

Statement for the Record
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on

S.2139
The Comprehensive Contingency Contracting Act of 2012

For the Subcommittee on Contracting Oversight
U.S. Senate Committee on Homeland Security and Governmental Affairs
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I appreciate the opportunity to provide this statement for the record regarding S. 2139, the Comprehensive Contingency Contracting Act of 2012, which has been introduced by Senator Claire McCaskill and Senator Jim Webb.

As a former member of the Commission on Wartime Contracting in Iraq and Afghanistan, I appreciate this Subcommittee's continuing attention to what we found to be serious problems in the way the U.S. government identified, awarded, and managed its contracts and contractors in the Iraq and Afghanistan conflicts. Many of those problems continue today. My statement will draw on the body of work the Commission conducted, including the recommendations we made in our final report "Transforming Wartime Contracting: Controlling Costs, Reducing Risks." That report, and the Commission's other publications, can be found at www.commissiononwartimecontracting.gov.

The Commission sunset on September 30, 2011, so my statement today is in my capacity as a private citizen. I can assure you, however, that nothing in this statement conflicts with the solid consensus that developed among the eight members of the Commission. In the too often rancorous atmosphere that permeates Washington, the Commission's consensus is noteworthy. Designed to have bipartisan membership—four Democratic and four Republican appointees—we went well beyond that and functioned as a non-partisan body. Our work sessions, travels, and public hearings featured lively discussions and debates, but were never marred by dissension along partisan lines. Our reports have no dissenting or alternative views. We are unanimous in our findings and our recommendations.

Before I turn to some individual sections of the bill, many of which are in keeping with the intent of the Commission's recommendations, let me make three points about Congressional responsibility in this matter.

First is the need for legislation itself. Although we saw some progress during the course of our work, particularly by the Department of Defense, it is clear that the agencies cannot or will not make the systemic and lasting changes needed to raise acquisition to a core function on their own. The ad hoc solutions agencies attempted in Iraq and Afghanistan have been ineffective. The policy issues embedded in the decision to use contractors to carry out sensitive government functions, the management and evaluation of contractor performance once employed, and the billions of dollars at stake in Iraq, Afghanistan and future contingency operations require some sweeping changes that will only be accomplished through legislation

The second is the need to more fully establish accountability. Contracting practices are important, but they are an outcome of a series of decisions that begin with Agency leaders defining goals and objectives and then deciding to use a contracted workforce to support them. Contract outcomes are not just the responsibility of contracting officers or even of the acquisition community. Instead, the seeds of success and of failure are established by the decisions made by mission teams and leadership priority. Our findings and recommendations make clear that the low level at which the decision to use contractors is made and the absence of consequences—on both the contractor and government side-- when contracted goods and services are not delivered as promised call out for greater accountability. Establishing responsibility and authority in new, focused positions will enhance accountability for the results. Contractor accountability needs to be strengthened through the better use of tools already available to the government and, in some cases, by creating new incentive and enforcement mechanisms.

And, finally, correcting the problems the Commission identified in its work on contingency operations in Iraq and Afghanistan could have important and positive spill over effects for government contracting as a whole. Although it was outside the scope of the Commission's mandate, many of the problems we identified are well known across the government. As a former managing director at the Government Accountability Office, I saw all too frequently the high risks and costly results associated with many of the same contracting issues that were present during contingency operations.

Next, let me turn to some specific bill provisions.

Given the high cost of failure, the need for greater attention and accountability is paramount in order to institutionalize the lessons learned in Iraq and Afghanistan. The bill appropriately addresses structural changes as part of the solution. Yet, I do not believe—nor do the Commission's recommendations support—that it goes far enough. A few examples:

Strategic national security decisions, the impact of which can drive the inappropriate use of contractors, poor contract outcomes, and mission

failure, do not consider resource conditions. The bill directs greater involvement by the Office of Management and Budget in advising the President on the costs and means of financing of operations. Although a good step, the Commission believes that resource considerations need to be part of the ongoing discussion of contingency related issues. The Commission recommended creating a dual-hatted, Senate-confirmed position to ensure that resource issues represented by the Office of Management and Budget become a normal part of policy discussions conducted by the National Security Council. With contractors representing almost half of the workforce employed by the United States in Iraq and Afghanistan, and likely as well in future contingencies, it is only prudent to recognize monetary and other costs when developing and deliberating national security options. This dual-hatted position is also key in representing the interagency character of contingency operations to ensure that each relevant agency has the necessary financial resources and policy oversight to carry out its contingency-related mission.

Policy direction, such as that contained in then Defense Secretary Gates' memo on operational contract support in January 2011, is welcome. Yet, that memo took years to get through the Pentagon bureaucracy even after its need was recognized. Further, translating those policy changes into practice will not happen automatically. The bill gives the Secretary of Defense a year to determine the correct alignment of roles, authorities, and responsibilities for operational contract support. The Commission, however, goes further in recommending that a position in the Office of the Joint Chiefs of Staff be created now, in part to institutionalize the many lessons that have already been learned and to make needed changes in current operations. The current placement of operational contract support under a colonel within the logistics directorate reflects outdated thinking that contracting is only a method to achieve logistical support—not the full spectrum of intelligence, communications, construction, security, training, and other non-logistics services for which contractors are employed in Iraq and Afghanistan contingencies and will likely continue to be in most future operations. As the Joint Staff goes through its ongoing reorganization to position itself for future operations, they have an opportunity now to increase effective leadership by capturing diffuse responsibilities and to establish greater accountability for the role contractors play in DOD contingency operations.

It is clear that the State Department does not take stewardship of its resources seriously, with only two acquisition professionals out of approximately 200 Senior Executive Service and senior Foreign Service Officers under the authority of the Under Secretary for Management. In its response to our interim report, State indicated that its model was working well and that there was no need for additional training, even as it took over

the many new and critical missions in Iraq for which it decided to rely on contractors. The bill establishes a new acquisition-focused office. The Commission's recommendation to require regular reporting from State may be the forcing function needed for this office to make changes in policy and practice. Including measurements in those reports, by which the agency can be held accountable, would also provide an incentive for State officials to actually apply lessons learned. The significant waste and other problems encountered in contracting for police training, for the new Embassy compound in Baghdad, and for the Pol-i-Charki prison in Kabul, to name just a few, show that the current State Department model is not working.

Under the decentralized structure at the U.S. Agency for International Development (USAID), the Administrator's procurement reform agenda has not reached those officials who are responsible for deciding when to use a contractor workforce, how to develop measurable and enforceable contract requirements, or how to effectively monitor contractor progress in hostile environments. The bill creates a new acquisition-focused office in USAID. Again, regular reporting from this office will be key to improving accountability. More than any other agency involved in the Iraq and Afghanistan operations, USAID relies on a contract workforce. Yet, it has the farthest to go in understanding the need for and applying sound contracting practices. For example, despite numerous project and program shortfalls, it is not clear that USAID officials believe that any changes are needed in Iraq at all as military operations there have ceased.

A number of other bill provisions reflect Commission intent. Those include

- establishing a management structure for service contracting in State and USAID,
- better tracking of contractor performance
- providing alternatives to agencies using private security contractors when their use is inappropriate,
- more closely managing the length of contract terms and the number of sole source procurements,
- requiring additional training in acquisition matters, and
- explicitly including the role of contractors in planning exercises.

The bill also rightly calls out the need for interagency action in several areas. In addition, the bill's requirement to establish a management structure for service contracting in the State Department and USAID, which is valuable in and of itself, also has the potential to bring needed and significant improvement in contract outcomes well beyond the contingency context. In many areas, such as the requirement to cancel unsustainable project, making changes now will have a positive impact in the short term and also set out standards to avoid future failures.

Finally, I would urge the Congress to recognize its own role in supporting enhanced agency cooperation and improving contract outcomes in contingency operations. The lines drawn between Committee portfolios should not be used as a wedge against change. The very interagency nature of contingency operations means that Congress must come together across jurisdictional boundaries to support integrated executive branch efforts and to provide and reallocate resources to achieve reforms.

It is well established that poor contracting results in mission failure and wasting dollars we can ill afford. Even were the agencies to make needed policy changes, such changes are only good until the next set of administrators comes in with perhaps different priorities. Without a legislative mandate, business as usual means that the United States will continue to confront problems that resulted in our estimate of \$31 billion to \$60 billion of taxpayer money lost to waste and fraud related to contracting in the Iraq and Afghanistan contingency operations between FY 2002 and FY 2011. As we also reported, billions of additional waste are likely to develop as U.S.-funded projects prove unsustainable by host-nation governments. Much of that actual and emerging waste was avoidable. Although the U.S. presence in Iraq and Afghanistan will wind down, future overseas operations will continue to rely on contracts and contractors.

As restructurings take place in the current climate of spending reductions, S.2139 provides the perfect opportunity to establish sound structures, principles, and practices to avoid similar waste in the future. Starting reform now is also important because changing organizational culture, policy, doctrine, and regulations can take months or years—time that must not be lost when the next urgent need develops.

Again, I thank the Subcommittee for its efforts and for inviting this submission for the record.