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Statement for the Record

The military has relied on contractors since the Revolutionary War. But since the end of the Cold War, when the Department of Defense cut its military and civilian logistical and support personnel, reliance on contractors has increased dramatically. Beginning with the operations in the Balkans and continuing with the wars in Iraq and Afghanistan, contractors have composed about half of the Department of Defense's personnel in-country. In Iraq and Afghanistan alone, more than 260,000 private workers— most of them not American citizens—have been deployed. This explosion in the use of contractors in contingency operations has undermined U.S. strategic and financial interests, outsourced essentially governmental functions, and distanced American policymakers from the moral hazards of their decisions.

If the U.S. is to protect its vital national interests in a cost-effective manner, now and in the future, the Congress must pass and the President should sign S.2139, the Comprehensive Contracting Reform Act of 2012, as soon as possible. If we do not act expeditiously, we will continue to needlessly squander blood and treasure and undermine our image in current and future conflicts. War and peace are matters of national interest and national endeavor, and it is not appropriate to impose a management structure or ethos more appropriate in the corporate world.

S.2139 addresses most of the structural, systemic, and technical problems identified by the Commission on Wartime Contracting in Iraq and Afghanistan. This group, which was created through legislation introduced five years ago by Senators Claire McCaskill (D-MO) and Jim Webb (D-VA), has made a number of recommendations to deal with the problems created by the overreliance on contractors in warzones and the waste, fraud, and abuse pervading the awarding and implementation of contracts.

This legislation is necessary because officials in the Executive Branch have shown that they are unable or unwilling to implement most of the Commission's recommendations. If this legislation does not pass, these problems will remain unresolved, as they have not just over the past decade but since the 1990s when we deployed forces to the Balkans. If S.2139 is not passed, large amounts of appropriated money will continue to be wasted; in Iraq and Afghanistan at least $31 billion and possibly as much as $61 billion of $200 billion appropriated to contracts has been lost to contractor fraud and waste. Additionally, if S.2139 does not pass, contractors will continue to perform activities that are inherently governmental, thus frequently undermining the mission.

Close examination of Titles I and II of this legislation makes it clear that, if enacted, most of the recommendations of the Commission will be implemented. However, the

legislation could be improved by adding a Title III. Hopefully, this additional section can be added in committee, on the floor, or in conference.

Title I deals with the organization and management of the Federal Government for contracting for oversees contingency operations and is focused on the responsibilities of the President, the Office of Management and Budget (OMB), and the Departments of State, Defense, and USAID in their oversight.

The first title mandates that the President include information and the Director of OMB provide the Congress with details of why Overseas Contingency Operations (OCO) funds are needed and subsequently report in detail on how those funds were spent. To ensure that these funds are spent efficiently and effectively, it amends the Inspector General Act of 1978 to mandate that a lead Inspector General be designated for any Overseas Contingency Operation lasting more than 30 days. Similarly, it amends the Services Acquisition Reform Act of 2003 by adding responsibilities to the Chief Acquisition Officers for OCO. Hopefully these provisions will limit the various agencies' tendency, exploited in particularly egregious fashion by the Department of Defense, to transfer items more appropriately included in the core budgets into the OCO accounts to hide budget growth and cost-overruns.

The second part of Title I focuses on issues that cut across agency lines and requires Department of Defense, State, and USAID to establish a management structure to manage contracts in support of OCO and requires them to maintain and staff Suspension and Debarment Officials (SDO's) outside the Acquisition Offices. This measure is intended to ensure that there will be no conflicts of interest when it comes to suspending and disbarring contractors who do not perform, which has been a serious problem in the last decade.

The third and fourth subtitles of Title I outline the responsibilities of the Secretaries of State and Defense and the Head of USAID in ensuring that contracting activities in OCO are awarded and executed satisfactorily.

Title II focuses on Transparency, Sustainability, and Accountability in Contracts for OCO. The first subtitle specifies limitations of contract periods and subcontracting titles. It demands that, unless there is a waiver granted, contracts should be limited to three years for competitively bid contracts and one year for non-competitive contracts, that contracts have only a single tier of subcontractors, and that the Secretaries of State and Defense perform an annual review to determine for which functions it is appropriate to use contractors. The provision also limits the Secretaries' authority to enter into sole

source contracts. Senators McCaskill and McCain have been particularly tireless in targeting sole source contracts, which are particularly vulnerable to fraud and abuse.

The next two subtitles enhance the contracting process by establishing a uniformed contract writing system and a database of federal contracts; improves contractor accountability by requiring them to consent to personal jurisdiction in the United States, so fraud and abuse can be prosecuted; and makes it illegal to make misrepresentations regarding employment to potential workers, to counter the prevalent abuse of foreign workers by contractors in dangerous environments.

The final subtitle focuses on sustainability requirements for capital projects. It prohibits Department of Defense from entering into contracts over for over $1 million unless the project can be sustained by the host country and requires that all current capital projects be terminated within six months after passage of the act unless it is determined that the projects are vital to United States military and security objectives.

The legislation could be improved in at least two ways. First, the executive branch should be required to provide Congress with a list of specific activities that are inherently governmental. Second, rather than designating a Lead Inspector General from among the existing Inspectors General after the beginning of Overseas Contingency Operations lasting more than 30 days, the legislation should create a small, expandable permanent office of Inspector General that can provide oversight from the outset of contingency operations.

These provisions aim to end the waste of American taxpayers' money on large, frequently superfluous projects which are likely fall into disrepair or disuse after the departure of American personnel. We need funds for nation building at home, and can no longer finance non-essential projects abroad.

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