



The Potential Impact of Senate Bill 2139 (S.2139), the Comprehensive Contingency Contracting Reform Act of 2012, on the United States Agency for International Development (USAID)

Statement By Angelique M. Crumbly, Acting Assistant to the Administrator, Bureau For Management, before The Senate Subcommittee On Contracting Oversight

Tuesday, April 17, 2012

Chairman McCaskill, Ranking Member Portman, and distinguished members of the Subcommittee on Contracting Oversight, thank you for the opportunity to discuss the potential impact of Senate bill 2139 (S.2139), the Comprehensive Contingency Contracting Reform Act of 2012, on the United States Agency for International Development (USAID).

The more than 9,000 men and women of USAID work to provide effective economic, development, and humanitarian assistance in support of our U.S. foreign policy goals. How we improve our contracting practices, including our contingency contracting practices, directly impacts the success and sustainability of our mission. Accountability to Congress and the U.S. taxpayer for the funds we use to develop successful programs is our duty. And it is a duty that we take very seriously.

Therefore, USAID understands the significance and motivations behind this legislation. It addresses many of the management challenges that were highlighted in the report written by the Commission on Wartime Contracting (CWC), that you, Senator McCaskill, created along with Senator Webb. It also addresses some of the most important issues that we contend with through engagements such as Afghanistan, Iraq, and expect to contend with in a potential future contingency.

USAID has supported the CWC's goals, provided access to our missions and data, testified at its formal hearings, and implemented its interim recommendations to the greatest extent practicable.

This legislation represents a measure to strengthen accountability on behalf of the U.S. taxpayer, and goes far in an effort to re-establish trust in the government's ability to

manage its contracts portfolio undertaken as a result of contingency operations. USAID agrees we must institutionalize accountability in contingency contracting.

In the past two years, USAID Administrator Rajiv Shah instituted one of the most comprehensive reform packages I have seen in my 23 years of service in the federal government. Our USAID Forward reforms, as we have named them, target and challenge the status quo within the Agency, ensuring that we provide a more effective business model and deliver more sustainable and results-driven development programs.

Implementation and Procurement Reform is a key element of the Agency's overall operational USAID Forward reform agenda. This reform agenda is complementary to many of the recommendations of the CWC, and as a result, USAID has already made great strides in enhancing our oversight and accountability of the Agency's acquisition and assistance portfolio.

As the Acting Assistant to the Administrator, Bureau for Management, it is my responsibility to ensure that we take the practical and cost-effective steps necessary to improve our business processes and systems in order to achieve our broader development mission. In my capacity, I oversee the Agency's Chief Information, Financial and Senior Procurement Executive Officers as well as provide oversight of the Agency's almost \$2 billion Operating Expense budget. My staff is intimately involved in instituting our operational reforms under USAID Forward. We are conditioned--and thereby are conditioning our overseas staff--to ask how we can improve the way we do business to produce better, more cost-effective and appropriate results.

Accountability and oversight require serious attention and resources--not just in designated contingency zones but wherever USAID works. Countries with weak rule of law, little or no infrastructure, war-torn social or governmental obstacles, or reduced economic capacity are where we work every day - and can test the most stringent oversight standards we put in place. It is no secret that contingency operations in Afghanistan and Iraq have tested USAID's capacity and capabilities beyond the norm. In those cases, we worked on development solutions in the midst of active military engagements. In many cases, we succeeded, but in some, we did not.

Today, I will provide some updates on the work that we have been doing to meet your, the CWC's, and our own expectations on improving management, oversight, and accountability at USAID. Following are some examples of enhanced accountability and stewardship of U.S. taxpayer dollars:

- Committing to transparency: The public can now view our spending, including spending on overseas contingency operations, through an on-line dashboard called

ForeignAssistance.gov.

- **Strengthening oversight:** In February 2011, we stood up a Compliance Division within the Bureau for Management's Office of Acquisition and Assistance (M/OAA) to serve as the central repository for any and all referrals of administrative actions, including suspension and debarment actions. In just one year the Division issued 102 administrative actions and recovered nearly \$1 million. Compare this to the eight (8) administrative actions issued between FY 2003 and FY 2007.
- **Promoting enhanced competition:** We established the Board for Acquisition and Assistance Reform (BAAR) in 2010. In its first year alone, the BAAR's recommendations resulted in a 31% increase (from 29 to 38 awardees) in the number of prime contract awards, representing a total combined ceiling of \$15.9 billion. The mere presence of the BAAR has led to a significant increase in competition and a broadening of our partner base.
- **Instituting cost savings:** Initiated in 2010, our Acquisition Savings Plan yielded approximately \$171 million in cost savings or avoidance.

USAID has learned some difficult lessons from Iraq and Afghanistan, but we have also achieved some significant successes. As Administrator Shah noted to the CWC last year, here are a few examples:

- **Afghanistan:** We have put more than 2.5 million girls back in school; integrated into the Afghan public sector 16,000 civil-service trainees; aided farmers transitioning towards growing legitimate crops; and helped dramatically improve health care, particularly among women.
- **Iraq:** Financing to more than 30,000 women has enabled \$63 million in economic activity, and agribusiness programs have created 40,000 sustainable jobs.

As you requested, I will now turn to offering my comments on the provisions that directly impact USAID within the proposed Comprehensive Contingency Contracting Reform Act of 2012.

Responsibilities of Inspector General (Sec. 103)

I defer to our USAID Office of Inspector General for comment.

Suspension and Debarment Officials (Sec. 112)

USAID agrees that the Suspending and Debarring Official (SDO) must maintain autonomy from the contracting agents to make the tough decisions. We do, however, have

concerns with requirements that the SDO and his/her staff may not be located or co-located within the acquisition office. After our discussions with the CWC, and a review of the 2009 USAID Office of Inspector General report on suspension and debarment, we reviewed the management structures with the Bureau and determined that it was best to separate the duties for suspension and debarment cases into a dedicated unit within the Office of Acquisition and Assistance (M/OAA) - the Compliance Division that I described previously. Currently, this unit reports directly to the Director of M/OAA within the Bureau for Management, who also serves as the current SDO for the Agency.

Because USAID contracts are most often "cradle to grave" actions--requiring a contracting officer to manage the initial start up of an activity, oversee it through its lifespan, and then close out the contract activity--the Compliance Division in Washington, D.C. serves the important function of keeping worldwide records on partners and their performance across a wide range of contracts or grants.

This Division is staffed by procurement analysts to maintain a necessary level of technical expertise for review of tips and information that come into the division via contracting officers, contractors, the USAID Inspector General, or another source. After receiving tips and actionable information that poor performance, waste, fraud, or abuse may be occurring under a USAID award, the Compliance Division collects and reviews the case, develops a recommendation, sends it to the General Counsel for approval, and then submits the recommendation to the SDO. The SDO performs a review of the case and issues a final decision. The duties and the interests of those who conduct the program with the affected contractor and those who recommend the case go forward remain separate from our current SDO.

Internally, the Division works closely with our Office of General Counsel; in fact, one member of the team is a General Counsel detailee. I also appreciate the work of the Office of the Inspector General (OIG) in supporting this Division and its efforts to provide relevant information for ongoing cases. The coordination offered by the OIG has played a critical role in allowing us to pursue the number of cases we have in this past year alone. By sharing relevant information from ongoing investigations, we are more able to address and correct situations immediately rather than waiting until an investigation ends and a report is issued. The Division also actively engages with the Interagency Committee on Debarment and Suspension, attending each meeting and weighing in on necessary activities to keep other agencies abreast of ongoing cases.

In addition, under the direction of our Administrator, we created the Suspension and Debarment Task Team, which is spearheaded by the USAID Deputy Administrator and directly engages the SDO and the Compliance Division. This task team triggers whenever an issue arises involving the potential waste, fraud, abuse, or poor performance of one of

our major partners. It serves as a real-time vehicle to keep the Administrator's office well informed of the situation and abreast of any actions taken by USAID or by the contractor. The intention of the legislation to improve the independent authority and role of the SDO is welcomed by USAID, and in fact we are already considering changing the SDO designation to a more senior level of Senior Deputy Assistant Administrator within the Bureau for Management. However, Section 112(b)(2) negatively impacts USAID in that we do not agree that the unit should be separated from M/OAA because we believe that the current structure has the necessary safeguards against conflicts of interest. We believe that a legislative mandate to separate the unit would negatively impact the unit from a technical as well as an efficiency perspective.

Automatic Suspension and Discretionary Authority (Sec. 113)

I understand the bill seeks to ensure that apparent cases of fraud, waste, or abuse are dealt with swiftly and appropriately. We agree with swift action when these situations are uncovered. We must take issue, however, with any mandate that removes the procedural protections for a case-by-case review of allegations, or reduces the discretionary authority of the SDO. USAID has learned a number of lessons from previous suspension and debarment cases where apparent actions appeared necessary, especially those in contingency situations, when in actuality they were not. We take seriously our role to stop fraud, waste, or abuse as soon as it is discovered. This means that we review all necessary administrative actions independent of the contractor's work with the Agency or the development programs that may be affected by any necessary administrative action. Simply stated, we do not play favorites.

One of the greatest lessons learned from our experience with suspensions and debarments in recent years is that information sharing early in the process is critical. Thus, we are engaging more actively with our OIG, as well as within the interagency, through our new Compliance Division as soon as potential fraud, waste, abuse, or other serious issues arise.

Reorganization of Contracting Function (Sec. 131)

We do not concur with the re-organization of our contracting function proposed in Sec. 131. While we appreciate the intention to elevate the acquisition function to the topmost level within our organization, we believe that USAID's current organizational structure already provides this elevation and the direct line of sight to the Administrator that goes with it. As an acquisition professional with more than 20 years of experience in public service, specifically at USAID, I am aware of its importance and have supported a dotted-line reporting relationship of the Senior Procurement Executive to the Administrator, as is the case with our Chief Information Officer and Chief Financial Officer.

In addition, codifying the acquisition organization of USAID in statute would reduce our

flexibility to make future adjustments as the need arises. For a small, nimble agency with a mission that entails immediate response to unpredictable global circumstances, it is critical that we be able to rapidly adapt to changing circumstances.

Finally, the acquisition function is integrally related to the other functions within the Bureau for Management, and they work together collaboratively. As a unified service Bureau focusing on helping employees carry out our development mission efficiently, effectively, and in compliance with the law, we bring together contracting, IT, finance, operational budget, and real property professionals.

Another point for reconsideration is the requirement under Section 131 (b) that the Director of M/OAA be appointed as a non-career employee. The Director of M/OAA effectively carries out the relevant duties of a Chief Acquisition Officer (CAO); and, in line with other key positions held by career employees within our Agency, including the Chief Financial and Information Officers, the Director of M/OAA is a career official. We have found that this Senior Foreign Service career designation affords the institutional expertise, overseas experience, and organizational continuity necessary and crucial for the position. Finally, the annual reporting requirement under Section 131 appears to duplicate many other reports required by Congress. We would ask for consideration as to whether there is an opportunity for sharing data points from other existing reporting requirements.

Training (Sec. 133)

USAID supports increased training for contract administration personnel. One immediate improvement I look forward to kicking off this May is a large-scale acquisition and assistance training class for Mission Directors and Deputy Mission Directors who are the most senior officials for our overseas divisions. Responsibility for planning and execution of our specific overseas programs via contracts or grants remains with them. This executive course will help our senior staff to be more accountable for the types of awards we make in contingencies, as well as in non-contingency situations.

Reduced Length of Time for Contingency Contracts/One-Tier Subcontracts (Sec. 201)

USAID concurs with the spirit of this provision; however, we have some concerns about the practical aspects of its implementation and would welcome the opportunity to discuss this further. Though intended to promote competition, this requirement could ultimately cause unintended outcomes. Specifically, legislatively imposed time limits, subcontract tier requirements, and additional work requirements may not produce the results desired in terms of more competitors. We certainly share the Subcommittee's goal of dealing with potentially inflated costs, limited competitions, and abuses that can arise during wartime contracting. In order to protect U.S. taxpayer investments, we have made a series of management improvements to shape the way we do business. In Afghanistan, for

instance, we have:

- Instituted a policy to limit our Afghanistan awards to one-year mechanisms and smaller amounts in part to contend with reports of rising fraud and abuse;
- Included a subcontractor clause in all new awards since 2011 that permits USAID to restrict the number of subcontract tiers, requires the prime contractor to perform a certain percentage of the work and prohibits subcontract "brokering" or "flipping," which is when a subcontractor passes the work to someone else, which can increase the risk for corruption;
- Established a joint program with the USAID Inspector General, for concurrent audits on all locally incurred costs of program-funded USAID contractors and grantees;
- Increased our contracting staff from three (3) Contracting Officers in 2007 to 19 Contracting Officers today with approximately eight (8) who are dedicated to administrative actions;
- Created new positions for On-Site Monitors at program sites in order to devolve project monitoring responsibilities to USAID personnel in the five regional commands.

In Iraq, we made a number of management changes to meet our mission's needs including modifying contracts to include more stringent reporting requirements. We also increased the number of Contracting Officer Representatives (CORs) in country and provided them with additional guidance on ensuring compliance related to reporting. As we have moved forward in Iraq and Afghanistan, we have found that the management and oversight of the awards remains the critical factor in protecting against, waste, fraud and abuse.

In some contracts, time limitations on an award may be suitable. But for the majority of USAID awards, longer timelines are necessary in order to achieve the needed development outcomes, as is the case for example with rule of law or health programs. This is one of the reasons we ask that time limits be set at the discretion of the contracting officer and those managing the program in country. They are the ones who know the market on the ground and the specific technical needs and can actively monitor the award process, reducing its time as needed. USAID has invested resources to integrate more rigorous development program planning into our training for the acquisition workforce which we believe will assist in limiting the longer, less clearly defined contract awards that we have seen in the past.

For these reasons, we do not support the legislation's proposal in Section 201(a)(2)(A) or

(B) which requires a hard-stop of three-year contract periods during a contingency and imposes a requirement that a full and open competition which receives only one bid must be re-competed after one year's time.

We also have concerns regarding the legislation's limitations on the number of tiers under a prime contract. Based upon our experiences in Iraq and Afghanistan, USAID believes that we will need a requirement of no less than two tiers in the majority of cases. In fact, two tiers is the most common level we are implementing for new awards in Afghanistan.

The legislation does allow for the waivers, which we greatly appreciate to meet those situations where appropriate. However, rather than legislating a process that will potentially add to the administrative burdens of those working in war zones, USAID suggests that this language be revisited to better meet the realities of contingency contracting requirements on the ground.

Performance of Certain Security Functions in Overseas Areas (Sec. 202)

I defer to our Department of State colleagues. I can share with the members of this Subcommittee that USAID engages closely with State Department's Office of Diplomatic Security in Washington D.C. and with its Regional Security Officers overseas for appropriate guidance in contingency zones. We will continue to follow Chief of Mission guidance to address the security needs of our projects, contractors and grantees.

Justification and Approval for Sole Source Contracts of Unusual and Compelling Urgency (Sec. 203)

This section addresses one of the persistent concerns we have had throughout our engagements in Afghanistan and Iraq. In fact, our procurement reforms have helped to significantly expand competition for USAID awards and achieve the best value for the U.S. Government. Sole source awards are one option in a very large toolbox for acquiring necessary services and is also a tool that we may utilize during urgent and compelling situations. However, it should be noted that whenever possible, our policy is to limit these types of awards. As mentioned earlier, USAID chartered a new body in 2010 called the Board for Acquisition and Assistance Reform which reviews any proposed sole source award over \$15 million. More importantly, Administrator Shah instituted a new policy where any sole source award (for contingency contracting) above \$20 million that serves as a follow-on activity must be personally approved by him before award.

We agree with the additional approval requirements for sole source awards in this section, but are concerned about potential duplication of effort. Justifications and Approvals (J&As) are automatically posted online on the e-Gov website - FedBizOpps.gov. Any request for a J&A can be made directly to this existing resource. We are concerned that an additional annual reporting requirement places a heavier workload burden on our staff.

Therefore, as a manager who strongly promotes efficiency, I request that the FedBizOpps solution be considered more closely.

Uniform Contracting Writing System (Sec. 211)

USAID has spent considerable resources deploying our current contract writing system for our unique operational environment, which involves "cradle-to-grave" procurements in a wide variety of countries and situations around the world. It allows us to write, manage, oversee, and report on USAID awards from anywhere. This system, called the Global Acquisition and Assistance System (GLAAS), became fully operational for all USAID operating units, including Afghanistan and Iraq, this past fall. The system, which was an off-the-shelf product that we tailored to meet USAID contracting requirements, manages more than 80 percent of all USAID obligated funds, including contracts, grants, and cooperative agreements. We have consulted with both the Departments of State and Defense and found that our contract writing needs are different and unique. Therefore, we believe that retaining the GLAAS system would be the most efficient and cost-effective way to manage USAID's acquisition and assistance portfolio.

Database on Prices of Items and Service Under Federal Contracts (Sec. 212)

USAID agrees that Section 212: Database on Prices of Items and Service Under Federal Contracts could be a beneficial tool to the U.S. Government, particularly for those contractors who work across agencies via multiple awards. We have actively participated in the Office of Management and Budget's Acquisition Cost Savings Initiative, and we are utilizing shared tools, such as the GSA schedule, as much as possible. In many cases, however, USAID works with host country local awardees where services and fee structures do not meet the needs of a U.S. domestic agency. We would ask for consideration to be given to the type of information that would be required within this database.

I would like to share with the members of this Subcommittee our efforts to avoid future cost overruns or wasteful spending. As part of our own management structure improvements, we resourced a new team within M/OAA to serve as dedicated cost and price analysts to provide surge capacity and additional analytic capability to our contracting officers around the world. The unit will specifically focus on providing data and analysis for high level procurements, including those within a contingency operation as needed. We will use this new team to:

- Review and analyze cost and price data in contractors/subcontractor and recipient/sub-recipient proposals as required for field and Washington, D.C. procurements;
- Liaise, coordinate, and participate in Contractor Purchase System Reviews;

- Review advance and progress payments;
- Conduct pre-award audits and/or surveys as needed; and
- Review and/or assist with market surveys at project design stage and prior to exercising contract option periods.

Trafficking in Persons (Sec. 222)

USAID, along with the Department of State, continues to support strengthening measures to combat human trafficking, including the legislative remedies listed in S.2139. These measures are built into our GLAAS system, which contains provisions to punish awardees using U.S. government funds to engage in this activity.

We take the issue of human trafficking to be a priority contracting concern. In February 2011, we implemented an Agency-wide Counter Trafficking in Persons (CTIP) Code of Conduct, which informs USAID employees about: 1) the due diligence protocol to be conducted prior to hiring contractors; 2) training for Agency personnel to recognize and report out on signs of abuse, in addition to fraud awareness training conducted by the OIG; 3) a standardized protocol for conducting investigations; and 4) development of legal sanctions for responding to abuses. USAID has been following the provisions as outlined in the Trafficking Victims Protection Act and would welcome clarification on Section 222 to determine if our current CTIP clause contained in all USAID awards will be appropriate to meet this legislation.

Contractor Comments in Past Performance Systems (Sec. 224)

USAID proposes that official responses still be received by contractors and become part of the permanent record within the Past Performance Information Retrieval System (PPIRS). Allowing contractors to present their side of the story, however, is a step we strongly believe maintains the integrity of the record and improves the accountability of USAID. We would welcome the opportunity to discuss this further with you or your staff.

Finally, it is easy to say that we will produce sustainable programs, be more accountable, and remain as transparent as possible. As you are well aware, sustainability is one of the greatest challenges we face during a time of war or conflict. In fact, last year the Administrator released detailed sustainability guidance for our programs in Afghanistan. USAID continues to internalize lessons learned in contingency operations in order to shape our future efforts. That is why the ongoing work of this Subcommittee, and our own USAID Forward reform efforts, informed by the CWC's study results, are so important.

We applaud the emphasis that S. 2139 places on accountability and look forward to working with you to refine and implement the goals of the bill which are to enhance

security, increase accountability, and improve contracting for overseas contingency operations.

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

Chamber Senate

Committee Subcommittee on Contracting Oversight, Committee on Homeland Security and Governmental Affairs