

**Written Testimony of Sam McCahon, McCahon Law Office, LLC
Before the House Committee on Oversight and Government Reform,
Subcommittee on Technology Information Policy, Intergovernmental Relations and
Procurement Reform.**

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

November 2, 2011

Chairman Lankford, Ranking Member Connolly, and members of the Subcommittee:

Thank you for inviting me to testify before you today and thank you for taking an interest in this practice of modern day slavery. I'm Sam McCahon and I am currently engaged in private practice, working primarily in the Middle East & India. The focus of my practice is U.S. government contracting in contingency areas and the establishment of corporate compliance programs for organizations in developing nations and contingency environments. A significant portion of my time is dedicated to pro bono work to combat trafficking in persons on U.S. government contracts. In support of the trafficking counter-measures my colleague, Sindhu P.K., and I have collectively spoken with several thousand victims of trafficking on government contracts.

Background

As an attorney who has spent a significant portion of his career investigating allegations of procurement fraud on behalf of the U.S. government and corporations, I look forward to talking to you today about the dynamics of trafficking in persons on government contracts performed in contingency areas.

In my written testimony I would like to focus on three key issues relating to trafficking in persons on U.S. government contracts in contingency areas:

- First, I will also describe the common schemes used by subcontractors and recruiters to exploit workers and reduce them to the status of indentured servants.
- Second, I'll describe the scope of trafficking on U.S. government contracts in particular and the inadequacy of governmental efforts to date to mitigate, much less stop the prolific trafficking in laborers from developing nations who are serving U.S. government interests.
- Finally, I will touch on mitigation measures the government can take to abolish trafficking in humans on government contracts.

Prior to elaborating on the key points of discussion, I would like to share with the committee some of the life experiences that have facilitated my observations and influenced the analysis of fraudulent recruiting and kickbacks taking place on government contracts.

My career in government contracts began twenty-two years ago as an assistant professor of government contracts at the Defense Acquisition University (ALMC). Since that time, I have served as Chief of the Contract Law Branch for Saudi Arabia and Kuwait, 22nd Support Command, in Operation Desert Storm; U.S. Army Regional Contract Counsel and Procurement Fraud Advisor for Bosnia, Croatia and Hungary (NATO); and as a trial attorney in the U.S. Army Procurement Fraud Division, Suspension/Debarment Branch. I have lived in Afghanistan, Iraq, Kuwait and Saudi Arabia for a total of nine years. With the exception of the military tours in Afghanistan, my efforts have focused on U.S. government contracts, representing the government and government contractors. I have also served as a federal prosecutor with the U.S. Department of Justice and Assistant Attorney General, State of Missouri, investigating and prosecuting fraud against the U.S. Government.

Although there are many companies engaged in trafficking on U.S. government contracts in Afghanistan and Iraq, they used a tried and tested business model to perpetrate the fraud. The following steps are the standard operating procedure:

1. Subcontractor/Prime contractor establishes direct contact with a recruiting company in the developing nation. The purpose of the personal contact by the subcontractor is to solidify the kickback scheme.
2. Arrangements are made for the contractor company to pay the recruiter for the services of recruiting, i.e. physical, airfare to site, VISA and fee.
3. The contractor and recruiter also agree to the amount of the kickback paid to the contractor for giving the recruiting firm the business. This kickback is typically 50% of the money charged by the recruiter to the prospective employee. (This conduct constitutes a violation of the Anti-Kickback Act of 1986)
4. Recruiter retains the services of subagents to solicit victims. This process facilitates the layering or onion skin affect in order to provide plausible deniability up the trafficking chain.
5. The recruiter will solicit victims from farming villages who are typically without resources. This category of victim is also less sophisticated concerning the fraudulent techniques used by the recruiter.
6. Recruiter deceives the victim into believing that he will receive money far beyond that which he will actually earn. Often times, but not always, the location of the worksite is misrepresented.
7. Recruiter's agent informs the victim that he will need to pay a fee, between \$2,500-\$5,000 in order to get the well paying job with good working conditions servicing the U.S. government. This action induce the victim to pay the high recruiting fee and will help ensure future compliance with the contractors dictates because the victim will become indebted in order to pay the commission to the recruiter.
8. Victims will typically obtain the money from a loan shark or use their house or dowry gold as collateral. The interest on the loan is between 35% and 45%. The money paid to the loan shark must be provided to the recruiter/subagent prior to departure for the worksite.
9. Workers are not provided a written contract prior to their departure from their host nation. If they do receive an agreement once they arrive at the worksite, it will not be written in a language they can read.

10. Once the victim arrives in the combat zone he is typically housed for several months without pay and not permitted to call his family. When he does receive his first work and pay it is typically 50% of what he was promised by the recruiter. He tells his employer what was promised by the recruiter, but the subcontractor/prime informs him that is a matter between the worker and the recruiter.

By this time, the worker has missed monthly payments to the loan shark. He now pays approximately 50-75% of his monthly wages just to service the interest on the loan. Even though he now knows he was deceived, he is helpless. If he speaks to anyone with the government he is terminated immediately and sent home. (The prime contractor typically instructs its employees that they are forbidden to inquire or report trafficking conditions of subcontractors, thereby completing the conspiracy of silence and mitigating detection of the crime.) The victim cannot quit because he has the outstanding loan to the loan shark. He must remain, working 12 hour days, 6 to 7 days per week in the combat zone. By the time he completes two to three years, he has still not retired the debt. He is an indentured servant to the U.S. government contractor.

In response to the focal question of this subcommittee, the Trafficking Victims Protection Reauthorization Act has not had any deterrent effect on labor trafficking on government contracts. Subcontractors and labor brokers have been exploiting and engaging in modern day slavery in support of U.S. government contractor for nearly 10 years. The practice is unabated. Moreover, prime contractors have a history of turning a blind eye to the practice and lack any motivation to get involved in mitigation efforts. My first exposure to the prime contractor response to trafficking evidence occurred at a conference where I was a speaker. The conference was conducted in the summer of 2007 and was intended to discuss measures contractors could take to mitigate the trafficking practice. A Vice President responsible for contracting was asked what measures his company, a current LOGCAP prime contractor, was taking to mitigate the practice of trafficking on government contracts. He merely stated, "We have no privity of contract with the subcontractor's employees, so it is not our problem". Unfortunately, that is the prevalent position taken by prime contractors.

There are several mitigation measures the government can take to abolish human trafficking on U.S. government contracts. None of the measures will result in a budgetary impact. Together, they would have the affect of abolishing trafficking on government contracts. From a contract administration perspective, the government can shift the responsibility for abolishing trafficking by subcontractors where it belongs, with the prime contractor. This task can be accomplished in the solicitation phase of the acquisition cycle for contracts anticipated to use unskilled or semi-skilled labor. The procurement contracting officer can require the prime contractor to provide a Trafficking in Persons mitigation strategy and recruiting plan to be evaluated as evaluation factors for award. Just as the government requires a subcontracting plan for socio-economic reasons, it should evaluate measures the contractor will take to abolish the practice of modern day slavery currently being supported by the U.S. taxpayer. The solicitation can also mandate that all workers on the contract must receive a written copy of their contract, binding upon the worker's employer, that identifies at a minimum: 1) the work location; 2) amount of compensation; 3) any fees charged to the worker; 4) duration of the agreement; and 5) the agreement must be written in the language of the host nation from which the worker is recruited and provided at least five days prior to departure for the worksite. The subcontractor should also

be held responsible for payment to the worker the day after departure from the nation from which the worker is recruited.

From a legislative perspective, Congress can amend 18 U.S.C.§1351, (Fraud in Foreign Labor Recruiting) to include language prohibiting fraudulent recruiting in support of U.S. government contracts performed outside the U.S.. This minor amendment would go to the crux of the human trafficking phenomena on government contracts, fraudulent recruiting. It would enhance reporting and adverse action by triggering the mandatory contractor disclosure requirements contained in the Closing the Contractor Fraud Loophole Act of 2008 as implemented in FAR 3.1.

A quote recently appeared in the New Yorker about trafficking on government contracts. The article was written by Sarah Stillman after conducting on the ground interviews with victims. They are words I have had relayed to me on many occasions by my colleague, Sindhu, who has also spoken with thousands of trafficking victims on U.S. government contracts: “The American people are a good people...they will help us if they know what is happening”.

Thank you for the opportunity to share with you, the representatives of the American people, what is happening to hundreds of thousands of laborers supporting U.S. government operations and policies in Iraq and Afghanistan.

Sam W. McCahon