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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

Human Trafficking

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, 2006, and before your subcommittee on November 2, 2011.

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 the DoD IG to expand its assessment focus to incorporate DoD and DoD contractor activities in the European Command theater of operations, in particular, 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.

Subsequently, on January 30, 2004, the Deputy Secretary of Defense issued a memorandum, “Combating Trafficking in Persons in the Department of Defense,” that stated “It is the policy of the DoD that trafficking in persons will not be facilitated in any way by the activities of our Service members, civilian employees, indirect hires or DoD contract personnel.” In addition, DoD established annual CTIP awareness training for all DoD Service members and civilians, which has been in effect since 2004. With respect to the trafficking in persons (TIP) issues raised concerning Korea, the Command has taken multiple actions to prohibit and prevent DoD military, civilian, and contractor personnel from patronizing establishments it had declared off-limits.

¹ “Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I – United States Forces Korea,” July 2003, www.dodig.mil/fo/Foia/H03L88433128Phasel.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.

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. 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 is required to report annually to the DoD CTIP Program Manager on CTIP training metrics and effectiveness.

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 all three annual reports assessing these commands, the final one on January 17, 2012.² The reports primarily focused on whether the contracts sampled were in compliance with Federal Acquisition Regulation (FAR) requirements.

The contract sample in each assessment included all construction and service contracts within the respective combatant command’s area of responsibility, 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.

² IE-2010-001, “Evaluation of DoD Contracts Regarding Combating Trafficking in Persons,” January 15, 2010; SPO-2011-002, “Evaluation of DoD Contracts regarding Combating Trafficking in Persons: U.S. Central Command,” January 18, 2011; DODIG-2012-041, “Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. European Command and U.S. Africa Command,” January 17, 2012. For copies of the reports see <http://www.dodig.mil/Inspections/IE/Reports.htm>.

The U.S. Pacific Command CTIP report, issued on January 15, 2010, was based on a sample of 99 contracts with places of performance in the Republic of Korea, Japan, and the Territory of Guam. We found 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.

The DoD IG also recommended in that report 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. We also recommended that the Defense Federal Acquisition Regulation Supplement guidance be updated to require CTIP oversight in contract quality assurance plans. The Director, Defense Procurement, and Acquisition Policy, initiated the software modification and, in January 2011, revised the relevant guidance.

In addition, the DoD IG team determined that contracting offices did not have access to an effective DoD process for obtaining TIP violation information from DoD criminal investigative organizations once their cases were closed, which would then provide the option of administrative contract remedial action. To address this issue, DoD updated DoD Instruction 2200.01, “Combating Trafficking in Persons (CTIP)”, September 15, 2010, requiring 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, publicly releasable information on TIP-related criminal indictments and convictions to DoD contracting organizations remains a challenge.

The report on U.S. Central Command, issued January 18, 2011, was based on a sample of 369 DoD contracts performed in the Republic of Iraq, the State of Kuwait, the State of Qatar, and the Kingdom of Bahrain. We determined that 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 its own 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 received by the Command 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 was mistakenly used to replace the required pre-existing FAR clause. The team recommended that the Commander, U.S. Central Command Contracting Command modify the 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 DoD contracting commands in Kuwait, both of which had implemented a requirement to include CTIP compliance in contract quality assurance reviews. Further, 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 a Theater Quality Plan for quality assurance contract audits reviewing 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 living conditions in the camps that would constitute a violation of CTIP statutes or regulations.

The DoD IG report on the U.S. European Command and U.S. Africa Command³, issued January 17, 2012, was based on a sample of 267 contracts executed in the Federal Republic of Germany, the Italian Republic, and the United Kingdom.

We found some form of a CTIP clause present in 70 percent of the contracts reviewed; however, only half had the current required FAR clause. We recommended the Military Departments correct the contracts identified as deficient in our review. The team also determined that three DoD contracting organizations specifically discussed the FAR CTIP clause during post-award orientations with contractors to increase awareness of CTIP programs.

In neither Combatant Command did the team find or have reported to it TIP violation incidents.

DoD IG TIP Investigations

There have been systemic obstacles which have hindered successful TIP criminal investigations, including jurisdiction limitations, foreign law enforcement capabilities, command investigative standards of evidence, and the challenges of evidence collection in contingency operation contracting environments.

³ U.S. Africa Command is headquartered in Stuttgart, Germany.

In spite of these difficulties, since 2006 the Defense Criminal Investigative Service of the DoD Office of Inspector General has investigated 21 TIP-related allegations worldwide, resulting in five cases being referred to the Department of Justice, of which one was accepted for prosecution. The violation in the accepted case was determined to be centered more on fraud against immigrants than on human trafficking, and, in any case, did not have a DoD nexus. Therefore, the Defense Criminal Investigative Service closed its investigation. The case was pursued by local law enforcement organizations and the U.S. Immigration and Customs Enforcement of the Department of Homeland Security.

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 DoD Resale Activities & Non-appropriated Fund Policy office within the Office of the Under Secretary of Defense for Personnel and Readiness has issued guidance to DoD Non-appropriated fund organizations reinforcing the application of trafficking in persons statutory requirements to their contracting activities.

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 during the 2010 field assessment, 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.

Ongoing DoD IG Assessments

A DoD IG team evaluating the DoD CTIP program in Afghanistan completed fieldwork in February 2012. The draft report will be provided to the Department for management comments within the next few weeks, and the final report is expected to be issued in May 2012.

The team examined 240 contracts administered by Army, Navy, and Air Force commands, as well as Defense Agencies in Afghanistan, and visited nine separate installations throughout Afghanistan. It conducted over 110 interviews with military commanders and contracting personnel, interviewed representatives from 10 U.S. and foreign contractors, and met with 145 contractor employees (Afghan and third-country nationals).

It is worth noting is that the mandatory CTIP clause was included in 93 percent (224 of 240) of the contracts reviewed, a significant improvement from previous Combatant Command assessments, including for the rest of U.S. Central Command.

During our fieldwork, the DoD IG team was made aware of an investigation recently conducted by the NATO International Military Police that had identified an Afghan company as involved in TIP violations. The case had been subsequently referred to the contracting officer, who took action recommending debarment. Additionally, the team was informed by third country nationals at one U.S. base that they were living in what could be adverse living conditions. We referred this complaint to the prime contractor, the U.S. contracting organization responsible for the administrative oversight of the contract, and the base commander/commandant, who initiated an immediate investigation.

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 the 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 counsel,
- contracting officers, specialists, and quality assurance specialists, contracting officer representatives, and
- representatives of contracting firms, and when possible, their employees.

This report is scheduled for final release in the summer of 2012.

November 2, 2011 HOCR Hearing

During the November 2 hearing before this subcommittee, the Deputy Inspector General for Special Plans and Operations was asked to provide recommendations for

improving CTIP compliance and enforcement. Our response, dated January 31, 2012, included suggestions designed to strengthen DoD TIP-related oversight, compliance, enforcement, and data availability and accuracy, to include:

- DoD Component Commanders and their Component Inspectors General could make CTIP a special interest item in Command inspections, assessments, or program reviews. Further, these special interest item inspections should include non-appropriated fund activities conducted by any DoD Component. Regular comprehensive reviews by DoD Components oversight agencies would increase Command awareness, improve policies, ensure the inclusion of required CTIP language in contracts, and verify contractor and subcontractor compliance.
- DoD could assess and centralize its TIP-related data collection with respect to: identification of the number of third country nationals supporting DoD contingency operations; consolidating contractual remedies applied in cases of TIP allegations; and identifying instances of criminal violations and sanctions.

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 with relevant statutes, policies and regulations.

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