

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

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4 TUESDAY, APRIL 17, 2012

5 United States Senate,  
6 Ad Hoc Subcommittee on Contracting Oversight,  
7 Committee on Homeland Security and Governmental Affairs,  
8 Washington, D.C.

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

12 Present: Senators McCaskill and Portman.

13 Senator McCaskill. I want to welcome everyone to this  
14 hearing this morning.

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

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

22 When I came to the Senate in 2007, Senator Webb and I  
23 quickly found that we had a place we wanted to work on, and  
24 that was contracting and contingencies. His background in  
25 the military was a great asset to us as we put together the

1 War Contracting Commission legislation, and he and I worked  
2 on it together and succeeded back in the day. Before  
3 Senator Warner had retired, Senator Warner, as the Ranking  
4 Member of the Armed Services Committee was a tough sell. I  
5 mean, people need to remember the context that this  
6 legislation was brought forward in. It was when President  
7 Bush was still President, and I think there was a fear that  
8 this Contracting Commission was a political exercise. And,  
9 of course, it was far from that. It was something that was  
10 really needed to take a hard look at what had gone wrong  
11 with contracting and contingencies and to build a body of  
12 work that could change the culture around contracting and  
13 contingencies for the long haul.

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

19 Senator Webb.

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

3           Senator Webb. Thank you very much, Madam Chairman and  
4 Ranking Member Portman and other members of the  
5 Subcommittee. I know you have got two full panels. I will  
6 be brief here. I would ask that the full written testimony  
7 that I have would be included at the end of my brief oral  
8 remarks.

9           Senator McCaskill. Without objection.

10          Senator Webb. Thank you. I am here to basically  
11 express the strongest support possible for the movement of  
12 this legislation that you, Madam Chairman, and I have worked  
13 on in different capacities for now, I guess, five years. At  
14 a time when the Senate is continually bogged down in  
15 symbolic votes rather than issues of governance, I am very  
16 proud of what we have been able to do on this issue since  
17 2007. I would say it has been one of the great pleasures of  
18 being in the Senate, to have been able to get this  
19 legislation into place, the first round of it with the  
20 Wartime Contracting Commission and hopefully with this  
21 recommendation that will be implementing some of the  
22 findings of that Wartime Contracting Commission.

23          As the Chairman mentioned, she brought a strong  
24 background in auditing to the Senate. I spent five years in  
25 the Pentagon in different capacities, including four years

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

15 That was one of the motivations that caused me to start  
16 working as avidly as I did, along with Chairman McCaskill,  
17 to see if we could not have the management structures in  
18 place, catch up with the realities of what had happened in  
19 the post-9/11 environment of military commitments overseas.  
20 This is a particular problem in the State Department and  
21 U.S. AID. I do not think they had anticipated these sorts  
22 of programs before the situation that existed once 9/11  
23 occurred.

24 We were very lucky, as Chairman McCaskill mentioned, to  
25 have gotten the support of Senator John Warner when we were

1 advancing this legislation through the Senate. He was my  
2 senior Senator, was a Republican. I had worked with him  
3 when I was a young Marine, my last year in the Marine Corps,  
4 when he was Secretary of the Navy. I had followed him as  
5 Secretary of the Navy. And he, by stepping forward and  
6 demonstrating that this was an issue with wide concern and  
7 from people like himself who had spent time in management  
8 positions in the Pentagon, really helped us push this over  
9 the threshold and into reality.

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

17 And I would like to emphasize here, as I did in our  
18 press conference earlier, that I believe, and I want to  
19 acknowledge that the great majority of the contractors who  
20 participated in this process since 9/11 are not only  
21 reputable, but they have really, really done a very fine job  
22 in an environment that a lot of people had not anticipated.  
23 So this is not a piece of legislation nor was it a major  
24 goal of this process simply to bash wartime contractors. We  
25 cannot get along without them. This has been an effort to

1 put the right kind of structure into place so that we can  
2 have efficiently run, well managed, and effective wartime  
3 contracting and operational contingencies now and in the  
4 future.

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

10       Thank you, Madam Chairman.

11       [The prepared statement of Senator Webb follows:]

1                   OPENING STATEMENT OF SENATOR MCCASKILL

2           Senator McCaskill. Thank you, Senator Webb.

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

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

13           This morning, I have the honor of hearing the  
14 distinguished representatives of the Defense Department,  
15 State Department, U.S. AID, and respective agencies'  
16 Inspectors General present their views on this important  
17 legislation. Based on their contributions and what we have  
18 heard from many of the stakeholders with whom I and the  
19 Subcommittee staff have met with over the last few months,  
20 and on the input of other Senators, we will revise the  
21 legislation and introduce a new version for consideration by  
22 the Homeland Security and Government Affairs Committee.  
23 This legislation will increase accountability for wartime  
24 contracting and transform the way the Federal Government  
25 awards, manages, and oversees wartime contracts. It will

1 help ensure that the waste, fraud, abuse, and mismanagement  
2 that we saw in Iraq and Afghanistan will never happen again.

3 I want to make a few points about today's hearing.

4 First, we are here today to seek input from the executive  
5 branch agencies and Inspectors General because we want to  
6 get this right. The Subcommittee has previously met with  
7 contractors and other stakeholders regarding this  
8 legislation. However, major portions of this bill deal with  
9 accountability and responsibility for the Government, and  
10 that is by design. Therefore, I encourage you to share any  
11 suggestions you have to improve this legislation.

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

23 The legislation requires agencies to conduct risk  
24 analyses before relying on private security contractors and  
25 to terminate unsustainable reconstruction and development

1 projects. It also strengthens tools to combat human  
2 trafficking. This approach is pragmatic and will reduce the  
3 potential for waste, fraud, and abuse in future wars.

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

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

20 Everyone knows that contracting in a wartime  
21 environment is not going to go away. It will be here with  
22 our Nation in the future. It is imperative that we no  
23 longer make excuses, rationalizations, or hide behind  
24 existing structures to defend the gross inadequacies that  
25 our Government has displayed during contracting processes in

1 Iraq and Afghanistan. We must fix these problems now while  
2 the memory is fresh, while the memory of these failures are  
3 fresh, and before the harsh lessons of Iraq and Afghanistan  
4 are forgotten.

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

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

17 Senator Portman.

18 OPENING STATEMENT OF SENATOR PORTMAN

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

23 It is an incredibly important hearing and it is an  
24 opportunity to examine the lessons we have learned from  
25 wartime contracting, from our experience over the last

1 decade, ten years in Afghanistan, nine years in Iraq. And  
2 it is a chance to hear from witnesses on some of these  
3 reforms that are necessary to improve the stewardship of our  
4 taxpayer dollars in some very challenging environments.

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

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

24       And this is not just a retrospective exercise, of  
25 course, because contractors are still very much engaged,

1 particularly in Afghanistan, where the United States still  
2 has, as we count them, over 100,000 private contractors.  
3 Even in Iraq today, after the last U.S. troops returned home  
4 in December, the Departments of Defense and State maintain  
5 roughly 30,000 private contractors. At this time of serious  
6 fiscal challenges and trillion dollar deficits, we must do  
7 all we can to avoid waste and to get the best possible value  
8 out of the taxpayers' dollar.

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

18       In addition, looking ahead, one of my principal  
19 concerns is that of sustainability, and by that I mean how  
20 do we ensure that our work, reconstruction, development  
21 work, and so on, will last and be carried on by the Afghan  
22 and Iraqi government and the people of those countries. The  
23 issue is critically important because it is about making  
24 sure that our good investments do not go bad. That means we  
25 have got to consider not only, for example, how many

1 additional schools and health clinics we can construct, but  
2 who is going to sustain them. Do they have the medical  
3 professionals and the teachers to be able to sustain them  
4 and keep them going? On this issue, the Wartime Contracting  
5 Commission was not very optimistic, and I will look forward  
6 to hearing from our panel on what steps are needed to reduce  
7 this risk of future waste or, again, lack of sustainability.

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

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

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

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

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

24           Our proposal is designed to ensure that the best  
25 practices adopted by those contractors become standard

1 practice for all contractors, and they include requiring  
2 contractors to have a compliance plan in place and reporting  
3 and monitoring requirements to ensure that credible evidence  
4 immediately triggers an investigation and giving contracting  
5 officers more tools to hold violators accountable. I am  
6 hopeful we can work to make these common sense and  
7 bipartisan reforms the law of the land.

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

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

20       Senator McCaskill. Thank you, Senator Portman.

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

23       Richard Ginman assumed the position of Director of  
24 Defense Procurement and Acquisition Policy in June of 2011.  
25 Mr. Ginman retired as a Rear Admiral from the U.S. Navy

1 after 30 years of service in 2000. Prior to assuming his  
2 current position, he served as Principal Deputy to the  
3 Director from 2008 until 2010, and Deputy Director,  
4 Contingency Contracting and Acquisition Policy, from 2010  
5 until assuming the position as Director.

6 Patrick Kennedy has served as Under Secretary for  
7 Management for the United States Department of State since  
8 2007. He has been with the Department of State for 39 years  
9 and has held positions including Director of the Office of  
10 Management Policy, Rightsizing and Innovation, Assistant  
11 Secretary for Administration, U.S. Representative to the  
12 U.N. for Management and Reform, Chief of Staff of the  
13 Coalition Provisional Authority in Iraq, and Deputy Director  
14 of National Intelligence for Management.

15 Angelique Crumbly is the Acting Assistant to the  
16 Administrator for the Bureau of Management for the United  
17 States Agency for International Development, commonly known  
18 as U.S. AID. She is a member of the Senior Executive  
19 Service with more than 20 years of Federal service and has  
20 held several key positions at U.S. AID, including Senior  
21 Deputy Assistant Administrator in the Bureau for Management  
22 and Director of the Office of Management, Policy, Budget,  
23 and Performance.

24 It is the custom of the Subcommittee to swear in all  
25 witnesses that appear before us, so if you do not mind, I

1 would ask you to stand.

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

5 Mr. Kennedy. I do.

6 Mr. Ginman. I do.

7 Ms. Crumbly. I do.

8 Senator McCaskill. Let the record reflect that all the  
9 witnesses have answered in the affirmative. Please be  
10 seated.

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

15 I am told that we have committed a protocol gaffe, Mr.  
16 Kennedy, that under the hierarchy of Under Secretaries  
17 versus Directors and Assistant Administrators that you  
18 should be first in the pecking order at this hearing, so we  
19 will call on you first for your testimony concerning your  
20 input into this legislation from the perspective of the  
21 Department of State.

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

3 Mr. Kennedy. Madam Chairwoman, I certainly defer to  
4 the Chair and you may please call upon the witnesses in  
5 whatever order you wish.

6 Senator McCaskill. It is fine. You can go ahead,  
7 Secretary Kennedy. It is fine. Go ahead.

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

16 This legislation builds on the important work of the  
17 Commission on Wartime Contracting, an independent,  
18 bipartisan panel that you, Chairman McCaskill, created with  
19 Senator Webb. The Department worked continuously with the  
20 Commission from its formation in 2008 until its sunset,  
21 gaining valuable insight. We have taken many steps to  
22 improve our contingency contracting based on the work of the  
23 CWC and other oversight entities and our own lessons  
24 learned. We are now engaged with the Government  
25 Accountability Office on its review of the Iraq transition,

1 contingency contracting, and the CWC's final report. We  
2 have learned much from the Iraq transition, working closely  
3 with DOD, U.S. AID, and interagency partners.

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

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

25 To elevate accountability for contracting as called for

1 in the Secretary's Quadrennial Diplomacy and Development  
2 Review, the requesting bureau must now ensure that adequate  
3 resources are identified early in planning. The cognizant  
4 Assistant Secretary must certify that planning and oversight  
5 is adequate for every service contract valued at an annual  
6 expenditure of over \$25 million and also verify annually  
7 that oversight continues to be sufficient.

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

22 To improve our suspension and debarment efforts, we  
23 have issued detailed procedures and provided training to  
24 grants officers and contracting officers. Suspension  
25 activities increased from no suspension in 2009 to five each

1 in 2010 and 2011 and 19 actions halfway into fiscal year  
2 2012. Debarment activity increased from no debarments in  
3 2009 to six issued thus far halfway through 2012. This  
4 increase is due to more active coordination between the  
5 Department and our OIG investigators, stronger referral  
6 activity, and improved processes and focus within the  
7 suspension and debarment office.

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

24 The Department has taken a significant number of  
25 positive steps to improve our contracting function. As the

1 CWC recommended, we have strengthened contract  
2 administration in conflict affected states through hiring  
3 and training adequate Federal personnel to provide strong  
4 governmental oversight of contractors.

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

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

10 [The prepared statement of Mr. Kennedy follows:]

1           Senator McCaskill. Thank you very much.

2           I apologize for mispronouncing your name. Mr. Ginman,

3 we will take your testimony now. Thank you.

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

4           Mr. Ginman. I have learned to respond to almost any  
5           pronunciation.

6           Senator McCaskill. I know the feeling.

7           [Laughter.]

8           Mr. Ginman. So, Chairman McCaskill, Ranking Member  
9           Portman, I welcome this opportunity to discuss the proposed  
10          Comprehensive Contingency Contracting Reform Act of 2012,  
11          the impact the legislation would have on the Department of  
12          Defense.

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

16          Senator McCaskill, you and Senator Webb also  
17          cosponsored the legislation that created the Commission on  
18          Wartime Contracting, and I would like to thank both of you  
19          for your leadership on this important topic. The  
20          Commission's efforts spanned three years, and their August  
21          2011 final report recommendations are the basis for many of  
22          the provisions of this bill.

23          The Department maintains a scorecard to manage our  
24          progress against all of the Commission's recommendations.  
25          The Government Accountability Office is currently evaluating

1 the Department's implementation of the Commission's  
2 recommendations and we have been actively providing  
3 information on our progress to them.

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

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

12 We are committed to enhancing contingency contracting  
13 and is in favor of legislative efforts to augment the  
14 ongoing Departmental initiatives to oversee contingency  
15 operations. We are especially appreciative of the 2012 NDAA  
16 coverage of no contracting with the enemy, access to  
17 subcontractor records in an overseas contingency operation,  
18 and the increased authorities provided to the reachback cell  
19 that supports the joint theater support contracting command.

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

1 challenges remain.

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

6           [The prepared statement of Mr. Ginman follows:]

- 1 Senator McCaskill. Thank you, Mr. Ginman.
- 2 Ms. Crumbly.

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

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

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

20 In November 2011, when U.S. AID Administrator Rajiv  
21 Shah asked me to lead the Bureau for Management, he did so  
22 because he knew that I was a career civil servant with more  
23 than 20 years of experience making things work at the  
24 Agency. Throughout my career, I focused on making our  
25 business practices more efficient and effective with the

1 overall goal of enhancing performance while reducing  
2 unnecessary cost, so I understand the motivation behind this  
3 legislation very well. It addresses many of the management  
4 challenges highlighted in the report of the Commission on  
5 Wartime Contracting that you, Senator McCaskill, created  
6 along with Senator Webb. It also addresses some of the most  
7 important issues in our current engagements in Afghanistan  
8 and Iraq and those we could contend with in future  
9 contingencies.

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

18 Implementation and procurement reform is a key element  
19 of U.S. AID Forward, and I want to note that this reform  
20 agenda is complementary to many of the recommendations of  
21 the CWC, so U.S. AID has already made great strides in  
22 enhancing the oversight and accountability for our  
23 acquisition and assistance portfolio.

24 For example, we are increasing transparency. We have  
25 been working actively with our Department of State

1 colleagues to make foreign assistance data available to the  
2 American public. As a result, anyone can view U.S. AID  
3 spending, including overseas contingency operations, online  
4 at [foreignassistance.gov](http://foreignassistance.gov).

5 We have been actively engaged in strengthening our  
6 oversight. In February 2011, we stood up a Compliance  
7 Division within the Bureau for Management's Office of  
8 Acquisition and Assistance to serve as the central  
9 repository for any and all referrals of administrative  
10 actions, including suspension and debarment. In just one  
11 year, the Division has issued 102 administrative actions and  
12 recovered nearly \$1 million in taxpayer funds, compared to  
13 eight such actions between 2003 and 2007.

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

21 U.S. AID has instituted several cost saving measures  
22 and our acquisition savings plan has yielded approximately  
23 \$170 million in cost savings or cost avoidance since 2010.

24 While we have had some difficult challenges in Iraq and  
25 Afghanistan, we have also achieved some significant

1 successes. As Administrator Shah noted before the CWC, in  
2 Afghanistan, we have put more than two-and-a-half million  
3 girls back in school, helped rebuild the Afghan civil  
4 service, aided farmers in growing legitimate crops, and  
5 assisted in dramatically improving health care, particularly  
6 among women. In Iraq, we have made significant  
7 contributions toward diversifying the economy and promoting  
8 women's participation in the market.

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

17         Again, thank you for the opportunity to be here today  
18 and for your support of U.S. AID. I look forward to our  
19 discussion.

20         [The prepared statement of Ms. Crumbly follows:]

1           Senator McCaskill. Thank you.

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

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

22           So this is your opportunity, and with that will come  
23 the danger that I hope I or somebody who will sit in this  
24 chair will not let you off the hook or your agencies off the  
25 hook in a few years when you say, well, you know, that

1 legislation just was not workable. I do not want those  
2 words to ever come out of the mouth of you or your  
3 successors in your jobs as it relates to improving  
4 contracting.

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

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

16       Just to give you some big numbers, according to the  
17 Defense Department, over a five-year period, we had--let me  
18 get the exact numbers, because I want to make sure I get it  
19 right--in 2011, the Defense Department found that over a  
20 ten-year period, the Department had awarded \$255 million to  
21 contractors who were convicted of criminal fraud, and \$574  
22 billion to contractors involved in civil fraud cases that  
23 resulted in a settlement or judgment against the contractor,  
24 many of whom were never suspended or debarred. In 2011, GAO  
25 reported that the State Department had only had six

1 suspension or debarment cases with over \$33 billion in  
2 outstanding contracts. Now, look at Air Force. Air Force  
3 had had 367 suspension or debarment actions in a single year  
4 last year. The State has had six in five years.

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

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

21         Mr. Kennedy. Senator, I fully agree with you, but I  
22 believe that is the process that we have in place at the  
23 State Department now. We have a head of contracting  
24 activity, a senior career Senior Executive Service civil  
25 servant, who is responsible for all of our contracting

1 activities. It is her responsibility to buy and it is her  
2 warranted contracting subordinates who do all our buying.

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

9 So we fully agree with you, Senator. We believe that  
10 it is absolutely correct to split the duty of buying from,  
11 in effect, the duty of oversight with due respect to our  
12 Inspector General, who also has the larger oversight  
13 framework. And so it is our Procurement Executive who is  
14 the debarment official and who, thanks to his good work, we  
15 have increased the number of suspension and debarments  
16 significantly, as I outline in my testimony. So we agree  
17 with you, Senator.

18 Senator McCaskill. So in our briefing, we were told  
19 that Corey Rindner is in the Office of Procurement  
20 Executive, an office that also assists State in contracting  
21 for supplies and services. That is incorrect?

22 Mr. Kennedy. He writes the policies, ma'am. He does  
23 not buy anything. He is a warranted contracting officer,  
24 yes, but he does not procure any goods or services for the  
25 State Department. We have hired--and it was actually my

1 predecessor who hired him--someone with wide and deep  
2 experience in contracting, because who would better know how  
3 to set policies and to discover when you should suspend or  
4 debar someone if you do not have that background. But he  
5 does not engage in procurement activities.

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

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

23 Senator McCaskill. Okay. I am hoping that we can get  
24 you to have somebody that is at the top of the organization  
25 of suspension and debarment. I do not know whether you need

1 assistance under him, but who has just that responsibility,  
2 because we think it is that important in terms of setting  
3 the tone. But we can talk about that going forward.

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

16 You know, I know under the Foreign Assistance Act, U.S.  
17 AID is required to have a certification. You know, that is  
18 because AID traditionally has been the one doing these  
19 projects, and as we know, it is a whole new world out there  
20 with Afghanistan Infrastructure Fund and with, what I call  
21 CERP and Son of CERP and, you know, the way CERP has morphed  
22 into something far beyond what was explained to me when I  
23 first arrived in the Senate.

24 In a report by ISAF, which I previously discussed,  
25 there is no persuasive evidence that the commander's

1 emergency response program has fostered improved  
2 interdependent relationships between the host government and  
3 the population, arguably the key indicator of  
4 counterinsurgency success. This legislation would impose a  
5 much more rigorous review of these projects, and I have  
6 circled several of them.

7 I have got a U.S. AID project in Afghanistan which is  
8 the power plant, \$300 million power plant. Clearly whatever  
9 certification was required, it was flawed, because that is  
10 not sustainable. I've got the Khost and Gardez Road in  
11 Afghanistan. I have got the water treatment plant that the  
12 State Department did in Iraq, it was almost \$277 million  
13 that we know SIGIR found was operating at only 20 percent of  
14 capacity because of the failure of the Iraqi folks to  
15 knowing how to operating or maintaining it. I have got the  
16 Fallujah water waste treatment system, which was a State  
17 Department-Defense Department joint project.

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

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

25 In August, we did create the Afghanistan Resource

1 Oversight Council. I think we are in our fourth or fifth  
2 meeting of that. It has been chaired by Alan Estevez, the  
3 Assistant Secretary of Defense for LMNR and basically  
4 filling in just as the principal deputy. Mike McCord is the  
5 principal Deputy and the CFO. And by Jim Miller, who, in  
6 his current acting role, has continued to be the Chair. And  
7 sustainability has clearly been on the topic and the agenda  
8 in each of those meetings for what we can do or not do.

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

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

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

23 Senator McCaskill. You know, I guess my biggest  
24 problem with this is that I know and understand that our  
25 military is the best in the world, because there is nothing-

1 -there is no mission they cannot accomplish if we set our  
2 minds to it and put the power of the resources of this  
3 country behind it.

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

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

23       Mr. Ginman. So again, from the ARPC perspective, I  
24 mean, those three individuals are consciously looking at  
25 what are the current projects that are there, what do we

1 think the long-term tail is. You know, CSTC-A/NTM-A, the  
2 people who are, in fact, overseeing the training of the  
3 military forces and the ability to do it, are participants  
4 in that discussion. I mean, from my standpoint, I think we  
5 have got the right people together to, in fact, attempt to  
6 address that question and can we, in fact, afford it, and  
7 then how is it going to be paid for in the future.

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

21         Ms. Crumbly. I call it Kabul power plant.

22         Senator McCaskill. Yes. I always say it is in Kabul  
23 somewhere, so--

24         Ms. Crumbly. Exactly. In essence, it was an  
25 interagency decision to move forward with the power plant.

1 And I do want to note that the power plant is working in  
2 terms of performing at peak or surge capacity. I know we  
3 were talking--

4 Senator McCaskill. Yikes. Three-hundred million  
5 dollars for--that is one expensive generator in an  
6 emergency.

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

12 You noted that the Foreign Assistance Act requires that  
13 we focus on sustainable development, and we do do that in  
14 U.S. AID programs. It is a key factor for consideration  
15 whenever we are developing program or projects.

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

1 longer-term sustainability in Afghanistan.

2 Senator McCaskill. Anything from State, Secretary?

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

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

16 Senator McCaskill. Okay.

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

20 Senator McCaskill. Okay.

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

24 Senator McCaskill. Let me know if there is anything  
25 about the sustainability portions of this legislation that

1 you think are not sustainable.

2 Secretary Portman--Senator Portman.

3 [Laughter.]

4 Senator Portman. I have had a lot of titles. I cannot  
5 keep a job. But it has never been Secretary yet.

6 [Laughter.]

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

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

24 One dramatic example is a report that came out of the  
25 Special Inspector General's office in July last year which

1 found that one Department of Defense contractor was charging  
2 \$900 for a control switch that was worth \$7. In some cases,  
3 the IG found contractors overloading the Government with  
4 markups ranging from 2,300 percent to 12,000 percent. So we  
5 have, again, had plenty of examples of this brought forward  
6 by IG reports and by the Commission itself. And again,  
7 enhanced competition is a powerful tool, but I would like to  
8 hear from our witnesses about the feasibility of a more  
9 systemic way to approach this issue, tracking pricing  
10 information to ensure that contracting agencies are getting  
11 a good value.

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

19 Mr. Ginman. Certainly. So I will start out that the  
20 Department agrees unequivocally that competition is the best  
21 way to get good pricing. The pricing database, or the  
22 pricing effort pilot that is under the Director of Defense  
23 Pricing is born from, frequently, we do not have good  
24 competition, and it is an effort to--what is it we need to  
25 do to be able to put into the hands of contracting officers

1 when they are negotiating with companies the information  
2 they need.

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

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

1           We have created, it is called the CBAR, and I apologize  
2   that I cannot do the acronym, but it is a database where we  
3   will put up all of the business clearances that are done.  
4   We will put up all of the pricing information, all of the  
5   rate information that is available to us so that when you  
6   are negotiating with any of the major defense contractors,  
7   you will be able to go to this one place and see what has  
8   everybody else done before you. What did they actually  
9   negotiate? What were their examples?

10           I would say, from the way the legislation is written,  
11   and asking in ways that it be changed, that we are a little  
12   leery that the way it is read is that this is, tell us  
13   pricing information. So if I am buying, you know, port-a-  
14   potties, what was the price we paid for port-a-potties? I  
15   do not think that is what you are intending. So that what  
16   we are attempting to do is when we do not have the forces of  
17   competition behind us, what we will have is the ability to  
18   provide the contracting officers with tools. We are going  
19   to make it available--we have agreed that we will make it  
20   available to OFPP and to any other agency that is dealing  
21   with those that has the appropriate need to be able to see  
22   this information.

23           We believe--let me step back. When I started doing  
24   this as a Lieutenant JG in 1973, we expected contracting  
25   officers to be skilled pricers. Probably in the--about 1990

1 coming forward, as we downsized within the Department, we  
2 more or less gave away the pricing capability within the  
3 contracting community. So while today we have pockets of  
4 people in various commands, we do not have a strong skill  
5 set.

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

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

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

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

25 And then to the other panelists, any thoughts,

1 obviously, on this issue of the pricing database and how to  
2 be sure that we are getting a fair price, as was talked  
3 about by the Commission.

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

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

10 Senator McCaskill. And what I will do is I will ask  
11 you all to hold. I will run over, vote quickly, and come  
12 right back. I just have a little bit more for this panel  
13 and then we have the remaining panel of the IGs. I will be  
14 right back.

15 [Recess.]

16 Senator McCaskill. I would like to look at  
17 subcontracting as an area that I would like your all's input  
18 on. There has been--and especially, I would like you to  
19 speak before you all leave the stand about whether or not  
20 you think any of the limitations we have put in here on  
21 suspension and debarment or on limitations on  
22 subcontracting, if you think they are workable in a  
23 contingency. Do they cause you pause, especially if you  
24 consider the waivers that we--the provisions that we have in  
25 there, the six-month lead time before any of these

1 requirements would go into effect, the noncompetitive  
2 requirements that we have in here.

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

5 Mr. Ginman. So, Senator, the one tier, I think is a  
6 problem, and I think what the Commission on Wartime  
7 Contracting was really trying to get to was why were we  
8 unable to break out work that was under LOGCAP expressly and  
9 to go through that, and I think that is a good question.  
10 But then the translation of that to one tier, from our  
11 perspective, in any scenario, wartime or not, is just simply  
12 unworkable. I mean, I cannot imagine a situation with  
13 almost anything we do that I could get to a single tier of  
14 subcontracts in doing it. So we think there are ways that  
15 that can be rewritten that will get to what I believe the  
16 Commission was really trying to get to and the objective  
17 that would help, and we are happy to work with the staff to  
18 come up with those words.

19 Senator McCaskill. Well, as you know, we had a Tamimi  
20 problem in the LOGCAP contract where we have kickbacks with  
21 KBR, and that is one of those large duration wartime  
22 contracts that is kind of the poster child for contracting  
23 gone badly. The Khost Trucking contract, with the multiple  
24 layers of subcontracts, really had a security risk  
25 associated with it as it related to where the money was

1 going. And clearly, we figured out that some of the money  
2 was going to the bad guys.

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

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

20 Senator McCaskill. And what about the recompeting  
21 contracts more frequently?

22 Mr. Ginman. Well, I think the Department's position  
23 writ large is we prefer shorter length periods of contract.  
24 But in all instances, it depends. What is the scenario I am  
25 in? What is the frequency with which we want to turn over

1 contracts? I mean, the express example I gave in my written  
2 testimony was as we were pulling out of Iraq and we were  
3 looking at recompeting some task orders, the Combattant  
4 Commander came in and said, I mean, I can focus us on  
5 getting out of Iraq or I can focus on transitioning  
6 contractors. I would much prefer to focus on getting us out  
7 of Iraq. Could you please just leave the contractors in  
8 place? So we did that. I mean, I think--

9 Senator McCaskill. Would that not be a waiver  
10 situation under this?

11 Mr. Ginman. I think--

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

17 Mr. Ginman. Yes. I mean, I think we--I mean, we have  
18 basically said for all our contracts, particularly in those  
19 where the technology moves quickly, we do not want contracts  
20 that exceed three years. I mean, that has been the  
21 Department's position. If we are in sole source contracts,  
22 we would like to find ways to get the competition. But if I  
23 am in a scenario where I cannot get the competition, I am  
24 going to have a lot of waivers. I mean, if I really am in a  
25 situation of sole source, it is going to be sole source for

1 an extended period of time, then you would see a lot of  
2 waivers to go do that.

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

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

11 Senator McCaskill. You just know--

12 Mr. Ginman. Yes.

13 Senator McCaskill. --that if a contract is more than  
14 three or four years old, that someone is on the bad end of  
15 it.

16 Mr. Ginman. Yes.

17 Senator McCaskill. Now, in some instances, it may be  
18 the contractor. Unfortunately, not often enough. I mean, I  
19 should not say that. I do not want the contractor to be on  
20 the bad end of it. I am focused on saving the Government  
21 money, so I think that the more frequent recompetes--and I  
22 know that there is a culture that kind of weighs against  
23 recompetes because it is a pain to compete. I mean, this  
24 is not like an exercise that everyone looks forward to,  
25 either the ones bidding or the ones running the competition.

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

9           Mr. Kennedy. Senator, if I may--

10          Senator McCaskill. Yes.

11          Mr. Kennedy. We are in favor, absolutely, of full and  
12 open competition, and all the points that you made are  
13 absolutely correct. But if I could just posit one scenario.  
14 The State Department has put out, in effect, competitively  
15 bid, a number of master contracts and then we issue  
16 recompetitively bid task orders once we have qualified a  
17 group of companies. We would want to make sure that nothing  
18 in the exact legislation could be interpreted to mean that  
19 we would have to back away from that activity. We go out.  
20 We note something either on food service or security service  
21 or whatever, go to a number of major companies,  
22 competitively bid, then award and put them on the master  
23 list, and then we award them task orders.

24          We would not want this limitation to say, well, since  
25 that contract is, in effect, over two years old, you cannot

1 then issue a task order that is valid for more than one  
2 year. That would set us back, because we are trying, as you  
3 have put forward almost in the preamble of your legislation,  
4 to make sure that we have planned. And so one of the steps  
5 that we are taking to plan for the future is to have master  
6 contracts in place, competitively bid, that then we can  
7 utilize them, having obtained the best price, and issue task  
8 orders.

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

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

13 Senator McCaskill. And was the security contract a  
14 master contract at the embassy in Kabul?

15 Mr. Kennedy. No. We have--no. That is one of the  
16 steps we have taken since then, to put this into place.

17 Senator McCaskill. Okay. So there was not a master  
18 contract with subs--

19 Mr. Kennedy. No. Those were individually bid.

20 Senator McCaskill. Okay.

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

25 Senator McCaskill. Okay. Ms. Crumbly, could you speak

1 to your--in response to a report by the Senate Foreign  
2 Relations Committee, your administrator wrote, in  
3 Afghanistan, quote, "now includes a subcontractor clause in  
4 new awards that permits U.S. AID to restrict the number of  
5 subcontract tiers and requires the prime contractor to  
6 perform a certain percentage of the work." Have these  
7 changes been implemented?

8 Ms. Crumbly. Yes, they have.

9 Senator McCaskill. And so they are in every contract  
10 now in Afghanistan?

11 Ms. Crumbly. That is correct--

12 Senator McCaskill. And--

13 Ms. Crumbly. --and the limitations are to a two-year  
14 sub--two-tier subs, so--

15 Senator McCaskill. Two tier?

16 Ms. Crumbly. Two tiers, exactly. We found that that  
17 is what works operationally best in Afghanistan--

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

22 Ms. Crumbly. I would say not as yet, but we need time  
23 to see the implementation--

24 Senator McCaskill. How long has this been in place?

25 Ms. Crumbly. I want to say within the last six months?

1 Mm-hmm, six months.

2 Senator McCaskill. Kudos, and I would be very anxious  
3 to see if you hit any bumps--

4 Ms. Crumbly. Okay.

5 Senator McCaskill. --because that seems reasonable to  
6 me--

7 Ms. Crumbly. Mm-hmm.

8 Senator McCaskill. --that you can restrict the number  
9 of tiers and requires the prime to do something other than  
10 taking a cut off the top.

11 Ms. Crumbly. Right.

12 Senator McCaskill. We have got a lot of those around,  
13 too many prime contractors that just take a cut off the top.  
14 That just means that they are managing the contract because  
15 we are not in a position to manage it ourselves. I would  
16 like to see those kinds of contracts go away.

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

25 I mean, this is what is so hard about funding our

1 Government, because what sounds good in the short run, in a  
2 budget cycle, we do not have a tendency to think in decade-  
3 long implications. And I think that we have got to be very  
4 careful as we go towards a much leaner Government, which we  
5 must do, and towards a Defense Department where DOD does not  
6 get everything it asks for, in fact, is looked upon to find  
7 savings many places.

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

15 Mr. Ginman. Well, so things that particularly concern  
16 me is in the area of past performance, not giving--when the  
17 Commission made this recommendation, we objected to it then  
18 and it is in the legislation--not giving contractors an  
19 opportunity to rebut negative past performance. We use the  
20 past performance for other contractors to make decisions  
21 when they award going forward. Anything that is negative  
22 requires the contracting officer in that competition to go  
23 out and ask industry, explain to me this negative past  
24 performance. So I can do it one time up front or I can have  
25 ten people afterwards do it. So from my standpoint, not

1 giving the contractors an opportunity, if there is negative  
2 past performance, to rebut it is only setting us up  
3 downstream where a contracting officer fails to do what they  
4 are supposed to do and go ask. It becomes a protest risk  
5 and we would do much, much better to give them an  
6 opportunity up front, and particularly if for whatever  
7 reason it was an unfair statement. Letting one level above  
8 the contracting officer to have the authority to say, all  
9 right, I have looked at what the contractor said, looked at  
10 what the contracting officer said, this is what I think the  
11 final answer should be, it just makes sense to us.

12 Senator McCaskill. Secretary Kennedy.

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

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

24 The second is that the ability to use direct hiring  
25 authority, to hire 1102s, to hire professional contracting

1 officers, that authority legislatively expires on the 30th  
2 of September. As we are trying, as you rightly say, to  
3 regrow the contracting community, anything that would enable  
4 us to bring in a new generation and get them trained up as  
5 fast as we can is of very great interest to us.

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

19       Senator McCaskill. Okay. So you have a sincere fear  
20 that the Combattant Commander would perhaps view the  
21 protection of the State Department's personnel as not  
22 mission specific enough in terms of his decision--his or her  
23 decision making power?

24       Mr. Kennedy. That is correct.

25       Senator McCaskill. Okay.

1           Mr. Kennedy. And the charge of the Secretary of State  
2 in what is usually known as the Inman legislation, the  
3 Omnibus Diplomatic Security Act--

4           Senator McCaskill. Right.

5           Mr. Kennedy. --that vests the responsibility for  
6 protecting of civilian employees overseas in the Secretary  
7 of State.

8           Senator McCaskill. And I want to follow up on a  
9 previous statement you made. It is my understanding that  
10 the State Department's worldwide protective services  
11 umbrella contract is ten years, not five years.

12          Mr. Kennedy. There is a base contract and then we  
13 award these task orders for no more than five years.

14          Senator McCaskill. Okay, but the umbrella contract  
15 that they can be awarded under is not five years, it is  
16 actually ten years, correct?

17          Mr. Kennedy. Yes. Right.

18          Senator McCaskill. Okay. I--

19          Mr. Kennedy. But the task orders are five years.

20          Senator McCaskill. That seems like a long time.

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

1 interest of the Government. And so you have the master.

2 You have qualified the firms to compete for the task order.

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

19 Mr. Kennedy. We would certainly, and we benefit  
20 greatly now and over time with cooperation from our military  
21 colleagues. But we also know that the U.S. military is  
22 exceedingly stretched. And when I first served in Iraq in  
23 2003, the U.S. military was protecting the civilian  
24 contingent. But over the course of time, as the demands on  
25 the U.S. military increased, they could not and did not have

1 the resources to protect us.

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

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

21 Senator McCaskill. But that is a new contractor.

22 Mr. Kennedy. No, it is the same one.

23 Senator McCaskill. I thought EODT was terminated.

24 Mr. Kennedy. EOD has been terminated, but EOD never  
25 started. The previous contractor that was involved with a

1 small unit of specific people, those individuals were  
2 replaced, the upper level management replaced. The company  
3 is still there and will be there until the new contractor  
4 arrives.

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

7 Mr. Kennedy. Yes, ma'am.

8 Senator McCaskill. Okay. And, Ms. Crumbly.

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

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

24 Senator McCaskill. Yes, and I think we have--every  
25 place that we have said, this should be the rule, we put in

1 waivers. And so what we are looking for is a change in what  
2 is the primary conduct of contracting and contingencies.  
3 And, obviously, because it is a contingency and stuff  
4 happens, there are going to be times that waivers will be  
5 necessary. But at least if waivers are necessary, that  
6 means you are going to get documentation, which is one of  
7 the challenges we have had in this area.

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

19 One thing I would let you know, Mr. Ginman, is that I  
20 did have an amendment to pull all the AIF funds out of  
21 Afghanistan and have them to into the United States Highway  
22 Trust Fund. People did not think I was serious. I was  
23 serious, and the reason I am serious is the projects that  
24 are now on the board for AIF, which is the morphing of CERP  
25 into infrastructure by the Defense Department as opposed to

1 AID, that has traditionally done all this work, is that the  
2 projects we have ongoing now are not going to be completed  
3 until 2014.

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

17       So I continue to wait to find out what this new \$400  
18 million that has been requested is supposed to be building  
19 in Afghanistan over the next two, three, four, five, six  
20 years, and hope you can spread the word over there that I am  
21 drumming my fingers waiting for that information.

22       Mr. Ginman. Yes, ma'am.

23       Senator McCaskill. Okay. Thank you all very much for  
24 being here.

25       [Pause.]

1           Senator McCaskill. I will introduce these witnesses.  
2           The first witness is Lynne Halbrooks. She became Acting  
3           Inspector General for the Department of Defense in December  
4           of 2011. She joined the Department of Justice as an  
5           Assistant U.S. Attorney in 1991 and has served as General  
6           Counsel for the Special Inspector General for Iraq  
7           Reconstruction, SIGIR, and General Counsel for the DOD  
8           Inspector General. Prior to her appointment as Acting  
9           Inspector General, she served as the principal Deputy  
10          Inspector General.

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

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

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

25          Do you swear that the testimony you will give before

1 this Committee will be the truth, the whole truth, and  
2 nothing but the truth, so help you, God?

3 Ms. Halbrooks. I do.

4 Mr. Geisel. I do.

5 Mr. Carroll. I do.

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

19 It is very important to me that we get this legislation  
20 right from your perspective because you are the front line.  
21 And while there may be a hit every once in a while that gets  
22 the bright glare of camera, you toil away most of the time  
23 in relative obscurity. Most Americans have no idea what  
24 Inspectors General are and they do not realize the work you  
25 do. They do not understand the capacity you have to look

1 after your interests. And they certainly do not get to  
2 watch those small but important battles that you wage every  
3 day with people who lead your agencies towards a goal of  
4 more accountability, transparency, and saving the taxpayers  
5 money.

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

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

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

8 As the Acting Inspector General at the Department of  
9 Defense, oversight of contingency operation remains my  
10 number one priority. I am committed to continually refining  
11 and improving our oversight approach.

12 Last week, I was in Afghanistan and had the opportunity  
13 to observe firsthand how the oversight organizations  
14 currently plan, coordinate, and deconflict audits and  
15 assessments. At the most recent Shura oversight meeting  
16 that I attended, IG staff from Defense, State, U.S. AID,  
17 SIGAR, the GAO, and local command IGs discussed critical  
18 oversight challenges and exchanged information in a  
19 productive and collaborative manner.

20 I also met with senior commanders there to determine  
21 how the DOD IG can continue to provide the best independent  
22 and objective oversight of contingency operations in  
23 Afghanistan. The senior commanders understand the need for  
24 transparency and oversight, and the men and women serving  
25 deserve to know that every dollar spent for their health,

1 safety, and security is spent efficiently and effectively.  
2 I believe that the organizations that do oversight and the  
3 commands are working well together to make this happen.

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

15 We as an oversight community have developed  
16 considerable experience in conducting timely and relevant  
17 audits, inspections, and investigations of overseas  
18 contingency operations. At DOD IG, we have the capacity to  
19 deploy anywhere in the world and are prepared to respond  
20 effectively, of course, in coordination with other Federal  
21 agencies and internal DOD oversight offices, to address  
22 future contingency operations overseas.

23 With this background, I would now like to discuss the  
24 Comprehensive Contingency Contracting Reform Act of 2012.  
25 Overall, I support the legislation and, in general, support

1 the provisions of Section 103 of the bill, which calls for a  
2 lead IG in overseas contingency operations.

3       Based on the strong working relationship that has  
4 evolved between the Department of Defense, State, and U.S.  
5 AID IGs, I do not believe there is a need, as the bill is  
6 currently written, for the Chair of the Council of  
7 Inspectors General on Integrity and Efficiency to designate  
8 a lead IG in a contingency. Given that the bill defines a  
9 contingency operation as, quote, "a military operation  
10 outside the United States and its Territories and  
11 possessions," I believe the legislation should recognize the  
12 Department of Defense Inspector General as the lead IG.  
13 Alternatively, a determination of the lead IG could be made  
14 based on the amount of funding appropriated to the  
15 respective agencies.

16       Congress mandated in Section 842 of the National  
17 Defense Authorization Act of Fiscal Year 2008 that the DOD  
18 IG, in conjunction with multiple Federal IGs and DOD  
19 oversight agencies, issue an annual comprehensive oversight  
20 plan for Southwest Asia. I recommend the Committee consider  
21 similar requirements to develop a joint oversight plan under  
22 the direction of the lead IG that would include a focus on  
23 strategic issues and contingency operations oversight.

24       I would also like to work with the Subcommittee further  
25 to refine the reporting requirements in the proposed

1 legislation. While compilation of data on obligations and  
2 disbursements is primarily a management function, an IG can  
3 add value by independently analyzing this data. Therefore,  
4 we believe a requirement to compile the data should be  
5 assigned to each Department and the IGs should review the  
6 quality of that data as part of their oversight plan and use  
7 it to inform their work. We believe that a semi-annual or  
8 even annual reporting requirement would provide Congress  
9 with meaningful data and necessary transparency.

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

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

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

25 [The prepared statement of Ms. Halbrooks follows:]

1           Senator McCaskill. Thank you.

2           Mr. Geisel.

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

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

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

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

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

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

22           Lastly, we support the provision for semi-annual IG  
23 reporting. We do suggest one adjustment, that this  
24 reporting be scheduled to coincide with the IG's semi-annual  
25 reporting cycle. However, the quarterly reporting provision

1 in Section 103 would mandate that IGs provide detailed  
2 financial data, specific obligations and expenditures, a  
3 project-by-project, program-by-program accounting of  
4 incurred costs, foreign investment revenues, seized or  
5 frozen asset information, agency operating costs, and  
6 detailed contract and grant financial information. All of  
7 this data resides in the Department or agencies, not in  
8 OIGs. We suggest the participating Departments provide a  
9 periodic stream of data to Congress and to the participating  
10 statutory IGs. We can use this information on a semi-annual  
11 basis to better plan and prioritize our oversight work.

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

22 That said, when you set out to rebuild an organization,  
23 take it to new regions, and modernize its approaches, it is  
24 not always about the money. That is why we appreciate your  
25 efforts to provide the new hiring authorities and the legal

1 framework adjustments that support more effective law  
2 enforcement.

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

5 [The prepared statement of Mr. Geisel follows:]

1           Senator McCaskill. Thank you very much.

2           Mr. Carroll.

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

3           Mr. Carroll. Chairman McCaskill, thank you very much,  
4 and Senator Portman and distinguished members of the  
5 Committee. Thank you for inviting me here today.

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

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

24           As it relates to Section 103, I agree with my  
25 colleagues that based on the way you have defined a

1 contingency operation, it is clear that DOD IG--it is clear  
2 to me that DOD IG would be the lead IG in this particular  
3 case, and then whether it is AID IG or State IG on an  
4 associate IG basis. So we do not see a need for CIGIE. If,  
5 somehow, that came to pass that CIGIE was part of this  
6 equation, then we would hope that there would be some  
7 committee that the three of us participated in that would be  
8 able to inform the CIGIE committee on whatever needed to be  
9 done. But we do not think there is a need for CIGIE, a role  
10 for CIGIE in this process.

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

20 There is one aspect not in the legislation that I would  
21 like to propose, and I know you asked that question to the  
22 previous group of witnesses, and that is based on our  
23 experience in Pakistan, we have had great success with a  
24 national hotline on the Kerry-Lugar implementation, and I  
25 can share the stats we have and the successes we have had

1 with you and your staff and I would like to possibly work  
2 with you to include something like that. I have talked to  
3 my colleagues. In principle, they agree. We could work  
4 through the jurisdictional issues and that sort of thing  
5 with no problems. But I think it would enhance the  
6 oversight of whatever the programs are in a contingency  
7 situation.

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

19       And I think from an agency point of view--I am not here  
20 to advocate on behalf of the agency, but I do endorse what  
21 Ms. Crumbly said. I think the agency has made huge strides  
22 since our audit of 2009 that was borne out of a bit of  
23 frustration on our part about how the agency was proceeding  
24 with our referrals. So I think the AED case in Pakistan is  
25 a great example of the agency stepping up and being able to

1 make the hard decisions, even when it impacts potential  
2 program implementation.

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

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

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

22       [The prepared statement of Mr. Carroll follows:]

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

4           Mr. Carroll. Yes.

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

12          Ms. Halbrooks. Yes, ma'am.

13          [Laughter.]

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

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

23          Mr. Carroll. No, I am not. I am acting right now--

24          Senator McCaskill. No, you are not, either.

25          Mr. Carroll. --and my authority is running out--

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

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

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

8           Mr. Carroll. Yes.

9           Mr. Geisel. Yes.

10          Senator McCaskill. Ms. Halbrooks.

11          Ms. Halbrooks. Yes. I think memorializing the  
12 decision making would be fine, yes.

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

1 Inspectors General?

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

8 I can say that I think in the case of a criminal  
9 conviction, at least from the point of view of our IG  
10 agents, the Defense Criminal Investigative Service, we do  
11 play a role in that we are the referring entity often for a  
12 violation of suspension and debarment and we do not just  
13 wait until there is a criminal conviction. It is one of the  
14 remedies in our tool kit, is to make a referral to the  
15 suspension and debarment authority.

16 I do not think that we need to play a role in  
17 management of that program. We should oversee it. We  
18 issued a report in July of 2011 on the service agencies in  
19 DLA and DLA was actually fairly aggressive in the sample  
20 that we looked at in terms of taking the contracting  
21 officers' recommendations and proceeding. So I think that  
22 we have a role. I do not think it is oversight of the  
23 specific decisions that the SDO authority makes, but I do  
24 think that as a referring agency, we can help to ensure that  
25 the Departments are promoting the suspension and debarment

1 program and training the contracting officials properly in  
2 the process and how to make those referrals, absolutely.

3 Senator McCaskill. What about limiting the amount of  
4 time for contractors to respond to past performance reviews?  
5 Do any of you believe that that makes sense? Do you have  
6 any problems with that? That also has gotten some attention  
7 from folks, that they think that allowing contractors to  
8 respond to past performance reviews before they are  
9 submitted to the Government's database, lowering that from  
10 30 days to 14 days is unreasonable. Do you all have any  
11 view on that particular provision?

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

15 Mr. Geisel. I would like to look, as well, and give  
16 you something in writing, but I would point out that you  
17 have used a word repeatedly which I think is very useful,  
18 and--well, two words which mean the same, actually, and that  
19 is waivers and documentation. And that is really what we  
20 are looking for, yes. A good law will always have  
21 provisions for what are we going to do now, this is  
22 different, but it has to be documented. So many people are  
23 much more inclined to do the right thing if they have to  
24 sign their name to a piece of paper.

25 Senator McCaskill. Right. And besides that, it

1 provides an audit trail, right?

2 Mr. Geisel. Right. I like--

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

5 Mr. Geisel. I like--

6 Senator McCaskill. When there is no documentation, it  
7 is a problem.

8 Mr. Geisel. I like saying that to the former Auditor  
9 General of Missouri.

10 Senator McCaskill. There you go. There you go.

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

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

22 Senator McCaskill. Okay. For the State Department,  
23 the State Department continues to say that it does not need  
24 the structural or organizational changes envisioned by this  
25 legislation. They have also said that they can meet any

1 demands that arise in a contingency by relying on the  
2 working capital fund. Do you believe that they are correct,  
3 that they do not need any organizational or structural  
4 changes, from your position as the Inspector General for the  
5 Department?

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

18 Senator McCaskill. Okay. You all mentioned this in  
19 your statements, and I assume that all of you think that it  
20 would be a good idea to have a percentage-based funding  
21 requirement for Inspector Generals in contingencies, just as  
22 we did for ARRA, that we would set aside sufficient  
23 resources to keep track of the money as we appropriate the  
24 money.

25 Mr. Geisel. Madam Chairman, I would point out that

1 when I came--I came to OIG on June 2, 2008, and since that  
2 time, thanks to what I assume is the good work we have done,  
3 Congress has doubled our resources. And as a result, we  
4 have been able to do a much better job. And the best way to  
5 ensure that we do not have what happened in Iraq, where  
6 there was a big delay until we got the resources, to have an  
7 automatic mechanism, I think serves everyone well. And it  
8 enables us to build up, but it also forces us to go down  
9 again when the--

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

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

25 Mr. Geisel. More.

1           Senator McCaskill. Or more. I just use dime and  
2 dollar because it is safe and I am conservative, you know,  
3 because you have got to be able to back it up, right? So  
4 that is why I think it is very important that we do not--as  
5 we cut the size of Government and spend less money in  
6 Government, we have got to make sure that we maintain a  
7 robust oversight function in these agencies because,  
8 frankly, it would be very hard for us to do our work without  
9 you all. I do not think people realize that you are so many  
10 times the communication that provides the oversight that  
11 Congress performs.

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

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

22           Senator McCaskill. Yes. I mean, with all due respect  
23 to Secretary Kennedy, even if the person in charge of SDO at  
24 State is not buying anything, they are helping write the  
25 policies that are telling them how to buy it. So if those

1 policies failed and allowed some bad actors to be included  
2 in contracting, I think it is harder sometimes to hold that  
3 mirror up. So I am going to continue to push for that  
4 independence in the Suspension and Debarment Office that I  
5 think that is dictated by the legislation and that makes  
6 sense in terms of functions of an SDO official.

7 Anybody else? Yes, Ms. Halbrooks.

8 Ms. Halbrooks. I just wanted to add that while I agree  
9 with Inspector General Geisel that funding is a critical  
10 element to ensure that we get started in oversight quickly  
11 on a contingency operation, I think that the parameters of  
12 the legislation that require coordination and coordinated  
13 planning and reporting by a lead IG will be effective, as  
14 well. As that funding takes a while to gear up at the DOD  
15 IG because of our size, we have the agility to immediately  
16 plug a trained group of auditors into a contingency and  
17 investors. So while the funding is critical, the language  
18 in the legislation that I think in some ways documents the  
19 coordination and collaboration and the lessons learned in  
20 the past contingency operations oversight will go a long way  
21 to ensuring that there is no gap in oversight when one  
22 begins.

23 Senator McCaskill. Yes, Mr. Geisel.

24 Mr. Geisel. I, of course, agree with my colleague from  
25 DOD. I would also point out that one other very important

1 part of the legislation should be our ability to use Title V  
2 and Title XXII annuitants because they have just what you  
3 were talking about, that very necessary experience. And if  
4 we can get them quickly when we need them, it will be a  
5 great help to getting the right people who can do the job.

6 Senator McCaskill. Okay. And I think Mr. Carroll  
7 mentioned that previously, that we needed to be able to get  
8 at that workforce, which makes sense. That makes sense.

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

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

23 Mr. Geisel. Thank you.

24 Senator McCaskill. The Subcommittee is adjourned.

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

1 adjourned.]