DEPUTY SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-1010

MAR 24 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Waiver of Limiting Legislation for Commanders' Emergency Response Program (CERP) for Fiscal Years 2008 and 2009

Section 1202 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Public Law 109-163), as amended by section 1205 of the NDAA for FY 2008 (Public Law 110-181), authorizes the use of Department of Defense operation and maintenance funds in fiscal years 2008 and 2009 for the CERP established for Iraq, and a similar program for Afghanistan.

Section 1202 also authorizes the Secretary of Defense to waive any provision of law that, if not waived, would prohibit, restrict, limit, or otherwise constrain the exercise of authority under CERP.

The nature of the CERP precludes the application of federal procurement and contracting rules, and requires payments to individuals and other nongovernmental entities that may not be consistent with federal laws, or are subject to military claims laws and procedures. This memorandum records my waiver of the following provisions of law, effective January 28, 2008:

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- Title 10 United States Code (U.S.C.) Chapters 137, 140, and 141, relating to federal procurements.
- Title 41 U.S.C. Chapter 4, relating to federal procurements.
- Title 10 U.S.C. Chapter 163, relating to military claims.
- Title 22 U.S.C. Chapter 32, relating to foreign assistance.
- Any provisions of annual National Defense and Foreign Assistance Authorization Acts that would, but for this waiver, prohibit, restrict, limit, or otherwise constrain the conduct of the CERP.
- Any provisions of annual Department of Defense and Foreign Operations Appropriations Acts that would, but for this waiver, prohibit, restrict, limit, or otherwise constrain the conduct of the CERP.

Questions regarding this waiver should be directed to Ms. Audrey Clark. She can be reached at 703-695-9437 or by e-mail to audrey.clark@osd.mil.

Gordon England
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