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Statement of
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before the

Subcommittee on Technology, Information Policy,
Intergovernmental Relations and Procurement Reform,
House Committee on Oversight and Government Reform

on

Are government contractors exploiting workers overseas?
Examining enforcement of the Trafficking Victims
Protection Act

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Chairman Lankford, Ranking Member Connolly, and distinguished members of the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform:

Thank you for this opportunity to discuss past and ongoing efforts by the Department of Defense (DoD) Office of Inspector General (DoD IG) in the area of combating trafficking in persons (CTIP). The DoD IG previously presented testimony on oversight efforts concerning the topic of human trafficking in 2004 and again in 2006.

Completed DoD IG Efforts

DoD IG initiated its first assessment of DoD CTIP as a result of a May 31, 2002, request made by thirteen Members of Congress to the Secretary of Defense seeking a “thorough, global and extensive” investigation into the publicized allegation that U.S. military leadership in Korea had been implicitly condoning sex slavery at the hands of traffickers.

In response to those Congressional concerns, the DoD IG initiated an assessment project to assess efforts to combat human trafficking within the United States Forces-Korea. In addition, DoD criminal investigations of DoD contractors underway during this period led to an expanded assessment focus incorporating the European Command

theater of operations, specifically its activities in Bosnia-Herzegovina and Kosovo.¹ The two assessments recommended that the Secretary of Defense issue a policy statement that clearly and unambiguously set forth DoD opposition to any activities promoting, supporting, or sanctioning human trafficking, which the Undersecretary of Defense for Personnel and Readiness subsequently did. In addition, DoD established annual CTIP awareness training for all Service members and DoD civilians, which has been in effect since 2004. With respect to the TIP issues raised concerning Korea, the Command took multiple actions to prohibit and prevent US military, DoD civilian, and DoD contractor personnel from patronizing establishments it had declared off-limits due to reports of forced labor or commercial sex.

In 2005, the DoD IG initiated an evaluation of CTIP efforts across DoD in further response to the 2002 request from Members of Congress. The resulting report, issued in November 2006, recommended that the Office of the Secretary of Defense, the Military Services and Combatant Commands develop CTIP policy and program guidance, and that the military commands evaluate the effectiveness of their CTIP awareness training. In response to the report, in 2007, the Under Secretary of Defense for Personnel and Readiness issued DoD Instruction 2200.01, “Combating Trafficking in Persons,” that established policy and assigned CTIP program responsibilities across the Department.

¹ “Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I – United States Forces Korea,” July 2003, www.dodig.mil/fo/Foia/H03L88433128PhaseI.pdf, and “Assessment of DoD Efforts to Combat Trafficking in Persons, Phase II – Bosnia-Herzegovina and Kosovo,” December 2003, www.dodig.mil/fo/Foia/HT-Phase_II.pdf.

The Under Secretary also created and filled the position of DoD CTIP Program Manager within that office. Additionally, the CTIP program officer for each DoD Component reports on CTIP training metrics and effectiveness to the DoD CTIP Program Manger within the office of the Under Secretary of Defense for Personnel and Readiness.

The most recent oversight efforts conducted by the DoD IG were in response to Public Law 110-457, the “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,” signed on December 23, 2008. Section 232 of the Act required the Inspectors General of DoD, State and USAID to “...investigate a sample of ... contracts, or subcontracts at any tier, under which there is a heightened risk that a contractor may engage, knowingly or unknowingly, in acts related to trafficking in persons...” The Act also required the respective Inspectors General to submit a report to Congress, no later than January 15, for three consecutive years beginning in 2010.

The DoD IG consulted with the State Department’s Office to Monitor and Combat Trafficking in Persons and selected for assessment four Combatant Commands with overseas responsibilities and contracting presence: U.S. Pacific, U.S. Central, and U.S. European and Africa Commands, in that order. To date, the DoD IG has issued two annual reports - covering the Pacific and Central Commands - and completed fieldwork for a third report on the European and Africa Commands, which will be issued in

January 2012.² The contract sample in each case included all construction and service contracts with a place of performance outside the United States, a period of performance in FY 2009 or later, and with a total contract value of \$5 million or greater. This provided a reasonable data set which particularly focused on labor-intensive contracts.

The U.S. Pacific Command CTIP report, issued on January 15, 2010, was based on a sample of 99 contracts which had a place of performance in the Republic of Korea, Japan, and the Territory of Guam. We found Federal Acquisition Regulation (FAR) clause 52.222-50, “Combating Trafficking in Persons,” present in 93 percent of the contracts we reviewed. However, 42 percent of those clauses were added shortly before the site visit. Further, the team found that the Command’s contract quality assurance reviews did not specifically include reviews of contractor TIP compliance and/or violations, and that contracting offices did not have access to an effective DoD process for obtaining TIP violation information from DoD criminal investigative organizations.

The DoD IG recommended that the Director, Defense Procurement, and Acquisition Policy modify widely-used contract writing software to ensure that the FAR CTIP clause was automatically included in contracts or solicitations. Also recommended was that the Defense Federal Acquisition Regulations System (DFARS) guidance be

² IE-2010-001, “Evaluation of DoD Contracts Regarding Combating Trafficking in Persons,” January 15, 2010, and SPO-2011-002, “Evaluation of DoD Contracts regarding Combating Trafficking in Persons: U.S. Central Command,” January 18, 2011. For copies of the reports see <http://www.dodig.mil/Inspections/IE/Reports.htm>.

updated to require CTIP oversight in contract quality assurance plans. The Director initiated the modification and had it distributed in 2010. And, in January 2011, the Director also revised the relevant DFARS guidance.

The DoD IG team also determined that contracting officers lacked the benefit of an effective process for obtaining information concerning TIP-related violations. DoD Instruction 2200.01, “Combating Trafficking in Persons (CTIP)”, September 15, 2010, requires the Secretaries of the Military Departments and Commanders of the Combatant Commands to “provide information on all known TIP cases to the USD (P&R), DoD Program Manager.” However, providing timely communication of substantiated and publicly releasable TIP-related indictment and conviction information to DoD contracting organizations remains a systemic challenge.

The report on U.S. Central Command, issued January 15, 2011, was based on a sample of 369 contracts with place of performance in the Republic of Iraq, the State of Kuwait, the State of Qatar, and the Kingdom of Bahrain. A CTIP clause was present in 79 percent of the contracts reviewed.

The team also found that the U.S. Central Command Contracting Command had published a supplement for inclusion in all service and construction contracts within the Command’s area of responsibility to strengthen the FAR CTIP clause. This was in response to allegations that some DoD contractors were providing poor living conditions or withholding employee passports.

However, the DoD IG team also identified a significant number of contracts where the Command supplement had actually replaced the required pre-existing FAR clause. To correct this, the team recommended that the Commander, U.S. Central Command Contracting Command modify their guidance to clarify proper usage of both the FAR and Command supplement CTIP clauses. The Commander concurred and issued modified guidance in September 2011.

The team also identified examples of proactive action taken by two U.S. contracting commands in Kuwait, both of which had incorporated a requirement to include CTIP compliance in contract quality assurance reviews. Additionally, Army Contracting Command-Kuwait had developed and implemented a CTIP questionnaire, translated into five common employee languages, as part of quality assurance audits.

In addition, the Defense Contract Management Agency (DCMA) in Kuwait had included CTIP-focused questions into their Theater Quality Plan quality assurance contract audits which reviewed contractor knowledge and understanding of CTIP clause requirements. DCMA representatives also provided reports based on periodic health and sanitation inspections they had conducted of employee camps in Iraq. In 2010, the DoD IG team visited several employee camps run by subcontractors in Iraq; the employees interviewed verified that DCMA personnel checked conditions on a regular basis. The team did not observe any conditions in the camps that would constitute a CTIP violation.

The DoD IG team was unable to review conditions in Afghanistan in time to meet the January 15, 2011, publication date for the report of the assessment of U.S. Central Command. However, we are planning to conduct this evaluation in FY 2012.

In 2009, 2010, and 2011, the team requested that DoD criminal investigative organizations provide TIP-related criminal investigative summary data for each of these years. To date, these requests have resulted in reports of only two alleged TIP incidents. In both cases, the contractor had dismissed the offending employee.

Ongoing Assessments

The next DoD IG CTIP report, in compliance with Public Law 110-457, will be issued in January 2012. It will be based on a sample of approximately 250 contracts with place of performance in the U.S. European and Africa Commands. In September 2011, the team conducted CTIP field evaluations of the Commands' headquarters and military installations in Germany and Italy for this assessment.

In addition to and concurrent with the multi-year review of contracts required by PL 110-457, the DoD IG has self-initiated an assessment of DoD Component CTIP program compliance and performance. As of this date, we have reviewed CTIP policies, procedures, awareness, and implementation in over 70 DoD organizations, including responsible officials in the Office of the Under Secretary of Defense for Personnel and

Readiness, and headquarters and major subordinate commands of Military Services, Defense Agencies and Combatant Commands. At each location, the team interviewed:

- commanders and staff responsible for the CTIP program;
- law enforcement personnel and legal counsels;
- contracting officers, specialists, and quality assurance specialists, contracting officer representatives; and
- representatives of contracting firms, and when possible, their employees.

In addition, at each location visited, the DoD IG team interviewed contracting officials, none of whom reported that they were aware of any TIP-related offense that had been brought to the attention of a DoD contracting office.

DoD Non-Appropriated Fund Organizations

During the DoD IG CTIP assessment of the U.S. Pacific Command, in 2009, the team noted that non-appropriated fund entities were not required to include the FAR CTIP clause in their contracts. Therefore, we included an assessment of the Navy Exchange (NEX) and Army and Air Force Exchange Service (AAFES) CTIP policy and procedures within the reviews of the U.S. Central Command and the U.S. European and Africa Commands.

The review of the NEX operation in the Kingdom of Bahrain determined that the Command had required all managers, associates, and vendors to take CTIP training.

Further, in December 2010, NEX Command headquarters in Virginia reported having submitted recommended changes to a proposed update of DoD Instruction 4105.71, “Nonappropriated Fund (NAF) Procurement Procedure,” which would require inclusion of a CTIP clause in all non-appropriated fund contracts. As of October 2011, the revision process was still ongoing.

The review of AAFES Europe identified that the Commander had issued a Manpower Associate “Bill of Rights,” available in English and eight other languages, that subordinate organizations were directed to post on employee bulletin boards for easy access. The Commander also had established an employee passport possession policy to ensure that “contractors do not withhold the passports of TCNs [Third Country Nationals] working in our facilities.”

In Kuwait, the DoD IG team observed AAFES passport checks and employee interviews first-hand while accompanying a contracting officer representative to several facilities. No CTIP violations were observed. The team also received a detailed briefing from the AAFES legal counsel outlining several additional TIP-related incidents and the contract remedies applied including show cause notices and cure letters.

Conclusion

The DoD IG remains committed to providing oversight support of the U.S. Government's "zero tolerance policy" against trafficking in persons. We will continue to evaluate the related DoD programs for compliance.

I thank you again for this opportunity to update you on DoD IG oversight of DoD actions to combat trafficking in persons.