

**Testimony of Patrick F. Kennedy  
Under Secretary of State for Management**

**Before the  
U.S. Senate Homeland Security and Governmental Affairs Committee  
Financial and Contracting Oversight Subcommittee  
on Implementation of Wartime Contracting Reforms**

**July 16, 2013**

Good morning Madam Chairwoman, Senator Johnson, and distinguished members. Thank you for inviting me here today to testify about the Department of State's implementation of contingency contracting provisions in the FY 2013 National Defense Authorization Act. I know that contingency contracting has been of interest to the Committee for years, and is a particular interest to the Chair. With about \$8.2 billion in total contracts, State takes all of its contracting responsibilities very seriously and is always seeking improvements.

**Section 850 Report**

Directly after the enactment of the FY 2013 NDAA, State formed three working groups to focus on the following:

- 1) how to assess the risks associated with contracting in overseas contingency operations and other high risk environments;
- 2) our contracting management procedures; and
- 3) the structure and capabilities of our acquisitions and contracts management workforce.

Each working group was comprised of subject matter experts in key policy areas such as procurement and acquisitions, human resources, training, and security. The results of analysis by the working groups were incorporated into the report required under **Section 850** of the NDAA, which State delivered to the Congress on June 25. In that report, the working groups found that State's structure and processes support our national security mission. We have also concluded that the use of our centralized acquisitions office based in Washington, D.C., supported by

two overseas Regional Procurement Support Offices, support our contingency contracting requirements.

The working groups continue to meet to advance the Department's implementation of the NDAA provisions. And we are working with GAO on their engagement requested under Section 850.

## **Continued Improvements**

However, the Department continues to take steps to improve and elevate the status of its contracting program. Using our Working Capital Fund, and the 1 percent charge on each contract, the Office of Acquisitions Management continues to hire contracting staff.

We have placed more emphasis on increasing the number of **Contracting Officer Representatives (CORs)** in our regional and functional bureaus to perform day-to-day contract oversight. The Department created a skills-based, adult learning centered Contracting Officer Representative (COR) course to improve COR performance. The Department established a COR Advisory Board to identify and share best practices and continually improve the COR function. A database has been established to track COR certification and which allows Contracting Officers and bureaus to identify qualified CORs. Assistant Secretaries must certify as part of their annual Management Assurance Statement that adequate contract administration resources have been identified on service contracts with annual expenditures exceeding \$25 million.

We continue to work with both DoD and USAID on contingency contracting. DoD logisticians are collocated in our Office of Logistics Management. A DoD liaison working in the Bureau of Diplomatic Security (DS) has improved interagency communication and collaboration. We believe that DoD liaisons should be a regular part of on-going interdepartmental coordination regardless of the status of any current contingency.

State is establishing a Contract Management Office in Kuwait that will support our operations in Iraq and could serve as a model for future contingencies.

The appointment of a lead Program Manager/COR to manage all CORs overseeing operations and maintenance and basic life support task orders in Iraq will provide effective oversight.

Staffing the office with specific technical skills and identifying individuals with previous U.S. government COR experience represents a continuing challenge that must be addressed creatively through supervisory CORs, training, mentoring, “reach back” advice, detailed inspection/acceptance planning, interagency support, and other means specifically tailored to the contingency.

State will examine how to use existing human resources flexibilities, such as recruitment, retention, and relocation incentives to ensure expedient, high-priority hiring for contract oversight functions. Congress can assist State’s ongoing efforts by providing special hiring authorities to staff future contingency operations. Such authorities include permanent direct hiring authority and flexibility on personal services contracting to include the acquisition support function domestically and overseas. State continues to advocate for a legislative proposal to expand and make permanent a dual compensation waiver authority for Foreign Service and Civil Service annuitants serving in qualified State positions.

In an area flagged by GAO for improvement, State issued guidance to strengthen the management of interagency acquisition agreements and is working with DoD to establish overall coordinating agreements. A lead for interagency agreement coordination will be established at the outset of future contingency operations.

By institutionalizing the lessons learned from Iraq and Afghanistan (such as enhanced program oversight, higher contractor performance standards, and improved management processes), and preparing for future contingencies, State will enhance its ability to respond to such future events.

## **NDAA Sections**

As required under **Section 844**, State has examined its use of SPOT – the Synchronized Pre-Deployment Operational Tracker --- to collect and report on

contract data. State, USAID, and DoD believe that SPOT remains the preferred system for tracking personnel under contingency contracts. Of the 8 elements listed in Section 844, numbers 6 through 8 are compiled in SPOT. Numbers 1 through 5 can be found in the existing publicly available Federal Procurement Data System (FPDS), the official reporting tool on contracts. State is working with DoD to integrate data from FPDS automatically into SPOT. And we are working both with the interagency and our contractor community to improve the quality of data in SPOT for the personnel information, particularly for contractors killed and wounded, an area that was identified as needing improvement. We continue reporting on SPOT to Congress, along with DoD and USAID, per **Section 847**.

We have been evaluating our risk management process, under **Section 846** of the NDAA. In the event of a Title 10 contingency such as Iraq or Afghanistan, our regional bureau, our functional bureaus, and the mission in that country will weigh the risks of contracting for security, life support, and other services. While we have been undertaking this evaluation for the past 10 years, particularly with DoD as a partner in Iraq and Afghanistan, we are looking at more formally establishing a centralized unit at State to coordinate in assessing and mitigating the risks associated with the use of contractors in contingency and high-risk environments. Also, when State must enter an area of conflict, an example being Syria where we previously suspended operations, we will use a support cell concept to assess risk.

The new responsibilities of Chief Acquisition Officer (CAO) added by **Section 849** have been specifically incorporated within the list of responsibilities of State's CAO.

Under **Section 861**, we now have a designated Suspension and Debarment Official (SDO), who is supported by a newly added Suspension and Debarment (S&D) Program Manager. The S&D manager works only on S&D matters and manages the referral and analysis process. Both the SDO and the S&D Program Manager work closely with our Office of the Legal Adviser and State's Office of Inspector General (OIG). The SDO is not part of either the OIG or the Office of Acquisitions, as stipulated by the NDAA.

GAO has indicated that successful S&D programs have dedicated resources, detailed policies, and a referral process. State has all three of these, and we have gone from 0 suspensions and 2 debarments in FY 2008 to 3 suspensions and 31 debarments to date in FY 2013. We believe the resources are adequate, but we will continue to evaluate our needs as our program activity evolves and will adjust as necessary. We have a referral process that has expanded to include examination of terminations and outreach to the front line contracting and grants officers, as well as Contracting Officer Representatives (CORs). We meet with the OIG quarterly on debarment and suspension to improve referrals and to status actions. Our timeliness has improved consistently, from 135 calendar days in FY 2010 to 25 calendar days in FY 2013. We are also implementing a better case management system to track activity.

Several sections of the bill promote government wide changes, and require these sections to be incorporated into the Federal Acquisition Regulation (FAR). State is an active member of the Civilian Agency Acquisition Council (CAAC) and is working through the CAAC with the Federal Acquisition Regulatory Council on these matters. These sections include:

- **Section 802** on Review and Justification of Pass-Through Contracts where a FAR Case (FAR Case 2013-012) was opened to incorporate this provision in the FAR.
- **Section 852** on Information on Contractor Performance and Integrity through the Federal Awardee Performance and Integrity System (FAPIS) where a FAR Case (FAR Case 2013-020) was opened to implement the collection of this additional information on the corporation awarded the contract or grant. FAPIS was originally launched in 2010 as a public repository for performance and integrity information and this expansion will provide additional information about the awardee of the Federal contract (or grant).
- **Section 853** on Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions. Several FAR Cases (FAR Case 2012-009 and 2012-028) have been opened to

implement this provision to improve the timely reporting and collection of past performance evaluation data on a government-wide basis. These FAR cases support OFPP's leadership in this area and align with their March 2013 past performance memorandum which directed agencies to improve their management accountability and timeliness and quality reporting of past performance information. At the State Department, we are also supporting this effort and recognize the need to improve contractor performance reporting in government-wide databases under Section 853, so the Department is working toward that end. A working group has been established to focus on improving the process which includes improving timely and quality reporting of performance evaluations reports in the databases. Points of contact have been identified in various offices and bureaus to increase accountability. Contracting Officer Representatives (CORs) are advised of past performance reporting responsibilities and training is provided. A new requirement will ensure that Contracting Officers request a past performance assessment prior to exercising contract options.

Under **Section 862**, the State Department is working with the Office of Federal Procurement Policy and an interagency group in the development of standards to ensure continued alignment of the agency's existing contract writing system with any new government-wide data standards that might be developed. While a FAR case has not been opened on Section 862, separate FAR cases are underway to standardize other contract reporting elements such as those to standardize the uniform line item numbering structure; for the use of Uniform Procurement Identification numbers; and for the use of Commercial and Government Entity Code.

Under **Section 1273**, the Department of State will undertake assessments to ensure that a capital project that is to benefit a host country is requested by the host government and can be sustained by it. The sustainability of our foreign assistance investments is something we take very seriously to ensure the effective use of our resources. We have been discussing the assessment process with USAID to see how USAID undertakes its 611(e) assessments to evaluate and determine best practices. To date, since the enactment of the 2013 NDAA, State has not

undertaken any capital projects that would trigger the need for an assessment. We will report semi-annually as required under this section.

### **Private Security Contractors – Embassy Kabul**

I know that the Chair has remained concerned about the use of private security contractors to provide security services at our posts in contingency areas such as Kabul. Department staff have discussed with your staff issues that arose during the summer 2012 transition of the static guard contract in Kabul, and I will be glad to answer any questions that you have today.

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.

We fully appreciate the need to have robust oversight of our PSCs. 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 Bureau of Diplomatic Security (DS) is staffed to properly oversee PSC compliance with these contractual requirements in Iraq and Afghanistan. Actions for management, oversight, and operational control of contract personnel include:

- DS Special Agents at each post in Iraq and Afghanistan serve as managers for the Static Guard and Personal Protective Security programs;
- DS Special Agents at each post also serve as Contracting Officer's Representatives (CORs) and Assistant CORs (A/COR) for the direct management and oversight of the Worldwide Protective Services (WPS) contract;

- DS personnel at each post are assigned as Government Technical Monitors (GTMs) to assist the COR and A/COR in the oversight of the WPS contract;
- DS personnel provide direct operational oversight of all protective motorcades in Iraq and Afghanistan;
- DS personnel continue to conduct frequent, unannounced health and welfare after-hours visits to WPS housing compounds. Collocation of contractor life support areas on Embassy, Consulate or other compounds enhances after-hours oversight of contractor personnel;
- Revised mission firearms policies strengthen rules on the use of force and new less-than-lethal equipment has been fielded as a means to minimize the need for deadly force;
- Video recording systems and tracking systems installed in vehicles to enhance oversight and contractor accountability;
- All incidents involving a weapons discharge and/or other serious incidents are thoroughly investigated by the Regional Security Office.
- Revised standards of conduct are in place, including a ban on alcohol.

Issues will always arise during times of contract transition, but currently in Kabul, we have a well-managed, effectively functioning contract in place that provides security services to protect our people and facilities.

In conclusion, while we believe that State's contracting function is organized to effectively undertake both routine and contingency contracting, we have been striving to learn from past practices and to better implement contingency contracting, especially with guidance of the 2013 NDAA provisions. The State Department will continue to refine its processes, procedures, and strategies to ensure that adequate resources and oversight mechanisms are in place for future contingencies.

I will be happy to answer any questions you have.