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BEFORE THE
SUBCOMMITTEE ON CONTRACTING OVERSIGHT OF THE
SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

“THE COMPREHENSIVE CONTINGENCY CONTRACTING REFORM
ACT OF 2012”

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Chairman McCaskill and Ranking Member Portman, and members of the Subcommittee, I am pleased to appear before you to testify on behalf of the Office of Inspector General (OIG) of the U.S. Agency for International Development (USAID). I welcome this opportunity to discuss the

Comprehensive Contingency Contracting Reform Act of 2012 (S. 2139) and how it relates to our oversight responsibilities for overseas contingency operations. We support efforts by the Subcommittee to reform and enhance the effectiveness of contingency contracting and generally agree with the direction of the bill. Feedback on specific provisions of this legislation is included in my testimony.

Oversight in contingency settings is an important feature of our work. We have provided oversight in conflict and post-crisis situations for decades. Our staff has demonstrated tireless commitment to strengthening the effectiveness, efficiency, and integrity of USAID's development and reconstruction assistance programs by repeatedly responding in the wake of natural disasters and during active military engagements.

Our unique mix of Civil and Foreign Service personnel enables us to respond rapidly to emerging oversight needs by immediately deploying staff on the ground while maintaining key support services and institutional knowledge at home. We currently provide effective oversight in conflict and post-crisis settings in Afghanistan, Haiti, and Iraq.

Drawing on a strong in-country presence in Iraq and Afghanistan, we provide comprehensive audit coverage of USAID programs and implement a vigorous investigative program. From the start of reconstruction efforts in

Iraq and Afghanistan in fiscal year (FY) 2003 through the end of the second quarter of FY 2012, our office issued more than 300 audits and reviews of USAID programs and activities and made 462 recommendations to USAID managers to improve their programs. We supervised financial audits of more than \$6 billion in expenditures. Meanwhile, our investigations led to 157 administrative actions (e.g., contract cancellations or employee terminations), 25 indictments, and 21 convictions and pleas. In total, our work in these countries has produced more than \$437 million in sustained questioned costs, funds put to better use, and investigative savings and recoveries.

Rigorous audit and investigative work by our staff in Iraq and Afghanistan has translated into net returns on our oversight spending. For each dollar we have obligated in these countries, we have returned nearly \$11 to the government in the form of sustained questioned costs and funds put to better use as well as investigative savings and recoveries.

The results of our work in contingency environments have only served to underscore the very risks to U.S. taxpayer dollars that the Subcommittee is seeking to address with this legislation. Security conditions often hamper program implementation and complicate monitoring and evaluation efforts. Pressures to quickly demonstrate tangible program results sometimes

overcome planning requirements with the result that too many programs fail to meet their objectives or produce sustainable development gains. Surging personnel needs and frequent staff rotations contribute to shortcomings in compliance, weaknesses in contract oversight, and diminished internal controls.

Over the past 2 years, 68 percent of our performance audits and reviews in Iraq and Afghanistan have found significant problems with the direction of the programs we examined. Our December 2011 review of the USAID Local Governance and Community Development Project in Afghanistan, for example, highlighted serious deficiencies in project procurement practices, including procurements that were noncompetitive and inadequately documented, and identified nearly \$7 million in questioned costs. Meanwhile, our audit last month of the USAID Electoral Technical Assistance Program in Iraq found that, after 7 years and more than \$100 million in expenditures, a key strategic objective of the program—to help establish Iraqi processes and institutions capable of managing electoral events—had not been met. Iraq’s Chief Electoral Officer and other high-level officials acknowledged that the Independent High Electoral Commission could not function without continuing assistance and did not have plans or systems in place to provide for its future sustainability. We

also reported last month in our audit of the Sustainability of Selected USAID-funded Information Technology Systems in Iraq that 10 of 24 systems, with an aggregate value of \$62 million, were not completed, not functional, or not used by the Government of Iraq as intended.

In addition to presenting greater challenges to program execution, contingency settings are also host to high-stakes operations. The success or failure of our development assistance efforts in these settings critically affects our national security interests. The anti-fraud hotline we established in Pakistan should serve as a model to combat fraud in future contingency environments. In January 2011, the OIG and USAID/Pakistan launched a very successful anti-fraud hotline in Pakistan, facilitating the reporting of allegations of fraud, waste, and abuse in English, Urdu, Pashto, Sindhi and Balochi by phone, conventional mail, email, and through a web-based interface on the hotline website, www.anti-fraudhotline.com. The OIG is solely responsible for investigating these complaints and taking appropriate measures to address them. This hotline has been widely advertised and received 2,368 calls in FY 2011 with between 72 and 80 calls received each week. Allegations are uploaded to the hotline database for review by the OIG for action.

We welcome the Subcommittee's focus on improvements to contingency contracting, and are pleased to note that the Comprehensive Contingency Contracting Reform Act seeks to address a number of challenges that we have encountered in our work, including suspension and debarment, the pricing of goods and services, oversight of sub-contractors, U.S. jurisdiction for certain crimes committed by contractors or their employees abroad, and trafficking in persons.

One topic addressed by the legislation that has been a major focus of attention for our office in recent years is suspension and debarment. In late 2009, we audited USAID's suspension and debarment program and observed a number of problems with Agency practices and decision-making processes. USAID had not considered the use of suspension and debarment in many circumstances that would have warranted the use of these authorities and had taken suspension and debarment actions in response to only nine investigations in four years. Even when USAID pursued suspension and debarment actions, it did not always enter related information into the Federal database of excluded parties or document the actions that it took. Finally, in 20 of 54 cases that we examined, USAID could not establish that it had performed required checks on suspension and

debarment information during the bidding and award process to determine eligibility for awards.

We made a dozen recommendations to correct these problems and have intensified our engagement with Agency suspension and debarment personnel to encourage the exercise of suspension and debarment authorities where appropriate. In response to one of our recommendations, USAID established and staffed a dedicated unit in its Office of Acquisitions and Assistance with a singular focus on suspension and debarment and compliance issues. Whereas in 2009 USAID had no staff with a primary focus on suspension and debarment, the Agency now has a division with eight acquisition, assistance, and audit positions supported by an attorney from its Office of the General Counsel to handle these matters and other contractor accountability functions.

This change and an increased commitment by USAID's leadership to hold implementing partners accountable have produced noticeable results. While USAID scarcely used suspension and debarment in years past, USAID reported that in FY 2011 it took 63 suspension or debarment actions (suspension, proposed and actual debarments). This year, the Agency is on pace to exceed that total. Perhaps more significantly, USAID has demonstrated a willingness to hold its implementing partners accountable

regardless of their size. One particularly high-profile case demonstrated the Agency's commitment. In late 2010, after we provided evidence of serious corporate mismanagement, misconduct, and a lack of internal controls on the part of the Academy for Educational Development, USAID took the extraordinary step of suspending the firm—one of USAID's largest implementing partners—from future Federal awards.

The changes that USAID has implemented in the structure of its suspension and debarment program have reinforced accountability in development assistance. In recent years, we believe that USAID has generally exercised appropriate discretion in applying suspension and debarment authorities.

Based on the positive change that we have observed in USAID's use of suspension and debarment, we are cautious about the approach being taken with this legislation. Any new requirements for agencies to apply suspension and debarment should be carefully structured so as not to jeopardize ongoing investigations or penalize firms that are working with us to address corporate or employee fraud. Changes to the Federal Acquisition Regulation that would mandate the suspension of contractors in all cases in which they or their employees are charged with a crime or civil fraud, have the potential to limit agency discretion in counterproductive ways.

Exceptions may be necessary in fraud cases involving employees that are brought to the attention of the U.S. government by the contractors themselves, or in which a non-negligent contractor may be unaware of the fraud. Even where there is widespread, significant fraud, there may be situations in which suspension would not be in the best interest of the U.S. government - for example in instances involving open and ongoing criminal investigations. In cases in which the contractor has already taken corrective actions, instituted appropriate controls, and established its present responsibility, it may be counterproductive to take suspension or debarment actions.

Once suspension and debarment actions have been taken, they must be properly considered by acquisitions and assistance personnel along with data on firms' past performance and integrity. This information is a key consideration in the contracting process and can help the Government make better contracting decisions and spend taxpayer dollars more wisely. For this reason, we are encouraged to see provisions in the bill that seek to clarify past performance reporting requirements.

The legislation seeks to strengthen the independence of USAID's suspension and debarment staff and increases the accountability of Agency procurement officials. By separating the suspension and debarment

personnel from the Office of Acquisition and Assistance (OAA), the bill enhances the posture to undertake suspension and debarment actions without any real or perceived conflict of interest. Under the bill, OAA's role in overseeing the procurement functions that guide USAID's development and reconstruction contracts, grants, and agreements also receives the heightened visibility and accountability that contracting—including overseas contingency contracting—deserves by establishing a direct reporting relationship with the Administrator.

The pricing of goods and services is another key consideration in contingency contracting. We have found many cases in which USAID implementing partners have overpaid and excessive payments sometimes form the basis for criminal schemes involving kickbacks and procurement fraud. For example, in our November 2011 audit of USAID/Afghanistan's Afghanistan Stabilization Initiative for the Southern Region, we found that the contractor paid more than \$18,000 each month per vehicle to rent 13 armored vehicles when our audit staff obtained quotes for vehicle rentals ranging from \$13,000 to \$14,000. Greater transparency and availability of pricing information could help reduce related waste. With access to a database of pricing information in contingency settings along the lines

proposed in S. 2139, contracting staff would be in a better position to identify cost savings and reduce waste.

Contingency operations make for challenging accountability environments. Security conditions delay monitoring activities and prevent evaluators from conducting impromptu site visits. Subcontractors are sometimes insulated from day-to-day oversight by layers of sub-awards. Local court systems that may still be developing basic capabilities are, in many cases, the only venues available for prosecuting the crimes that we uncover. In this context, additional measures to reinforce contractor accountability are welcome. By clearly establishing U.S. civil jurisdiction for certain crimes committed by contractors or their employees abroad and by strengthening contractor accountability for trafficking-in-persons violations in the Federal Acquisition Regulation, S. 2139 promises needed improvements.

While our military service members, diplomats, and development professionals face the greatest difficulties operating in contingency settings, oversight work by OIGs is not without its challenges. The Comprehensive Contingency Contracting Reform Act includes welcome provisions intended to help address these challenges.

The principal challenges we face as an OIG in responding to the intensive oversight requirements of a contingency operation relate to staffing and funding. When contingencies arise, we reset our priorities and reallocate budgetary and personnel resources accordingly. We work quickly to establish a strong in-country presence by deploying our experienced cadre of Foreign Service auditors and investigators, and increasing awareness of our efforts to combat fraud, waste, and abuse through aggressive outreach.

Under zero-sum staffing and budgeting conditions, increased oversight in contingency settings means less oversight elsewhere in USAID OIG's \$31.5 billion oversight portfolio for development assistance. When we have had to reassign resources to support contingency operations, we have not lost sight of our other responsibilities. Fortunately, in past years, we have received dedicated appropriations for our oversight work in Afghanistan, Iraq, and Haiti, and have successfully maintained needed oversight of other important areas such as global health, democracy and governance, and education. From FY 2003 through the second quarter of FY 2012, nearly 85 percent of our performance audits were accomplished in countries other than Iraq or Afghanistan, demonstrating our ability to provide concurrent oversight of both traditional USAID operations and USAID work supporting contingency operations, made possible through

additional funding from dedicated appropriations for these contingency operations. Additional funding to support oversight activities during future contingency operations is essential for the USAID OIG to continue the quality and scope of our oversight of USAID programs and activities around the world.

In 2010, Congress provided us with enhanced personnel authorities that give us vital surge capacity. Unfortunately, our enhanced personnel authorities will begin to expire at the end of this fiscal year, constraining our operations. Section 103 of the Comprehensive Contingency Contracting Reform Act of 2012 offers relief through a provision that would allow us to hire temporary employees and bring aboard reemployed annuitants for up to 5 years. The enactment of these provisions would enable us to respond to emerging oversight requirements without the need for Congress to periodically reauthorize special OIG personnel authorities during future contingency operations.

However, in providing new personnel authorities, the legislation appears to address only the rehiring of Civil Service annuitants. While Civil Service annuitants currently provide important assistance to our office in Afghanistan, Haiti, and Iraq, we would also benefit from the international experience of retired Foreign Service officers during future contingency

operations. Most of our reemployed annuitant positions filled under current personnel authorities to provide oversight in Iraq, Afghanistan, and Haiti, are done so with Foreign Service investigators. Accordingly, if the legislation addressed the hiring of reemployed Foreign Service personnel as well, it would greatly enhance our ability to respond to the pressing personnel requirements of contingency operation oversight.

The public has a vital interest in transparency regarding contingency operations. Routine reporting helps keep the Congress and the public informed of key aspects of these operations. We recognize the importance of this reporting, and for that reason we publish quarterly and semiannual reports on our oversight efforts in Afghanistan, Pakistan, and Iraq. With respect to Pakistan, we also coordinate the development of a report on the progress of the U.S. Government's civilian assistance program that also details oversight plans and activities. The Comprehensive Contingency Contracting Reform Act of 2012 includes a requirement for similar quarterly reporting, akin to the current requirements for the Special Inspector Generals for Iraq and Afghanistan, on the part of inspectors general during contingency operations.

The legislation also seeks to establish a framework for the coordination of contingency oversight. Under S. 2139, the chair of the

Council of Inspectors General on Integrity and Efficiency (CIGIE) would designate a lead inspector general for a given overseas contingency operation from among the Inspectors General for the Department of Defense, the Department of State, and USAID. The designated lead inspector general would, in turn, be responsible for (1) conducting oversight of areas over which none of the statutory inspectors general have principal jurisdiction, (2) determining principal jurisdiction for oversight responsibilities in areas of overlapping jurisdiction, (3) authorizing the employment of temporary employees and annuitants by inspectors general in support of contingency operations, and (4) reporting to Congress on the progress of contingency operations and oversight activities. This framework for coordination is simpler, less bureaucratic, and more streamlined than the establishment of a new institution to address contingency operations under other proposals or utilized in Iraq and Afghanistan. This framework relies on the proven capabilities of the existing statutory OIGs and our strong track record of working together to ensure oversight of multiagency matters. It would greatly simplify planning, clarify authorities, and establish jurisdiction for each OIG and avoid the duplication of efforts, redundancy, and inefficiencies that the establishment of a Special Inspector General for Overseas Contingency Operations would generate.

We also suggest consideration of the formation of a “contingency operations oversight” subcommittee within CIGIE with representatives of the Inspectors General from the Department of Defense, the Department of State, and USAID, to address needs, mediate disputes, and make recommendations to the CIGIE chair, including the designation of the lead inspector general. This subcommittee should also request each respective inspector general to identify work force requirements to support determination of designation of temporary staff and rehired annuitants by the lead inspector general, as specified in the legislation, as well as serve as a forum for discussing oversight lessons learned from contingency operations.

Thank you for this opportunity to address the Subcommittee. We are encouraged by your continued attention to the important challenges that contingency operations present. We look forward to continuing to work with Congress and the Administration to meet these challenges and capitalize on opportunities to advance national security while saving taxpayer’s dollars. I would be happy to answer any questions you may have at this time.