

TESTIMONY OF
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OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF STATE AND
THE BROADCASTING BOARD OF GOVERNORS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM

ON

HUMAN TRAFFICKING AND ABUSIVE LABOR PRACTICES INVOLVING
THIRD-COUNTRY NATIONALS HIRED TO PERFORM SERVICES UNDER
CONTRACTS OR SUBCONTRACTS TO THE FEDERAL GOVERNMENT ON
OVERSEAS CONTRACTS

MARCH 27, 2012

Thank you Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee for the opportunity to discuss our views on strengthening enforcement of trafficking-in-persons (or TIP) in government contracts.

Our Office of Inspector General (OIG) commends the subcommittee for its leadership in developing critical legislation on TIP enforcement in government contracts.

Mr. Chairman, OIG believes that TIP compliance can be better monitored by strengthening the legal framework for enforcing TIP compliance and prosecuting TIP violators; establishing requirements in future contracts and the Federal Acquisition Regulation (FAR) that make the contractor accountable for compliance with TIP laws and regulations; and holding Contracting Officers (COs) and Contracting Officer's Representatives (CORs) accountable for the enforcement of TIP compliance. In addition, the OIG will continue to vigorously perform its oversight role to ensure that the Department is properly discharging its programmatic responsibilities.

1. Strengthen the Legal Framework

To ensure that the Department of Justice (DOJ) and other Federal agencies have criminal sanctions available for use in combating TIP violations, the OIG

agrees with DOJ's support of a robust and comprehensive Civilian Extraterritorial Jurisdiction Act (CEJA) and also the proposed Blumenthal Amendment to 18 U.S.C. § 1351.

CEJA would provide clear and unambiguous criminal jurisdiction to prosecute non-Department of Defense government contractors and employees for a broad spectrum of overseas misconduct, some of which are TIP violations. We do, however, suggest CEJA use the same approach as the Military Extraterritorial Jurisdiction Act (MEJA) and provide jurisdiction over *all* conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year (18 U.S.C. felony offenses). The MEJA approach provides the greatest flexibility for fighting crime associated with U.S. overseas activities and reduces the potential that CEJA might be rendered confusing or obsolete by future amendments to the specific crimes enumerated in 18 U.S.C.

The Blumenthal Amendment to 18 U.S.C. §1351 would specifically criminalize fraudulent recruiting, soliciting and hiring practices for purposes of work on U.S. Government contracts performed outside of the United States or on military installations or missions or other property or premises owned/controlled

by the U.S. Government, clarifying the availability of criminal sanctions for this key aspect of the TIP problem.

CEJA, the Blumenthal Amendment to 18 U.S.C. § 1351, and the modification to FAR 52.222-50 will collectively enable U.S. Government authorities to better enforce and prosecute TIP violations, especially in contingency environments, and provide a greater deterrent by making the threat of criminal sanctions more imminent.

2. Establish Specific Requirements in Future Contracts

OIG supports the proposed amendments to the Trafficking Victims Protection Reauthorization Act (TVPRA), Section 111, which would require a condition in every contract, grant, or cooperative agreement that authorizes Federal departments or agencies to terminate a contract if the contractor or subcontractor engages in human trafficking or uses forced labor. In addition, future contract solicitations, where it is known that the labor force will include third-country nationals should, at a minimum, require the following provisions:

1. The contractor shall provide the contracting agency a detailed description of housing accommodations it intends to provide for its foreign workers.

2. The contractor shall provide workers with standard contracts in English and their respective native language and include policies on wages, overtime rates, allowances, salary increases, the contract term, leave accrual, and other personnel matters.

3. The contractor shall provide workers with written information about labor laws, including the U.S. Government's zero tolerance policy about TIP, in English and the workers' native languages.

4. The contractor shall provide written assurance that it violates no U.S., host-country, or third-country labor laws, including recruiting third-country national employees and improperly retaining employee passports and other personal documents.

5. The contractor shall provide the contracting agency a repatriation plan 120 days prior to completion of the contract.

All future contracts that include the use of third-country nationals as part of their labor force should include penalties for TIP non-compliance. In addition, incentives should be used in the contract that motivate prime contractors to "police" themselves and their subcontractors. An incentivized, self-policing prime contractor community with active and effective COR oversight will increase the likelihood of success in minimizing TIP violations and other overseas contracting

issues. The proposed amendments to TVPRA, Section 111 are a step in the right direction.

In addition, we believe that the FAR should be modified so that clause 52.222-50, "Combating Trafficking in Persons," includes the same language found in FAR 52.203-13(b)(3)(i), "Contractor Code of Business Ethics and Conduct."

Specifically, OIG believes that FAR 52.222-50 should state:

The contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or close out of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving TIP.

The inclusion of this language would require timely, written reporting of possible TIP violations to the OIG, which is not currently required.

3. Hold COs and CORs Responsible for TIP Oversight

COs and CORs are at the front lines of TIP enforcement around the world and must effectively monitor and enforce standards as well as report violations. The quality, quantity, and location of CORs are a key to combating TIP and other

contract oversight problems. CORs should be made aware of the importance of their role, and they should receive specific, regularly updated, training on TIP.

In March 2011, the Department of State issued Procurement Information Bulletin (PIB) 2011-09. Although the PIB requires that the FAR's TIP clause be included for solicitations and contracts over the micro-purchase threshold and requires a housing plan where applicable, it merely provides COs and CORs with suggested actions to follow to minimize the risk of TIP violations in government contracts.

Although the Department of State's PIB is a good starting point, much of the content of the guidance is not mandatory within the Department and is not applicable to all Federal agencies. Federal agencies could improve TIP oversight by drafting regulations requiring their CORs to:

1. Make at least semiannual, unannounced visits to the contractor-provided housing site.
2. Interview contractor employees to ensure that they have been briefed on the TIP clause and obtain copies of TIP-related training materials.

Lastly, the agency should require all COs and CORs to document TIP monitoring programs in the contract files.

OIG will use a cross-disciplinary approach to oversee the Department's overall efforts to enforce its zero tolerance policy regarding TIP-related violations. OIG will continue to perform audits, evaluations, inspections and investigations of areas vulnerable to TIP abuses.

Since the November 2011 hearing, *Are Government Contractors Exploiting Workers Overseas? Examining Enforcement of the Trafficking Victims Protection Act*, the Office of Audits has been conducting a compliance follow up review of its January 2011 report, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons in Four States in the Cooperation Council for the Arab States of the Gulf*, to determine whether the Department took corrective action in response to our recommendations. The preliminary results of that review indicate that the Department has taken some corrective action, to include improvements in third country national housing in Riyadh, issuance of PIB 2011-09, and improved communication with the contractors concerning the laws and regulations relating to passport retention. However, the Office of Audits has also identified other third country national housing conditions that have not improved and at one location it has deteriorated since we issued the January 2011 report. In addition, the Department has not taken action on other recommendations such as requiring contractors to provide third country national

employees with contracts in their respective languages that include policies on wages, overtime rates, contract terms, leave approvals, and other personnel matters stating that it is too expensive and futile because the third country nationals cannot read. We expect to issue the compliance follow up review report in May 2012.

Our Office of Inspections continues to include reviews of contract provisions and monitoring of the treatment of third country nationals working on U.S. Government contracts in the course of its post inspections. A report of inspection of the Office to Combat Trafficking in Persons will soon be finalized, but that is focused on that office's primary role to report on and assist country efforts to combat trafficking.

Our Office of Investigations (INV) has been engaging the Department of Justice (DOJ) Human Trafficking Prosecution Unit, as well as other Federal investigative organizations with TIP responsibilities, in a proactive effort to determine current law enforcement involvement and ways to broaden involvement in combating TIP abroad. In addition, INV has created a position to manage the OIG TIP investigative program, serving as a primary point of contact and liaison for TIP-related investigative matters. Currently INV is coordinating with the Bureau of Diplomatic Security and the Office to Monitor and Combat

Trafficking in Persons to establish policy designating the OIG Investigation Hotline as the office to which employees and contractors should report suspected TIP violations. In addition, as a new member of the TIP working group in Baghdad, which includes members from other Department entities, Department of Justice, the International Organization for Migration, and non-governmental organizations, INV is now better able to reach areas and victims which they previously could not. Since the November 2011 hearing, INV has received two allegations related to TIP violations abroad and has one open TIP related investigation. Although prior to the November 2011 hearing, in June 2011, as a result of an OIG investigation, a company providing security services to Embassy Kabul agreed to pay \$7.5 million to the Department of Justice to settle allegations that the company had engaged in multiple contract violations, including violating TIP-related FAR provisions.

Once again, thank you, and I am pleased to answer any questions you may have.

EVELYN R. KLEMSTINE, ASSISTANT INSPECTOR GENERAL



As Assistant Inspector General for Audits, Ms. Evelyn R. Klemstine is responsible for leading, directing, monitoring, and reporting audit activities, including financial statement and performance audits, evaluations, and management reviews that promote the economy, efficiency, and effectiveness of U.S. Department of State and Broadcasting Board of Governors (BBG) programs and operations. From 2004 to 2009, Ms. Klemstine served as the Assistant Inspector General for Auditing at the National Aeronautics and Space Administration (NASA). She was responsible for a broad range of professional audits of NASA programs and projects and contractor activities that focused on issues impacting the NASA mission. These issues related to the Space Shuttle and International Space Station

Programs, procurements, the financial management program, and information technology security. In addition, she was responsible for oversight of audits by independent public accountants of non-profit organizations, colleges, and universities receiving substantial NASA funding.

From 1995 to 2004, Ms. Klemstine served at the Department of Defense (DoD) as the Program Director for the International Programs Division, Readiness and Logistics Support Directorate, Office of Inspector General. She was responsible for supervising and monitoring audits related to international and cooperative aircraft acquisition, export controls, foreign disclosure policies, and international agreements. Under her leadership and direction, her division tackled complex, controversial, diverse, and politically sensitive international and intergovernmental issues. Her responsibilities included audits and evaluations related to the Cooperative Threat Reduction Program (dismantlement of nuclear and chemical weapons in the former Soviet Union), North Atlantic Treaty Organization, United Nations, and Foreign Military Sales programs as well as export control policies and procedures.

As a result of her outstanding achievements, Ms. Klemstine has received numerous awards throughout her career. In November 2004, the Secretary of Defense presented her the DoD Distinguished Civilian Service Award “for her leadership and exceptional devotion to duty to the resolution of large-scale organizational problems directly impacting national security and Defense strategy considerations.” Other significant awards she has received include the DoD Inspector General’s Meritorious Award, the DoD Inspector General’s Superior Civilian Service Award, and the President’s Council on Integrity and Efficiency Award for Excellence in Management.

Ms. Klemstine was born in Hamburg, Germany. She received her Bachelor of Science of Accounting in 1979 from Virginia Polytechnical Institute and State University (Virginia Tech) and her Master of Business Administration in 1986 from Boston University.