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PROCUREMENT OF NAVY BOAT BARRIERS

HEARING

BEFORE THE

SEAPOWER AND EXPEDITIONARY FORCES SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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PROCUREMENT OF NAVY BOAT BARRRIERS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SEAPOWER AND EXPEDITIONARY FORCES SUBCOMMITTEE,
Washington, DC, Wednesday, June 6, 2007.

The subcommittee met, pursuant to call, at 2:45 p.m. in room 2212, Rayburn House Office Building, Hon. Gene Taylor (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. GENE TAYLOR, A REPRESENTATIVE FROM MISSISSIPPI, CHAIRMAN, SEAPOWER AND EXPEDITIONARY FORCES SUBCOMMITTEE

Mr. TAYLOR. The subcommittee will come to order.

I would first like to make an observation to my colleagues that we have received a unanimous consent from the full committee to meet while the full committee is meeting, so in case anyone is questioning the legitimacy of this subcommittee meeting.

Today the subcommittee will receive testimony from senior officials at the Naval Command Investigative Service, or NCIS, or the General Services Administration, GSA, on the acquisition of floating barriers, which, along with other measures, help protect Navy ships and installations from the specific threat of small-boat attack.

Testifying before this committee today we have Mr. Thomas Betro, Director of NCIS; Ms. Cathy Riddick-Brown, Deputy Assistant Director for Acquisition and Logistics at NCIS; Mr. James Williams, Commissioner of the General Services Administration, GSA. On behalf of the members of the subcommittee, I thank you for coming and look forward to your testimony.

After the tragic suicide bombing of the USS Cole in October of 2000, the Navy correctly recognized that additional security measures must be taken to protect our ships pierside and at anchor. The NCIS was given the task to lead the effort in this vital force protection initiative.

Unfortunately that effort appears to have been beset with contractual irregularities which have caused significant additional costs to our Nation's taxpayers. Make no mistake, this subcommittee fully supports force protection measures. This subcommittee under both the chairmanship of Mr. Bartlett and continuing today has led the fight to up-armor Humvees, expedite improved body armor and helmets, and, most significantly, increase the rate of production of mine-resistant, ambush-protected vehicles, commonly known as MRAPs.

Our main concern is with cost and schedule overruns in Navy and Marine Corps programs. Unfortunately, I am hard pressed to

point to a single significant acquisition program which is currently progressing on budget or on schedule.

Members of this subcommittee are determined to provide to our Navy and Marine Corps the best ships and equipment in sufficient numbers that the Nation can provide, but we will continue to be frustrated as program after program reports cost overruns and schedule delays.

It is not the concept of installing force protection barriers which brings us here today. In fact, I applaud former Chief of Naval Operations (CNO) Admiral Vern Clark with recognizing that our Nation has a vulnerability and moved quickly to solve it. I am sure he expected his organization would execute his orders with the proper level of professionalism.

Today we on this subcommittee, with the full support of our full committee and Chairman Ike Skelton, are attempting to fund the construction of 313 ships for our United States Navy for our current CNO Mike Mullen. We will not be able to accomplish this goal if the service itself cannot adequately handle routine acquisition projects. Every dollar wasted is a dollar that cannot go to buy a ship or an aircraft or right now an MRAP.

This issue is particularly troubling since our committee was first made aware of possible waste of taxpayers' money by reading on the front page of the Washington Post. I was not briefed, nor do I believe that any of the members of this subcommittee were informed by the Navy that there had been irregularities in contracting.

Based on the information available to this committee, it appears that the acquisition program violated a number of standard procedures. These include the improper use of the governmentwide GSA services contract which was designed to provide IT support to government agencies; the use of multiple invoices to stay below contract price thresholds; and authorizing unnecessary contractor fees. These are serious irregularities, possibly criminal.

What is of interest today are the questions: How did this happen, where was the oversight, why did it take two years for the improper practices to be revealed, and, most importantly, what have you done to fix the internal problem?

Finally, I would like to remind the members of this subcommittee that an ongoing criminal investigation into these matters is in practice. It is not the intentions of this hearing to jeopardize that effort. I understand that the NCIS and the GSA have continuing efforts to resolve all issues relating to these contracts. I further understand that based on this event, the NCIS and the GSA have reorganized departments and have accomplished other internal changes to prevent this type of issue from occurring again. I look forward to the witnesses' testimony concerning these changes.

I will now turn to my friend, the gentleman from Maryland, Ranking Member Roscoe Bartlett.

STATEMENT OF HON. ROSCOE G. BARTLETT, A REPRESENTATIVE FROM MARYLAND, RANKING MEMBER, SEAPOWER AND EXPEDITIONARY FORCES SUBCOMMITTEE

Mr. BARTLETT. Thank you, Mr. Chairman.

Good afternoon, ladies and gentlemen. I wish I could say we were here today to applaud the Navy's responsiveness to an urgent force protection requirement that emerged after the attack on the USS Cole in Yemen on October 12, 2000. This is a personal and important issue to me. It may seem unimaginable, but 2 of the 17 sailors who were killed on the USS Cole came from small towns in Washington County, Maryland. U.S. Navy Seaman Craig Wibberley from Williamsport, and Fireman Apprentice Patrick Roy of Keedysville were both 19.

What I will always remember, and this was before 9/11, were the hundreds and thousands of people who lined the routes to Craig Wibberley's grave at St. Mark's Episcopal Church in Booneboro and Patrick Roy's grave at Antietam National Cemetery. The Civil War hallowed ground was reopened by the National Park Service at the request of Patrick's family.

Unfortunately, the good work the Navy did do to ensure our sailors and marines were protected from small-boat attacks while they were at port or anchored have been overshadowed by the recent article in the press headlining the millions of dollars apparently wasted on this important effort. So for the record, let me echo Chairman Taylor's remarks and emphasize that in comparison to the amount of time it typically takes the DOD to procure a new capability, the speed of this program was indeed impressive. From the time of the attack, the fleets's requirements for barriers were identified and the funds provided within three months. A solution was found and tested within five months after that, and orders were being placed within five months after testing.

By the time allegations of procurement irregularities surfaced two years ago, most of these systems were installed and protecting our men and women. That is good news. Sadly, we now know that this program had its share of bad news. I am interested in the testimony from our witnesses today because I believe there is more to this story than appeared in the press. I am hopeful that we will learn that the system responded appropriately and addressed any wrongdoing that may have been found. But whether the story represents another example of systemic problems with our defense acquisition system, or whether this is merely a case of a few bad apples, those are two important takeaways.

First, Mr. Taylor is right. The first time I learned of this was when I read the paper a couple of weeks ago. While I understand that an investigation is ongoing, and it would be inappropriate to reveal too many details publicly, I would strongly encourage the Navy to keep us informed about these matters. It does a disservice to the good work of our acquisition personnel who perform every day on behalf of the warfighter and taxpayer for Congress to remain in reactionary mode in responding to incidents after they are first reported in the media.

Second, we have another lesson in the need for thorough acquisition workforce training and understanding contractual issues not only within acquisition programs, but also within the investigative services and the prosecutor's office.

Clearly, it is possible that a more thoroughly trained acquisitions staff within NCIS might have caught these issues earlier or better, yet kept them from happening in the first place. This committee is

strongly supportive of keeping inherently government functions within the government, in part to avoid the cost of contractors who provide little value added to the procurement process. I sincerely hope the Department of Defense and the Congress can work together to stem the erosion of these critical functions within the government.

Again thank you to our witnesses, and thank you, Mr. Chairman. I hope we learn from valuable lessons today.

Mr. TAYLOR. The Chair now recognizes Mr. Thomas Betro.

STATEMENT OF THOMAS BETRO, DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS)

Mr. BETRO. Thank you, Mr. Chairman, Ranking Member Bartlett. It is a pleasure to be here today to try to address this issue of procurement of boat barriers. I had submitted a statement for the record, but if it pleases the committee, I would like to summarize that statement orally today.

Mr. TAYLOR. Mr. Betro, it is the custom of this committee to have a five-minute rule. It has been the custom of this subcommittee to allow the witness to speak as long as he would like as long as we don't find ourselves in a filibuster. So with unanimous consent, we will waive the five-minute rule and allow you to speak freely.

Mr. BETRO. Thank you, Mr. Chairman.

My name is Thomas Betro, and since January 2006 I have served as Director of the Naval Criminal Investigative Service. With me is Cathy Riddick-Brown, who is our Deputy Assistant Director for Acquisition and Logistics.

We very much appreciate the subcommittee's sensitivity to the fact that the matter before us today remains the focus of an ongoing criminal investigation. There will be some limitations, I believe, on what we can discuss in an open hearing, but we understand the subcommittee's desire to receive information, and we will be as responsive as we can to those desires.

As the element within the Department of the Navy that has primary responsibility for investigating procurement fraud, we are acutely sensitive to the fact that every time a Navy dollar is wasted, it means one less dollar to support our warfighters. As we speak today, approximately 120 NCIS personnel are deployed to Iraq, Afghanistan, the Horn of Africa and elsewhere in support of the global war on terror. We understand that lost dollars may mean the difference in NCIS's ability to properly train and equip our own personnel before we send them in harm's way.

I would like to start today by highlighting some of the things that NCIS has done relative to the reported improprieties associated with the boat barrier procurements.

In June 2003, NCIS initiated a criminal investigation into these matters following the receipt of allegations of improprieties. We initially tasked the NCIS inspector general to look into these matters, but upon determination that there may be some criminal involvement, the case was transferred to our Washington, D.C., field office where they initiated a criminal investigation.

From the outset, NCIS has included the Defense Criminal Investigative Service, which is the felony investigative arm of the Department of Defense Inspector General, in all of our investigative

efforts. This includes interviews, interrogations, and even polygraph examinations of former NCIS employees. All 24 NCIS investigative reports associated with these matters have been provided to both DCIS and the GSA Inspector General's Office. We also sought out and received audit support from the Defense Contract Audit Agency. We have shared information fully with our partners in this joint criminal investigation.

Moreover, NCIS and DCIS have jointly presented this case to three separate U.S. Attorneys for potential prosecution and civil action starting in April 2004. NCIS has been diligent in pursuing both prosecution and civil remedies. The case remains pending before the U.S. Attorney for the District of Columbia.

Additionally, upon determining that these improprieties occurred, NCIS made major structural and process changes. In a moment Ms. Riddick-Brown will address procurement reforms we have implemented.

I want to note that in October 2003, NCIS divested itself of the mission of technology validation, procurement and installation of physical security equipment, including the boat barriers in question. We have also disestablished the NCIS department that had been responsible for these procurements. Because we divested ourselves of these operations and disestablished this department, we have had to reconstruct many of the events described today from our investigative case files and from the recollection of those who worked in that department but not directly involved in the Waterside Security Systems. None of the individuals who were directly involved by those procurements are currently employed by NCIS.

Let me turn now to the areas that the subcommittee specifically inquired about. First, what was the requirement for these barriers, and how did NCIS become the lead organization for their procurement? The requirement was identified in the aftermath of the USS Cole in October 2000. Within weeks of that event, each of the fleet commanders was tasked by the Chief of Naval Operations to identify measures to boost force protection. Several fleets identified the need for boat barriers.

The NCIS Law Enforcement Physical Security Department, at the time known as NCIS Code 24, was tasked to execute the funding identified for these measures. At the time, Code 24 was responsible for program management of a number of Navy physical security systems stemming from additional CNO staff responsibilities held by the Director of NCIS, as the Special Assistant to the CNO for Naval Investigative Matters and Security.

Prior to the Cole attack, Code 24 had the responsibility for DON electronic security system design and installation, as well as other security systems, though not boat barriers. In the immediate wake of the Cole bombing, Code 24 and contractor personnel conducted site surveys and worked to identify boat barrier options. In the interest of urgency, to deploy boat barrier capability as soon as possible, attention focused on commercial off-the-shelf, or COTS, solutions. The Dunlop boat barrier, a British system already in use by the Royal Navy in Scotland, was identified as the only COTS option.

Full-scale tests of the Dunlop boat barrier system were conducted in San Diego in May 2001 with the help of the Naval Facilities En-

gineering Service Center. In May 2001, the Navy established new security standards, including requirements for the use of water barriers where appropriate and/or practical, especially for strategic assets.

In August 2001, NCIS Code 24 was identified as the Navy boat barrier program manager by the CNO's staff element responsible for antiterrorism and force protection. From September 2001 to February 2003, Code 24 was involved in buying 667 Dunlop barriers. After NCIS's original purchase of 667, 30 more boat barriers were procured by other Navy commands. According to the Naval Facilities Engineering Command, NAVFAC, these barriers today remain in use at five CONUS and five OCONUS sites, with 535 deployed and 75 spares in the Navy inventory. Thus, some 90 percent of the barriers are still deployed or available for use.

Based on the records we have, NCIS estimated that the costs associated with Code 24's procurement of these 667 barriers was $30.7 million. This is a slight downward revision from the estimate provided in my formal statement. Of this amount we estimate that some $2.6 million was applied toward contractor and subcontractor administrative fees.

NCIS estimates that the cost of installing these barriers was some $24.1 million, including up to $2.1 million of this amount in similar administrative fees. I should note that we never have received any allegation of illegality with regard to the installation of the barriers.

NCIS's Code 24 initiated boat barrier procurements in September 2001. It engaged GSA, which had previously supported NCIS security systems procurement on this acquisition. Several irregularities occurred thereafter. First, Code 24 sought to use the same GSA contract vehicle it has previously used for other security work. However, this contract vehicle, a small business set-aside Governmentwide Acquisition Contract, was created strictly to enable firms to provide information technology solutions to GSA's government customers. Code 24 improperly sought to use this IT contract vehicle to purchase boat barriers, and GSA improperly agreed to this.

Second, the boat barrier orders were improperly structured by Code 24 and approved by GSA so as not to exceed the $3 million each. In this manner, those involved sought to circumvent competition requirements.

Finally, a security consultant utilized by Code 24 to advise on boat barrier requirements, a single individual doing business as P–CON, was also directly responsible as a subcontractor for purchasing boat barriers on behalf of prime contractor Northern NEF. As the liaison between the vendor of boat barriers, Dunlop, and Northern NEF under the GSA contract, P–CON received a fee for each task order handled. In essence, P–CON both helped specify the requirements for affected installations and profited from the purchase of barriers slated for those installations. In March 2002 P–CON was removed from the middle of this arrangement, but P–CON had already earned a fee on the procurement of the first 317 of the 667 boat barriers ordered by Code 24.

Code 24 initiated its last purchase of boat barriers in February 2003, supported by RMES, which by then had succeeded Northern NEF as the prime contractor. In May 2003, NCIS received allega-

tions of potential illegalities associated with the boat barrier procurements. The NCIS IG was tasked to look into these matters, and at the same time NCIS was told by GSA that an audit had identified irregularities with these procurements. Upon determining that criminal violations may have occurred, the NCIS IG referred this matter to our Washington, D.C., field office in June of 2003. Also in June, NCIS asked DCIS to participate in the investigation and first briefed the assistant U.S. Attorney heading the Criminal Division for the District of Maryland on this matter.

In July 2003, NCIS met with the GSA OIG to obtain preliminary audit findings. These findings heightened NCIS's concerns, and in August of 2003 the manager of the NCIS boat barrier program was polygraphed twice by NCIS. In September 2003, he resigned. That same month the P–CON security consultant was escorted out of NCIS headquarters.

At this time, NCIS leadership made a determination that the agency did not have the capacity to handle this burgeoning acquisition program. For context, in fiscal year 2000, Code 24 received $4.4 million to execute physical security equipment responsibilities for the entire Navy. In fiscal year 2001, following the Cole attack, this number quadrupled to over $17 million. The next year following 9/11, the figure grew astronomically to $106 million. Moreover, the new requirements were for equipment that was generally different from that which Code 24 had historically purchased.

In August 2003, NCIS proposed divesting itself of these responsibilities in favor of a naval command better able to manage these requirements, and NCIS voluntarily transferred this mission to NAVFAC in October 2003.

In sum, Mr. Chairman, it is recognized that in the interest of providing a rapid solution to protect Navy vessels, a small number of NCIS employees took improper actions. Shortcuts were taken to meet urgent fleet requirements, the expectation of Navy seniors, and fiscal deadlines. These actions were wrong. I neither excuse nor condone them. With adequate oversight, I do believe that these improper actions would not have occurred.

Importantly, upon learning of these irregularities, NCIS took remedial measures. We investigated actively and realigned functions, and we undertook major process reforms. In the end the barriers that were procured were sufficient to satisfy the Navy's physical security requirements for ships in port. They have been in place for several years, and the vast majority of them are still in service.

The purpose of the barriers was to deter and prevent small-boat attacks similar to the attack on the USS Cole. We do not know whether such attacks would have occurred had these barriers not been installed, but the barriers undoubtedly have provided a deterrent.

With that, let me ask Mr. Riddick-Brown to offer some brief comments on our acquisition reforms. Thank you.

[The prepared statement of Mr. Betro can be found in the Appendix on page 31.]

STATEMENT OF CATHY RIDDICK-BROWN, DEPUTY ASSISTANT DIRECTOR FOR ACQUISITION AND LOGISTICS, NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS)

Ms. RIDDICK-BROWN. Mr. Chairman, Mr. Bartlett and distinguished Members, I am Cathy Riddick-Brown. I am a GS–15 supervisory contract specialist at NCIS. I joined the organization in July of 2004, and in this capacity, I serve as the Deputy Assistant Director for Acquisition and Logistics.

I would like to highlight a few things that Director Betro shared earlier and talk about the measures that we have taken to improve our acquisition process.

First of all, we did divest ourselves of the function to procure, to assess, and to install any equipment or processes in Waterside Security Systems. That now is handled by NAVFAC. Equally important, we disestablished Code 24 that used to manage that program.

Additionally, with the creation of my department, the Acquisition and Logistics Department, we have put in place acquisition professionals with currently combined 70 years of procurement experience. Currently, our acquisition process, we manage about $30 million. Also very importantly is we have in the department created a training program for Contracting Officer's Representatives, also known as CORs, and in this training program the responsibility of a COR is to have the technical expertise on contracting matters, whatever they may be. This is required not only by DOD and the Department of Navy, but it is required for the Federal Government if you are going to have a contract that requires technical oversight. These individuals are trained and certified and recertified once every three years as the programs are currently managed.

Additionally, we also ensure that we are following the Federal Acquisition Regulations, the FAR; we are following the DFARS, the Defense Federal Acquisition Regulations Supplement; and also Navy's internal process, Navy Marine Corps Acquisition Regulation Supplement. We follow those; our teams are trained in those requirements. We follow those processes.

Also most recently, DOD and the Department of the Navy revised their policy from 2002 that talked about if you have requirements that exceed $100,000, and you plan to use non-DOD contracting assets, you must have what is called an acquisition strategy. The revision to that legislation talks not only to services, but it also talks to supplies. Further, any DOD organization that will have requirements that will exceed $100,000, be it a service or supply, must have an acquisition strategy, must go to the comptroller for review, and also a DOD contracting officer, and we do follow that practice.

Mr. Chairman, I do believe had these mechanisms and practices been in place and adhered to before 2004 when I arrived, we wouldn't be here discussing this matter.

I gladly will respond to any questions you might have regarding our reform and our contracting acquisitions. Thank you very much.

Mr. TAYLOR. Mr. Williams, do you have a statement?

Mr. WILLIAMS. Yes, I do, sir.

Mr. TAYLOR. Would you like to begin?

STATEMENT OF JAMES A. WILLIAMS, COMMISSIONER, FEDERAL ACQUISITION SERVICE, GENERAL SERVICES ADMINISTRATION (GSA)

Mr. WILLIAMS. Good afternoon, Chairman Taylor, Ranking Member Bartlett and committee members. I am Jim Williams, Commissioner for the Federal Acquisition Service within the U.S. General Services Administration. I am pleased to appear before this subcommittee to testify on GSA's role in the 2002–2003 procurement of floating security barriers designed to protect U.S. Navy ships in port or at anchor.

GSA is the central acquisition agency in the Federal Government, and its Federal Acquisition Service leverages the government's buying power on behalf of Federal agencies by acquiring products, services and solutions at best value in support of agency missions.

Over the last five years, GSA set out a program to address and carry out significant changes in the management and execution of its acquisition and contract management policies, procedures and practices. GSA and the Federal Acquisition Service have made significant positive management and financial changes to our procurement operations over the last five years to ensure our customers get best value for their contracting requests.

Several years ago GSA senior management reviewed our contracting activities, including GSA's Office of the Inspector General, performing audits of contracting practices throughout GSA. One of the serious problems found was the purchase of boat barriers made by GSA's then Federal Technology Service on behalf of NCIS, which began shortly after the terrorist attacks of September 11, 2001, and in the aftermath of the attack on the USS Cole.

The original contract request was for floating security barriers designed to protect American men and women serving on our Navy ships. In 2003, after becoming aware of the ongoing GSA IG audit and the issues identified on the boat barrier projects, GSA terminated for the convenience of the government all remaining work on this matter.

GSA recognizes serious contracting irregularities that occurred and moved swiftly and aggressively to fix the problem and prevent it from happening again. GSA made the corrective action in the Federal Technology Service the top priority for the agency. The OIG also recommended several areas that needed to be improved, and GSA senior management agreed with those audit findings and recommendations and took action to address them.

GSA created an initiative entitled Get It Right to specifically address acquisition concerns. Our Get It Right initiative made GSA a better, more effective and compliant contracting agency. I would like to specifically highlight several key areas implemented under the Get It Right program where GSA is a better agency as a result of the hard lessons learned years ago.

Strengthened management controls: GSA instituted a review process for preaward task orders over $1 million using contract review boards, which includes senior managers in that review. In addition, GSA has a policy that all task orders over $5 million must be reviewed by GSA legal counsel prior to award. The agency also

conducts procurement management reviews annually by a team of GSA procurement experts external to the area reviewed.

Training for GSA's contracting and program officers: GSA has worked aggressively to provide core training in appropriations law, the proper use of schedules and governmentwide acquisition contracts, and project management training and certification.

Customer relationship management: We have implemented a GSA working group that meets weekly to address GSA DOD acquisition issues and concerns from both agencies, and we have recently signed a joint memorandum agreement with the Department of Defense that further outlined our commitment to ensure a sound and compliant acquisition process.

Contractual results: In December of 2006, GSA's Office of the Inspector General published the results of a second series of audits of the Federal Acquisition Service. I am proud to report that the OIG's findings showed GSA had significantly addressed weaknesses previously found in our contract management practices. Specifically, the OIG said that FAS was providing acquisition services with proper management and internal controls in place. We take management and internal controls seriously at GSA, and the time to improve our controls, train our employees, and develop improved customer relationship management has resulted in significantly improved contract management practices.

In summary, GSA recognizes that we have a responsibility to provide sound acquisitions for our Federal customers. Our employees are inspired to help our customer agencies be better stewards of taxpayer dollars and more effective and efficient in meeting their missions every day by providing best value products services and solutions in compliance with Federal laws and rules.

Thank you, Mr. Chairman. I welcome any questions you or the committee may have.

[The prepared statement of Mr. Williams can be found in the Appendix on page 40.]

Mr. TAYLOR. Thank you, and I want to thank all of you for appearing. The motto of one of our service academies is: Deeds, not words. I have got to tell you after hearing your testimony, I think you would have failed to fulfill that. I am hearing a lot of strong talk, but the fact of the matter is that according to what I can see, NCIS made a series of blunders.

Again, from published reports, no one was told by NCIS to hire P–CON Consulting of Alexandria, someone who was already working for NCIS. Apparently people were paid millions of dollars of fees for doing absolutely nothing, and subcontractors to them were paid additional millions of dollars for apparently doing nothing.

Four years later, yes, it is great that none of our vessels have been attacked from the sea as the Cole was. But four years later I am not convinced that this was the only solution. I am certainly not convinced this was the most cost-effective solution. I did not see a sense of urgency there. The Cole was bombed in October. The testing was not done until the following May. And so if there was any sense of urgency, why the first 6-month delay, 8-month delay? And then apparently in a move to catch up, contracts were issued, it would certainly appear to be, through favoritism. And then a series of contracts and invoices are issued for slightly under the $3

million limit including—again, according to published reports, multiples of up to six on one day were issued for slightly under $3 million, and no one in NCIS finds this unusual? No one at GSA finds this unusual? This goes on for some time.

And I have got to believe if I would have heard that testimony five years ago, I would have heard the same thing, that you have strong procedures in place to keep this from happening. Well, apparently you did not. And what is most troubling of all, apparently there has been some criminal wrongdoing. The taxpayers are out of a heck of a lot of money, and I don't see charges being levied against anyone. Your name is Naval Criminal Investigative Service. Why aren't you doing it? Again, you were the wronged party. I would think you would have the resources to look into this. And I would like to hear what you have to say to that.

Mr. BETRO. Well, Mr. Chairman, as I indicated, we definitely recognize there were breakdowns in oversight at NCIS at the time that allowed these things to occur. The small group of folks who were handling the procurements for that particular code at the time certainly were not experienced enough to be able to adequately carry out this large acquisition.

Mr. TAYLOR. Mr. Betro, no one in the system found it unusual that on one day six contracts were let for slightly under $3 million? No one thought to think that maybe someone is trying to skirt the law?

Mr. BETRO. Sir——

Mr. TAYLOR. No one in the whole system found that unusual?

Mr. BETRO. The only folks in the NCIS system who were providing any oversight to those particular statements of work were the individuals doing it themselves. They were—our processes at the time——

Mr. TAYLOR. Is that a good business practice?

Mr. BETRO. It is not a good practice. It is a terrible business practice, one that we have corrected since then. The individuals who were performing the acquisitions were not even contract specialists. They were budget technicians who had been previously responsible for $800,000 worth of procurement.

Mr. TAYLOR. Let's back up a little bit. Obviously you have looked into this. Did anyone at that time when tasked with this responsibility—is anyone on record of contacting anyone in the Navy chain of command and saying, I am not so sure we are the right people to be doing this?

Mr. BETRO. No, sir, not until after we noticed or were alerted to these improprieties.

Mr. TAYLOR. At no time did someone step forward and say, we are not the right people, this is out of our level of expertise?

Mr. BETRO. No sir, at no time did we step forward prior to the improprieties being surfaced to senior leadership.

Mr. TAYLOR. Yes, sir?

Mr. WILLIAMS. I would just like to add that I agree with you, Mr. Chairman, that what was done was wrong. There were not proper internal controls in place. We do agree with that. I do believe that we did not perform this in the most cost-effective manner either. However, we have also instituted the reforms, and it was some-

thing that GSA found the problem, worked with our IG to identify what had gone wrong, and took quick action to fix it.

Mr. TAYLOR. Are you prohibited by law, is NCIS prohibited by law from doing an internal criminal investigation?

Mr. BETRO. No, sir.

Mr. TAYLOR. Since you have told me—I thought I heard you say we have identified wrongdoing.

Mr. BETRO. That is correct.

Mr. TAYLOR. Why haven't you done so?

Mr. BETRO. Sir, we did initiate both a criminal—first an administrative review, which very quickly, within the first 30 to 45 days, identified the potential for criminal wrongdoing. We did immediately initiate a criminal investigation into those matters.

Mr. TAYLOR. And what became of it?

Mr. BETRO. It is still ongoing. We have presented findings of that investigation first to three separate U.S. Attorneys' offices, first in the District of Maryland in 2004. Their response was essentially that this was part of a larger investigation, and they believed it should be handled administratively potentially for civil remedies, and they suggested a new venue of Kansas City. We then took the case, we continued to work the case based on their review, and we did not go to Kansas City. At the time we believed we had proper venue in Virginia, the Eastern District, and we began dialogue almost immediately with the U.S. Attorney's Office in the Eastern District of Virginia pursuing both civil and/or criminal remedies for this investigation.

Eventually that U.S. Attorney's office decided formally that another venue would be better, either Kansas City or Washington, D.C. We did eventually—and that is where it remains today—have been working with the United States Attorney's Office in Washington, D.C., continuing with the investigation, because we weren't satisfied to let it go with the first declination from the first U.S. Attorney's office in 2004. We persisted in investigating and persisted in trying to seek justice by presenting the case to a second and now a third U.S. Attorney's office. We still have the potential of going all the way back to Kansas City to that venue if the U.S. Attorney's Office in Washington, D.C., also declines prosecution or civil remedies.

Mr. TAYLOR. According to the Washington Post article, and I am quoting now, Northern was told by NCIS officials to hire P–CON Consulting of Alexandria. Who were those officials?

Mr. BETRO. Those officials were the same individuals who remain the focus of this criminal investigation, an individual who no longer works for NCIS that resigned in 2003 shortly after these improprieties were surfaced. There does appear to be a preexisting relationship. And that is, as we mentioned, part of the details of our criminal investigation which we would request that we could address in—potentially in a closed session.

Ms. RIDDICK-BROWN. Sir, if I may?

Mr. TAYLOR. Yes, ma'am.

Ms. RIDDICK-BROWN. It is not uncommon for a customer to say, I want to go to a particular venue. But it is the responsibility of the contracting officer to say, what is in the best interest of the government? So the record shows that an official said, go to a par-

ticular company, but as a contracting officer I must ensure that what I am doing is in the best interest, cost-efficient, et cetera. So the client can make all kinds of recommendations, but the contracting officer bears the burden of the decision.

Mr. WILLIAMS. The contracting officer was at GSA after the joint decision was made between NCIS and GSA to move this under the small business thresholds for competition, which was wrong. Then they it put it into the sole source, legitimate sole source. Had it been legitimate, we would have named a small business company to do it. It was not legitimate to split the orders, to put it underneath that $3 million threshold.

Mr. TAYLOR. How much money do you think would have been saved——

Mr. BETRO. Well, Mr. Chairman——

Mr. TAYLOR [continuing]. If all the barriers had been purchased in one purchase order rather than in a series of small purchases? You have got to have some experience in that field.

Mr. BETRO. Yes, I think, as I mentioned in my statement, we would look at some of the administrative fees that were charged or provided to the contractors and subcontractors for their efforts in this procurement. There are fees; that is acceptable to charge some level of fee. We would probably say the fees in this case were excessive, should not have been accepted by us at NCIS, but they were not mentioned in any way as being excessive. That was about $4 million total between the procurement and the installation of the barriers.

There is no way for us to tell on the actual base cost of the systems themselves. At least I certainly can't, and maybe our colleagues from Naval Facilities Engineering Command could, to say what would have been the cost. They were a COTS solution, we were going for a COTS solution. This is the one found, the only one known to be available in all likelihood. I guess if there was a sole source done legitimately, sole-source contract, they may still have ended up being the provider of those barriers.

But the administrative fees that I mentioned, a little over $4 million that we would point to somewhere in there, I would say would represent the excess and potentially the wasted expenditure of money.

Mr. TAYLOR. What are the names of the NCIS officials? Who directed Northern to hire P–CON Consulting?

Mr. BETRO. Mr. Chairman, I would respectfully request that we, if possible, address that in a closed session for the interest of the matter being an ongoing criminal investigation.

Mr. TAYLOR. I understand you saying that, but I would also tell you that this is not the only acquisition program going on in our Nation. I would sure hate for another agency being bilked out of money by the same people as we speak. They have not been convicted of anything, but they certainly are under some suspicion of mismanaging the citizens' money. This is not the only wasteful thing going on in the Navy. The Littoral Combat Ship (LCS) program comes to mind. And I would hope that one or two things comes out of this today. Number one is that we are sending the message that we are going to take care of our troops. The second

part is that this is not carte blanche for contractors to defraud our Nation in the process.

And after reading these articles in the Post, I certainly have reason to believe that we have been defrauded, and it looks like an inside job. And I would like the message to be that those people are going to be brought to justice, and that steps are being taken so that this won't happen again, and that the message being sent is that if you use your position to enrich yourself or your friends, you are going to pay for it criminally. That has not happened yet.

Mr. BETRO. No, sir. And we will endeavor and have been endeavoring to continue to pursue the criminal charges complaints against the one or two or three individuals involved. And like I say, we are currently in the United States Attorney's Office in the District awaiting a decision.

Mr. TAYLOR. I would like to request for the record—it is my understanding that U.S. Attorneys cannot talk about ongoing investigations, but it is also my understanding that those people who have approached a U.S. attorney are free to say, I have approached that U.S. Attorney and asked them to look into this subject. And for the record, I would like the names of the United States attorneys that have been approached, and what days they were approached, and what information was given to them.

[The information referred to can be found in the Appendix beginning on page 47.]

Mr. TAYLOR. The Chair yields to the gentleman from Maryland.

Mr. BARTLETT. Thank you very much.

Had this been competed on a fast-track basis, how much longer would it have taken?

Ms. RIDDICK-BROWN. Possibly, sir, three to nine months, depending on the venue. If we decide to stay in a sole-source venue, sole sources tend to go quicker than a competitive venue. At a minimum three to nine months.

Mr. BARTLETT. You are all familiar with the article in the Washington Post. Are there any errors in that article?

Mr. BETRO. Sir, I would say there are not any latent errors that I can speak of, just information we mentioned that was not included in the article because they were not aware of. It was information that the authors of the articles were not aware of that we shared today, but generally the information in the article is accurate.

Mr. WILLIAMS. I would say, sir, the information is accurate. I don't think it noted that while things were done wrong, this was a different time frame. This request came to us to help out one week after September 11th. There certainly was a sense of urgency. It still does not excuse or condone the wrongdoing that happened, but it was a different time, and, frankly, it is a different time now. I believe we have fixed those problems so they won't happen again under my watch.

Mr. BARTLETT. If another request like this came, how would the procurement proceed differently?

Ms. RIDDICK-BROWN. One, sir, we would put together a team that consists of both the requirements team, the comptroller's team and the contracting team within, in our case, NCIS. We would look at all the venues within DOD. It is always better to use existing con-

tracts which can save time in that venue. You look at within the DOD structure what is available, you look at what is in the marketplace. We assess what that looks like, and if it, in fact, does meet our needs, we then go to either an existing vehicle, we either can go sole source, or we can compete. And there are enough venues in the acquisition arena that we could hopefully choose the venue that best works for the government.

Following that, if, in fact, we had a competition, there would be an evaluation of the potential offerers, those who are proposing. If there was even a sole source within a small business venue, we could actually even compete within the small business venue. So there are various avenues one could take be it small business, be it sole source, be it competitive in that arena.

But the one challenge that we always have in the arena is putting another adequate statement of work that reflects our needs so we will know where to go and get the resources to make our purchases, be it a service or supply. The evaluated contractor who is a potential offerer we then make determinations what is the best value to the government, and we then make the award.

Mr. BARTLETT. Certainly there will be occasions when time is of the essence, which it was deemed to be here. And we need to proceed very rapidly. This was a fair-sized procurement. The regulations as they were interpreted required that these contracts be let in amounts of less than $3 million. There were a large number of those let, sometimes several in one day, a clear, clear attempt to skirt the requirements.

Recognizing that there may be times when instances—when time is of the essence, and we need to move very quickly, and we really can't wait 6 to 9 months for a competition, how can we structure that kind of procurement to avoid the problems that we had here? Clearly we just ignored the rules, and you have got to have it real quickly, so you can't spend more than 3 million in one contract, so we will let three contracts in one day, each of them less than $3 million. That is an obvious ruse to get around the regulation. But recognizing that there may be times when we need to move very quickly, how can we do that without the kind of problems we created here?

Mr. WILLIAMS. I think, sir, there are legitimate ways to do that within the Federal Acquisition Regulation. Other shortcuts were taken here that shouldn't have been taken. But where you have in this particular case an urgent and compelling need and a single source, I believe it could have been easily done by either NCIS, or as we do at GSA—we help agencies do their acquisitions—it could have been done right, and it could have been done fast under the existing regulations.

Mr. BARTLETT. Dave Nelson from Northern said he did not have any idea why NCIS selected his company. He apparently did not feel that he had the kind of credentials which would have recommended him for that contract. Why do you think the company was selected?

Mr. BETRO. I believe, sir, that he was inappropriately selected because the individuals involved tried to use an existing vehicle that they had been using to make other procurements for a while. Clearly improper. And in their interest to expedite and to use a

system that was familiar to them, they used an improper vehicle, and his company was an 8(a) set-aside.

Mr. BARTLETT. What company?

Mr. BETRO. Small business.

Mr. BARTLETT. 8(a)?

Ms. RIDDICK-BROWN. Yes.

Mr. BARTLETT. Why was he directed to hire P–CON, which apparently was one man already fully employed?

Mr. BETRO. Yes, sir. P–CON, he had been an employee—P–CON had been a subcontractor for NEF working for NCIS as a security consultant before the barrier procurements ever came up, and it was definitely a focus of our investigation as to why an individual in NCIS would have further recommended that individual to NEF to participate in the boat barrier procurements.

As mentioned before, it is not necessarily that unusual that a preference or a recommendation would be made. In this instance we believe there was potentially some irregularities based on prior relationships that the individuals had which is a focus and a subject of our criminal investigation.

Mr. BARTLETT. When you investigated this, was there any value added by the Navy hiring both Northern and P–CON? What they did couldn't the Navy buyers have done directly? Now, I have trouble understanding what value is added to this procurement process by hiring these two companies. They did not do anything except let contracts to somebody else, which is what I thought our buyers did.

Mr. BETRO. Sir, as I mentioned, the Navy could have gone directly through different vehicles to Dunlop, and there is no question that the individuals who were involved in this took improper action. But clearly there was another venue or vehicle that we could have used to go directly without using NEF or P–CON industries.

Mr. BARTLETT. When you say were improper, do you mean dumb or criminal?

Mr. BETRO. Sir, I think it could be one or the other or both, and I think that is what we are waiting for the U.S. attorney's ruling or judgment on the merits of the criminal investigation. Clearly the inferences there raised our concern that it did meet the threshold of criminal violations.

Mr. WILLIAMS. If you don't mind, sir, I believe the splitting of the procurements under the competition rules was wrong. Then picking any company to be the prime contractor as Northern was with the understanding that they were not going to do any work was wrong. So you start with splitting the award was wrong, and then the GSA contracting officer agreed to that. That was wrong. Then picking any company, and under this particular 8(a) set of contracts there were 165 contractors, if you picked any one of them by throwing a dart at the wall and saying, we want you to be the prime, you don't have to do any work, it is just a passthrough, that was wrong.

Mr. BARTLETT. It says in the article that the auditors wanted to question NCIS officials about the boat barrier project, but NCIS officials declined to discuss it. Why would your people decline to discuss it with the auditors if our intent is to get to the truth?

Mr. BETRO. Sir, I am not aware of any NCIS officials declining to discuss.

Mr. BARTLETT. I thought you said the article was factual.

Mr. BETRO. I said generally I thought the article was accurate. That is one of the specifics that I have not been able to find out who might have refused. As I said, we worked with DCIS and GSA's OIG office almost immediately from the outset and have worked closely with them from that time until now.

Mr. BARTLETT. NCIS agents said they were conducting an investigation of their own and wanted to take over the case. GSA agreed?

Mr. WILLIAMS. My understanding is the GSA officer and inspector general did agree with that.

Mr. BARTLETT. And that was four years ago?

Mr. WILLIAMS. I believe, sir.

Mr. BARTLETT. And we still are investigating it?

Mr. BETRO. Yes, sir, still open investigation today.

Mr. BARTLETT. Seems incredible to me that that investigation could take more than four months let alone four years.

Mr. BETRO. Well, any procurement investigation does. There are some complexities, sir, involved with contract reviews and trying to find records and task orders. But we did present it to the first U.S. Attorney in the May time frame of 2004. So at that point we had investigated enough where we thought there was sufficient information enough for a U.S. attorney.

We could have stopped. We could have closed our investigation in 2004 with that U.S. Attorney's declination, but we did not. We took the information they provided with what the weaknesses were in the case from a criminal prosecutive standpoint, and we continued to investigate. We continued to do lots more interviews, records reviews until we thought we had enough additional information to bring it to another U.S. Attorney's office, which we did.

Likewise, that U.S. Attorney's office chose not to prosecute the case. We did not stop there. We could have stopped at that particular point in time, but we did not. We have continued to investigate these allegations and improprieties, and currently we are at a third U.S. Attorney's office. We also did this fully jointly with the Defense Criminal Investigative Service in addition to the GSA OIG. So it is three different investigative organizations with full visibility on this investigation, all sharing information and sharing each other's reports, jointly presenting these cases to the various U.S. Attorneys' offices.

But I recognize in hindsight, now that it has come to my attention, there might be some things in the investigation we could have done more rapidly. But I do believe we have carried out due diligence in continuing to pursue the criminal and civil remedies that might be available.

Mr. BARTLETT. Mr. Chairman, I think that this case is instructive enough that it would be useful—I am not desirous of identifying specific people to be hung for this. That is not my goal. I am sure mistakes were made. I am sure each step—I hope that each step the person thought they were making the right decision; in hindsight they clearly did not.

But I think this could become a textbook study on how to really screw up a procurement so that we wouldn't do it again. And I would like to see this not kind of swept under the rug and some people administratively disciplined or whatever. I would like to see this—and you can call them employee A, B and C if you wish, but I would like to see this exposed in the clear light of day, because I think there were enough things that went wrong here that this would be an excellent case study for looking at contracting in urgent situations like this so we did not repeat these mistakes.

Can you get that kind of information to us so that we can see what we might do with that?

Mr. BETRO. Sir, we actually have an investigative time line that we were prepared to share if we were to go into a closed session and leave with the committee. It just outlined broadly the investigative steps and chronologies. We could make that available for the committee.

[The information referred to can be found in the Appendix beginning on page 48.]

Mr. BARTLETT. I have a couple of questions for the record.

Mr. Chairman, thank you very much.

Mr. TAYLOR. Sure. Before going to Mr. Larsen, I would be curious, what is the name of the CEO of Northern NEF on or about the date of September 28, 2001?

Mr. BETRO. Excuse me, Mr. Chairman, I will try to find that name.

Sir, I believe the president was Ken Dyer.

Mr. TAYLOR. How do you spell the last name?

Mr. BETRO. D-Y-E-R.

Mr. TAYLOR. Okay. With that, the Chair yields to Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

Mr. Betro, the article says that the cost for the program was at least $100 million, I think. But you have testified that at least in the procurement of the boat barriers, NCIS estimates that the cost will be 30.7- after adjustment. Why that discrepancy? What is being counted in the article that you are not counting?

And second, you also mentioned in terms of fees and costs, fees of $2.6 million and some other costs of 24.7- leaves about 27.3 million that you have accounted for of your 30.7-. Where did that other 4.4 million go to? Can you address that for me?

Mr. BETRO. First, I believe that I was trying to address the total cost of the boat barrier program. The $100 million I can only surmise might have referenced our overall budget for Waterside Security Systems, which included several other things in addition to the boat barriers. So I am surmising that this article might have referred to that amount.

The boat barrier program, as best we can reconstruct, is just under the total of $60 million, which included both base costs of the materials and installations. It also included those miscellaneous administrative fees which I referenced, I believe, totaled a little over $4 million.

Mr. LARSEN. And you are saying the procurement part of that 60-plus million was 30.7 million?

Mr. BETRO. That is correct.

Mr. LARSEN. And then you talked about some of the fees associated with that procurement which still left, by my math, $4.4 million left unaccounted for, which I would like you to account for. Maybe you can account for the record.

Mr. BETRO. Yes, sir. I have it here in terms of where the 4.4 or so million dollars went broken down between Northern NEF, P–CON. Those fees would be—I believe that P–CON received a total of $1.1 million in fees for participating as a middleman between Dunlop and Northern NEF, and that NEF received $1.5 million in fees associated with the procurement activity, and then in the installation piece was the remainder of the 4.4-, which is 1—I am sorry—$1 million in fees that went to a company called ITA, which was responsible for the installation of the boat barriers. So if I got this correct it is $1.1 million to P–CON, $2.6 million to NEF and $1 million to ITA, and I have a total of 4.7-.

Mr. LARSEN. So beyond the other $2.6 million for otherwise, that is not doing much.

Actually, honestly, what is that, 6 million, 7 million out of 30.7 million for fees to procure the program—to procure the boat barriers?

Mr. BETRO. I believe, sir, that is out of 56.7.

Mr. LARSEN. Okay. About 12 percent or so; 12 to 15 percent.

Some questions with regards to the attorneys' offices. I don't quite understand it. You said that USAO Maryland declined prosecution, and in your oral testimony you said it was because it was part of a larger investigation so they wanted to move it to Kansas City? Is that what I heard you say?

Mr. BETRO. It was presented jointly with a larger case of kickbacks—alleged kickbacks, which, when this first came up, some of the companies were the same, and so they were brought under a worn umbrella for ease of understanding who the companies and individuals were. We did subsequently break out the boat barrier one pure and simply by itself, but by that time the entire package, including P–CON and NEF and the boat barrier issue, were declined by the U.S. attorney's office in Maryland saying basically that the P–CON issues are deemed more administrative, and that the appropriate venue for that could be Kansas City where the GSA office which was the contracting office for those particular acquisitions.

Mr. LARSEN. Is that a determination that NCIS agreed with, or did not agree with but had to live with?

Mr. BETRO. We had to live with, but didn't agree with. That is why we went on to the Eastern District of Virginia believing that P–CON, the company that was middleman in this, was incorporated in Virginia, so we thought potentially that was a better venue.

Mr. LARSEN. And their determination—your written testimony says they asked you to explore other options, which is a different way of saying they declined prosecution.

Mr. BETRO. They did not formally decline; they recommended that they were not the appropriate venue and wouldn't consider the case any further.

Mr. LARSEN. Nobody says no in this business. So they were not going to pursue an investigation. Can I ask, was P–CON and

Northern NEF part of this broader investigation that USAO Maryland declined, or was this a clean break, to your knowledge?

Mr. BETRO. For us it was a clean break. The other case involved, sir, grand jury and other related materials.

Mr. LARSEN. Maybe that can be discussed in a different venue.

Then so now you are at DCAO, and there actually has been no determination from them whether or not a crime has been committed, whether or not there has been a determination that this needs to go any further; is that correct?

Mr. BETRO. That is correct. We have no kind of final determination, civil or criminal, from the U.S. Attorney's office here in D.C.

Mr. LARSEN. Is there an expectation when that would occur from your end?

Mr. BETRO. They did not give us a specific date. And so we will continue to make contact with them.

Mr. LARSEN. Can I—that is somewhat disconcerting. I am not an attorney, and some of us are up here, and some of us aren't, but it sure sounds like things happened that were extremely bad and extremely illegal from a layman's point of view.

Can I just suggest—and I don't want this to sound smart-alecky, but I would rather hear from you the results of the U.S. Attorney's office of D.C. determination rather than read it in the Washington Post.

Mr. BETRO. Yes, sir.

Mr. LARSEN. So certainly, I don't know how we can set that up or if we can even do that, but it would certainly be appropriate.

Mr. BETRO. We can certainly be sure that happens, sir.

Mr. LARSEN. I think Mr. Bartlett asked some questions about this convoluted relationship between P–CON Consulting and Northern NEF and the other side of the security consultant contract within NCIS. But just one more question, Mr. Chairman. It does not look like you are keeping time, but I know that Ms. Bordallo is here.

For Mr. Williams, on page four of your testimony, you say that—this is just trying to define terminology. It says specifically the OIGs—the FSA was providing compliant assisted acquisition services with proper management. What is the definition of "compliant assisted acquisition services"?

Mr. WILLIAMS. Well, assisted acquisition services means that when other agencies need help doing their acquisition, they come to GSA with a statement of work. We then do an acquisition plan. We may do the competition or do the award for them and help them with postaward management.

What they found, the IG, when they came back to us after looking at it—after they initially helped us identify these problems, they came back and reviewed us again and said that we had proper internal controls, and we were doing these assisted acquisitions, helping other agencies with their procurements, in a compliant manner, compliant with the Federal Acquisition Regulations.

Mr. LARSEN. Okay. One more point to make, Mr. Chairman. I have to step out for a meeting, and I will be right back in for the remainder of questioning from other Members, but just a quick review. From what I can gather, on the $56 million or so in a procurement, about 12 to 14 percent or so went to fees of some sort,

sounds like; that we don't have a determination yet from the U.S. Attorney's office in D.C. on whether or not there will be—at least from their view, there is enough there to say there is either a civil violation or a criminal violation took place. I mean, from my understanding, we are waiting to see if these folks get off the hook essentially. I don't know if there is anything else to go beyond that, unless we go to the U.S. Attorney's office of Peoria, Illinois, or some other venue.

Mr. BETRO. Kansas City.

Mr. LARSEN. The final point I want to make is this whole—this thing started in some ways because obviously there are individuals there who were not the folks we want in those kinds of positions. The second is I have seen this before, and maybe we could dig into this one broader issue about something we might call procurement migration. That is using a program that is not designed at all, but is available because someone sees it as available, so they use it for something that it was not designed to be used for; in other words, using a technology program—it has a tangential relationship with security, it is physical security, not technology security, but it has the word "security" in it, so let's use that to pursue this other program. And whether you call it procurement migration or some other term, there are other examples of that that we have seen in the past several years that don't end up with the same extreme result, but end up with money being wasted because we are using things that were not designed to be used for. And that may be something that warrants us looking into as well.

Thank you, Mr. Chairman.

Mr. TAYLOR. I would like to thank the gentleman. If I could do a quick follow-up.

Who paid P–CON the million dollars? Was it—did they get a check from the United States Government? Did they get a check from Northern? Did they get a check from Dunlop?

Mr. WILLIAMS. It would have been made by Northern their prime contractor. They were a subcontractor to Northern.

Mr. TAYLOR. So this is a cost of doing business that Northern had?

Mr. WILLIAMS. Yes.

Mr. TAYLOR. Just as a matter of curiosity, what is the time that a former naval uniformed person would have to wait before they could have gone to work for Northern under the law?

Ms. RIDDICK-BROWN. Well, it depends, sir. If it is $10 million or more, then there is usually a—has to be a direct correlation with the program you just left than simply knowing about the program.

Mr. TAYLOR. Are the employees or the management of Northern former Navy personnel.

Mr. BETRO. Not to our knowledge, sir.

Mr. TAYLOR. The Chair yields to Mrs. Bordallo.

Ms. BORDALLO. Thank you, Mr. Chairman, and thank you for calling the hearing today on such an important issue. Unfortunately, today our full committee heard testimony about another force protection issue and that was on body armor, and the news that members of our Armed Forces in harm's way may not have the best body armor they need to meet the best operational requirements.

And in this case today, it seems our sailors and marines in the wake of the USS Cole bombing had their protection compromised for the sake of expediency and favoritism.

I have, Mr. Betro, I have some questions that I think were—some of the members here were leading up to, and I would like to get more information.

How could the Navy's own inspector general and internal auditing units allow the prime contractors to bill one major contractor into many separate invoices always totaling under the $3 million threshold. Is this what put up the red flag?

Mr. BETRO. Ma'am, no red flags were raised internally by us. There was no detection of those improprieties. It wasn't until it was brought to our attention by the Program Integrity Office of the Department of Navy as one way, plus the GSA audit was indicating that there was some improprieties, and those both surfaced roughly in the spring of 2003.

Regrettably, there was no oversight on to the actions of the individuals who were orchestrating.

There were two ways this could have been caught at the time. Our employees certainly should have known better and shouldn't have done it, and certainly our next was our contracting officer also potentially should have advised or known that this shouldn't have occurred.

So we clearly stand up and say the folks at NCIS took improper actions and we are trying to again further investigate that now.

Ms. BORDALLO. What was the time frame when you finally caught it?

Mr. BETRO. It was in roughly April–May of 2003.

Mr. WILLIAMS. If you would like a little background from GSA, GSA's management had actually identified some problems in another region of GSA, and we essentially have 11 regions all doing similar work. They then decided we should have an audit done of all of the 11 regions. The original irregularities occurred in another GSA region, but then when they looked at our region out of Kansas City, that is when our Office of Inspector General identified the problems with the boat barrier project.

Ms. BORDALLO. Now on the investigation, I think Mr. Bartlett brought up the idea that it has been four years; is that correct?

Mr. BETRO. Yes, ma'am.

Ms. BORDALLO. The principals involved, were they reprimanded or put on leave, or how did you handle that?

Mr. BETRO. The government employee involved resigned in the immediate kind of wake of us initiating this investigation and beginning questioning of that individual, and some polygraphs.

There is a subcontractor we have discussed earlier, P–CON, who was escorted out of the building, and his work with NCIS was terminated at that time.

Those are the only kind of immediate—under our control, individuals that we took some action on immediately.

Ms. BORDALLO. Inasmuch as this investigation is ongoing and has been ongoing, and I find it very unusual for an investigation to be stretched out into a four-year period—and I don't know how much longer—is there a statute of limitation here? Would that kick in?

Mr. BETRO. Five years.

Ms. BORDALLO. How hard are you pushing this investigation?

Mr. BETRO. A lot harder right now.

But honestly, there are lots of procurement cases that the U.S. Attorney's offices are taking. We are presenting the information to various U.S. Attorneys offices in hopes of getting—exhausting any final decisions regarding prosecution that we can get. We are continuing to pursue that. That is why we are at our third office. We know at least potentially there is at least one more venue that we could approach. But we have tried to persist in getting a determination on either the civil or prosecutive or criminal remedies for this particular case.

Ms. BORDALLO. Mr. Chairman, there is not much time left.

Mr. Williams, I have a question for you. It seems that the Navy leadership was hasty to find a solution and they took advantage of the GWAC loose contracting guidelines. What steps, beyond additional training, has GSA taken to clarify the rules governing issuance of governmentwide acquisition contracts known as GWACs?

Mr. WILLIAMS. We have done training in that area. We have also instituted management controls where we do reviews now that weren't done before. We did have a lack of proper management controls. We did take action across all of our 11 regions to put in the training, the management controls, sign the agreement with DOD on how we were going to improve that. We monitor on a regular basis.

I would say that we also ask our IG to come back in and check up on have we put those proper management controls in place.

For these assisted acquisition services where we help other agencies, we feel like we are now on solid ground. We still do help all Federal agencies when they need help with their acquisitions. We don't want them to come to GSA thinking we take shortcuts to help them. We want them to come to us knowing we can help their mission in a compliant way.

Ms. BORDALLO. Thank you. Thank you very much, Mr. Chairman.

Mr. TAYLOR. Mr. Williams, I find several things curious. I would ask for your intelligence on this.

I was here for September the 11th. The Cole was built in my congressional district. It was brought back to my congressional district for repairs. Two of my local newspaper editors, who are both Vietnam veterans, brought it to my attention that they had gotten within 50 or so yards of the Cole on the other side of the Pascagoula River, undetected. Just walked up. Both Vietnam veterans said if we had another RPG, we could have put another hole in it.

I remember at another hearing bringing that to the CNO's attention. But I also remember going to the home port at Pascagoula and the shipyard and the Coast Guard station adjacent to it, because after they brought it to my attention, I felt like I had to do something. So I go to the Coast Guard station. Who has got responsibility for the watershop application of the Cole? Well, the Navy does. So I went to the Naval Station. Who has got responsibility

of the watershop of the Cole? The shipyard does. Went to the shipyard. The Coast Guard did.

So about the time line that this procurement is being issued, September 28th of 2001, it again—it is almost a year since the event of the attack on the Cole, and really nothing has happened. And I think someone could draw the conclusion that it wasn't until the events of September the 11th that some people within the Navy said, Go do something and do something in a hurry.

The reason I say all of that is, Mr. Williams, now that someone has lit a fire under someone at the Navy to do something almost a year after the attack on the Cole, if they had come to the GSA and said we need to do something, we need to do something really fast, under the normal procedures could GSA have been tasked to buy these barriers and how quickly could they have done it under the normal rules? Or are there expedited rules that would have gone into place?

Mr. WILLIAMS. Well, I believe we could have done the task. We had people who received this request from the Navy a week after September 11th. They did a task but they broke the rules. I believe we could have done it within the rules and done it fast, given that, as Director Betro said, this is really a single source. I believe you also had an urgent and compelling situation and the Federal acquisition regulations allow you to move fast when you have both an urgent and compelling situation.

Mr. TAYLOR. How fast?

Mr. WILLIAMS. Maybe not as fast as we did it. But probably if we did everything right, I think we probably could have done it within a couple of weeks, or maybe a month. But we did this—we can do an urgent, compelling, in 30 days or less. I believe we could have done this, and it would have been appropriately justified, and we could have done it in under a month. And we do this to the tune of several billion dollars a year for all Federal agencies. We now do it right. We just did it wrong.

And, again, there were people who didn't have the proper oversight, they probably didn't have the proper training. They tried to break the rules to help the Navy with their urgent mission. It was wrong what they did, but I believe we could have done this in a correct manner and we could have done it fast.

Mr. TAYLOR. Playing devil's advocate, is there any evidence that the rules were broken? I realize a year has gone by since the Cole was first attacked. Or very close to a year. But is there any evidence in your—from what you can see, that the rules were broken to expedite the purchase? Or do you feel like the rules were broken to enrich someone?

Mr. WILLIAMS. Well, let me answer both questions. The rules were broken to expedite the purchase.

When the Navy came to us after having already tested the boat barriers in May of 2001, then they came to us in September. Then went to our contracting officer, decided it was okay to split these procurements, which was wrong.

And whether somebody enriched themselves, I think that is part of the ongoing investigation. And I think Director Betro has already talked about what he saw in that regard.

What came to us was, as we agreed to do this under the small—under the threshold for competition for an 8A, to do it in a sole source manner, we then got a request to go to northern NEF and to P–CON.

Mr. TAYLOR. Mr. Betro, I am curious. As Mr. Williams mentioned, the tests were conducted in May. It is June, July, August, almost all of the month of September passes, apparently nothing was purchased.

Two weeks after the events of September 11th, someone gets a fire lighted, probably in the proximity of their body parts, and decides to move. Is there any evidence between May and September that any movement at all took place?

Mr. BETRO. I really can't answer that. I can't say NCIS wasn't designated until August of 2001 as being responsible for the program of boat barriers. And we did not—I believe the report was not done until August of 2001. Which suggested that these barriers met the minimum requirements for the intended purpose.

So it was August, about 2001, when we had a program manager identified NCIS; the test results came back to us saying yes, it met the minimum threshold of requirements, and the first procurement was in October.

Mr. TAYLOR. But that certainly in my mind gets a little confusing, when in all of this time apparently there is only one supplier, so there really should—it is not a competition any longer. So it is a question of whether or not that one supplier made a product that was adequate. Is that what took this long to decide, made the determination by August?

Mr. BETRO. The combination of site surveys and examinations of what was available commercially did come down to Dunlop, and then the tests were conducted and the results of the test that came back in August of 2001 said even though they were the only manufacturer, we now had some confirmation that that manufacturer could meet the minimum basic requirements. It is about the same time as, well, that NCIS was then designated as the program manager.

There were things going on but until we knew we had the requirement met minimally at least, we weren't going to extend any money to procure any technology, at least boat barriers.

Mr. TAYLOR. Because the Washington Post raised the issue and you mentioned that about 90 percent of the barriers are still available, was there a significant problem with the barriers leaking and sinking, or was that just something that happened to a few of them?

Mr. BETRO. I have some colleagues from Naval Command here. We divested on the program back in 2003 and so we would not have been tracking, and I don't have information available.

Mr. TAYLOR. But you started buying them in September of 2001. I would imagine by now there is a sense of urgency. So those deliveries were in a month or two of that, and I would have hoped that you would have known early on if you had problems on them.

Mr. BETRO. I had no information available to us.

Captain SAMUELS. I am Mark Samuels. I am the commanding officer of Naval Facilities Engineering Service Center, which is technical agent for NAVFAC. Like my other dynamic pieces of equip-

ment that is maintained and that has to be done, we have been involved in some of this maintenance, but most of that has been done at the local bases. And I am not prepared right now to talk about any of those specific patterns or problems that may exist.

Mr. TAYLOR. If you would, Captain, for the record, since you have been identified as a program officer, if there have been a—when I say "substantial," over ten percent of them having problems with leaks or other quality effects that have lead to a premature life diminishment, I would like you to get back to this committee.

Captain SAMUELS. Yes, sir.

Mr. TAYLOR. If there is anything consistent that was causing this problem that could be pointed to as a manufacturing problem.

Captain SAMUELS. Yes, sir.

Mr. TAYLOR. Mr. Bartlett.

Mr. BARTLETT. Thank you. I don't have any further questions.

Mr. TAYLOR. If I may, I think Mr. Betro has offered to give us a time line of what he feels are the criminal events. That would have to be done in closed session. And I would, if Mr. Betro is prepared to do that today, I would be open to doing so today if that fits your schedule.

With that in mind, I am going to call this hearing to a close and announce a ten-minute recess, and then ask our panelists to come back at that time so we can receive testimony in closed session.

I would also like to ask unanimous consent for Mr. Ron O'Rourke to attend that hearing in his capacity.

Mr. BARTLETT. So moved.

Mr. TAYLOR. The hearing is adjourned.

[Recess.]

[Whereupon, at 4:20 the subcommittee proceeded in Closed Session.]

A P P E N D I X

JUNE 6, 2007

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

JUNE 6, 2007

NOT FOR PUBLICATION UNTIL
RELEASED BY THE
HOUSE ARMED
SERVICES COMMITTEE

STATEMENT OF

NAVAL CRIMINAL INVESTIGATIVE SERVICE

BEFORE THE

HOUSE ARMED SERVICES COMMITTEE

SEAPOWER AND EXPEDITIONARY FORCES SUBCOMMITTEE

ON

CONTRACTING AND PROCUREMENT OF FLOATING SECURITY BARRIERS

6 JUNE 2007

BY THOMAS BETRO

NOT FOR PUBLICATION UNTIL
RELEASED BY THE
HOUSE ARMED
SERVICES COMMITTEE

Mr. Chairman, Ranking Member Bartlett, members of the subcommittee –

Thank you for the opportunity to appear before you today to address the subcommittee's concerns with regard to the Navy's procurement of boat barriers for antiterrorism/force protection purposes.

In your letter to Secretary Winter requesting this hearing, Mr. Chairman, you expressed concern that the procurement of the security barriers was not accomplished using standard contracting practices. You specifically asked that four areas be addressed. I intend to address each of these areas today, and of course will attempt to shed light on any other points about which the members may wish to inquire.

But first, Mr. Chairman, in addition to these areas of interest, I know you have also expressed a concern that "the Naval Criminal Investigative Service appears to have taken the unusual position of insisting that it lead the investigation into its own alleged wrongdoing."

NCIS initiated its criminal investigation into the matters referenced in the *Post* article in June 2003, following both the receipt of allegations of improprieties that were reported to NCIS and indications from discussions with GSA that it was preparing an audit report that would be critical of the procurement procedures for boat barriers. NCIS initially tasked its Inspector General's office to look into these allegations and concerns. Upon determination that there may have been criminal involvement, the NCIS Inspector General's office requested that the NCIS field office in D.C. formally assume lead status. It is important to stress that, from the outset of this investigative activity, NCIS has included the Defense Criminal Investigative Service (DCIS) – the felony investigative arm of the Department of Defense Inspector General – in the totality of its investigative efforts. With only one exception, all interviews, interrogations, and polygraph examinations of former NCIS employees who were the focus of investigative activities in this case were conducted jointly with DCIS. NCIS provided DCIS, as well as the General Services

Administration's Office of the Inspector General (GSA OIG), which also has investigative equities in this matter, with every one of NCIS' 24 Reports of Investigation in this case, and importantly, DCIS generated its own investigative file in its case reporting system. Moreover, in March 2004, NCIS asked for and received assistance from the Defense Contract Audit Agency (DCAA) in the form of audit support to review task orders issued under the GSA contracts and related subcontracts in support of this investigation. There has been total, absolute transparency with our partner law enforcement agencies in this joint investigation in the interest of ensuring investigative integrity throughout its course.

That said, it is not unusual for law enforcement agencies to investigate allegations of wrongdoing by their own members. Internal investigations occur in law enforcement agencies every day in this country, whether because an officer discharges a weapon in the line of duty, or because specific allegations of wrongdoing are received. There are procedures that law enforcement agencies employ to safeguard the integrity of such investigations.

Additionally, NCIS has presented this case to the offices of three separate U.S. Attorneys for potential prosecution and civil action since April 2004. After the U.S. Attorney's Office (USAO) for the District of Maryland declined prosecution, NCIS pursued both criminal and civil action with the USAO for the Eastern District of Virginia. When that office recommended that NCIS consider other options, NCIS introduced this case to the USAO for the District of Columbia. NCIS was joined by DCIS in presenting this case for prosecution and civil action. NCIS has been diligent in pursuing prosecution and civil remedies.

Let me turn now to the four areas of interest you inquired about in your letter.

First, the requirement for these barriers was identified in the aftermath of the attack on USS COLE. On October 27, 2000, in response to that attack, Secretary of the Navy Danzig directed the establishment of a Department of the Navy Antiterrorism/Force Protection (AT/FP)

Task Force to review force protection procedures and identify further actions that could be taken to enhance the force protection posture of Naval forces worldwide. By early November 2000, each of the Fleet commanders had identified near-, medium-, and long-term steps to boost AT/FP measures. Several of the Fleets' responses identified the need for enhanced waterside security measures and systems, including boat barriers. These and other AT/FP recommendations were validated by the OPNAV staff, and some of these requirements – including those related to boat barriers – were provided to the NCIS Law Enforcement and Physical Security Department, at the time known as NCIS Code 24, for execution. Code 24 and contractor personnel conducted site surveys starting in late 2000 and worked to identify available options for boat barriers.

As part of this effort, Code 24 and OPNAV N34, which was the Navy's AT/FP element within the Office of the Deputy CNO for Plans, Policy and Operations at the time, tasked the Naval Facilities Engineering Service Center to perform operational testing of the Dunlop boat barrier, a commercial-off-the-shelf, or COTS, system. Full-scale tests of the Dunlop boat barrier system were conducted in south San Diego Bay on May 16, 2001. Though the Dunlop COTS solution, which was a British system already in use by the Royal Navy in Scotland, had limitations, it did demonstrate success against certain small boat threats and was ultimately adopted.

Of note, COTS procurement was not only deemed desirable in light of the urgency of meeting Fleet AT/FP requirements, but it also was in keeping with the prescriptions by the then-CNO, ADM Vern Clark, who in a message to Fleet and Systems Command commanders dated November 17, 2000, set forth as a basic tenet of the Navy's response to COLE the need to "[p]ursue appropriate [COTS] technology and aggressively utilize Naval research and experimentation resources to identify current and future non-lethal force protection technology solutions." While a Navy developmental system that involved metal floats reportedly was also

evaluated at the time, it is my understanding that it was rejected due to cost, maintenance, and schedule considerations.

On a parallel track to these technology assessment efforts, Navy AT/FP policy was being re-crafted to address the post-COLE paradigm. A review of AT/FP guidance by the Navy ultimately resulted in the promulgation of Change 2 to OPNAV Instruction 5530.14C in May 2001. This revision spelled out new standards for the security of waterfront assets, including requirements for electronic waterside security systems and the "use of water barrier(s), where appropriate and/or practical," especially for certain strategic assets.

With regard to the procurement of the boat barriers, NCIS estimates the overall cost was approximately $32.8 million. Some of the documents needed to provide a more-precise figure have been sequestered under Rule 6(e) of the Federal Rules of Criminal Procedure for possible presentation to a Grand Jury and are not available to the Navy at this time. We estimate that this $32.8 million reflects a payment of roughly $2.6 million to the two prime contractors and one subcontractor that would not have been paid had NCIS used Navy contracting officials. It is my understanding that the NCIS Code 24 personnel involved believed GSA would enable a more timely deployment. According to the Naval Facilities Engineering Command (NAVFAC), the barriers that were procured by Code 24 are currently in use at five CONUS and five OCONUS locations. Of the 667 barriers that were originally purchased, 535 remain deployed today, with a further 75 in useable condition in the Navy's inventory – a total of roughly 91 percent.

Second, you requested a detailed list of all contractors, including subcontractors and consultants, who received payment for services associated with these procurements. There were two prime contractors, Northern NEF and RMES, and one subcontractor, P-CON, who were involved in these transactions. Dunlop was the vendor from which the boat barriers were purchased.

There were multiple irregularities with regard to execution of the boat barrier procurements. First, when the requirement for the boat barriers was received, Code 24 personnel asked GSA contracting officials whether a GSA Government-Wide Acquisition Contract (GWAC) could be used to effect these purchases. GWACs were established to provide GSA's government clients with easier access to information technology (IT). Code 24 had earlier used a GWAC involving a small business ("8(a)") set-aside contract vehicle for electronics-related work. GSA approved the use of this same contract vehicle to purchase the boat barriers, even though there was no significant IT connection to the boat barriers. Second, the boat barrier orders were deliberately structured so as not to exceed $3 million each, as that funding level would have triggered competition requirements. Finally, the subcontractor who was involved in this arrangement, a single individual doing business as P-CON, was under contract to Code 24 as a security consultant to advise on the requirements for boat barriers. He also was employed as a subcontractor to the two prime contractors, in which capacity he served as a liaison between the vendor and the primes and received a fee for each task order he handled. In essence, he both helped specify requirements for affected installations and profited from the purchase of barriers slated for those installations.

Third, you inquired why NCIS was chosen as the lead organization for this large acquisition. Prior to the attack on COLE, NCIS Code 24 was responsible for program management of a number of DON physical security systems. This stemmed from additional CNO staff responsibilities held by the Director of NCIS as the Special Assistant to the CNO for Naval Investigative Matters and Security (N09N), and particularly, responsibility as Assistant for Law Enforcement and Physical Security (N09N3). Code 24 had responsibilities related to these physical security functions, which prior to the COLE bombing primarily involved design, assessment, and installation of locks, as well as of electronic security systems used at Naval

installations. With regard to boat barriers specifically, on August 17, 2001, OPNAV N34, the policy focal point for force protection within the Navy, issued a message identifying Code 24 as the Navy program manager for boat barriers.

Finally, you asked about methods that were, or should have been, in place for oversight of this project. In FY00 – the fiscal year that ended just days prior to the bombing of COLE – NCIS received $4.4 million to execute these physical security responsibilities. The year before that, FY99, NCIS received $844,000 to carry out these functions. In FY01, in the wake of the COLE attack, Code 24 received over $17 million to execute physical security responsibilities – an almost four-fold increase over the preceding year's total. Moreover, the expenditures were in investment areas that were generally different from the ones in which Code 24 had historically played a role.

In FY02, in the wake of both the attack on USS COLE and the 9/11 attacks, the dollar figure for physical security equipment that NCIS Code 24 was tasked to execute rose to nearly $106 million – a dramatic increase over the FY00 amount. In FY03, it exceeded $75 million.

In this environment of significantly increased budget responsibilities, unfortunately, some poor decisions were made. They were made by a handful of Code 24 personnel who are no longer with NCIS but were, for the most part, seeking the most expedient means of effecting the procurement and deployment of the boat barriers in order to meet urgent Fleet requirements, the expectations of Navy seniors, and the certainty of fiscal year deadlines.

Upon receiving significant additional funding to procure a host of other technologies, this same small number of Code 24 individuals sought to use GWACs to support non-IT acquisitions that were much larger than Code 24's traditional acquisitions and that clearly should have been executed via other means. These activities should have triggered alarm bells – both within NCIS and with the GSA contracting officer.

Although NCIS is not the only organization that bears responsibility in this case, I accept that there were significant breakdowns in our acquisition process. It is fair to say that the means for ensuring effective oversight were simply not in place. And while I could describe hypotheticals that might have prevented these problems, I think the more productive course of action would be to describe what NCIS has actually done to correct this situation since these events first came to our attention in 2003.

NCIS has taken a number of measures to correct structural and process deficiencies revealed by these events. These include:

- The functional transfer of technology assessment, procurement, and installation responsibilities for Waterside Security Systems to NAVFAC;
- The disestablishment of Code 24;
- The creation of a new Acquisition and Logistics Department within NCIS, led by a GS-15 Supervisory Contract Specialist who serves as Deputy Assistant Director and staffed by professional contract specialists who are responsible for governing NCIS contracting initiatives;
- The implementation within the Acquisition and Logistics Department of a new Contracting Officer's Representative (COR), an expert who ensures the technical requirements are being met on the contract, this position requires formal training and certification once every three years);
- The implementation of policies and practices to ensure compliance with the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Navy Marine Corps Acquisition Regulation Supplement (NMCARS); and
- Compliance with the recently revised DOD/DON policy that requires the program office to consult both the Comptroller and the Contracting Officer at the DOD entity for all supplies and services over $100,000 awarded by non-DOD entities.

Mr. Chairman, your questions referenced several critical concerns, but in closing, let me recap by touching on two. The first is whether there was organizational oversight to ensure that proper procedures were in place for the acquisition of boat barriers and, if not, what oversight should have been present. As we have described, when faced with an unprecedented requirement to rapidly provide a solution to protect U.S. Navy vessels from attack while in port, a small number of individuals seized upon a procurement program that

quickly delivered large numbers of boat barriers. Had there been adequate oversight of the project, the irregularities that occurred in the procurement of the boat barriers would not have occurred. Upon learning of the irregularities, NCIS took several remedial measures. It investigated the irregularities aggressively and persevered to the point of seeking prosecution and civil relief from three different U.S. Attorney's offices. In addition, NCIS realigned functions so that the program responsible for physical security of Naval vessels now resides in a major systems command that possesses both the engineering and procurement capabilities to successfully execute the program.

The second critical concern addresses whether the barriers that were procured were sufficient to satisfy the requirement for the physical security of U.S. Navy ships while in port. As detailed earlier, large numbers of barriers were installed in numerous ports for that purpose. The barriers have been in place for several years, and the majority of them are still in service. The purpose of the barriers was to deter and prevent small boat attacks similar to the attack on USS COLE. We do not know whether such attacks would have occurred if the barriers had not been installed, but the barriers undoubtedly have provided a deterrent.

With that let me conclude and defer to the subcommittee for questions.

STATEMENT OF

JAMES A. WILLIAMS
COMMISSIONER

FEDERAL ACQUISITION SERVICE

U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON SEAPOWER AND EXPEDITIONARY FORCES

COMMITTEE ON ARMED SERVICES

U.S. HOUSE OF REPRESENTATIVES

JUNE 6, 2007

Chairman Taylor, Ranking Member Bartlett, and committee members, I am Jim Williams, Commissioner for the Federal Acquisition Service within the General Services Administration (GSA). I am pleased to appear before this Subcommittee to testify on GSA's role in the 2002-2003 procurement of floating security barriers designed to protect U.S. Navy Ships in port or at anchor.

The GSA is the central acquisition agency in the Federal Government. GSA's Federal Acquisition Services (FAS), leverages the Government's buying power on behalf of Federal agencies by acquiring products, services and solutions at best value in support of their missions.

Over the last five years, GSA set out a program to address and carry out significant changes in the management and execution of its acquisition and contract management policies, procedures and practices. GSA redoubled its efforts to make improvements and ensure our customers were getting best value for their contracting requests. GSA and the Federal Acquisition Service (FAS) have made significant, positive management and financial changes to procurement operations over the last five years to lead in the areas of accountability, transparency and delivery of services to customers.

Several years ago, GSA's senior management, including the Regional Offices and Central Office executives, reviewed our contracting activities, including GSA's Office of the Inspector General conducting audits of contracting practices throughout GSA. One of the serious problems found was the purchase of boat barriers made by GSA's then Federal Technology Service (FTS) on behalf of the Navy Criminal Investigative Service (NCIS), which began shortly after the terrorists attacks on September 11, 2001 and in the aftermath of the attack on the USS COLE. The original contract request was for floating security barriers designed to protect the men and women serving on our Navy ships. In 2003, after becoming aware of the ongoing GSA IG audit and the issues identified on the boat barrier projects, GSA terminated, for the convenience of the Government, all remaining work on this matter.

GSA recognized the serious contracting irregularities that occurred and moved swiftly and aggressively to fix the problem and to prevent it from happening again. GSA made the corrective action in the FTS the top priority for the Agency. We developed and put in place an action plan to take immediate steps to address our acquisition errors, not only in the

region where the boat barrier tasks occurred, but in all eleven FTS Client Support Centers providing Assisted Acquisition Services. The Office of the Inspector General (OIG) also identified several procurement violations and recommended several areas that needed to be improved. GSA senior management agreed with the OIG audit findings and recommendations and took action to address them.

GSA established a high-level working group that met weekly to address our contract management action plan, including deliverables and timeline assessments. In addition, we created an initiative entitled "Get It Right" to specifically organize and address acquisition concerns. Our "Get It Right" initiative, which occurred a couple years ago, made GSA a better, more effective and compliant contracting agency. Under "Get it Right," GSA did the following:

- Issued updated and revised contract and financial policy and procedures;
- Implemented extensive training of our project managers and contracting officers in the Federal Acquisition Regulations
- Increased and improved management oversight of contracts, procurement practices and financial reporting;
- Provided additional training on the appropriate use of our Schedules and Government Wide Acquisition Contracts; and
- Worked jointly with other agencies, including the Department of Defense, on ensuring that bona fide needs are fully supported and business requirements are addressed in the statement of work.

I would like to specifically highlight several key areas where GSA is a better agency as a result of the hard lessons learned years ago.

Strengthened Management Controls

GSA recognizes that there was a need for accountability among our leadership, managers, contracting officers and project managers when such infractions occur as the boat barrier procurements. GSA has instituted a review process for pre-award task orders over $1 million using Contract Review Boards which include senior managers in that review. In addition, GSA has a policy that all task orders over $5 million must be reviewed by GSA Legal Counsel prior to award. The agency also conducts Procurement Management Reviews annually by a team of GSA procurement experts external to the area reviewed. These reviews are documented in writing and discussed with the senior management team. Also, in the Heartland Region, where the boat barrier tasks occurred, we have an internal FAS position, Program Evaluation Officer, to review sample task order files.

Across the regions, we properly distributed the workload to ensure our contracting officers could conduct appropriate due diligence for our customer's requests for assisted acquisition services. For example, Kansas City has implemented a workload tracking application that allows managers and associates the ability to review the workload of contracting officers and project managers. This system also standardizes and automates our acquisition processes and provides reporting necessary for internal management controls.

Training for GSA's Contracting and Program Officers

GSA has worked aggressively to provide core training in (1) appropriations law, (2) the proper use of Schedules and Government Wide Acquisition Contracts, and (3) project management training and certification.

The Heartland Region has a training needs assessment for managers, contracting officers and project managers. Many project managers and contracting officers in the Heartland Region have completed or are currently completing the Project Management associate certification training which was provided by The George Washington University.

Customer Relationship Management

In the acquisition process, we rely strongly on our customers to provide us sound information and to help us understand the type of product or service that we are acquiring on their behalf. We have partnered specifically with the Department of Defense (DoD) to further educate and train our customers on the acquisition process we must follow. In addition, our customer agencies have specific acquisition processes that must be followed, as well. We have implemented a GSA and DoD working group that meets weekly to address acquisition issues and concerns from both agencies. In addition, we recently signed a joint Memorandum of Agreement with the Department of Defense that further outlines our commitment to ensure a sound and compliant acquisition process.

Contractual and Financial Accountability Results

GSA developed an action plan to improve its budgetary reporting. It was a team effort – across GSA staff reviewed 2.5 million transactions and over $1 billion of customer orders as well as contract files. We returned nearly $1 billion to our Federal customers, including nearly $579 million to Department of Defense. We also have an internal control program to

monitor and track financial activity including monthly financial reporting that goes directly to our executives and contracting staff: payables, receivables, unfilled customer orders and obligations.

I am very happy to report that we received a clean "unqualified" opinion on our Financial Statement Audit from an outside, independent auditor -- PriceWaterhouseCooper. For GSA, this is a testament to the commitment of our contracting officers, program managers and financial analysts to assure our customers we appropriately and legally apply their Federal funds to contract activity.

Further, in December 2006, the GSA's OIG published the final results of a second series of audits of FAS. Again, I am proud to report that the OIG's findings showed GSA had significantly addressed the weaknesses previously found in our contract management practices. Specifically, the OIG said that FAS was providing compliant assisted acquisition services with proper management and internal controls in place. We take management and internal controls seriously at GSA and the time spent to improve our controls, train our employees and develop improved customer relationship management has resulted in significantly improved contract management practices.

Summary

GSA recognizes that we have a responsibility to provide sound acquisitions for our Federal customers. GSA's dedicated employees do billions of dollars in Federal contract business with our customers and industry partners annually and in compliance with Federal laws and rules. Our employees are inspired to help our customer agencies be more effective and efficient in meeting their missions every day by providing best value products, services, and solutions. We leverage the Government's buying power and our acquisition expertise in ways that help all agencies to be better stewards of taxpayer dollars.

Thank you Mr. Chairman. I welcome any questions you or the Committee may have.

QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

JUNE 6, 2007

QUESTIONS SUBMITTED BY MR. TAYLOR

Mr. TAYLOR. You mentioned that about 90 percent of the barriers are still available, was there a significant problem with the barriers leaking and sinking, or was that just something that happened to a few of them?

Mr. BETRO. Prior to installing the Dunlop Anti-Boat Barrier (DABB) system, a full-scale test was performed by the Naval Facilities Engineering Service Center (NFESC) on the existing commercial-off-the-shelf (COTS) 6-foot diameter units. Testing demonstrated DABB's effectiveness in stopping the threat for which they were designed.

NFESC recommended to NCIS the implementation of a larger diameter unit to deter the widest range of expected small boat attacks. The larger diameter unit required modification of the existing COTS 6-foot diameter design and was put into production very rapidly in the immediate wake of the 9/11 attacks. Operational verification testing was conducted in Norfolk, VA in early 2002 on initial DABB units. The units were found to be susceptible to leakage around and through the end flanges. Upon Navy notification, Dunlop pursued modifications, improving both lifecycle and performance capabilities. By the end of the production run in late 2003, leakage issues had been minimized.

In October 2003, the Navy designated the Naval Facilities Engineering Command (NAVFAC) as manager of the AT/FP program. NAVFAC tasked NFESC to manage the Navy's Waterside Security Systems. In this capacity, the NFESC has established standardized maintenance, inspection, and operation procedures for the Dunlop barrier systems. A centralized storage and maintenance depot for the Dunlop barriers was established. This pneumatic design requires adjustment of the air bladder from daily thermal expansion and contraction. Depending on the site and range of temperature differentials this can impact regular maintenance actions. As early production units show leakage problems in the field, they are removed from service and returned to the depot for refurbishment. New units from the end of the production run are issued from the depot to replace the leaking units.

In our experience, the maintenance requirements are typical for this type of structural system when operating in a marine environment. As noted in the NCIS testimony, roughly 90 percent of the DABB units purchased by the Navy remain deployed or in the NFESC depot available for deployment today.

Mr. TAYLOR. It is my understanding that U.S. Attorneys cannot talk about ongoing investigations, but it is also my understanding that those people who have approached a U.S. attorney are free to say, I have approached that U.S. Attorney and asked them to look into this subject. And for the record, I would like the names of the United States attorneys that have been approached, and what days they were approached, and what information was given to them.

Mr. BETRO. Below is the list of all Assistant United States Attorneys (AUSAs) briefed and the date of declination/referral, or, in the case of DC, the last meeting on this topic:

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Date of Declination/Referral: April 23, 2004

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Date of most recent briefing: May 31, 2007
(No prosecutive decision has been rendered.)

QUESTIONS SUBMITTED BY MR. BARTLETT

Mr. BARTLETT. You mentioned that about 90 percent of the barriers are still available, was there a significant problem with the barriers leaking and sinking, or was that just something that happened to a few of them?

Mr. BETRO. Prior to installing the Dunlop Anti-Boat Barrier (DABB) system, a full-scale test was performed by the Naval Facilities Engineering Service Center (NFESC) on the existing commercial-off-the-shelf (COTS) 6-foot diameter units. Testing demonstrated DABB's effectiveness in stopping the threat for which they were designed.

NFESC recommended to NCIS the implementation of a larger diameter unit to deter the widest range of expected small boat attacks. The larger diameter unit required modification of the existing COTS 6-foot diameter design and was put into production very rapidly in the immediate wake of the 9/11 attacks. Operational verification testing was conducted in Norfolk, VA in early 2002 on initial DABB units. The units were found to be susceptible to leakage around and through the end flanges. Upon Navy notification, Dunlop pursued modifications, improving both lifecycle and performance capabilities. By the end of the production run in late 2003, leakage issues had been minimized.

In October 2003, the Navy designated the Naval Facilities Engineering Command (NAVFAC) as manager of the AT/FP program. NAVFAC tasked NFESC to manage the Navy's Waterside Security Systems. In this capacity, the NFESC has established standardized maintenance, inspection, and operation procedures for the Dunlop barrier systems. A centralized storage and maintenance depot for the Dunlop barriers was established. This pneumatic design requires adjustment of the air bladder from daily thermal expansion and contraction. Depending on the site and range of temperature differentials this can impact regular maintenance actions. As early production units show leakage problems in the field, they are removed from service

and returned to the depot for refurbishment. New units from the end of the production run are issued from the depot to replace the leaking units.

In our experience, the maintenance requirements are typical for this type of structural system when operating in a marine environment. As noted in the NCIS testimony, roughly 90 percent of the DABB units purchased by the Navy remain deployed or in the NFESC depot available for deployment today.

Mr. BARTLETT. It is my understanding that U.S. Attorneys cannot talk about ongoing investigations, but it is also my understanding that those people who have approached a U.S. attorney are free to say, I have approached that U.S. Attorney and asked them to look into this subject. And for the record, I would like the names of the United States attorneys that have been approached, and what days they were approached, and what information was given to them.

Mr. BETRO. Below is the list of all Assistant United States Attorneys (AUSAs) briefed and the date of declination/referral, or, in the case of DC, the last meeting on this topic:

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