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U.S. SENATE

WRITTEN STATEMENT OF

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BEFORE

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

ON

THE COMPREHESIVE CONTINGENCY CONTRACTING REFORM ACT OF 2012

April 17, 2012

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

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

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

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

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

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

DoD Support of Commission on Wartime Contracting

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

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

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

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

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

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

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

DoD Reaction to Comprehensive Contingency Contracting Reform Act

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

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

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

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

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

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

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

Subtitle A—Government-wide Matters

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

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

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

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

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

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

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

Subtitle B—Multi-Agency Matters

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

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

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

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

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

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

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

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

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

Subtitle C—Department of Defense Matters

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

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

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

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

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

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

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

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

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

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

Subtitle D—Department of State and Related Agency Matters

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

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

Subtitle A—Limitations in Contracting

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

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

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

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

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

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

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

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

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

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

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

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

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

Subtitle B—Enhancements of Contracting Process

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

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

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

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

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

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

Subtitle C—Contractor Accountability

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

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

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

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

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

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

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

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

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

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

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

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

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

Subtitle D—Other Matters

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

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

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

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

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

Conclusion

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

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