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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

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, but positive and certainly manageable. OIG agrees with and supports Sections 101 and 103 of this legislation, with three suggested revisions, which we believe will 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.

While similar mechanisms have appeared in previous funding bills, they have been included only occasionally. 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.

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.

OIG suggests an approach that might be more efficient and 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, departmental 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 real 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 various 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 the participating Departmental IGs in a format similar to the *List of Contracting Actions and Grants* data presentation produced

by the 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 Departmental 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, OIG appreciates 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 gives 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 OIG more flexibility and speed to hire for a contingency environment while simultaneously allowing OIG to retain focus on the rest of our important mission.

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 OIG's 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 profound contract management shortcomings and some critical internal control problems. The Department agreed with our recommendations, and we continue to monitor their 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 risks. 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.

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. 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 commends the Subcommittee for its 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. Because of 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

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.