

STATEMENT BY  
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BEFORE THE  
Homeland Security and Governmental Affairs Committee,  
Subcommittee on Contracting Oversight  
United States Senate

April 17, 2012

Good morning Chairman McCaskill, Senator Portman, and distinguished members of the subcommittee. Thank you for your invitation to appear here today to discuss Senate bill 2139, the Comprehensive Contingency Contracting Reform Act of 2012.

We share the Committee's desire to ensure that efforts continue to strengthen contingency contracting. S. 2139 raises a number of important issues. While our review of the bill is ongoing, we welcome the opportunity to discuss our initial views on the bill's provisions.

We understand that this legislation builds on the recommendations of the Commission on Wartime Contracting in Iraq and Afghanistan – an independent, bipartisan panel that you, Senator McCaskill, created along with Senator Webb in 2007. The State Department worked continuously with the Commission on Wartime Contracting (CWC) from when it was formed in early 2008 until it sunset last August, and gained valuable insight from the Commission's efforts. We have taken many steps to improve our contingency contracting over the past several years, based on the CWC's reports, recommendations from other oversight entities, and our own lessons learned.

The Department's participation in CWC's study was headed by the Office of the Under Secretary for Management and the Bureau of Administration. In addition to numerous meetings with the CWC, senior Department officials testified at seven formal CWC hearings.

Although the CWC has sunset, we continue to work with our other oversight entities on our contracting program. Currently GAO is reviewing the Iraq transition, contingency contracting, and the CWC's Final Report in three separate engagements. We are taking GAO's input to heart, and will work to improve our contracting administration, including Interagency Agreements, and address other GAO findings.

We have also learned much from the Iraq transition, where we worked closely with DoD and other interagency partners. As recently as April 3, when Secretary Clinton addressed a class of cadets at the Virginia Military Institute, she stated that the Iraq transition was the largest military to civilian transition since the Marshall Plan. We can now take the lessons learned in Iraq and apply them to contract planning and execution in Afghanistan and future contingencies.

The Department has been involved in overseas contingency operations with DoD for 10 years in Iraq and Afghanistan. The U.S. Military launched Operation Enduring Freedom in Afghanistan in October 2001, and Embassy Kabul re-opened in 2002. Operation Iraqi Freedom began in March 2003, and Embassy Baghdad re-opened in 2004. DoD and State have worked closely together in these conflict areas since that time, and we continue to work closely on a daily basis. We have also counted on USAID's efforts to assist in stabilizing these societies.

The Department's contracting function has grown from \$1.8 billion in 2001 to \$8.8 billion in 2011, primarily due to programming growth since 9/11 and in support of State Department activities in Iraq and Afghanistan. As our contracting activity has increased, we have hired additional Acquisitions Management staff using funding in the Working Capital Fund, which is generated through a 1 percent fee on all procurements. The Working Capital Fund has provided sufficient funding and flexibility to allow us to hire 103 additional staff in the Office of Acquisitions Management since 2008.

### **Oversight by Inspectors General (Sec. 103)**

State agrees that there must be independent, objective oversight of contingency operations, and we support the IG concept outlined in proposed Section 103. The oversight outlined by S. 2139 ensures that inspections are carried out by experts who understand the agency mission, policy, procedures, and

operations, and provides an approach for the coordinated efforts of existing agency Inspectors General. We do observe that the reporting requirements are intensive, which would result in resource implications for the IGs, and would flow down to the agency program offices.

We note that this section requires publication of information on the Internet of potential offerors and potential grantees. We are concerned that such disclosure available to both the general public and hostile overseas elements of some of these organizations, companies, or individuals may endanger their safety and may reduce competition. We recommend that provisions be developed for retaining the confidentiality of some of this information based on determinations of danger or program impact.

### **State Adoption of DoD Management Structure for Services Acquisition (Sec. 111)**

With regard to section 111, State has been working closely with DoD on contractual efforts in Iraq and Afghanistan. In Iraq we are receiving support from the LOGCAP program under a LOGCAP IV Task Order competed among LCIV contractors for life support services, and other DoD contracts for food, fuel, equipment maintenance, logistics, and information technology support.

We do not believe successful management of services acquisition requires that State's management structure mirror that specified in statute for DoD. Unlike DOD, State centralizes acquisition of goods and services in our Acquisition Management Office (AQM), which together with the two Regional Procurement Support Offices (RPSOs), handle over 98% of the contracted dollars. This centralization of acquisition in AQM obviates the need for extensive additional policy guidance and oversight of other acquisition organizations. There is no need to designate by statute a lead policy official since all State acquisition is already under centralized policy guidance and acquisition.

State further centralizes acquisition with special construction, security guard, and information technology branches. These contracting officers are de facto Commodity Managers by virtue of their acquisition expertise and their central role in purchasing their service commodities. We also have 37 contracting officers,

specialists and support service personnel devoted to contracting efforts in Iraq and Afghanistan.

State develops and maintains policies, procedures, and best practices guidelines that address the procurement of contract services. We are examining the list in 10 U.S. Code 2330 to determine if additional policies applicable to State's operations should be developed.

We would note that the Department participated in Office of Management and Budget (OMB) working groups regarding the Office of Federal Procurement Policy's (OFPP's) efforts to clarify the definition of the term "inherently governmental." When the final definition was released in OFPP Policy 11-01, our regional and functional executive directors were briefed about the new definition and requirements.

In addition, consistent with OMB's guidance to identify areas that warrant priority attention (e.g., because they are at heightened risk of overreliance), the Department will annually analyze its largest contracts for the purpose of determining whether or not an overreliance on contractors exists and whether inherently governmental functions are being performed by contractors. Existing Department practices already include review of statements of work for inherently governmental functions, when we are procuring a service. However, the Department intends to strengthen this management practice by requiring a written pre-award determination and requesting the program office to ensure the statement of work does not include inherently governmental functions. We expect to implement this practice by the fall of 2012.

### **Suspension and Debarment (Sec. 112 and Sec. 113)**

Currently our Office of the Procurement Executive (OPE) serves as our Suspension and Debarment Official (SDO). We have worked to improve our efforts, reviewing suspension and debarment processes to make them more effective. We have:

- Contacted other agencies to identify best practices in their suspension and debarment programs.
- Created a suspension and debarment log to track actions.

- Established regular meetings with the Office of the Inspector General Investigations Office to ensure cases are dealt with expeditiously.
- Participate in monthly Interagency Suspension and Debarment Council (ISDC) meetings; participated in the website subcommittee and attended S&D training and conferences.
- Provided training on suspension and debarment to grants officers and contracting officers.
- Attended training on debarment and suspension to improve skills.
- Issued detailed debarment and suspension procedures including procedures to require a written determination on action taken regarding referrals for suspension or debarment from Contracting Officers and/or the Office of the Inspector General.

We believe that our Office of the Procurement Executive is capable of handling suspension and debarments with the necessary level of impartiality to consider and apply suspensions and debarment whenever necessary and, for this reason, are concerned with a requirement that would preclude a suspension and debarment official from being located within the Bureau of Administration of the Department. We will continue to look at the staffing of the suspension and debarment function as part of overall Department of State resource planning. We believe we do not need a separate SDO or staff as proposed in Section 112.

Suspension activity increased from no suspensions in FY2009 to five each in FY 2010 and FY2011 and 19 actions halfway into FY2012. Debarment activity increased from no debarments issued in FY2009 to six issued thus far in FY2012. This increase is due to more active coordination between the Department's OIG investigators, stronger referral activity, and improved processes and focus within the suspension and debarment office.

With regard to the automatic suspension provisions set out in proposed Section 113, we believe that the current, long-standing policy requiring a reasoned decision from the SDO based on a totality of information remains a sound approach, and would have concerns with a provision that imposes automatic suspension and debarment which will likely lead to due process challenges by the affected contractor community and potential court action that could delay necessary action in crisis situations.

## **Reorganization of Contracting Function (Sec. 131)**

We respectfully do not concur with the re-organization of our contracting function proposed in Sec. 131. Defining the acquisition organization of the Department of State in statute would reduce our flexibility and codify the structure, making future adjustments to support new 21<sup>st</sup> century challenges cumbersome and time consuming. Future legislation would have to be drafted and passed to allow the Department to adjust to the fast changing world of diplomacy, rendering the Department less agile and thereby potentially handicapping the Department's ability to respond to contingencies. Also, the proposed re-organization would constitute a bureau with not only the contracting function but logistics, motor vehicles, diplomatic pouch, household effects, shipping and storage. If a bureau were to be formed with only the contracting program, it would not be of sufficient size to warrant bureau-level status.

As noted earlier, the Department of State acquisition model uses a centralized contracting approach, with a primary Washington, D.C. based central office and two Regional Procurement Support Offices to provide additional forward deployed support. The Department centralized the acquisition of worldwide local guard services using this Washington, D.C. based approach with great success.

The Department's Chief Acquisition Officer (CAO) is the Senate confirmed, Assistant Secretary of Administration, an individual with worldwide experience with our acquisition needs and challenges, as well as experience working with our Department of Defense colleagues. The Head of Contracting Activity is a seasoned professional with a solid record of acquisition accomplishments. We also believe that the separation of the Office of the Procurement Executive from the Acquisitions Management Office (AQM) provides a decision making process removed from direct acquisition responsibility.

As Under Secretary for Management, I work hand in hand with the CAO on acquisition issues, especially contingency contracting. Major decisions on contingency contracting policy, such as how to strengthen private security contractor oversight, are made by me. Solutions to any acquisition issues are facilitated by the current flexible, well coordinated structure. Neither access nor authority is a problem under the current structure.

The Department acknowledges that improvements are always possible in our contracting oversight and management, and we continue to strive to enhance accountability for contracting throughout our organization. The examples of contracting challenges cited by the CWC in its final report are not a function of the organizational location or strength of our acquisition staff, but rather of the need for more effective contract administration support.

As our contracting activity increased, we faced two challenges: 1) we needed additional acquisition personnel to support our procurement efforts; and 2) the requirements offices needed to better support our acquisitions with up front planning and contract administration oversight.

As noted above, we increased our acquisitions staff through the Working Capital Fund – hiring 103 staff since 2008, in line with CWC Recommendation 13. The increase in staff can be directly attributed to direct-hire authority being obtained for “1102s,” the contracting specialist series in March 2010, and we will continue to augment our direct-hire staff. Our additional staff has improved operation of the office, decreasing the time to complete a simplified acquisition by 4.4 days or 23%.

As part of the implementation of the Secretary’s Quadrennial Diplomacy and Development Review, which called for elevating accountability for contracting, the Assistant Secretary of a performing bureau now needs to ensure that adequate resources, both personnel and funding, are identified early in program planning to make certain contract administration is not an afterthought. Department guidance issued in a Procurement Information Bulletin in June 2011 requires the cognizant Assistant Secretary to certify that planning and oversight is adequate for every service contract valued at an annual expenditure of \$25 million or more, and also to verify in their annual management control reviews that they have examined these contractual arrangements and judged oversight to continue to be sufficient. The guidance also highlights the appropriate use of contractor support in contract administration and discusses how to mitigate potential contractor conflicts of interest and violations of non-personal services requirements.

The Department also increased accountability for contract oversight by mandating the inclusion of contract oversight work elements in performance appraisals of technical personnel with contract management responsibilities, creating an award to recognize outstanding contract administration by a Contracting Officer's Representative (COR), and by creating and maintaining a community for CORs to share experiences and best practices, including shared websites.

Contracting is a team effort at the Department with close relationships between acquisition and requirements personnel; collaboration is essential to anticipate upcoming requirements, allow sufficient lead time, consider various methods of procurement, and otherwise increase the efficiency of the acquisition process. The Contracting Officer from Acquisitions strives to appoint a COR as soon as a requirement is initiated, so that the COR can assist in the solicitation process. The Contracting Officer may appoint an additional individual—a U.S. government employee known as a government technical monitor (GTM)—to assist the COR in monitoring a contractor's performance.

Over the past few years, we have trained and deployed more CORs. In FY11 the Department had 1,080 employees certified to carry out COR duties and projects an increase to 1,200 by the end of FY12.

We believe our ability to increase our acquisitions staff through the Working Capital Fund, coupled with the steps taken to elevate accountability of the requirements offices for contracting – serves as a solid foundation for our contracting function at State.

### **QDDR / Contractor Readiness (Sec. 132)**

As Secretary Clinton has noted, the QDDR is a valuable tool to provide us with short-term and long-term blueprints for how to advance our foreign policy objectives and our values and interests. We have seen tangible results from our first QDDR, such as the establishing of three new bureaus within the Department dealing with counterterrorism, energy, and civilian stabilization. We firmly believe that there should be a regular quadrennial review of this sort. We look forward to working with the Congress to institutionalize the QDDR.

The Department's current acquisitions process awards to contractors who we believe are ready to carry out our national security needs. In conjunction with all the offices that support our expeditionary diplomacy, we put into place contracts that can be accessed on short notice. If contractor readiness falters during the term of the contract, we would take remedial action. When new requirements are anticipated, the Department conducts market research to determine the extent and capability of the potential contractor pool.

### **Training (Sec. 133)**

The Department supports increased training for contract administration personnel. We have updated COR training to be more interactive, skills based and adult learning focused. All CORs and GTMs, both domestic and overseas, must complete a 40-hour approved training course. A separate COR class session has been tailored for CORs from the Bureau of Diplomatic Security to include special issues dealing with oversight of local guards and other security programs overseas. All Department of State CORs supporting DOD issued contracts for our Iraq mission take additional DOD training in the contingency environment and any other specialty training related to the specific contract. This ensures that Department of State personnel managing DOD contingency contracting programs meet the DOD standard.

### **Reduced Length for Contingency Contracts/ One-Tier Subcontracts (Sec. 201)**

The Department objects to imposing contract term limits, as proposed in Sec. 201, that reduce contract performance periods for competitively awarded contingency contracts to three years. This limitation would require a continuous cycle of solicitation and contract award when resources are most constrained. Shorter contract periods may also reduce the amount of initial competition. Contracting Officers continually assess the need to exercise contract options to determine if continuing with an existing contractor represents the best decision for the Government.

Limitation of contractors to a single tier of subcontractors is not practicable for large contracts, and may require significant additional contracting and contract administration capability in contingency operations where these resources are most scarce. It may also result in prime contractors attempting to do more work

themselves, regardless of cost or other efficiencies, to maintain a single subcontracting tier.

### **Private Security Contractors (Sec. 202)**

The Department has a long history of using contract guards for protection of facilities and personnel stretching back to the 1970s, with enhanced capabilities in the 1990s. Private security contractors (PSCs) are critical to our readiness and capability to carry out American foreign policy under dangerous and uncertain security conditions. Maintaining this capability is particularly important when the Department is taking on expanding missions in contingency operations environments or areas that are transitioning from periods of intense conflict, such as in Iraq and Afghanistan.

That said, we appreciate the intent of section 202. We have sought to reduce risks associated with using contractors through robust oversight of our PSCs, as in CWC Recommendation 4. Contractors are operationally overseen and contractually managed by direct hire Department of State personnel, and we have instituted cultural training requirements, and contractor behavioral standards of conduct to ensure the professionalism of PSC personnel. The Department is staffed to properly oversee PSC compliance with these contractual requirements in Iraq and Afghanistan.

State strongly disagrees with the language of paragraph Sec. 202 (b)(1), which has the combatant commander determining whether performance of security functions by contractor personnel for the Department of State in overseas contingency areas is appropriate and necessary. This language is too open-ended and is not acceptable as it infringes upon the Secretary of State's primary role in leading and carrying out foreign policy. The Secretary of State and the Chief of Mission have statutory responsibility for the safety and security of personnel under Chief of Mission authority. We routinely discuss the security situation in-country with DoD and other agencies present at post; and in situations where U.S. military forces are present, that coordination is intensified and ongoing. We fully comply with OFPP's new Policy Letter on inherently governmental and critical functions, and our PSCs never engage in combat operations. We hope to work with you and your staff to find mutually acceptable language in this section.

### **GSA Contracting Writing System (Sec. 211)**

State supports the use of consistent, clearly written contracts; however we do not support the provisions of 211(a) calling for the Administrator of General Services to establish and maintain a single contract writing system applying to all Executive Agencies other than DoD. The Department of State spent considerable resources deploying our current contract writing system and, given the likely complexity of trying to create a single system, would be concerned about the expense and investment of resources needed to deploy another system.

### **Trafficking in Persons (Sec. 222)**

The Department continues to support strengthening measures to combat Human Trafficking. State's Trafficking in Persons (TIP) office combats trafficking as a foreign policy mission, and we have also been vigorous in our efforts to ensure none of the contracts written by the Department are with contractors abusing their employees. We have identified contracting programs which may result in the hiring of unskilled or semi-skilled labor from third countries, including our facility construction and guard services. Major approaches/or initiatives undertaken at State to address these TIP contracting issues include:

- Training Contracting Officers and CORs as our front line in preventing contractor trafficking in persons and worker abuses. The Department worked closely with the Federal Acquisition Institute (FAI) and the Department of Homeland Security (DHS) to develop on-line training for Contracting Officers across the government, including at State.
- Oversight Recommendations - We have implemented many of the Commission on Wartime Contracting, GAO and OIG recommendations for contract oversight in Iraq and Afghanistan throughout our contracting program. Several Contracting Officers are collocated with bureau staff outside the contracting office to provide oversight, and Contracting Officers travel to overseas performance sites, as called for by CWC Recommendation 2. When Contracting Officers are on temporary duty in a region, they look at other programs in the area that use contractors, taking extra steps to monitor and enforce TIP programs. In some locations, this includes having a direct-hire Project Manager or COR living on-site with construction or

security staff at their housing areas, and unannounced inspections of housing compounds for DS local guard programs.

- Procurement Information Bulletin, PIB 2011-9 on TIP (issued March 24, 2011) by State's Office of the Procurement Executive, is used by Contracting Officers to tailor specific oversight requirements based on locale, service, and contract type. New solicitation language regarding recruitment, including a recruitment plan and submission of agreements, has been developed for our contracts to prevent maltreatment of workers.

Contingency contracts require special vigilance against trafficking in persons. We continue to strive for zero tolerance of trafficking in all our contracts.

In conclusion, the Department has taken a significant number of positive steps to improve our contracting function. Because of our involvement in the Iraq and Afghanistan contingencies, and our reliance on support service contracts, we have increased the number of our contracting staff through the Working Capital Fund; improved our training; and enhanced our contract monitoring and oversight. As the CWC recommended, we have strengthened contract administration in conflict-affected states through the hiring and training of adequate federal personnel to provide strong governmental oversight of contractors. We also believe that S. 2139 has many positive elements that can be used to further strengthen our contracting program, and we look forward to working with you.

Thank you for providing me with this opportunity to appear before you and for your ongoing support for the Department of State. I will be pleased to answer any questions that you have.