

TESTIMONY OF HAROLD W. GEISEL
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U.S. DEPARTMENT OF STATE AND THE
BROADCASTING BOARD OF GOVERNORS
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COMMISSION ON WARTIME CONTRACTING
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Mr. Chairman and Members of the Commission:

I appreciate the opportunity to appear here today representing the Office of Inspector General of the Department of State and the Broadcasting Board of Governors.

OIG is pleased to work closely with the Commission and your staff to help carry out your important work.

In my last visit with the Commission, I reported that OIG continues to see some of the same problems with contracting we did 14 years ago, when I served my first term as Acting Inspector General. A major difference, of course, is that the Department of State is using more contractors, much more frequently, especially in Iraq and Afghanistan, than it has in the past.

Today, OIG can report there are some positive developments. OIG's forward regional presence has significantly enhanced our ability to identify potential savings and cost efficiencies, and provide real-time information on matters affecting high-cost, high-risk Department programs in critical crisis, conflict, and post-conflict areas, such as Iraq, Afghanistan, Pakistan, Lebanon, and other countries throughout the region.

Updates and Trends

Middle East Regional Office

Over the past 18 months, our Middle East Regional Office (MERO) completed several performance audits in Iraq and Afghanistan, including reviews of worldwide personal security contractors in these two countries, the Department's counternarcotics programs in Afghanistan, and the Baghdad Embassy security force. We also conducted a joint audit with the Department of Defense Inspector General of Afghan National

Police Training. We plan to continue reviewing programs in these countries, as well as in other crisis areas, including Pakistan.

In our audits, OIG found two major issues related to contingency contracting. First, any program needs a well written contract with clearly defined goals, a suitable scope of work, and measurable performance indicators. Good contracting is especially important in contingency areas, but in several audits, MERO discovered contracts that did not meet these criteria, including contracts for Afghan National Police training and counternarcotics programs. Second, throughout its reviews, MERO found an insufficient number of U.S. Government contracting personnel in the field, which led to weak oversight and management of programs. This situation is a root cause of poor “ground truth” monitoring of contractors, incomplete contract files, and untimely or inadequate review of invoices. Given the difficulty in recouping funds in foreign environments and the lost opportunity costs of poorly planned and executed projects, the U.S. Government must have sufficient contracting and oversight personnel in the field. The Department needs enough people experienced in its policies and processes to provide adequate contract management and oversight.

We found that waste, fraud, and abuse in contingency areas are difficult to quantify. Early in the Iraq operation, a rush to award contracts, extremely short tours of duty for contracting personnel, and cash payments were the source of many of the problems. Although these problems still exist to a certain degree, the number of issues has decreased as lessons have been learned.

We believe that in contingency operations, the key is prevention. Thus, in an attempt to avoid the problems we found in our audits and reviews in these locations,

OIG plans early oversight of the Department's efforts in Afghanistan and elsewhere. We are confident that our systems, with adequate time and resources, can uncover waste, fraud, and abuse. We have sufficient funds to accomplish our current level of oversight. However, to increase the level of oversight in crisis locations and areas with contingency operations, we will need additional funding. Furthermore, we advised Congress that new hiring authorities would provide us the flexibility to address the added workload. We would then be able to quickly deploy more oversight resources to these locations.

MERO's plans for these locations include:

- A joint State-DoD OIG follow-up review of Afghan National Police training;
- A congressionally-requested review of State's capability to assume management and oversight of the Iraqi police training contract from DoD;
- A review of Department and embassy construction activities, as well as of operation and maintenance contracts in Afghanistan and Iraq;
- A review of the Worldwide Protective Services (formerly WPPS) program;
- An anti-corruption program review in Afghanistan; and
- A review of transition-related activities in Iraq

Office of Audits

In our *"Audit of the Design and Construction of the New Embassy Compound in Baghdad, Iraq,"* which was issued last October, we found that the Department did not require the construction contractor to provide adequate documentation to support invoice payments for five fixed-price contracts totaling \$467 million. Missing from the documentation were listings for amounts included for subcontractor work. The

contracting officer approved only the first and last invoice on all construction contracts. The contracting officer's representative (COR) was delegated the authority to approve all other invoices. The Department took commendable action based on OIG's report, and will now require all contracting officers to conduct periodic reviews of all invoices, not just the first and last invoice, prior to payment.

Also, the construction contractor for the New Embassy Compound in Baghdad, Iraq, did not comply with Federal Acquisition Regulation (FAR) provisions related to the Cargo Preference Act (46 App. U.S.C. 1241(b)). The Act requires transporting, in privately owned U.S.-flag commercial vessels, at least 50 percent of all government cargo tonnage transported on ocean vessels to the extent that such vessels are available at fair and reasonable prices. The contractor ignored repeated attempts by the Maritime Administration and the Department's contracting officer to comply. The construction contractor allegedly used foreign vessels as a cost-savings measure.

In response to our report, the Department has taken measures to assure contractor compliance with the Cargo Preference Act requirement that gives preference to U.S. flag carriers. First, all active construction contractors working with the Department were notified by letter of Cargo Preference Act requirements and this letter was posted to the Federal Business Opportunities Web site along with each Department construction project advertisement issued in 2010. In addition, Maritime Administration representatives have provided presentations at Department joint pre-proposal conferences. Also, this subject is an agenda item in each pre-proposal site visit and pre-construction conference held on projects that are awarded and administered by the Department's contracting office.

In our 2007 audit, entitled *“Accounting for Government-Owned Personal Property Held by Selected Contractors in Afghanistan,”* our audit team found that the Department had no guidelines and procedures provided for contracting officers, CORs, and other Department staff with oversight responsibilities for contractor-held property. Responsible Department officials were left to rely on their own initiative or depend on the actions of the contractor. In Afghanistan, the capitalized assets for contractor-held property amounted to \$40.6 million, and our report identified that Department records were understated by at least \$1.1 million to \$2 million.

In part as a result of the OIG review, the Department issued Procurement Information Bulletin No. 2007-21 (Contractor-Held Government Property Requirements), which defines Contracting Officer and Property Administrator responsibilities. In addition, the Department modified the Delegation of Authority memorandum to add specific responsibilities for the COR/Property Administrator with regard to U.S. Government property.

Office of Inspections

Our *“Inspection of Embassy Kabul,”* which was issued in February, found that embassy oversight of contracts and grants is seriously inhibited by the dangerous security conditions that preclude onsite visits outside of Kabul, as well as by the shortage of qualified CORs in Kabul. Also, the ability of embassy sections, such as the public affairs section and the political section, to support proposed new and/or expanded grant programs will be limited until additional qualified grants officers are in place and local staff have been trained in grants management.

In Afghanistan, the Bureau of International Narcotics and Law Enforcement Affairs (INL) budget averaged \$217 million annually over the last 5 years. INL's narcotics control program operates in direct support of rule-of-law and anti-corruption programs in Afghanistan. Its major objectives are threefold:

- 1) attack and weaken the nexus among narcotics, crime, corruption, and the insurgency;
- 2) build a professional and competent Afghan National Police force; and
- 3) support nationwide development of rule-of-law institutions and capabilities.

Our inspection team found there were five In-country Contracting Officer's Representatives (I-CORs) in Kabul, all of them personal services contractors. We recommended in February that INL immediately fill all seven I-COR positions in Kabul. Concurrently, our joint audit of Afghan National Police training also highlighted this deficiency. In recent testimony before a Senate subcommittee, INL stated that they would have 22 I-CORs assigned to the various task orders in Afghanistan by this coming September.

Additionally, we have provided the Commission with an annex of closed and open inspection recommendations on contracting issues found in Iraq and Afghanistan and other organizations within the Department.

Office of Investigations

We consider contractor self disclosure to be a positive trend. In December 2008, the FAR was amended to require government contractors to disclose violations of criminal law and/or the False Claims Act pertaining to the award and performance of their government contracts and subcontracts. Penalties for failure to adhere to the

disclosure requirements include possible debarment or suspension of the offending contractor.

Since November 2009, OIG's Office of Investigations has received three disclosures from contractors pursuant to the new requirements. These disclosures all involved Department of State contractors currently active in significant overseas contingency operations and all have prompted vigorous investigative action on the part of OIG's Office of Investigations, in partnership with the Department of Justice.

Mr. Chairman, we believe that continued use of personal services contractors (PSCs) in roles that are inherently governmental, as defined by the current FAR Subpart 7.5 or subsequently, or by OMB's pending policy, can be problematic. As overseas contingency operations have increased in recent years, the corresponding contracts have increased in number and complexity. As a result, the Department's placement of PSCs in positions as the COR or as the I-COR, is now an accepted Department practice. PSCs in COR or I-COR positions have an expanded scope of duty and have Department authority to review contractor actions ranging from approving payment requests to approving contract designs. The use of PSCs acting as CORs or I-CORs creates significant challenges as it relates to potential criminal prosecution of violation of Conflict of Interest, 18 U.S.C. § 208, which applies to "officers and employees of the executive branch of the U.S. Government, or of any independent agency of the U.S." because it has not been definitively established that the statute applies to PSCs.

Managing Oversight in Crisis Environments

Congress has provided significant levels of supplemental funds for our efforts in Iraq and Afghanistan. These funds often are enacted as one-year or 18-month money. While supplemental funds have been vital for success of the U.S. mission, for Inspectors General, this type of funding often arrives late and we operate with the uncertainty of next year's supplemental appropriation. That often requires us to hire full-time auditors, inspectors or investigators and to take on the associated logistics and training costs, with little certainty that funds will be available the next year. This type of funding significantly constrains our recruiting efforts and is less useful for conducting performance audits of construction programs, for example, that necessarily take place 1-2 years after the short-term funds expire.

Resources

Since 2008, OIG has received increased funding to meet planned needs. We are now seeking a range of new hiring authorities that will permit us to effectively manage our new base funding and enable us to better compete for scarce talent. These new authorities are needed for a large portion of our overseas work in crisis, conflict and post-conflict environments.

Future Needs and Recommendations

OIG suggests four areas of improvement for you to consider regarding OIG oversight in the contingency environment:

First, encourage Congress to set aside funds for IGs for oversight, as no-year or multi-year funds.

Second, encourage Congress to routinely establish a menu of flexible hiring authorities for any agency IG that establishes temporary offices overseas in contingency environments.

Third, encourage Congress to set aside a percentage of appropriated funds in the statute for agency IG oversight.

Fourth, support OMB's pending government-wide standards designed to help federal managers determine inherently governmental and non-governmental functions.

In closing, you asked whether a contingency inspector general should be established. While that concept may be attractive at first glance, creation of another special IG would result in overlapping oversight and a new bureaucracy. Permanent agency IGs are working closely together in a coordinated fashion to properly oversee government programs and spending in Afghanistan, Pakistan, and Iraq. From our perspective, I am confident that we have the right resources, organizational structure, and staff to respond to these conflicts, and with the right hiring authorities and resources, we can meet any future contingency.