities of those involved in the process. We defer to the involved agencies, however, for any specific comments regarding the impact of this legislation (including Sections 112 and 131) on their personnel, resources and organizational structure.

Regarding Section 113's automatic suspensions, OIG strongly supports prompt and effective suspension and debarment actions to protect the United States Government from additional exposure to contractors who misappropriate government funds or otherwise engage in criminal activity. OIG urges further analysis, however, to ensure that vital government operations or objectives are not inadvertently jeopardized by automatic suspensions.

Combating Trafficking In Persons

OIG appreciates the Subcommittee's efforts in Section 222 to expand and improve the tools available to combat trafficking in persons (TIP) violations associated with government contracts. OIG also supports the companion efforts within the Senate and House this year to combat TIP, including S. 1301 and HR 4259. Due to the overlap among these efforts and the extensive discussions and comments received by Congress in conjunction with each effort, OIG urges Congress to combine and fully reconcile these efforts to produce the most effective legislation possible to address this important issue.

In addition to supporting the improvements proposed in Section 222, as well as S. 1301 and HR 4259, OIG strongly supports the Department of Justice's (DOJ) call for a robust and

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comprehensive Civilian Extraterritorial Jurisdiction Act (CEJA). CEJA would provide clear and unambiguous criminal jurisdiction to prosecute non-Department of Defense government contractors and employees for a broad spectrum of overseas misconduct, some of which are TIP violations but aren't specifically addressed in the current drafts of Section 222, S. 1301, or HR 4259.

We do, however, suggest CEJA use the same approach as the Military Extraterritorial Jurisdiction Act (MEJA) and provide jurisdiction over *all* conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year (18 U.S.C. felony offenses). The MEJA approach provides the greatest flexibility for fighting crime associated with U.S. overseas activities and reduces the potential that CEJA might be rendered confusing or obsolete by future amendments to the specific crimes enumerated in 18 U.S.C.

Thank you, Chairman McCaskill and Ranking Member Portman for this opportunity to present our views. I am prepared to answer your questions.

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TESTIMONY OF

MICHAEL CARROLL,

ACTING INSPECTOR GENERAL,

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

BEFORE THE

SUBCOMMITTEE ON CONTRACTING OVERSIGHT OF THE

SENATE COMMITTEE ON HOMELAND SECURITY AND

GOVERNMENTAL AFFAIRS

"THE COMPREHENSIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012"

APRIL 17, 2012

Chairman McCaskill and Ranking Member Portman, and members of the Subcommittee, I am pleased to appear before you to testify on behalf of the Office of Inspector General (OIG) of the U.S. Agency for International Development (USAID). I welcome this opportunity to discuss the

Comprehensive Contingency Contracting Reform Act of 2012 (S. 2139) and how it relates to our oversight responsibilities for overseas contingency operations. We support efforts by the Subcommittee to reform and enhance the effectiveness of contingency contracting and generally agree with the direction of the bill. Feedback on specific provisions of this legislation is included in my testimony.

Oversight in contingency settings is an important feature of our work. We have provided oversight in conflict and post-crisis situations for decades. Our staff has demonstrated tireless commitment to strengthening the effectiveness, efficiency, and integrity of USAID's development and reconstruction assistance programs by repeatedly responding in the wake of natural disasters and during active military engagements.

Our unique mix of Civil and Foreign Service personnel enables us to respond rapidly to emerging oversight needs by immediately deploying staff on the ground while maintaining key support services and institutional knowledge at home. We currently provide effective oversight in conflict and post-crisis settings in Afghanistan, Haiti, and Iraq.

Drawing on a strong in-country presence in Iraq and Afghanistan, we provide comprehensive audit coverage of USAID programs and implement a vigorous investigative program. From the start of reconstruction efforts in

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Iraq and Afghanistan in fiscal year (FY) 2003 through the end of the second quarter of FY 2012, our office issued more than 300 audits and reviews of USAID programs and activities and made 462 recommendations to USAID managers to improve their programs. We supervised financial audits of more than $6 billion in expenditures. Meanwhile, our investigations led to 157 administrative actions (e.g., contract cancellations or employee terminations), 25 indictments, and 21 convictions and pleas. In total, our work in these countries has produced more than $437 million in sustained questioned costs, funds put to better use, and investigative savings and recoveries.

Rigorous audit and investigative work by our staff in Iraq and Afghanistan has translated into net returns on our oversight spending. For each dollar we have obligated in these countries, we have returned nearly $11 to the government in the form of sustained questioned costs and funds put to better use as well as investigative savings and recoveries.

The results of our work in contingency environments have only served to underscore the very risks to U.S. taxpayer dollars that the Subcommittee is seeking to address with this legislation. Security conditions often hamper program implementation and complicate monitoring and evaluation efforts. Pressures to quickly demonstrate tangible program results sometimes

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overcome planning requirements with the result that too many programs fail to meet their objectives or produce sustainable development gains. Surging personnel needs and frequent staff rotations contribute to shortcomings in compliance, weaknesses in contract oversight, and diminished internal controls.

Over the past 2 years, 68 percent of our performance audits and reviews in Iraq and Afghanistan have found significant problems with the direction of the programs we examined. Our December 2011 review of the USAID Local Governance and Community Development Project in Afghanistan, for example, highlighted serious deficiencies in project procurement practices, including procurements that were noncompetitive and inadequately documented, and identified nearly $7 million in questioned costs. Meanwhile, our audit last month of the USAID Electoral Technical Assistance Program in Iraq found that, after 7 years and more than $100 million in expenditures, a key strategic objective of the program—to help establish Iraqi processes and institutions capable of managing electoral events—had not been met. Iraq's Chief Electoral Officer and other high-level officials acknowledged that the Independent High Electoral Commission could not function without continuing assistance and did not have plans or systems in place to provide for its future sustainability. We

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also reported last month in our audit of the Sustainability of Selected USAID-funded Information Technology Systems in Iraq that 10 of 24 systems, with an aggregate value of $62 million, were not completed, not functional, or not used by the Government of Iraq as intended.

In addition to presenting greater challenges to program execution, contingency settings are also host to high-stakes operations. The success or failure of our development assistance efforts in these settings critically affects our national security interests. The anti-fraud hotline we established in Pakistan should serve as a model to combat fraud in future contingency environments. In January 2011, the OIG and USAID/Pakistan launched a very successful anti-fraud hotline in Pakistan, facilitating the reporting of allegations of fraud, waste, and abuse in English, Urdu, Pashto, Sindhi and Balochi by phone, conventional mail, email, and through a web-based interface on the hotline website, www.anti-fraudhotline.com. The OIG is solely responsible for investigating these complaints and taking appropriate measures to address them. This hotline has been widely advertised and received 2,368 calls in FY 2011 with between 72 and 80 calls received each week. Allegations are uploaded to the hotline database for review by the OIG for action.

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We welcome the Subcommittee's focus on improvements to contingency contracting, and are pleased to note that the Comprehensive Contingency Contracting Reform Act seeks to address a number of challenges that we have encountered in our work, including suspension and debarment, the pricing of goods and services, oversight of sub-contractors, U.S. jurisdiction for certain crimes committed by contractors or their employees abroad, and trafficking in persons.

One topic addressed by the legislation that has been a major focus of attention for our office in recent years is suspension and debarment. In late 2009, we audited USAID's suspension and debarment program and observed a number of problems with Agency practices and decision-making processes. USAID had not considered the use of suspension and debarment in many circumstances that would have warranted the use of these authorities and had taken suspension and debarment actions in response to only nine investigations in four years. Even when USAID pursued suspension and disbarment actions, it did not always enter related information into the Federal database of excluded parties or document the actions that it took. Finally, in 20 of 54 cases that we examined, USAID could not establish that it had performed required checks on suspension and

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debarment information during the bidding and award process to determine eligibility for awards.

We made a dozen recommendations to correct these problems and have intensified our engagement with Agency suspension and debarment personnel to encourage the exercise of suspension and debarment authorities where appropriate. In response to one of our recommendations, USAID established and staffed a dedicated unit in its Office of Acquisitions and Assistance with a singular focus on suspension and debarment and compliance issues. Whereas in 2009 USAID had no staff with a primary focus on suspension and debarment, the Agency now has a division with eight acquisition, assistance, and audit positions supported by an attorney from its Office of the General Counsel to handle these matters and other contractor accountability functions.

This change and an increased commitment by USAID's leadership to hold implementing partners accountable have produced noticeable results. While USAID scarcely used suspension and debarment in years past, USAID reported that in FY 2011 it took 63 suspension or debarment actions (suspension, proposed and actual debarments). This year, the Agency is on pace to exceed that total. Perhaps more significantly, USAID has demonstrated a willingness to hold its implementing partners accountable

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regardless of their size. One particularly high-profile case demonstrated the Agency's commitment. In late 2010, after we provided evidence of serious corporate mismanagement, misconduct, and a lack of internal controls on the part of the Academy for Educational Development, USAID took the extraordinary step of suspending the firm—one of USAID's largest implementing partners—from future Federal awards.

The changes that USAID has implemented in the structure of its suspension and debarment program have reinforced accountability in development assistance. In recent years, we believe that USAID has generally exercised appropriate discretion in applying suspension and debarment authorities.

Based on the positive change that we have observed in USAID's use of suspension and debarment, we are cautious about the approach being taken with this legislation. Any new requirements for agencies to apply suspension and debarment should be carefully structured so as not to jeopardize ongoing investigations or penalize firms that are working with us to address corporate or employee fraud. Changes to the Federal Acquisition Regulation that would mandate the suspension of contractors in all cases in which they or their employees are charged with a crime or civil fraud, have the potential to limit agency discretion in counterproductive ways.

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Exceptions may be necessary in fraud cases involving employees that are brought to the attention of the U.S. government by the contractors themselves, or in which a non-negligent contractor may be unaware of the fraud. Even where there is widespread, significant fraud, there may be situations in which suspension would not be in the best interest of the U.S. government - for example in instances involving open and ongoing criminal investigations. In cases in which the contractor has already taken corrective actions, instituted appropriate controls, and established its present responsibility, it may be counterproductive to take suspension or debarment actions.

Once suspension and debarment actions have been taken, they must be properly considered by acquisitions and assistance personnel along with data on firms' past performance and integrity. This information is a key consideration in the contracting process and can help the Government make better contracting decisions and spend taxpayer dollars more wisely. For this reason, we are encouraged to see provisions in the bill that seek to clarify past performance reporting requirements.

The legislation seeks to strengthen the independence of USAID's suspension and debarment staff and increases the accountability of Agency procurement officials. By separating the suspension and debarment

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personnel from the Office of Acquisition and Assistance (OAA), the bill enhances the posture to undertake suspension and debarment actions without any real or perceived conflict of interest. Under the bill, OAA's role in overseeing the procurement functions that guide USAID's development and reconstruction contracts, grants, and agreements also receives the heightened visibility and accountability that contracting—including overseas contingency contracting—deserves by establishing a direct reporting relationship with the Administrator.

The pricing of goods and services is another key consideration in contingency contracting. We have found many cases in which USAID implementing partners have overpaid and excessive payments sometimes form the basis for criminal schemes involving kickbacks and procurement fraud. For example, in our November 2011 audit of USAID/Afghanistan's Afghanistan Stabilization Initiative for the Southern Region, we found that the contractor paid more than $18,000 each month per vehicle to rent 13 armored vehicles when our audit staff obtained quotes for vehicle rentals ranging from $13,000 to $14,000. Greater transparency and availability of pricing information could help reduce related waste. With access to a database of pricing information in contingency settings along the lines

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proposed in S. 2139, contracting staff would be in a better position to identify cost savings and reduce waste.

Contingency operations make for challenging accountability environments. Security conditions delay monitoring activities and prevent evaluators from conducting impromptu site visits. Subcontractors are sometimes insulated from day-to-day oversight by layers of sub-awards. Local court systems that may still be developing basic capabilities are, in many cases, the only venues available for prosecuting the crimes that we uncover. In this context, additional measures to reinforce contractor accountability are welcome. By clearly establishing U.S. civil jurisdiction for certain crimes committed by contractors or their employees abroad and by strengthening contractor accountability for trafficking-in-persons violations in the Federal Acquisition Regulation, S. 2139 promises needed improvements.

While our military service members, diplomats, and development professionals face the greatest difficulties operating in contingency settings, oversight work by OIGs is not without its challenges. The Comprehensive Contingency Contracting Reform Act includes welcome provisions intended to help address these challenges.

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The principal challenges we face as an OIG in responding to the intensive oversight requirements of a contingency operation relate to staffing and funding. When contingencies arise, we reset our priorities and reallocate budgetary and personnel resources accordingly. We work quickly to establish a strong in-country presence by deploying our experienced cadre of Foreign Service auditors and investigators, and increasing awareness of our efforts to combat fraud, waste, and abuse through aggressive outreach.

Under zero-sum staffing and budgeting conditions, increased oversight in contingency settings means less oversight elsewhere in USAID OIG's $31.5 billion oversight portfolio for development assistance. When we have had to reassign resources to support contingency operations, we have not lost sight of our other responsibilities. Fortunately, in past years, we have received dedicated appropriations for our oversight work in Afghanistan, Iraq, and Haiti, and have successfully maintained needed oversight of other important areas such as global health, democracy and governance, and education. From FY 2003 through the second quarter of FY 2012, nearly 85 percent of our performance audits were accomplished in countries other than Iraq or Afghanistan, demonstrating our ability to provide concurrent oversight of both traditional USAID operations and USAID work supporting contingency operations, made possible through

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additional funding from dedicated appropriations for these contingency operations. Additional funding to support oversight activities during future contingency operations is essential for the USAID OIG to continue the quality and scope of our oversight of USAID programs and activities around the world.

In 2010, Congress provided us with enhanced personnel authorities that give us vital surge capacity. Unfortunately, our enhanced personnel authorities will begin to expire at the end of this fiscal year, constraining our operations. Section 103 of the Comprehensive Contingency Contracting Reform Act of 2012 offers relief through a provision that would allow us to hire temporary employees and bring aboard reemployed annuitants for up to 5 years. The enactment of these provisions would enable us to respond to emerging oversight requirements without the need for Congress to periodically reauthorize special OIG personnel authorities during future contingency operations.

However, in providing new personnel authorities, the legislation appears to address only the rehiring of Civil Service annuitants. While Civil Service annuitants currently provide important assistance to our office in Afghanistan, Haiti, and Iraq, we would also benefit from the international experience of retired Foreign Service officers during future contingency

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operations. Most of our reemployed annuitant positions filled under current personnel authorities to provide oversight in Iraq, Afghanistan, and Haiti, are done so with Foreign Service investigators. Accordingly, if the legislation addressed the hiring of reemployed Foreign Service personnel as well, it would greatly enhance our ability to respond to the pressing personnel requirements of contingency operation oversight.

The public has a vital interest in transparency regarding contingency operations. Routine reporting helps keep the Congress and the public informed of key aspects of these operations. We recognize the importance of this reporting, and for that reason we publish quarterly and semiannual reports on our oversight efforts in Afghanistan, Pakistan, and Iraq. With respect to Pakistan, we also coordinate the development of a report on the progress of the U.S. Government's civilian assistance program that also details oversight plans and activities. The Comprehensive Contingency Contracting Reform Act of 2012 includes a requirement for similar quarterly reporting, akin to the current requirements for the Special Inspector Generals for Iraq and Afghanistan, on the part of inspectors general during contingency operations.

The legislation also seeks to establish a framework for the coordination of contingency oversight. Under S. 2139, the chair of the

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Council of Inspectors General on Integrity and Efficiency (CIGIE) would designate a lead inspector general for a given overseas contingency operation from among the Inspectors General for the Department of Defense, the Department of State, and USAID. The designated lead inspector general would, in turn, be responsible for (1) conducting oversight of areas over which none of the statutory inspectors general have principal jurisdiction, (2) determining principal jurisdiction for oversight responsibilities in areas of overlapping jurisdiction, (3) authorizing the employment of temporary employees and annuitants by inspectors general in support of contingency operations, and (4) reporting to Congress on the progress of contingency operations and oversight activities. This framework for coordination is simpler, less bureaucratic, and more streamlined than the establishment of a new institution to address contingency operations under other proposals or utilized in Iraq and Afghanistan. This framework relies on the proven capabilities of the existing statutory OIGs and our strong track record of working together to ensure oversight of multiagency matters. It would greatly simplify planning, clarify authorities, and establish jurisdiction for each OIG and avoid the duplication of efforts, redundancy, and inefficiencies that the establishment of a Special Inspector General for Overseas Contingency Operations would generate.

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We also suggest consideration of the formation of a "contingency operations oversight" subcommittee within CIGIE with representatives of the Inspectors General from the Department of Defense, the Department of State, and USAID, to address needs, mediate disputes, and make recommendations to the CIGIE chair, including the designation of the lead inspector general. This subcommittee should also request each respective inspector general to identify work force requirements to support determination of designation of temporary staff and rehired annuitants by the lead inspector general, as specified in the legislation, as well as serve as a forum for discussing oversight lessons learned from contingency operations.

Thank you for this opportunity to address the Subcommittee. We are encouraged by your continued attention to the important challenges that contingency operations present. We look forward to continuing to work with Congress and the Administration to meet these challenges and capitalize on opportunities to advance national security while saving taxpayer's dollars. I would be happy to answer any questions you may have at this time.

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MEMORANDUM
April 16, 2012

To: Chairman McCaskill
Fr: Subcommittee on Contracting Oversight Staff
Re: Hearing on The Comprehensive Contingency Contracting Reform Act of 2012 (S.2139)

On Tuesday, April 17, 2012, at 10:30 a.m., the Subcommittee on Contracting Oversight will hold a hearing entitled, "The Comprehensive Contingency Contracting Reform Act of 2012 (S.2139)." Senator McCaskill and Senator Webb introduced S.2139 on February 29, 2012. Senators Blumenthal, Franken, and Tester have joined as co-sponsors. The legislation is based on the findings and recommendations of the Commission on Wartime Contracting in Iraq and Afghanistan (the Commission), which were presented in its final report to Congress in August 2011.

The purpose of this hearing is to review S.2139. The hearing will examine how S.2139 remedies systemic problems in contingency contracting. The hearing will also provide an opportunity to discuss what additional steps, if any, may be required to fully address findings in prior hearings and investigations by the Commission, Congress, and others regarding contracting in overseas military contingencies.

In preparation for the hearing, this memorandum provides background information on S.2139. A table with additional background on problem contracts in Iraq and Afghanistan will be provided separately.

I. Background

In 2007, Senator McCaskill and Senator Webb introduced legislation to create an independent Commission on Wartime Contracting to assess and examine potential waste, fraud, and abuse in contracting in Iraq and Afghanistan. The Commission was modeled on the Truman Committee, which investigated waste and fraud during World War II.[1] The legislation was incorporated in the National Defense Authorization Act for Fiscal Year 2008, which was signed by the President on January 28, 2008.[2] The Commission submitted its final report to Congress on August 31, 2011.

The Commission found that at least $31 billion, and possibly as much as $60 billion, was wasted through government contracts in Iraq and Afghanistan. According to the Commission, "waste and fraud during contingency operations in Iraq and Afghanistan averages about $12 million *every day for the past 10 years*." This assessment did not include the costs of projects

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[1] Government Executive, *Senate Dems Seek Probe of Wartime Contracting* (Sept. 25, 2007).

[2] Pub. L. 110-181, § 841, *National Defense Authorization Act for Fiscal Year 2008* (Jan. 28, 2008).

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that cannot be sustained, which will increase the estimate by billions. In addition to the financial costs, the Commission found that poor planning, management, and oversight of contracts damaged the United States' strategic and diplomatic objectives. The Commission also made 15 sweeping recommendations to improve the management and oversight of contingency contracting, from changes to the management structure at the Defense Department, State Department, and the United States Agency for International Development (USAID) to improving the government's use of data and information technology. The Commission concluded that "[m]eaningful progress will be limited as long as agencies resist major reforms that would elevate the importance of contracting … ."[3]

Following the completion of the Commission's work, Congress held several hearings on the Commission's final report and recommendations. At a hearing of the Senate Armed Service Subcommittee on Readiness and Management Support that Senator McCaskill chaired in October 2011, Commissioner Dov Zakheim testified:

> [W]asteful contract outcomes in Iraq and Afghanistan demonstrate that federal agencies still do not see the heavy reliance on contractors as important enough to warrant thorough planning for and effective execution of the goods and services acquisitions that contingency requires.[4]

In his testimony, Commissioner Zakheim emphasized that legislative action by Congress would be necessary to ensure that federal agencies implemented the Commission's recommendations. He concluded, "[p]olicies are easy to make. Implementation … is really what counts."[5]

II. The Comprehensive Contingency Contracting Reform Act of 2012 (S.2139)

S.2139 builds upon the Commission's recommendations in its final report to Congress and on investigations conducted by the Subcommittee on Contracting Oversight, the Government Accountability Office (GAO), inspectors general, and other federal auditors and investigators. If enacted, the legislation would implement comprehensive reforms by (1) increasing accountability for contingency contracting and (2) transforming the way the federal government awards, manages, and oversees contracts in contingencies.

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[3] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011). (emphasis in original).

[4] Senate Armed Services Subcommittee on Readiness and Management Support, *Hearing to receive testimony on the Final Report of the Commission on Wartime Contracting in Iraq and Afghanistan*, Testimony of Dov Zakheim, Commission on Wartime Contracting in Iraq and Afghanistan (Oct. 19, 2011).

[5] Senate Armed Services Subcommittee on Readiness and Management Support, *Hearing to receive testimony on the Final Report of the Commission on Wartime Contracting in Iraq and Afghanistan*, Testimony of Dov Zakheim, Commission on Wartime Contracting in Iraq and Afghanistan (Oct. 19, 2011).

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A. Accountability for Contingency Contracting

If implemented, S. 2139 will increase accountability across government and within federal agencies for contingency contracting. S.2139 requires the federal government to address how it will pay for contingency operations. The legislation also establishes clear lines of authority for contingency contracting support within departments and requires inclusion of contract support in planning documents and professional training for departments and agencies. The legislation also strengthens oversight of contracting in contingencies.

1. Consideration of Costs

Lack of controls on spending for contingencies has contributed to skyrocketing costs in Iraq and Afghanistan, including the costs of contracting. Over 90% of the Defense Department's spending in Iraq and Afghanistan, which accounts for over 94% of the $1.3 trillion spent to date in those contingencies, has been provided through emergency or supplemental appropriations. This type of funding is exempt from the ceilings and limitations applicable in normal appropriations by Congress. Between 2003 and 2008, requests to Congress for wartime spending increased by 13% to 41% each year.[6]

The growing costs of the wars in Iraq and Afghanistan have been overwhelmingly financed through borrowing by the federal government. Earlier wars were paid for with a combination of tax increases, cuts in non-essential domestic spending, and borrowing. During World War II, for example, tax increases accounted for approximately 45% of the cost of the war and cuts to federal programs in combination with borrowing paid for the remaining 55%. During the length of the wars in Iraq and Afghanistan, however, the government has neither increased taxes nor cut domestic spending to pay for war funding, making borrowing the single mechanism to finance the nation's military efforts.[7]

S.2139 requires the Executive Branch to address how it will fund overseas contingency operations in the future. The President is required to ensure that any future request to Congress for funds in support of overseas contingency operations includes the proposed means to finance the requested amount, either by increases in revenue, decreases in federal programs, borrowing by the federal government, or by other means. The Director of the Office of Management and Budget must advise the President on the means to finance such requests in consultation with the

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[6] Congressional Research Service, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11* (March 29, 2011). Defense Department war costs are in addition to regular costs such as salaries, training, regular weapons procurement, and research and development. *Id.*

[7] Steven M. Kosiak, Center for Strategic and Budgetary Assessments, *Cost of the Wars in Iraq and Afghanistan, and Other Military Operations Through 2008 and Beyond (Dec.* 15, 2008); U.S. Congress Joint Economic Committee, *Hearing on The Costs of the Iraq War* (Feb. 28, 2008).

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Secretaries of Defense, State, and Treasury, and must report to Congress on all such obligated funds.[8]

2. Management Structures for Contingency Contracting Support

The Commission found that inadequate contract management at the Defense Department, State Department, and USAID contributed to waste, fraud, and abuse in Iraq and Afghanistan, and that most of the waste, fraud, and abuse was "foreseeable and avoidable." With respect to USAID, the Commission found:

> [T]he decentralized structure has not served the agency well. The gravest example is the fallout from the collapse of the Kabul Bank, showing that processes and rules that work elsewhere may be unsuitable in the midst of wartime operations.[9]

The Defense Department's management of contracts has been identified by GAO as a "high-risk" area for waste, fraud, and abuse since 1992. Among the significant and ongoing problems identified by GAO has been the Department's "approach to managing services acquisitions." GAO has found that these problems extended to contingency contracting.[10]

The Defense Department was required to develop a structure for management of its service contracts in non-contingencies over six years ago.[11] The department has struggled to comply. The State Department and USAID have never had such requirements.

S.2139 requires the Defense Department to include services contracts in support of contingency operations within its existing management structure for the procurement of service contracts. S.2139 also requires the State Department and USAID to develop their own management structure for procurement of services contracts, including contracts in support of contingency operations. The State Department and USAID must evaluate whether to include elements such as guidelines and procedures for acquisition planning, solicitations, contract oversight, contract performance evaluations, and risk management, as part of their management structures. The Departments must then report to Congress on those areas included in their respective management structures and those elements not included.[12]

3. Accountability within the Defense Department

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[8] S.2139 §§ 101, 102.

[9] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[10] Government Accountability Office, *High-Risk Series* (Feb. 2011) (GAO-11-278).

[11] Pub. L. 109-163, § 812, *National Defense Authorization Act for Fiscal Year 2006* (Jan. 6, 2006).

[12] S.2139 § 111.

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In its final report to Congress, the Commission cited a lack of clear lines of responsibility as a major problem in Iraq and Afghanistan. The Commission concluded that "poor planning, management, and oversight of contracts ... damaged [U.S. defense, diplomatic, and development] objectives."[13]

At the Defense Department, there is no single individual or office below the Secretary who is currently responsible for all aspects of contingency contracting in Afghanistan. According to the Department's Director of Expeditionary Business Operations:

> Today's Afghanistan contingency contracting offices do not yet operate synergistically. Dozens of different offices operate independently ... A single acquisition leader must be given the responsibility – and authority – to coordinate and manage end-to-end acquisition processes, systems, and controls ... Not only is streamlined leadership essential to creating and implementing unified strategy, but it is also necessary to ensure progress is institutionalized and lessons are noted.[14]

The Defense Department's actions to date to streamline and centralize acquisition planning and oversight have not been adequate to address these problems. In 2006, Congress required the Secretary of Defense to develop joint policies for planning, staffing, training, and assignment of responsibility for contingency contracting. However, a subsequent review by GAO in 2008 found that the Defense Department had either failed to fully develop the required policies or had not implemented those policies it had developed.[15]

In March 2010, the Department established an internal Functional Capability Integration Board (FCIB) to coordinate operational contract support planning, program management, requirements definition, and related issues, including the requirements established by Congress in 2006.[16] The FCIB's work is ongoing.

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[13] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[14] Andrew S. Haeuptle, Renanah Miles, Defense Acquisition University (DAU) Defense AT&L Magazine, *Effects Through Acquisition, Leveraging the Power of Contingency Contracting* (Feb. 2012).

[15] Pub. L. 109-364, § 854, *National Defense Authorization Act for Fiscal Year 2007* (Oct. 17, 2006); Pub. L. 110-181, § 849(a), *National Defense Authorization Act for Fiscal Year 2008* (Jan. 28, 2008); U.S. Government Accountability Office, *Contract Management: DOD Developed Draft Guidance for Operational Contract Support but Has Not Met All Legislative Requirements* (Nov. 20, 2008) (GAO-09-114R).

[16] Department of Defense, Under Secretary of Defense for Acquisition, Technology, and Logistics, *Memorandum: Establishment of the Operational Contract Support (OCS) Functional Capability Integration Board (FCIB)* (March 29, 2010).

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S.2139 requires the Secretary of Defense to determine the chain of authority and responsibility within the Department for policy, planning, and execution of contract support for overseas contingency operations, including the responsibilities, roles, authorities, and objectives of officials within that chain, as they relate to contract support for overseas contingency operations. The Secretary must establish the chain and report to Congress within one year of the bill's enactment. Within 18 months, the Comptroller General must report on whether the chain of authority established by the Secretary enables the Department to achieve effective policy, planning, and execution of contract support for overseas contingency operations.[17]

4. Responsibilities of Chief Acquisition Officers within the State Department and USAID

The Commission concluded that meaningful progress in contingency contracting reform would not happen at the State Department and USAID without changing the role of the Chief Acquisition Officer. According to the Commission, "without a focus on contingency contracting in both State and USAID, skill sets, tradecraft, and knowledge gleaned from lessons learned will be soon forgotten and the benefits of any staffing gains will be lost."[18]

The Commission found that the State Department had failed to comply with the 2003 Service Acquisition Reform Act, which requires most federal agencies to designate a Chief Acquisition Officer (CAO) who reports directly to the agency head. Under current law, the CAO must be a non-career employee with acquisition management as his or her primary duty. The Commission found that the State Department's CAO is several levels below the agency head and deals with procurement issues as "just one item in a grab-bag of unconnected duties."[19]

The Commission also found that USAID had failed to comply with of the intent of the law. The agency believes that it is not statutorily required to have a CAO.[20] It does, however.

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[17] S.2139 § 121.

[18] Commission on Wartime Contracting in Iraq and Afghanistan, Final Report to Congress, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[19] These requirements in the Service Acquisition Reform Act were adopted in the fiscal 2004 NDAA. *See* Pub. L. 108-136, § 1421, *National Defense Authorization Act for Fiscal Year 2004* (Nov. 24, 2003). *See also* 41 U.S.C. § 1702; Commission on Wartime Contracting in Iraq and Afghanistan, Final Report to Congress, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[20] Department of Defense, Department of State, and USAID, *Joint Briefing for Subcommittee Staff* (April 10, 2012).

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have an individual who fulfills many CAO functions. This individual is a career employee, with multiple additional responsibilities, who does not report directly to the agency's administrator.[21]

S.2139 requires that CAOs advise agency and department leadership regarding applicable contracting policy for overseas contingency operations and ensure compliance with policy requirements. S.2139 also requires the head of acquisition functions for the State Department and USAID to be the Chief Acquisition Officer for the department and agency. It sets direct reporting requirements to the Secretary and Administrator and requires that the CAO comply with all aspects of the Service Acquisition Reform Act of 2003.[22]

5. Collecting and Maintaining Information on Contingency Contract Support at the Departments of Defense and State

Congress and the public still do not have access to even basic information regarding contracts performed in Iraq and Afghanistan. Although the Defense Department, State Department, and United States Agency for International Development (USAID) have been required to report annually to Congress regarding contracts performed in Iraq and Afghanistan since 2008, the agencies have failed to provide complete and accurate information.

In 2011, GAO found that agencies provided inaccurate information on contract spending and personnel figures in their annual report to Congress because none of the sources they used to report on contractor personnel and spending numbers were reliable. According to GAO, the agencies' 2010 joint report understated the three agencies' obligations on contracts and grants in Iraq and Afghanistan by at least $4 billion.[23]

S.2139 requires the Defense Department and State Department to report annually to Congress during overseas contingency operations on the total number, value, and the extent of competition for contracts performed in the area of the contingency, total number of contractor personnel working under reported contracts, total number of contractor personnel performing security functions, and the total number of contractor personnel killed or wounded under reported contracts. S.2139 also requires that reports include assessment of policy, planning, management, and oversight of contract support by the departments.[24]

6. Contingency Contract Support Planning and Training at the Departments of Defense and State

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[21] Commission on Wartime Contracting in Iraq and Afghanistan, Final Report to Congress, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[22] S.2139 §§ 104, 131.

[23] Government Accountability Office, *Iraq and Afghanistan: DOD, State, and USAID Cannot Fully Account for Contracts, Assistance Instruments, and Associated Personnel* (Sept. 15, 2011) (GAO-11-886).

[24] S.2139 §§ 121, 131.

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A shortage of trained personnel has severely hampered the management and oversight of contracts in Iraq and Afghanistan. According to Special Inspector General for Iraq Reconstruction Stewart Bowen:

> [s]upplying adequate numbers of personnel with the requisite expertise emerged as a critical bottleneck early in the reconstruction effort ... Although personnel recruitment improved somewhat as the reconstruction enterprise matured, at no time were there sufficient numbers of experienced advisors to meet Iraq's critical capacity-building needs.[25]

Neither the Defense Department nor the State Department has adequately addressed the lack of trained personnel. Since 2006, the Secretary of Defense has been required by Congress to develop joint policies for training to address contingency contracting. In 2008, Congress required the Department to expand its policies to include development of requirements for training of military personnel outside the acquisition workforce. Despite these requirements, GAO has reported that the Defense Department has not fully developed or implemented adequate training policies.[26]

In March 2012, GAO reported that Defense Department has continued to fail to provide sufficient, trained personnel to oversee contracts in Afghanistan. GAO concluded that, while the Department has taken steps to improve its training, "the required training does not fully prepare [officials] to perform their contract oversight duties in contingency areas such as Afghanistan."[27]

The Defense Department has also failed to comply with its own guidance related to planning for contingency contracting. The Defense Department has required the combatant commands to include planning for operational contract support in their planning since 2006. However, GAO found that only four operational plans had been approved containing the required sections addressing operational contract support.[28]

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[25] Stuart W. Bowen, Jr., *Hard Lessons: The Iraq Reconstruction Experience* (2009).

[26] Pub. L. 109-364, §854, *National Defense Authorization Act for Fiscal Year 2007* (Oct. 17, 2006); Pub. L. 110-181, § 849(a), *National Defense Authorization Act for Fiscal Year 2008* (Jan. 28, 2008); U.S. Government Accountability Office, *Contract Management: DOD Developed Draft Guidance for Operational Contract Support but Has Not Met All Legislative Requirements* (Nov. 20, 2008) (GAO-09-114R).

[27] Government Accountability Office, *Operational Contract Support: Management and Oversight Improvements Needed in Afghanistan* (March 29, 2012) (GAO-12-290).

[28] Department of Defense, Joint Chiefs of Staff, *Joint Publication 5-0, Joint Operational Planning* (Dec. 26, 2006); Government Accountability Office, *Warfighter Support: DOD Needs to Improve its Planning for Using Contractors to Support Future Military Operations* (March 30, 2010) (GAO-10-472).

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Neither the State Department nor USAID require personnel outside of their acquisition departments to be trained on contingency contracts. In addition, neither agency is currently required to include plans for the use of contractors in contingency planning.[29]

S.2139 requires professional education for Defense Department and State Department officials to include curriculum on contracting in contingencies. Military education must include requirements for contingency program management and the strategic impact of contract costs in contingencies. State Department professional education must develop curriculum to cover these areas as well as acquisition matters specific to the Department of State in support of overseas contingency operations.[30]

S.2139 also requires the Defense Department and State Department to add operational contract support as a requirement in planning documents. Contractor support must be reviewed quarterly in reports to Congress as a capability under the Department's existing readiness reporting system. The Secretary of State must establish a readiness reporting system for the State Department that includes review of contract support. The Secretary of State must also set requirements for performance of a Quadrennial Diplomacy and Development Review (QDDR), within the Department with elements to include contractor support for diplomatic and overseas development strategy and roles and responsibilities of contractors within the Department.[31]

7. Suspension and Debarment Officials

Federal agencies have failed to adequately use suspension and debarment to protect the government. In 2011, the Defense Department found that, over a 10-year period, the Department awarded $255 million to contractors who were convicted of criminal fraud and $574 billion to contractors involved in civil fraud cases that resulted in a settlement or judgment against the contractor, many of whom were never suspended or debarred.[32] In 2011, GAO reported that over a five year period from 2006 through 2010, the State Department, with over $33 billion in contracts, had only six suspension or debarment cases.[33]

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[29] Department of State, U.S. Agency for International Development, *Briefing for Subcommittee Staff* (April 10, 2012).

[30] S.2139 §§ 123, 133.

[31] S.2139 §§ 122, 132. A similar requirement to assess roles and responsibilities of contractors was adopted in the fiscal 2012 NDAA for the Department of Defense to be included in its Quadrennial Defense Review. Pub. L. 112-81, § 820, *National Defense Authorization Act for Fiscal Year 2012* (Dec. 31, 2011).

[32] Department of Defense, Under Secretary of Defense for Acquisition, Technology, and Logistics, *Report to Congress on Contracting Fraud* (Oct. 2011).

[33] Government Accountability Office, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved* (Aug. 31, 2011) (GAO-11-739).

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Agencies, including the State Department, which failed to adequately use suspension and debarment procedures to safeguard the government's interests, share similar characteristics: no full time dedicated suspension and debarment staff, lack of detailed policies and guidance, and absence of established practices to encourage referrals.[34] By contrast, the Air Force suspensions and debarment program, which had 367 suspension or debarment actions in 2010 and is widely regarded as successful, owes its effectiveness to a dedicated staff with a full-time, career official in charge who is separate from the acquisition chain, and "empowered" to protect the government.[35]

S.2139 requires Suspension and Debarment Officials (SDOs) for the Defense Department, the military departments, the State Department, and USAID to maintain a dedicated staff, adopt and comply with guidance on policies and procedures, and implement training and uniform practices for suspension and debarment activities. Each agency must maintain at least one full time official, whose duties are limited to the direction, management, and oversight of suspension and debarment activities. The legislation prohibits locating the SDO within the acquisition offices of the department or agency and requires that SDOs maintain membership and provide information to the Interagency Committee on Debarment and Suspension (ICDS) to assist the ICDS in fulfilling its annual reporting obligations to Congress.

S.2139 also provides for automatic suspensions where a contractor has been indicted, a civil or criminal action alleging fraud has been filed by the government, or there has been a final determination of a contractor's failure to pay outstanding obligations. This section applies only to suspension, not debarment, and its requirements may be waived at the discretion of the SDO.[36]

8. Responsibilities of Inspectors General

Congress has previously attempted to address the lack of oversight in contingencies by creating new Inspectors General. In 2003, Congress created the Special Inspector General for Iraq Reconstruction (SIGIR) and in 2008, it created the Special Inspector General for Afghanistan Reconstruction (SIGAR) to provide a comprehensive and independent means for oversight of programs and operations in Iraq and Afghanistan, respectively.[37] In the past nine years, SIGIR has issued over 200 audit reports and estimates that over $644 million has been recovered or saved based on actions taken by government agencies in response to SIGIR findings

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[34] Government Accountability Office, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved* (Aug. 31, 2011) (GAO-11-739).

[35] Senate Committee on Homeland Security and Governmental Affairs, *Hearing on Weeding out Bad Contractors: Does the Government Have the Right Tools?* (Nov. 16, 2011).

[36] S.2139 §§ 112, 113.

[37] Pub. L. 108-106, § 3001, *Emergency Supplemental Appropriations Act for Defense and for Reconstruction of Iraq and Afghanistan* (Nov. 6, 2003). The Inspector General of the Coalition Provisional Authority was re-designated as the SIGIR under Pub. L. 108-375; Pub. L. 110-181, §1229, *National Defense Authorization Act for Fiscal Year 2008* (Jan. 28, 2008).

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and recommendations. As of January 2012, SIGAR has completed 53 audits over a four year period, identifying over $259 million in funds that should be returned to the U.S. Investigations by SIGIR and SIGAR have resulted in over $224 million in recovered funds in Iraq and Afghanistan.[38]

Statutory Inspectors General have also made major contributions to the detection and prevention of waste, fraud and abuse in Iraq and Afghanistan. In 2011, GAO found that across government, the Inspectors General reported potential savings of about $43.3 billion resulting from their work in 2009 alone, which represents a return of approximately $18 for every dollar spent on the Inspectors General."[39] In just the six month period between April and September 2011, the Defense Department Inspector General conducted over 80 audits identifying $547 million in funds which could be better spent.[40]

S.2139 works within existing structures to increase the authority and responsibility of Inspectors General upon declaration of contingency operations. S. 2139 does not implement the Commission's recommendation that Congress create a permanent Office of Inspector General for Contingency Operations with authority to increase or decrease staff in the event of an overseas contingency. The Inspectors General for the Defense Department, State Department, and USAID have expressed concerns regarding this recommendation, including whether such an office could be effective. In addition, fiscal concerns remain about the efficacy of creating a new inspector general office, staff, and fund, all of which would be required by the creation of a permanent Inspector General for contingencies.[41]

S.2139 amends the Inspector General Act of 1978 to require the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE) to designate a Lead Inspector General for Contingency Operations from among the existing Inspectors General for the Department of Defense, Department of State, and USAID. The Lead Inspector General is responsible for conducting oversight of all aspects of a contingency and must report annually to Congress on all overseas contingency operations. The Lead Inspector General is also responsible for resolving jurisdictional disputes and, along with the other covered inspectors general, may employ rehired

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[38] Special Inspector General for Iraq Reconstruction, *Quarterly and Semiannual Report to the United States Congress* (Jan. 30, 2012); Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress* (Jan. 30, 2012).

[39] Government Accountability Office, *Inspectors General: Reporting on Independence, Effectiveness, and Expertise* (Sept. 21, 2011) (GAO-11-770).

[40] Department of Defense Office of Inspector General, *Semiannual Report to the Congress* (Sept. 30, 2011).

[41] Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, *Hearing on Oversight of Reconstruction Contracts in Afghanistan and the Role of the Special Inspector General* (Nov. 18, 2010).

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annuitants and temporary personnel for up to five years to assist in conducting oversight of contingency operations.[42]

B. Contract Award, Management, and Oversight

S.2139 requires agencies to reduce reliance on noncompetitive contracting practices and restrict subcontracting practices that have resulted in a lack of visibility regarding where U.S. dollars flow in contingencies. The legislation also requires agencies to conduct risk analyses before relying on private security contractors and to terminate unsustainable reconstruction and development projects. It also strengthens tools to combat human trafficking.

1. Limitations on Noncompetitive Contracts

The Commission found that lack of competition contributed to the waste, fraud, and abuse of contracts in Iraq and Afghanistan. In just one example, the Commission estimated that failure to implement competition at the task-order level at the beginning of the $6 billion Army logistical support contract known as LOGCAP III and delays in awarding its competitive successor contract, LOGCAP IV, resulted in over $3.3 billion in waste.[43]

S.2139 limits the time period for contracts entered into by the Defense Department, State Department, and USAID in contingency operations to three years for competitively bid contracts and one year for all non-competitive contracts. These limitations can be waived depending on compelling needs of departments in contingencies if senior officials provide written justifications. The limitations do not take effect until six months after the commencement of an overseas contingency operation.[44]

S.2139 requires that when agencies solicit contract proposals from only a single source, use of the "unusual and compelling urgency" exception provided for in the Federal Acquisition Regulation (FAR) as the basis for entering into sole-source contracts, must be documented by the agency in a written justification and approval (J&A) of the reasons necessary for using this authority. The legislation requires agencies to compile these J&As and submit them annually in a report to Congress.[45]

2. Subcontractor Transparency and Oversight

The government's inability to conduct adequate oversight of subcontractors has also contributed to waste, fraud, and abuse. For example, in 2011, the Justice Department filed a False Claims Act case against KBR on the LOGCAP III contract based on allegations of

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[42] S.2139 § 103.

[43] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011) (emphasis in original).

[44] S.2139 § 201.

[45] S.2139 § 203.

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kickbacks to one of its subcontractors, Tamimi. According to the Commission, Tamimi, which held subcontracts worth over $700 million, and whose general manager was subsequently convicted of related felonies, was legally entitled to refuse to provide a complete record of its subcontracts to the Defense Contract Audit Agency or to the Commission.[46]

In June 2011, in response to a report by the Senate Foreign Relations Committee on U.S. foreign assistance to Afghanistan which found that USAID relied heavily on contractors, had limited oversight and visibility of prime contractors and subcontractors, and concluded that the U.S. should review Afghan aid policy to ensure that it engages only in projects that are "necessary, achievable, and sustainable", USAID implemented a number of improvements to address contractor accountability and enhanced oversight at USAID. These improvements include new limitations for subcontractors. USAID states that it now includes a clause in new contract awards in Afghanistan which permits USAID to restrict the number of subcontract tiers and requires the prime contractor to perform a certain percentage of the work.[47]

S.2139 limits the number of tiers that can be subcontracted for service contracts. These limitations can be waived depending on compelling needs of departments in contingencies if senior officials provide written justifications. The limitations do not take effect until six months after the commencement of an overseas contingency operation.[48]

3. Reliance on Private Security Contractors.

Problems with armed private security personnel in Iraq and Afghanistan have been widely reported. The most notorious incident occurred in September 2007, when guards employed by the private security company Blackwater allegedly shot and killed 17 civilians in Iraq's Nisur Square.[49] In Afghanistan, multiple private security contractors working for the Defense Department have been found to be funneling U.S. taxpayer dollars to Afghan warlords.[50] The performance of many private security contractors has also been found to be so inadequate that their failures "directly affect the safety of U.S. military personnel."[51]

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[46] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011)

[47] Senate Committee on Foreign Relations, *Evaluating U.S. Foreign Assistance to Afghanistan* (June 8, 2011) (S. Rept. 112-21); Letter from USAID Administrator Rajiv Shah to Chairman John Kerry (June 1, 2011).

[48] S.2139 § 201.

[49] *U.S. Contractor Banned by Iraq Over Shootings*, New York Times (Sept. 18, 2007).

[50] Senate Committee on Armed Services, *Report: Inquiry Into the Role and Oversight of Private Security Contractors in Afghanistan* (Sept. 28, 2010).

[51] Senate Committee on Armed Services, *Report: Inquiry Into the Role and Oversight of Private Security Contractors in Afghanistan* (Sept. 28, 2010).

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In 2008, Congress required increased training and reporting requirements for private security contractor personnel in contingencies as well as new contract clause provisions to reflect these changes. However, over four years later, regulations addressing selection, training, equipping, and conduct of contractor personnel performing private security functions in areas of contingency operations have still not been fully enacted.[52]

In its final report, the Commission concluded that existing standards do not provide adequate guidance to federal agencies about when private security contractors should be used in contingency operations. Those standards only address when the government is legally entitled to use such contractors, not whether it is advisable. The Commission recommended that agencies conduct a realistic risk assessment and noted that there could be circumstances, like those currently present in Afghanistan, where the risks outweighed the benefits of contracting for security functions.[53]

S.2139 requires that, for contingency operations that exceed six months, the commander of combat activities in a contingency, in consultation with the Secretaries of Defense or State, must perform a risk analysis consistent with the obligations for analysis under Defense Department Instruction 1100.22 to determine whether the continued performance of personal, mobile, or static security functions by contractors is appropriate. The Act requires the Secretaries of Defense and State must each report annually to Congress on the continued use of contractors to perform these security functions in overseas contingency operations. The review must incorporate the risk analysis performed by the combatant commanders and explain the departments' plans for maintaining performance of these functions.[54]

4. Uniform Contract Writing Systems and Information on Prices.

The award and management of contingency contracts could be improved through better implementation of information technology. For example, GAO has identified five overlapping

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[52] Pub. L. 110-181, § 862, *National Defense Authorization Act for Fiscal Year 2008* (Jan. 28, 2008). In 2011, The Defense Department prescribed regulations that fulfilled the first requirement in section 862. However, the Federal Acquisition Regulation (FAR) has not yet been revised to require a contract clause to reflect these regulations for covered contracts performed in areas of contingency operations, as required by the second requirement in that section. *See* Pub. L. 110-181, § 862. As of March 2012, the proposed FAR change has been submitted to the Office of Information and Regulatory Affairs in the Office of Management and Budget for review. *See* DFARS Case 2011-029: *Contractors Performing Private Security Functions*.

[53] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[54] S.2139 § 202.

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and duplicative contract writing systems at the Air Force alone, which the Air Force has recently begun work to consolidate.[55]

There are also opportunities to achieve savings in contingency contracts through better sharing of information among agencies. The Defense Department's Director of Defense Pricing is developing a pilot system called the Contractor Business Analysis Repository (CBAR), which will give contracting officials tools to compare the price histories and the proposed rates on goods and services across the Department.[56] If expanded and shared, this type of information presents an opportunity for cost savings across the government.

S.2139 requires civilian and military agencies each to establish and maintain a single contract writing system for executive branch agencies. Agencies may use contract writing systems of another agency if the Office of Management and Budget determines that such use will result in cost savings to the federal government. S.2139 also requires that the Office of Federal Procurement Policy establish a database on prices for services and items charged to the federal government under existing contracts to assist acquisition personnel in monitoring price changes and conducting cost analyses regarding the reasonableness of prices for items and services.[57]

5. Combating Trafficking in Persons and Consent to Jurisdiction.

The Commission found that existing laws have been insufficient to stem human trafficking under contracts in Iraq and Afghanistan. The Commission stated:

> At many times during its travels and hearings, the Commission uncovered tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of contingency contractors. Existing prohibitions on such trafficking have failed to suppress it. Labor brokers or subcontractors have an incentive to lure third-country nationals into coming to work for United States contractors, only to be mistreated or exploited.[58]

The Commission also noted that there are limited opportunities for accountability for contractors because civil and criminal jurisdiction for foreign contractors operating overseas remains uncertain due to lack of personal jurisdiction in U.S. courts.

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[55] Government Accountability Office, *Information Technology: Department of Defense and Energy Need to Address Potentially Duplicative Investments* (Aug. 17, 2012) (GAO-12-241).

[56] *DCMA Leads Acquisition 'Revolution'* Federal News Radio (Nov. 16, 2011).

[57] S.2139 §§ 211, 212.

[58] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

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S.2139 makes it illegal to solicit, recruit or hire persons for work on contracts performed outside the United States by fraudulent means, such as material misrepresentations or promises regarding employment. The legislation also requires that these contracts include a termination clause applicable if any prime contractor, subcontractor, or labor broker employed under a contract with the Defense Department, State Department, and USAID engages in trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, such as failure to repatriate an employee upon the end of employment or confiscation or concealment of an employee's immigration documents. Contractors would be required to annually certify to the government that no such activity has occurred by persons employed by them under the contract.[59]

S.2139 requires that foreign entities who choose to enter into contracts with the United States must consent to personal jurisdiction in the United States in suits brought by the government and authorized individuals for actions involving wrongful death, serious bodily injury, rape, or sexual assault.[60]

6. Information on Past Performance

The Commission found that agencies were not effectively using information about contractors' past performance in contingencies. According to the Commission, "agencies lack the necessary insight into contractor performance and have an increased risk of awarding contract to habitual poor performers." The Commission also found that the current process of performance evaluations, including contractor appeals, discourages candid evaluations and unduly delays sharing past performance information among contract officials. The Commission recommended that contractors not be allowed to appeal agency performance evaluations.[61]

In 2011, Congress partially addressed the problem of contractor evaluations by changing the applicable time period for the process for Defense Department contracts. Defense Department officials are now required to report past performance information into the government's past performance system 14 days after sharing it with the contractor, regardless of whether contractors provide rebuttals or additional information to contracting officials for inclusion in their evaluations.[62]

S.2139 requires that information about past performance and integrity of contractors currently maintained by the government in the Federal Awardee Performance and Integrity Information System (FAPIIS) must include information about an entire corporation, including

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[59] S.2139 § 222.

[60] S.2139 § 221.

[61] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[62] Pub. L. 112-81, § 806, *National Defense Authorization Act for Fiscal Year 2012* (Dec. 31, 2011).

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any parent, subsidiary, or successor entity, not just an individual vendor. The legislation also amends the Federal Acquisition Regulation to require agencies to use the Contractor Performance Assessment Reporting System (CPARS) when submitting information to the Past Performance Information Retrieval System (PPIRS). It also eliminates the obligation for agencies to wait 30 days in order for contractors to respond to performance evaluations prior to submission.[63]

7. Sustainability

The federal government has spent hundreds of millions, if not billions, on projects in Iraq and Afghanistan which cannot be sustained by the host government. In just one example, the Commission found that the United States spent $40 million to partially construct a prison in Iraq, even though the Iraqi government explicitly stated it would not complete construction or occupy the prison after it was completed.[64]

The government of Afghanistan will be unable to sustain the overwhelming majority of projects built by the United States. In June 2008, the Senate Foreign Relations Committee released a report which found that 97% of Afghanistan's GDP is comprised of spending related to the military operation and international support. The Foreign Relations Committee report recommended that the Administration and Congress review Afghan aid policy to ensure that it engages only in projects that are "necessary, achievable, and sustainable."[65]

The majority of funding for reconstruction projects in Iraq and Afghanistan has come from the Defense Department. Overall, the Defense Department has spent more than $6.9 billion in Iraq and Afghanistan on projects funded by the Commanders' Emergency Response Program (CERP) and the Afghanistan Infrastructure Fund (AIF).[66] In one year, under the AIF alone, the Defense Department received over $400 million for reconstruction and development projects, including approximately $130 million for continuation of a power transmission project in Kandahar, $101 million for a power transmission project in Chimtala-Ghazni, and $23 million for a road construction project in Helmand Province. These projects were approved with cursory

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[63] S.2139 §§ 223, 224.

[64] Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Aug. 31, 2011).

[65] Senate Committee on Foreign Relations, *Evaluating U.S. Foreign Assistance to Afghanistan* (June 8, 2011) (S. Rept. 112-21).

[66] Congressional Research Service, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11* (Mar. 29, 2011); Congressional Research Service, *Afghanistan: U.S. Foreign Assistance* (Aug. 19, 2011).

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explanations by the Department regarding how the host country might sustain these projects in the future.[67]

Under current law, sustainability analyses are already required to be performed for projects administered by USAID. The Foreign Assistance Act of 1961 requires that a sustainability analysis be conducted and certification of a host nation's ability to sustain a project be provided for any infrastructure projects over $1 million that are funded out of development-related accounts.[68]

S.2139 prohibits the Defense Department from entering into large reconstruction related projects in contingencies unless the Secretary of Defense in consultation with the U.S. commander of military operations in the country in which the project is to be carried out jointly certify that the host country can sustain the project once completed. Certifications must be provided to Congress and current projects in Afghanistan must be terminated unless they can be certified as sustainable or a determination is made by the Secretary that the project is necessary to the military mission.[69]

III. WITNESSES

The following witnesses will testify at the hearing:

Panel I

The Honorable Jim Webb
U.S. Senator

Panel II

Richard T. Ginman
Director, Defense Procurement & Acquisition Policy
U.S. Department of Defense

The Honorable Patrick Kennedy
Under Secretary for Management
U.S. Department of State

Angelique Crumbly
Acting Assistant to the Administrator, Bureau of Management
U.S. Agency for International Development

Panel III

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[67] Department of Defense, Afghanistan Infrastructure Fund: Approved FY2011 Projects Supporting the Afghanistan Infrastructure Fund (June 27, 2011).

[68] 22 U.S.C. § 2361.

[69] S.2139 § 231.

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Lynne M. Halbrooks
Acting Inspector General
U.S. Department of Defense

Harold W. Geisel
Deputy Inspector General
U.S. Department of State

Michael G. Carroll
Acting Inspector General
U.S. Agency for International Development

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Statement for the Record

The military has relied on contractors since the Revolutionary War. But since the end of the Cold War, when the Department of Defense cut its military and civilian logistical and support personnel, reliance on contractors has increased dramatically. Beginning with the operations in the Balkans and continuing with the wars in Iraq and Afghanistan, contractors have composed about half of the Department of Defense's personnel in-country. In Iraq and Afghanistan alone, more than 260,000 private workers— most of them not American citizens—have been deployed. This explosion in the use of contractors in contingency operations has undermined U.S. strategic and financial interests, outsourced essentially governmental functions, and distanced American policymakers from the moral hazards of their decisions.

If the U.S. is to protect its vital national interests in a cost-effective manner, now and in the future, the Congress must pass and the President should sign S.2139, the Comprehensive Contracting Reform Act of 2012, as soon as possible. If we do not act expeditiously, we will continue to needlessly squander blood and treasure and undermine our image in current and future conflicts. War and peace are matters of national interest and national endeavor, and it is not appropriate to impose a management structure or ethos more appropriate in the corporate world.

S.2139 addresses most of the structural, systemic, and technical problems identified by the Commission on Wartime Contracting in Iraq and Afghanistan. This group, which was created through legislation introduced five years ago by Senators Claire McCaskill (D-MO) and Jim Webb (D-VA), has made a number of recommendations to deal with the problems created by the overreliance on contractors in warzones and the waste, fraud, and abuse pervading the awarding and implementation of contracts.

This legislation is necessary because officials in the Executive Branch have shown that they are unable or unwilling to implement most of the Commission's recommendations. If this legislation does not pass, these problems will remain unresolved, as they have not just over the past decade but since the 1990s when we deployed forces to the Balkans. If S.2139 is not passed, large amounts of appropriated money will continue to be wasted; in Iraq and Afghanistan at least $31 billion and possibly as much as $61 billion of $200 billion appropriated to contracts has been lost to contractor fraud and waste. Additionally, if S.2139 does not pass, contractors will continue to perform activities that are inherently governmental, thus frequently undermining the mission.

Close examination of Titles I and II of this legislation makes it clear that, if enacted, most of the recommendations of the Commission will be implemented. However, the

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legislation could be improved by adding a Title III. Hopefully, this additional section can be added in committee, on the floor, or in conference.

Title I deals with the organization and management of the Federal Government for contracting for oversees contingency operations and is focused on the responsibilities of the President, the Office of Management and Budget (OMB), and the Departments of State, Defense, and USAID in their oversight.

The first title mandates that the President include information and the Director of OMB provide the Congress with details of why Overseas Contingency Operations (OCO) funds are needed and subsequently report in detail on how those funds were spent. To ensure that these funds are spent efficiently and effectively, it amends the Inspector General Act of 1978 to mandate that a lead Inspector General be designated for any Overseas Contingency Operation lasting more than 30 days. Similarly, it amends the Services Acquisition Reform Act of 2003 by adding responsibilities to the Chief Acquisition Officers for OCO. Hopefully these provisions will limit the various agencies' tendency, exploited in particularly egregious fashion by the Department of Defense, to transfer items more appropriately included in the core budgets into the OCO accounts to hide budget growth and cost-overruns.

The second part of Title I focuses on issues that cut across agency lines and requires Department of Defense, State, and USAID to establish a management structure to manage contracts in support of OCO and requires them to maintain and staff Suspension and Debarment Officials (SDO's) outside the Acquisition Offices. This measure is intended to ensure that there will be no conflicts of interest when it comes to suspending and disbarring contractors who do not perform, which has been a serious problem in the last decade.

The third and fourth subtitles of Title I outline the responsibilities of the Secretaries of State and Defense and the Head of USAID in ensuring that contracting activities in OCO are awarded and executed satisfactorily.

Title II focuses on Transparency, Sustainability, and Accountability in Contracts for OCO. The first subtitle specifies limitations of contract periods and subcontracting titles. It demands that, unless there is a waiver granted, contracts should be limited to three years for competitively bid contracts and one year for non-competitive contracts, that contracts have only a single tier of subcontractors, and that the Secretaries of State and Defense perform an annual review to determine for which functions it is appropriate to use contractors. The provision also limits the Secretaries' authority to enter into sole

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source contracts. Senators McCaskill and McCain have been particularly tireless in targeting sole source contracts, which are particularly vulnerable to fraud and abuse.

The next two subtitles enhance the contracting process by establishing a uniformed contract writing system and a database of federal contracts; improves contractor accountability by requiring them to consent to personal jurisdiction in the United States, so fraud and abuse can be prosecuted; and makes it illegal to make misrepresentations regarding employment to potential workers, to counter the prevalent abuse of foreign workers by contractors in dangerous environments.

The final subtitle focuses on sustainability requirements for capital projects. It prohibits Department of Defense from entering into contracts over for over $1 million unless the project can be sustained by the host country and requires that all current capital projects be terminated within six months after passage of the act unless it is determined that the projects are vital to United States military and security objectives.

The legislation could be improved in at least two ways. First, the executive branch should be required to provide Congress with a list of specific activities that are inherently governmental. Second, rather than designating a Lead Inspector General from among the existing Inspectors General after the beginning of Overseas Contingency Operations lasting more than 30 days, the legislation should create a small, expandable permanent office of Inspector General that can provide oversight from the outset of contingency operations.

These provisions aim to end the waste of American taxpayers' money on large, frequently superfluous projects which are likely fall into disrepair or disuse after the departure of American personnel. We need funds for nation building at home, and can no longer finance non-essential projects abroad.

Lawrence J. Korb
Senior Fellow
Center for American Progress Action Fund

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Statement for the Record
Katherine V. Schinasi, Former Commissioner,
The Commission on Wartime Contracting in Iraq and Afghanistan
on

S.2139
The Comprehensive Contingency Contracting Act of 2012

For the Subcommittee on Contracting Oversight
U.S. Senate Committee on Homeland Security and Governmental Affairs
SD-342 Dirksen Senate Office Building
Washington, DC
April 17, 2012

I appreciate the opportunity to provide this statement for the record regarding S. 2139, the Comprehensive Contingency Contracting Act of 2012, which has been introduced by Senator Claire McCaskill and Senator Jim Webb.

As a former member of the Commission on Wartime Contracting in Iraq and Afghanistan, I appreciate this Subcommittee's continuing attention to what we found to be serious problems in the way the U.S. government identified, awarded, and managed its contracts and contractors in the Iraq and Afghanistan conflicts. Many of those problems continue today. My statement will draw on the body of work the Commission conducted, including the recommendations we made in our final report "Transforming Wartime Contracting: Controlling Costs, Reducing Risks." That report, and the Commission's other publications, can be found at www.commissiononwartimecontracting.gov.

The Commission sunset on September 30, 2011, so my statement today is in my capacity as a private citizen. I can assure you, however, that nothing in this statement conflicts with the solid consensus that developed among the eight members of the Commission. In the too often rancorous atmosphere that permeates Washington, the Commission's consensus is noteworthy. Designed to have bipartisan membership—four Democratic and four Republican appointees—we went well beyond that and functioned as a non-partisan body. Our work sessions, travels, and public hearings featured lively discussions and debates, but were never marred by dissension along partisan lines. Our reports have no dissenting or alternative views. We are unanimous in our findings and our recommendations.

Before I turn to some individual sections of the bill, many of which are in keeping with the intent of the Commission's recommendations, let me make three points about Congressional responsibility in this matter.

First is the need for legislation itself. Although we saw some progress during the course of our work, particularly by the Department of Defense, it is clear that the agencies cannot or will not make the systemic and lasting changes needed to raise acquisition to a core function on their own. The ad hoc solutions agencies attempted in Iraq and Afghanistan have been ineffective. The policy issues embedded in the decision to use contractors to carry out sensitive government functions, the management and evaluation of contractor performance once employed, and the billions of dollars at stake In Iraq, Afghanistan and future contingency operations require some sweeping changes that will only be accomplished through legislation

The second is the need to more fully establish accountability. Contracting practices are important, but they are an outcome of a series of decisions that begin with Agency leaders defining goals and objectives and then deciding to use a contracted workforce to support them. Contract outcomes are not just the responsibility of contracting officers or even of the acquisition community. Instead, the seeds of success and of failure are established by the decisions made by mission teams and leadership priority. Our findings and recommendations make clear that the low level at which the decision to use contractors is made and the absence of consequences—on both the contractor and government side-- when contracted goods and services are not delivered as promised call out for greater accountability. Establishing responsibility and authority in new, focused positions will enhance accountability for the results. Contractor accountability needs to be strengthened through the better use of tools already available to the government and, in some cases, by creating new incentive and enforcement mechanisms.

And, finally, correcting the problems the Commission identified in its work on contingency operations in Iraq and Afghanistan could have important and positive spill over effects for government contracting as a whole. Although it was outside the scope of the Commission's mandate, many of the problems we identified are well known across the government. As a former managing director at the Government Accountability Office, I saw all too frequently the high risks and costly results associated with many of the same contracting issues that were present during contingency operations.

Next, let me turn to some specific bill provisions.

Given the high cost of failure, the need for greater attention and accountability is paramount in order to institutionalize the lessons learned in Iraq and Afghanistan. The bill appropriately addresses structural changes as part of the solution. Yet, I do not believe—nor do the Commission's recommendations support—that it goes far enough. A few examples:

> Strategic national security decisions, the impact of which can drive the inappropriate use of contractors, poor contract outcomes, and mission

failure, do not consider resource conditions. The bill directs greater involvement by the Office of Management and Budget in advising the President on the costs and means of financing of operations. Although a good step, the Commission believes that resource considerations need to be part of the ongoing discussion of contingency related issues. The Commission recommended creating a dual-hatted, Senate-confirmed position to ensure that resource issues represented by the Office of Management and Budget become a normal part of policy discussions conducted by the National Security Council. With contractors representing almost half of the workforce employed by the United States in Iraq and Afghanistan, and likely as well in future contingencies, it is only prudent to recognize monetary and other costs when developing and deliberating national security options. This dual-hatted position is also key in representing the interagency character of contingency operations to ensure that each relevant agency has the necessary financial resources and policy oversight to carry out its contingency-related mission.

Policy direction, such as that contained in then Defense Secretary Gates' memo on operational contract support in January 2011, is welcome. Yet, that memo took years to get through the Pentagon bureaucracy even after its need was recognized. Further, translating those policy changes into practice will not happen automatically. The bill gives the Secretary of Defense a year to determine the correct alignment of roles, authorities, and responsibilities for operational contract support. The Commission, however, goes further in recommending that a position in the Office of the Joint Chiefs of Staff be created now, in part to institutionalize the many lessons that have already been learned and to make needed changes in current operations. The current placement of operational contract support under a colonel within the logistics directorate reflects outdated thinking that contracting is only a method to achieve logistical support—not the full spectrum of intelligence, communications, construction, security, training, and other non-logistics services for which contractors are employed in Iraq and Afghanistan contingencies and will likely continue to be in most future operations. As the Joint Staff goes through its ongoing reorganization to position itself for future operations, they have an opportunity now to increase effective leadership by capturing diffuse responsibilities and to establish greater accountability for the role contractors play in DOD contingency operations.

It is clear that the State Department does not take stewardship of its resources seriously, with only two acquisition professionals out of approximately 200 Senior Executive Service and senior Foreign Service Officers under the authority of the Under Secretary for Management. In its response to our interim report, State indicated that its model was working well and that there was no need for additional training, even as it took over

the many new and critical missions in Iraq for which it decided to rely on contractors. The bill establishes a new acquisition-focused office. The Commission's recommendation to require regular reporting from State may be the forcing function needed for this office to make changes in policy and practice. Including measurements in those reports, by which the agency can be held accountable, would also provide an incentive for State officials to actually apply lessons learned. The significant waste and other problems encountered in contracting for police training, for the new Embassy compound in Baghdad, and for the Pol-i-Charki prison in Kabul, to name just a few, show that the current State Department model is not working.

Under the decentralized structure at the U.S. Agency for International Development (USAID), the Administrator's procurement reform agenda has not reached those officials who are responsible for deciding when to use a contractor workforce, how to develop measurable and enforceable contract requirements, or how to effectively monitor contractor progress in hostile environments. The bill creates a new acquisition-focused office in USAID. Again, regular reporting from this office will be key to improving accountability. More than any other agency involved in the Iraq and Afghanistan operations, USAID relies on a contract workforce. Yet, it has the farthest to go in understanding the need for and applying sound contracting practices. For example, despite numerous project and program shortfalls, it is not clear that USAID officials believe that any changes are needed in Iraq at all as military operations there have ceased.

A number of other bill provisions reflect Commission intent. Those include

- establishing a management structure for service contracting in State and USAID,
- better tracking of contractor performance
- providing alternatives to agencies using private security contractors when their use is inappropriate,
- more closely managing the length of contract terms and the number of sole source procurements,
- requiring additional training in acquisition matters, and
- explicitly including the role of contractors in planning exercises.

The bill also rightly calls out the need for interagency action in several areas. In addition, the bill's requirement to establish a management structure for service contracting in the State Department and USAID, which is valuable in and of itself, also has the potential to bring needed and significant improvement in contract outcomes well beyond the contingency context. In many areas, such as the requirement to cancel unsustainable project, making changes now will have a positive impact in the short term and also set out standards to avoid future failures.

Finally, I would urge the Congress to recognize its own role in supporting enhanced agency cooperation and improving contract outcomes in contingency operations. The lines drawn between Committee portfolios should not be used as a wedge against change. The very interagency nature of contingency operations means that Congress must come together across jurisdictional boundaries to support integrated executive branch efforts and to provide and reallocate resources to achieve reforms.

It is well established that poor contracting results in mission failure and wasting dollars we can ill afford. Even were the agencies to make needed policy changes, such changes are only good until the next set of administrators comes in with perhaps different priorities. Without a legislative mandate, business as usual means that the United States will continue to confront problems that resulted in our estimate of $31 billion to $60 billion of taxpayer money lost to waste and fraud related to contracting in the Iraq and Afghanistan contingency operations between FY 2002 and FY 2011. As we also reported, billions of additional waste are likely to develop as U.S.-funded projects prove unsustainable by host-nation governments. Much of that actual and emerging waste was avoidable. Although the U.S. presence in Iraq and Afghanistan will wind down, future overseas operations will continue to rely on contracts and contractors.

As restructurings take place in the current climate of spending reductions, S.2139 provides the perfect opportunity to establish sound structures, principles, and practices to avoid similar waste in the future. Starting reform now is also important because changing organizational culture, policy, doctrine, and regulations can take months or years—time that must not be lost when the next urgent need develops.

Again, I thank the Subcommittee for its efforts and for inviting this submission for the record.

Statement about the Contingency Contracting Reform Act.

I am Charles Tiefer, professor of governmental contracting at the University of Baltimore Law School. I was a Commissioner in 2008-2011 on the Commission on Wartime Contracting in Iraq and Afghanistan. This is my statement on the Contingency Contracting Reform Act ("the Act"). The Act does a good job of going the next step from the recommendations of my Commission. I support the Act as a whole. I have singled out the ten provisions of the Act for which I personally am most familiar as a result of my work on the Commission.

Section 112. Requirements and limitations for suspension and debarment officials.
While some agencies have properly structured their arrangements for suspension and debarment officials (SDOs), some components of the Department of Defense have not. Restructuring might facilitate the Department of Defense's moving ahead better with its suspension and debarments. The enormous Prime Vendor contract by the Department of Defense with Agility in Iraq should have produced an earlier suspension long before Agility's felony indictment. Another example is Parsons Delaware, Inc. Parsons botched vital work for the Department of Defense on the Baghdad Police College, which did not produce a suspension even when the Special Inspector General for Iraq (SIGIR) produced a blistering report.

Section 112 would usefully make agencies like the Army pull their suspension and debarment officials out of organizations like the Judge Advocate General. Without making the SDOs independent, they will certainly have the appearance, and quite possibly, of having diminished clout and independence.

A strongly supporting instance looked into by the Commission, and particularly by myself, was AID's lack of reaction to Louis Berger pleading – as a company – to criminal fraud in its billing of U.S. contracts. AID decided not to require Louis Berger to go through even one single day of suspension, just an administrative agreement. The AID decision was made without even one single page of public explanation.

Besides section 112's comprehensive overhaul of suspension and debarment officials, its subsection 112(b)(8)requires "a description of the basis for any final decision declining to pursue suspension or debarment and information on any administrative agreements in lieu of suspension or debarment." That is precisely what was missing as to Louis Berger. A description would assist oversight by Congress and the press to see whether the deal represents agency coziness with a criminal contractor. The Commission saw such a need. (Commission final report, p.156-57)(discussion of Louis Berger).

Section 113. Additional bases for suspension of contractors.
A strongly supportive instance looked into by the Commission were kickbacks in KBR's LOGCAP III contract by managers to a Kuwaiti company, Tamimi. (Commission final report, p.79.) KBR also had civil false claims charges filed against it for making payments, in violation of government rules, to armed subcontractors. Neither of these

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instances became the basis of even one single day of suspension. Section 112 would properly make these the basis of automatic suspension.

Industry has complained that automatic suspension does not give enough due process. However, automatic suspension has long been the rule when contractors are indicted. When the government had probable cause to file criminal or civil fraud charges, that in itself provides the basis for suspension in order to protect the government. The contractor will have its day in court to deal with those government charges. After all, suspension does not deprive the contractor of existing contracts, just new ones. Let the contractor clear its name before being given further and increased access to the Treasury.

Section 201. Limitations of contingency contracts.
Section 201 would limit the duration of some contingency contracts to one year, others to three years. This would address the problem that contracts used to handle the beginning of a contingency, the KBR's LOGCAP III for Iraq in 2003, stay in place for many years instead of getting competed. (Commission final report, p.75).

Some might ask whether this will inhibit contracting needed in the early phase of a contingency. This should not be a serious concern. Section 201 cuts more than enough slack for the agencies' contracting -- both by having the contract period limitation not kick in until 180 days after the operation starts, and, by expressly authorizing agency heads to grant a waiver. Without some kind of duration-limiting mechanism like this section 201, contracts where there was little or no real competition with last as long as a long contingency – many years for Iraq and more than a decade for Afghanistan.

The Commission devised the standard this section uses, namely, that it applies to (among others) to "competitively bid contracts for which only one offer was received by the covered agency." Some would urge that competitively bid contracts are always competitive enough, but, all too often, a contract may be bid in a way that discourages all but one contractor (for example, when a contract comes to an end, slanting the "competition" so only the incumbent has a good shot at getting the successor. In plain English, these are the all-too-numerous "no-bid contracts."

Section 201(b) would limit subcontractor tiering. Too many levels of tiering leads to abuses. The infamous private security contract for convoys that came to light after the 2004 Fallujah incident had four tiers from KBR at the top to Blackwater at the bottom. The Commission held a hearing on a poorly structured contract involving translators (Commission report, p.79).. Another example of a tiering-type arrangement looked into by the Commission was Paravant – a security contractor – having a hidden and all-too-convenient close relationship with Blackwater.

Section 202. Performance of certain security functions.
Section 202 requires risk analyses of private security contracts. In the entire bill, this is the most significant provision about which I had the view that a tougher provision, that closed down some wrong uses of security contractors, would be better. The Commission came to see the shadow the aftermath of the terrible incident of Blackwater in Nisur

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Square in 2007. The internal State Department report had said that State would have to consider, after Nisur Square, whether the continuation of the Blackwater contract was "in the interest of the United States," but the State Department responded with a degree of evasion about this that matched the continuing harm Blackwater did in generating anti-American feeling among Iraqis.

Quite distinctly, Afghanistan had its own bad scandals about the problems in performance of private security contractors. A House subcommittee issued, in a report *Warlords, Inc.*, a powerful indictment of PSCs in Afghanistan. The Commission started from there and went further, discovering the cutting-edge findings that in Afghanistan, funding from U.S. contracts was being diverted by security subcontractors to the Taliban. (Commission final report, p. 73). Indeed, diverted security subcontractor funding was the second largest source of funding for the Taliban. The many incidents in the past year of violence against American soldiers from Afghans in "allied" positions lends a new concern to this subject. In 2012 an Afghan contractor (a translator) drove a truck that may have been intended as a suicide attack, onto an airfield when Defense Secretary of Defense Panetta was landing.

The start of any reforms of PSC issues is risk analysis, as the Commission devoted an entire chapter, in significant measure, to discussing (Commission final report, at 52-61). So as to that, section 202 is a good start. But, the provision should go further, as the Commission did, and describe some uses of PSCs that ought to be ended.

Section 203. Justification and approval for sole source contracts.
The Commission discussed several of the most famous problems of competition failure, such as Dyncorp's training contract in Iraq and KBR's RIO contract in Iraq (Commission final report, at 78, 83). The Commission proposed a number of recommendations. (Commission final report, p.153). Requiring a J&A of this kind is a useful first step.

Section 221 Contractor consent to jurisdiction.
This Subcommittee has compiled an impressive record to support this under the rubric of the "Rocky Baragona" bill. The Commission similarly recognized the problem that foreign contractors or subcontractors should consent to U.S. jurisdiction. (Commission final report, p.158).

Industry may say that this would discourage foreign contractors. That is implausible. The Commission saw how avidly foreign contractors pursue contingency contracts – how lucrative such contractors are for foreign contractors. As an example of what needs to be done, construction work by foreign subcontractors proved all-too-often to be faulty, and food services, like dining facilities, could have risks like foreign workers with communicable diseases. Our troops deserve at least the rights about such contracting, as to foreign contractors and subcontors, that they rightly have today about U.S. contractors.

Section 222. Combating trafficking in persons.
This section has both an excellent list of concrete examples of trafficking, and, the right approach of making prime contractors responsible for their subcontractors and labor

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brokers. The Commission similarly found the problem acute and in need of vigorous action.. (Commission final report, p.160) The problem here is passive inaction both by the agencies and by the prime contractors, who shrug their shoulders and contend they are doing all they can. Congressional action is necessary to deal with the problem.

Section 223. Information on contractors through FAPIIS
The Commission observed that the new government database of contractor performance, FAPIIS, often did not include many dramatic contractor abuses on the public record, such as criminal or civil charges and administrative scandals whether reported in the press. An example would be the KBR "negligent electrocutions" scandal in Iraq. (Commission final report, p.89).

Even when a contracting officer might learn off very bad contractor performance, all too often they simply do not enter it in the database. The Commission found that for years of the KBR logistics contracting, either some data had been entered in an obscure and hard-to-find way, or, most often, had not been entered at all. For example, contracting officers failed to record DCAA questioning of costs or adverse findings about business systems. The lame came back from agencies that future contracting officers could just contact the present or past ones for information about KBR. Just think about how lame that answer is. There is no substitute for putting important information in the database.

The Project on Government Oversight keeps an entire public database of instances of contractor abuse which is largely unreflected in FAPIIS. This section would take the government database in the right direction.

Section 224. Contractor performance evaluations and PPIRS
The Commission found a severe problem with getting timely and frank evaluations into the PPIRS database: contracting officers face delay and difficulty from contractor replies drawing on unlimited legal resources. (Commission final report, p.155-56) This section would go right to the heart of that problem. There is such a problem with contracting officers learning the facts about past performance, that every effort should be made to further this. Industry may say that it needs to respond for future source selections. Let us first make sure that the source selection officials hear of the past performance problems, and then contractors, having made sure the source selection officials have heard, can say what they want at that later stage. The current system is deterring what it is most vital to encourage.

Section 231. Sustainability requirements for DoD projects.
The Commission did extensive work on the problems of sustainability, particularly in DoD projects in Afghanistan. (Commission final report, Chapter 2). These include the training facilities for CSTC-A in Afghanistan (Commission final report, p.72). This section is vitally nee3ded today because the drawdown in Afghanistan is accompanied by the pouring of billions of dollars into projects in Afghanistan, which may not be sustainable. This section is a vital step to making sober judgments about what to fund.

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Never before has there been so large a role for the Defense Department in reconstruction as in Iraq and, at least as importantly, today and in years to come in Afghanistan. The Commission noted that many billions of dollars has been spent on Commander's Emergency Response Program (CERP) projects in Iraq and Afghanistan, including how, in 2011 alone, Defense programmed more than 4000 projects in Afghanistan (Commission final report, at 133). CERP funding of projects that the Afghans will not sustain, is grossly wasted. Similarly, the Commission found "the $6.4 billion per year in training, equipping, and otherwise supporting the Afghan National Security Forces goes far beyond what the government of Afghanistan can sustain" (Commission final report, at 72).

Take an important example of initiating, contracting for, or funding electricity generating or transmitting in Kandahar and Helmand provinces. I personally studied this during my trip to Kandahar, and then brought up at Commission hearings. DoD funded projects that AID would not. Some of these projects appeared to have been initiated just to make an immediately favorable impression among Afghans – like diesel generating plants – when there was little reason to think that, in years to come, Afghans would be able to sustain the projects.

Section 103. Responsibilities of inspectors general.
There is a real need to report to inspector general system for contingencies. It took too long in Iraq to have a response to the contingency – scandals had their roots in the buildup in Kuwait in 2002-2003, and then bloomed in 2003-2004, yet it was not until 2004 that a special inspector general was given charge. (Commission final report, p.146). This section is a sensible step to putting in place rapidly a lead inspector general as early in the contingency as possible. The work by the special inspectors general in Iraq and Afghanistan has been highly commendable. But, there is a need to have a mechanism in place to respond swiftly in future wars, that will kick in if and until Congress does not set up a special inspector general.

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