FEDERAL CONTRACTING: DO POOR PERFORMERS KEEP WINNING?

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 18, 2007

Serial No. 110–105

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.oversight.house.gov

U.S. GOVERNMENT PRINTING OFFICE

46–109 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
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FEDERAL CONTRACTING: DO POOR PERFORMERS KEEP WINNING?

WEDNESDAY, JULY 18, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2154, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the subcommittee) presiding.

Present: Representatives Towns, Murphy, Welch, Maloney, Bilbray, and Platts.

Staff present: Michael McCarthy, staff director; Rick Blake, professional staff member; Cecelia Morton, clerk; John Brosnan, minority senior procurement counsel; Emile Monette, minority professional staff member; Brian McNicoll, minority communications director; and Benjamin Chance, minority clerk.

Mr. TOWNS. The hearing shall come to order.

We are here today to consider an important question: Is there any penalty for poor performance as a Federal contractor? This committee's investigation has gathered evidence of serious, well-documented performance problems with large Federal contracts. But these problems never seem to prevent the companies involved from getting new work.

I remember the old saying, "Fool me once, shame on you; fool me twice, shame on me." Well, in my view, the taxpayers are being fooled time and time again. This must stop.

I hear from my constituents and from small minority-owned businesses nationwide that they can't get contracts with the government, only subcontracts from these enormous firms that get all the prime contracts. I am very concerned that when the government does not expect existing contractors to meet high standards, innovative new companies are effectively frozen out.

We could really shake up Federal contracting if we could cut out the middleman and give some new people a shot. And it would be an incentive for everyone to step up their performance if they knew that doing a lousy job would mean the next contract went to someone new.

For this hearing we have put together some case studies to look at how the system for measuring past performance works or does not work, as the case may be. I want to focus on the policy behind managing for performance. How is the contractor's performance measured? How is it weighed in the selection process? Do our con-

tracting officers have the tools they need? Does it matter when contractors don't pay their taxes, violate labor laws or face court judgments for fraud or discrimination? These are the types of questions we should consider today.

Our first case study is Wackenhut. Wackenhut has provided security for the Department of Energy at the Oak Ridge nuclear site since 2004. The Department of Energy inspector general reported that Wackenhut tipped off guards to a security drill, making the drill useless, required personnel to work overtime in excess of safety guidelines, and falsified records of security guard training. The IG found that Oak Ridge security cost nearly double during the Wackenhut 5-year term, and that the company may have unduly profited. But Energy officials are pleased with Wackenhut's performance, they have awarded ratings of 98 and 99 percent, granted millions in award fees and renewed the Wackenhut contract.

Wackenhut also provided security at DHS headquarters; we have a former Wackenhut guard who will tell us about security breaches and mismanagement in that contract. In fact, DHS has decided not to employ Wackenhut at DHS headquarters anymore. But just a few months after that decision, the Border Patrol within DHS hired Wackenhut for a 5-year, $250 million contract to transport immigration detainees in the Southwest.

Our second study is Bechtel, one of the largest contractors in the world. At the Department of Energy, Bechtel holds a massive construction contract for nuclear waste storage at the Hanford site in Washington. Under Bechtel's management the project's estimated cost has increased more than 150 percent to about $11 billion, and the completion date has been extended from 2011 to 2017. GAO attributed most of the cost increase and delays to Bechtel's poor performance.

The Department of Energy also experienced problems with security and management at Los Alamos National Laboratory which was managed by the University of California. The problems got so bad that Energy decided to rebid the contract and look for new management. They found new management, a joint venture between Bechtel and the University of California.

After Katrina, Bechtel got an emergency no-bid contract to install and maintain trailers. The cost of that contract spiraled out of control and auditors found more than $55 million of incorrect charges. More than 6 months after the emergency, DHS finally put the contract out for competitive bids. After the competition, Bechtel received a new contract to continue its trailer work.

Let me point out, I am not against contracting or contractors. I am against weak management and shoddy work. I know responsible contractors share my views. The flaws in the system are just as frustrating for companies who do high-quality work as they are for Congress and the taxpayers.

From a policy view, one problem seems to be that contracting officers often don't have a clear view of company track records when making procurement decisions. There is no easy access to relevant information like audit reports, IT reports, a court decision reviewing previous work.

My colleague from New York, Carolyn Maloney, has introduced a bill to acquire a data base for this type of information, and we should discuss that approach today.

At this time, I would like to yield to the ranking member of the committee, Congressman Bilbray from California.

[The prepared statement of Hon. Edolphus Towns follows:]

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SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OPENING STATEMENT OF CHAIRMAN EDOLPHUS TOWNS

HEARING ON FEDERAL CONTRACTING: DO POOR PERFORMERS KEEP WINNING?

July 18, 2007, 2:00 p.m., 2154 Rayburn

We are here today to consider an important question – is there any penalty for poor performance as a federal contractor?

This committee's investigations have gathered evidence of serious, well-documented performance problems with large federal contracts. But these problems never seem to prevent the companies involved from getting new work.

I remember the old saying, "Fool me once, shame on you. Fool me twice, shame on me." Well, in my view the taxpayers are being fooled time and time again.

I hear from my constituents, and from small and minority-owned businesses nationwide, that they can't get contracts with the government, only subcontracts from these enormous firms that get all the prime contracts. I am very concerned that when the government does not expect existing contractors to meet high standards, the innovative new companies are effectively frozen out.

We could really shake up federal contracting if we could cut out the middleman and give some new people a shot. And it would be an incentive for everyone to step up their performance, if they knew that doing a lousy job would mean the next contract went to someone new.

For this hearing, we've put together some case studies to look at how the system for measuring past performance works, or doesn't work, as the case may be. I want to focus on the policy behind managing for performance. How is contractor performance measured? How is it weighed in the selection process? Do our contracting officers have the tools they need? Does it matter when contractors don't pay their taxes, violate labor laws, or face court judgments for fraud or discrimination? These are the types of questions we should consider today.

Our first case study is Wackenhut. Wackenhut provides security for the Department of Energy at the Oak Ridge nuclear site. Since 2004, the Department of Energy Inspector General reported that Wackenhut tipped off guards to a security drill, making the drill useless; required personnel to work overtime in excess of safety guidelines; and falsified records of security guard training. The IG found that Oak Ridge security costs nearly doubled during Wackenhut's five year term, and that the company may have unduly profited. But Energy officials are pleased with Wackenhut's performance. They've awarded ratings of 98 and 99 percent, granted millions in award fees, and renewed the Wackenhut contract.

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Bechtel also has work at DHS. After Katrina, Bechtel got an emergency, no-bid contract to install and maintain trailers. The costs on that contract spiraled out of control, and auditors found more than $55 million of incorrect charges. More than six months after the emergency, DHS finally put the contracts out for competitive bids. After competition, Bechtel received a new contract to continue its trailer work.

I'd like to point out that we're not focusing on these companies because they're necessarily the worst of the worst. In fact, examples like this are far too common.

Let me say that I am a realist. The federal government spends so much money on contracting that we will always see examples of contracts that go wrong. But the government can do a better job of giving new companies a chance to prove themselves, instead of just sticking with the same few companies, again and again.

Let me also say that I am not against contracting, or contractors. I am against weak management and shoddy work. I know responsible contractors share that view. The flaws in the system are just as frustrating for companies who do high-quality work as they are for Congress and the taxpayers.

From a policy view, one problem seems to be that contracting officers often don't have a clear view of company track records when making procurement decisions. There's no easy access to relevant information like audit reports, IG reports, or court decisions reviewing previous work. My colleague Mrs. Maloney has introduced a bill to require a database for this type of information, and we should discuss that approach today.

Another problem is that the suspension and debarment process that should be weeding out the worst contractors is hardly being used at all. I hope we can discuss how to fix that problem as well.

I'd like to thank all the witnesses who are here today. I think it's important to hear from all sides, so we've invited government officials and contractors to give their take on these cases.

I will note for the record that we invited Bechtel to appear here today, and they declined the invitation. It's unfortunate that we won't hear from them, but everybody makes their own decisions. Bechtel has offered to answer questions submitted for the record, so if there are specific issues, that option is available.

***

Mr. BILBRAY. Thank you, Mr. Chairman, I thank you for having this hearing.

Mr. Chairman, I have served in many different functions in government. At 25, I was a city council member, at 27 I became mayor; I served 10 years for a small little group of citizens called the county of San Diego, 3 million, and had the privilege of coming here and serving in Congress. In that time, the one thing that has become obvious to me is that there are different schools of thought about the best way to provide services to the public.

Frankly, I was forced as a young mayor when we lost 40 percent of our city funding under Proposition 13 to eventually eliminate the police department and contract out that service. We did it because the in-house bureaucracy had become so loaded and inefficient that we needed to add competition to the process; the only way to do that was to bring in outside agencies.

Today I am looking at the explanation of this hearing, and I would like to remind everybody that poor performance, keep getting the contracts, also applies to those of us who are in government. But poor performance is not a monopoly resting on private contractors. I will give you an example.

I am shocked this town and the media didn't jump more on the horrendous performance of the RTC with the liquidation of the billions and billions of dollars of public assets. If you think they were very efficient, take a look at the huge profits of the people who bought up those assets of the RTC during that period and said those profits could have been resources of the taxpayer.

So we see the savings and loan debacle, we look at the private sector. I spent most of my career in the public sector realizing it was those on this side of aisle who really ripped off the taxpayers by mismanaging those assets.

The lack of performance is something I think we need to look at. One of things that I have seen is that fair competition is where contracting really gives the ability to get effectiveness.

There are some people I have worked with here as a government official; I saw great success in some of these companies. I would only say, I see contracting as being an essential part of the ability of the Federal Government to provide cost-effective service to the American people.

This hearing today should not be a crucifixion of the private sector; it should be a way of being able to improve a system that is essential, because when I came here to Washington and looked around and looked at situations like a powerhouse owned by the government that is still burning coal at the turn of the century, all I thought was, My God, there has to be a better way than having the Federal Government try to do it all in house.

Mr. Speaker, there is a reason why today, across this country and around this world, we have private contractors defending our Naval bases and securing our facilities and that is because we cannot afford not to. So I hope that this hearing is a way to be able to take a system that is essentially to the protection of the American people and improve it and get the most cost-effective way of providing services, because honestly there is no way we can make that claim if we try to say we abolished the participation of the private sector and try to do it all in house.

I think the record will show we will not go back to the 1930's. We need to do it with a competitive system, and hopefully this will correct misconceptions and find some situations that we can improve as partners in this concept of providing essential services to the American people.

I yield back at this time, Mr. Chairman.

Mr. TOWNS. Thank you very much, Mr. Bilbray.

Congressman Welch.

Mr. WELCH. I have no opening statement.

Mr. TOWNS. Congressman Murphy.

Mr. MURPHY. Thank you, Mr. Chairman. Just a brief remark to say, I think what we discuss here today is not a crucifixion of the private sector, not to create a justification to end Federal contracting as we know it, but to ask a simple question: When the Federal Government knows about inefficiencies and lapses of judgment with a contractor doing business with the Federal Government, what are our responsibilities? If there is an indictment to be made today, I think it lies with both the private and public sectors.

In the State of Connecticut we spent a great deal of time in Southington remediating a situation with a contractor who did some major work on schools that was millions upon millions of dollars over budget, or was well beyond schedule; and came to find out that this contractor had had a long history of problems in other school districts, unbeknownst and undisclosed to the small town of Southington.

This isn't that situation. This is a situation where we are not talking about information undisclosed; we are talking about public information that U.S. Government agencies have regarding the inefficiencies and poor work performance of private contractors.

The question to be asked today is not necessarily, to the ranking member's point, whether or not we go with more or less Federal contracting, but what do we do with the information? The way we are doing it now is not working. I certainly think that can lead to an appropriate conversation as to whether we are doing far too much over the private sector, but today's conversation is how we utilize taxpayer dollars when we have already made the decision to send that money into private hands.

I look forward to testimony of the witnesses before us.

Mr. TOWNS. Thank you very much, Congressman Murphy.

Congresswoman Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman, for calling this hearing on a critically important issue. It is really Congress' responsibility to ensure that the taxpayers' dollars are used wisely and not wasted on contracts that will not be fulfilled or be fulfilled up to standards.

I will say that the chairman and I grew up in the rough and tumble of New York City politics where we have had our share of contract scandals. I chaired the committee on contracts in New York City and authored a bill called VINDEX. It basically says, before a procurement officer lets a contract, they must go into the centralized data base and check whether or not that contractor has good credit, whether or not that contractor has completed the work on time, whether or not that contractor has cost overruns, whether or not that contractor has a record of having completed work and

done it well, or if they have a record of debarments and fines and penalties and punishment. And that VINDEX system allows procurement officers to make good choices when they make a decision to spend taxpayers' dollars for a service.

The bill that I introduced does exactly that, it is built on the copy of the H.R. 3033, Contractors and Federal Spending Accountability Act and it will really put teeth behind and fortify the current Federal suspension and debarment system.

When we put this into context, the United States is the largest purchaser of goods and services in the entire world, spending more than $419 billion on procurement awards in 2006 alone and $440 billion on grants in 2005. Yet the Federal Government's watchdogs, the Federal suspension and debarment official, our procurement officers, currently lack the information that they need to protect our taxpayers' dollars and the interest of business and government in getting a contract built and done on time in the right manner.

To what our bill does is that right now we have no centralized, confidential, governmentwide method to study and account for the performance of our contractors and to assist the procurement officers in making informed choices on who can get the job done right.

I do want to cite data from the Project on Government Oversight on a report that they did in 1995 of the top 50 Federal contractors, based on the total contract dollars received. Mine have a total of 12 resolved cases, totaling $161 million in penalties paid; so my question is, why in the world are we giving contracts to people who are being penalized for poor performance? Obviously our procurement officers do not have access to this information, this bill would give them that information.

Additionally, these 50 contractors paid approximately $12 billion in fines and penalties. I mean, so we really can do a better job and this bill would help create a system that would allow us to have a more open and transparent government so that our procurement officers could make better decisions on wisely investing taxpayers' dollars in—over $400 billion in private contracts.

So I thank you for calling this hearing, I think that one of the things we have to continue to work on is better oversight, better decisions, better procedures to protect taxpayers' dollars, and this hearing and this bill will do that.

I yield back, thank you.

Mr. TOWNS. Thank you very much, Congresswoman Maloney.

Let me add, we invited Bechtel to this hearing and they declined. I just want the record to indicate that, they declined.

Will the witnesses please stand? We always swear in our witnesses here.

[Witnesses sworn.]

Mr. TOWNS. Let the record reflect they all answered in the affirmative.

You may be seated.

Let me introduce our witnesses at this time. William Woods is the Director of Acquisition and Sourcing Management with the Government Accountability Office, an agency he has served with since 1981. He is responsible for GAO's reviews of Federal agency contracting and is an expert in the field.

Welcome.

Mr. WOODS. Thank you.

Mr. TOWNS. Elaine Duke is Chief Procurement Officer at the Department of Homeland Security. Ms. Duke previously served as Department of Homeland Security's Deputy Chief Procurement Officer and as the Assistant Administrator for Acquisitions for the Transportation Security Administration. She spent much of her career in acquisition for the U.S. Navy.

Welcome.

Richard Skinner is the Inspector General at the Department of Homeland Security. He was formerly the FEMA IG, and has previously served with the Department of State, Department of Commerce, the Arms Control Disarmament Agency and other Federal agencies.

Welcome.

Mr. William Desmond is Associate Administrator for Defense Nuclear Security at the National Nuclear Security Administration in the Department of Energy. He is a career executive who has held a number of senior management posts in nuclear security. Mr. Desmond is accompanied by Mr. Przybylek; is that correct?

Mr. PRZYBYLEK. Yes, it is.

Mr. TOWNS. I want you to know I have been struggling with that.

He was Senior Adviser to the Administrator at NNSA.

Gregory Friedman is Inspector General at the Department of Energy. He has served at the Department since 1982 and has worked in the Federal auditing field since 1968.

Mr. Woods, why don't you proceed with your opening statement and let me just say, we would like for you to speak for 5 minutes at the most; and then, of course, we allow the committee the opportunity to ask questions. And, of course, thank you so much; we will begin with you, Mr. Woods.

STATEMENTS OF WILLIAM WOODS, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE; ELAINE DUKE, CHIEF PROCUREMENT OFFICER, DEPARTMENT OF HOMELAND SECURITY; RICHARD SKINNER, INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY; WILLIAM DESMOND, ASSOCIATE ADMINISTRATOR, ACCOMPANIED BY TYLER PRZYBYLEK, SENIOR ADVISER TO THE ADMINISTRATION, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY; AND GREGORY FRIEDMAN, INSPECTOR GENERAL, DEPARTMENT OF ENERGY

STATEMENT OF WILLIAM WOODS

Mr. WOODS. Thank you, Mr. Chairman, Mr. Bilbray, Mrs. Maloney, Mr. Murphy. Good afternoon, it is a real pleasure to be here, and I thank you for inviting me.

As Mrs. Maloney pointed out, the Federal Government is the largest single buyer in the world, spending over $400 billion annually on goods and services. Many of our agencies are highly reliant these days on the use of contractors to carry out their vital and important missions; and that makes it all the more important and critical that we make sure that we award contracts only to respon-

sible contractors and that we have systems in place to hold them accountable.

What I would like to do in a few minutes I have available today is to run through some of the existing ways in which contractor performance is considered in the award and performance of government contracts.

Second, how that actually happens in practice, I will have to point out that we are not involved in an in-depth evaluation of the contractor performance, but we do know a little bit about how that process is supposed to work; and I hope we can provide that information to the committee this afternoon.

Third, we have a mechanism at GAO, a bid protest function that allows us a particularly illuminating picture into how past performance and other issues in the award of government contracts actually happened on the ground; and I will illustrate—my statement illustrates some cases where the use of past performance has been an issue in some of those bid protest decisions.

First—there are basically four ways in which a contractor's performance might come into play, first, in the area of source election. Now we as consumers in our ordinary day-to-day lives would certainly agree that past performance is important as we would pick contractors to perform services for us, but surprisingly, it is not until relatively recently that past performance became a required evaluation factor in selecting government contractors.

It was in the mid-1990's that Congress enacted legislation, largely shepherded by this committee, as well as others, requiring that past performance be a critical and important evaluation factor. The Federal Acquisition Regulation was subsequently revised to require that past performance be an evaluation factor in all government procurements.

The second way that contractor performance might come into the play is in the area of responsibility. Now, once an agency selects a contractor going through the evaluation process, weighing the various evaluation factors and selecting a contractor, it must then determine that selected contractor is responsible; and that means that he has the business resources, has the key personnel available, as well as the ethical foundation in place, to be able to adequately carry out the contract.

The third area is in the area of surveillance. The government is responsible for the day-to-day monitoring of contracting performance, and at the end of contracts is responsible for completing a performance evaluation for all of the contractors and making that available governmentwide, entering it into a governmentwide data base.

And then fourth, where contractors fail to perform in a very serious manner, there is a process, suspension and debarment, and the Federal Acquisition Regulation specifically says that a contractor who has a history of not performing up to the requirements of a contract, that contractor may be debarred from further contracts, and the debarment process can last up to 3 years.

There are a number of guidance regulations, that is, policy documents, etc., that are outlined in my statement—I won't get into detail on those; some of those are governmentwide, the Federal acquisition I mentioned. The Office of Federal Procurement Policy within

OMB also issued guidance on the use of past performance in selecting contractors. There are also specific guidance documents that individual agencies have; the Department of Homeland Security, for example, Department of Defense, Department of Energy all have their own guidance documents that provide further elaboration on how past performance ought to be considered.

Basically, there are a number of key points that must be considered as contractor performance is factored into the source selection process. First of all, agencies have very broad discretion in how they are going to weigh past performance. As I said, it is a required evaluation factor, but it is up to the agencies to decide how much weight that factor is going to apply in individual procurements.

Mr. TOWNS. Can you summarize?

Mr. WOODS. I certainly will.

The key to all of this is whatever the solicitation says as to how past performance is going to weigh, the agency must adhere to that evaluation scheme. They do not have the discretion to depart from an announced evaluation scheme.

Thank you, sir.

Mr. TOWNS. Thank you very much.

[The prepared statement of Mr. Woods follows:]

United States Government Accountability Office

GAO

Testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
Wednesday, July 18, 2007

FEDERAL CONTRACTING

Use of Contractor Performance Information

Statement of William T. Woods, Director
Acquisition and Sourcing Management

GAO-07-1111T

July 18, 2007

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Highlights

Highlights of GAO-07-1111T, a testimony before the Subcommittee on Government Management, Organization, and Procurement, Committee on Oversight and Government Reform, House of Representatives

FEDERAL CONTRACTING

Use of Contractor Performance Information

Why GAO Did This Study

The federal government is the largest single buyer in the world, obligating over $400 billion in fiscal year 2006 for a wide variety of goods and services. Because contracting is so important to how many agencies accomplish their missions, it is critical that agencies focus on buying the right things the right way. This includes ensuring that contracts are awarded only to responsible contractors, and that contractors are held accountable for their performance. Use of contractor performance information is a key factor in doing so.

This testimony covers three main areas concerning the use of contractor performance information: (1) the various ways in which a contractor's performance may be considered in the contracting process; (2) how information on past performance is to be used in selecting contractors, as well as the various mechanisms for how that occurs; and (3) some of the key issues that have arisen in considering past performance in source selection, as seen through the prism of GAO's bid protest decisions.

GAO has previously made recommendations for improving the use of contractor performance information, but is not making any new recommendations in this testimony.

www.gao.gov/cgi-bin/getrpt?GAO-071111T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

What GAO Found

The government contracting process provides for consideration of various aspects of contractor performance at multiple points:

- *Source selection:* Past performance is required to be an evaluation factor in selecting contractors, along with factors such as price, management capability, and technical approach to the work.
- *Responsibility determinations:* Once a contractor is selected for award, the contracting officer must make a responsibility determination that the prospective awardee is capable and ethical. This includes, for example, whether the prospective awardee has a satisfactory performance record on prior contracts.
- *Surveillance under the current contract:* Once a contract is awarded, the government monitors a contractor's performance throughout the performance period, which may serve as a basis for performance evaluations in future source selections.
- *Debarment:* To protect the government's interests, agencies can debar, that is preclude, contractors from receiving future contracts for various reasons, including serious failure to perform to the terms of a contract.

Agencies are required to consider past performance in all negotiated procurements above the simplified acquisition threshold of $100,000 and in all procurements for commercial goods or services. Although past performance must be a significant evaluation factor in the award process, agencies have broad discretion to set the precise weight to be afforded to past performance relative to other factors in the evaluation scheme. Whatever they decide about weights, agencies must evaluate proposals in accordance with the evaluation factors set forth in the solicitation, and in a manner consistent with applicable statutes and regulations. In evaluating an offeror's past performance, the agency must consider the recency and relevance of the information to the current solicitation, the source and context of the information, and general trends in the offeror's past performance. The key consideration is whether the performance evaluated can reasonably be considered predictive of the offeror's performance under the contract being considered for award.

Although a seemingly simple concept, using past performance information in source selections can be complicated in practice. GAO bid protest decisions illustrate some of the complexities of using past performance information as a predictor of future contractor success. Some of the questions raised in these cases are:

- *Who:* Whose performance should the agencies consider?
- *What:* What information are agencies required or permitted to consider in conducting evaluations of past performance?
- *When:* What is the period of time for which agencies will evaluate the past performance of contractors?
- *Where:* Where do agencies obtain contractor performance information?

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the use of contractor performance information. The federal government is the largest single buyer in the world, obligating over $400 billion in fiscal year 2006 for a wide variety of goods and services. Spending on contracts across the government has increased significantly in recent years and currently represents about a quarter of discretionary spending governmentwide. Because contracting is so important to how many agencies accomplish their missions, it is critical that agencies focus on buying the right things the right way. This includes ensuring that contracts are awarded only to responsible contractors, and that contractors are held accountable for their performance.

Today I would like to cover three main areas concerning the use of contractor performance information. First, I will discuss the various ways in which a contractor's performance may be considered in the contracting process. Second, I will discuss in more detail how information on past performance is to be used in selecting contractors, as well as the various mechanisms for how that occurs. And third, I will highlight some of the key issues that have arisen in considering past performance in source selection, as seen through the prism of GAO's bid protest decisions.

In preparing this statement, we analyzed federal statutes, regulations, and government-wide guidance, as well as more specific guidance from the Departments of Defense (DOD), Energy (DOE), and Homeland Security (DHS) concerning the use of contractor past performance information in awarding contracts. We selected these agencies because they were the three largest agencies in terms of federal contracting dollars obligated during fiscal year 2006. We also reviewed prior GAO reports on related topics, as well as relevant bid protest decisions. This statement is based primarily on prior GAO work that was conducted in accordance with generally accepted government auditing standards.

Contractor Performance Is to Be Considered at Multiple Points in the Contracting Process

The government contracting process provides for consideration of various aspects of contractor performance at multiple points:

- *Past performance as source selection factor*: Only relatively recently have federal agencies been required to consider past performance in selecting their contractors. In 1997, the Federal Acquisition Regulation (FAR) was modified to require that agencies consider past performance information as an evaluation factor in source selection.

Past performance is now required to be an evaluation factor in selecting contractors, along with factors such as price, management capability, and technical approach to the work.

- *Responsibility determinations:* Once a contractor is selected for award, the contracting officer must make an affirmative determination that the prospective awardee is capable and ethical. This is known as a responsibility determination, and includes, for example, whether a prospective awardee has adequate financial resources and technical capabilities to perform the work, has a satisfactory record of integrity and business ethics, and is eligible to receive a contract under applicable laws and regulations.[1] As part of the responsibility determination, the contracting officer also must determine that the prospective awardee has a "satisfactory performance record" on prior contracts. This determination of the prospective awardee's responsibility is separate from the comparison of the past performance of the competing offerors conducted for purposes of source selection.[2]

- *Surveillance of performance under the current contract:* Once a contract is awarded, the government should monitor a contractor's performance throughout the performance period. Surveillance includes oversight of a contractor's work to provide assurance that the contractor is providing timely and quality goods or services and to help mitigate any contractor performance problems. An agency's monitoring of a contractor's performance may serve as a basis for past performance evaluations in future source selections. GAO reported in March, 2005 on shortfalls at DOD in assigning and training contract surveillance personnel, and recommended improvements in this area.

- *Suspension and debarment:* Contractor performance also comes into play in suspensions and debarments. A suspension is a temporary exclusion of a contractor pending the completion of an investigation or legal proceedings, while a debarment is a fixed-term exclusion lasting no longer than 3 years. To protect the government's interests, agencies can debar contractors from future contracts for various reasons, including serious failure to perform to the terms of a contract. Suspensions and debarments raise a whole set of procedural and policy issues beyond past performance, not the least of which is the question of whether these are useful tools in an environment in which recent

[1]FAR § 9.104-1.

[2]FAR § 15.305(a)(2)(i).

consolidations have resulted in dependence on fewer and larger government contractors. Questions have also been raised about whether delinquent taxes or an unresolved tax lien should result in suspension or debarment. A proposed revision to the FAR would list these tax issues as grounds for suspension or debarment.[3] In July 2005, GAO reported on the suspension and debarment process at several federal agencies and recommended ways to improve the process.

Past Performance Should Play a Key Role in Source Selection

In the Federal Acquisition Streamlining Act (FASA) of 1994, Congress stated that in the award of contracts, agencies should consider the past performance of contractors to assess the likelihood of successful performance of the contract. FASA required the adoption of regulations to reflect this principle, and the FAR now requires the consideration of past performance in award determinations. The Office of Federal Procurement Policy (OFPP) has issued guidance on best practices for using past performance information in source selection, and individual agencies have issued their own guidance on implementing the FAR requirements.

For agencies under the FAR, a solicitation for a contract must disclose to potential offerors all evaluation factors that will be used in selecting a contractor. Agencies are required to consider past performance in all negotiated procurements above the simplified acquisition threshold of $100,000 and in all procurements for commercial goods or services. Although past performance must be a significant evaluation factor in the award process, agencies have broad discretion to set the precise weight to be afforded past performance relative to other factors in the evaluation scheme. Whatever they decide about weights, agencies must evaluate proposals in accordance with the evaluation factors set forth in the solicitation, and in a manner consistent with applicable statutes and regulations. Agencies must allow offerors to identify past performance references in their proposals, but also may consider information obtained from any other source. In evaluating an offeror's past performance, the agency must consider the recency and relevance of the information to the current solicitation, the source and context of the information, and the general trends in the offeror's past performance. Offerors who do not have any past performance may not be evaluated favorably or unfavorably. That is, they must receive a neutral rating.

[3]For more information on contractor tax compliance, see *Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System*, GAO-07-742T (Washington, D.C.: April 19, 2007).

In addition, the OFPP has issued guidance on best practices for considering past performance data.[4] Consistent with the FAR, OFPP guidance states that agencies are required to assess contractor performance after a contract is completed and must maintain and share performance records with other agencies. The guidance encourages agencies to make contractor performance records an essential consideration in the award of negotiated acquisitions, and gives guidelines for evaluation. It also encourages agencies to establish automated mechanisms to record and disseminate performance information. If agencies use manual systems, the data should be readily available to source selection teams. Performance records should specifically address performance in the areas of: (1) cost, (2) schedule, (3) technical performance (quality of product or service), and (4) business relations, including customer satisfaction, using a five-point rating scale.[5]

Agencies may also issue their own supplemental regulations or guidance related to past performance information. All of the three largest departments in federal procurement spending - the Department of Defense, the Department of Energy, and the Department of Homeland Security - provide at least some additional guidance in the use of past performance data, addressing aspects such as the process to be followed for considering past performance during contract award and what systems will be used to store and retrieve past performance data. Below are some examples that illustrate the types of guidance available.

- DOD offers instruction on using past performance in source selection and contractor responsibility determinations through the Defense Federal Acquisition Regulation Supplement and related Procedures, Guidance, and Information. DOD's Office of Defense Procurement and Acquisition Policy also has made available a guide that provides more detailed standards for the collection and use of past performance information, including criteria applicable to various types of contracts.

[4]Federal law gives the Office for Federal Procurement Policy the authority to prescribe guidance for executive agencies regarding standards for (1) evaluating past performance of contractors, and (2) collecting and maintaining information on past contract performance. In May of 2000, OFPP published discretionary guidance entitled "Best Practices for Collecting and Using Current and Past Performance Information."

[5]The guidance also addresses the evaluation of affiliates, the contractor comment process, and the retention of performance evaluation records.

- DOE also provides additional guidance to contracting officers in the form of an acquisition guide that discusses current and past performance as a tool to predict future performance, including guidelines for assessing a contractor's past performance for the purpose of making contract award decisions as well as for making decisions regarding the exercise of contract options on existing contracts.

- At DHS, the department's supplemental regulations outline which systems contracting officers must use to input and retrieve past performance data. Specifically, contracting officers and contracting officer representatives are required to input contractor performance data into the Contractor Performance System, managed by the National Institutes of Health, and use the Past Performance Information Retrieval System (PPIRS) - which contains contractor performance ratings from multiple government systems - to obtain information on contractor past performance to assist with source selection.

Issues in Using Past Performance in Source Selection

Although a seemingly simple concept, using past performance information in source selection can be complicated in practice. GAO has not evaluated the practices that agencies use regarding contractor past performance information in source selection or whether those practices promote better contract outcomes. Our bid protest decisions, however, illustrate some of the complexities of using past performance information as a predictor of future contractor success. Some of these issues are listed below. In all of these cases, the key consideration is whether the performance evaluated can reasonably be considered predictive of the offeror's performance under the contract being considered for award.

- *Who:* One issue is whose performance agencies should consider. Source selection officials are permitted to rate the past performance of the prime contractor that submits the offer, the key personnel the prime contractor plans to employ, the major teaming partners or subcontractors, or a combination of any or all of these. For example, in one case, GAO found that the agency could consider the past performance of a predecessor company because the offeror had assumed all of the predecessor's accounts and key personnel, technical staff, and other employees.[6] In another case, GAO held that an agency

[6]Al Hamra Kuwait Co., B-288970, December 26, 2001.

could provide in a solicitation for the evaluation of the past performance of a corporation rather than its key personnel.[7]

- *What:* Also at issue is what information agencies are required or permitted to consider in conducting evaluations of past performance. The issue is one of relevancy. Agencies must determine which of the contractor's past contracts are similar to the current contract in terms of size, scope, complexity, or contract type. For example, is past performance building single family homes relevant to a proposal to build a hospital? Agencies do not have to consider all available past performance information. However, they should consider all information that is so relevant that it cannot be overlooked, such as an incumbent contractor's past performance. In one case, GAO found that an agency reasonably determined that the protester's past performance on small projects was not relevant to a contract to build a berthing wharf for an aircraft carrier.[8]

- *When:* Agencies also have to determine the period of time for which they will evaluate the past performance of contractors. Agencies are required to maintain performance data for 3 years after the conclusion of a contract[9] although agencies have discretion as to the actual length of time they consider in their evaluation of past performance and could, for example, choose a period longer than 3 years. In one case, GAO held that although the solicitation required the company to list contracts within a 3-year time frame, the agency could consider contract performance beyond this timeframe because the solicitation provided that the government may "consider information concerning the offeror's past performance that was not contained in the proposal."[10]

- *Where:* Once agencies determine who they will evaluate, what information they will consider, and the relevant time frame, they still may have difficulties obtaining past performance information. Agencies can obtain past performance information from multiple sources, including databases such as PPIRS - a centralized, online database that contains federal contractor past performance information. However, in

[7]Olympus Bldg. Svcs., B-282887, August 31, 1999.

[8]Marathon Constr. Co., B-284816, May 22, 2000.

[9]FAR §42.1503(e).

[10]BST Systems, Inc., B-298761, B-298761.2, December 1, 2006.

2006, the General Services Administration noted that PPIRS contains incomplete information for some contractors. Agencies may also obtain information from references submitted with proposals and reference surveys. One case illustrates how an agency evaluated a company based on limited past performance information. The agency assigned the company a neutral rating because the agency did not receive completed questionnaires from the company's references listing relevant work and the solicitation provided that it was the company's obligation to ensure that the past performance questionnaires were completed and returned.[11]

These are just some of the many issues that have been the subject of protests involving the use of past performance. Our cases are not necessarily representative of what may be occurring throughout the procurement system, but they do provide a window that allows us to get a glimpse of how the issue is handled across a number of agencies. At a minimum, however, our cases suggest that the relatively straightforward concept of considering past performance in awarding new contracts has given rise to a number of questions that continue to surface as that concept is implemented.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

For further information regarding this testimony, please contact William T. Woods at (202) 512-4841 or woodsw@gao.gov. Individuals making key contributions to this testimony included Carol Dawn Petersen, E. Brandon Booth, James Kim, Ann Marie Udale, Anne McDonough-Hughes, Kelly A. Richburg, Marcus Lloyd Oliver, Michael Golden, Jonathan L. Kang, Kenneth Patton, and Robert Swierczek.

[11] American Floor Consultants, Inc., B-294530.7, June 15, 2006.

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Mr. TOWNS. Ms. Duke.

STATEMENT OF ELAINE DUKE

Ms. DUKE. Good afternoon, Chairman Towns, Ranking Member Bilbray and members of the subcommittee. Thank you for the opportunity to speak before you and meet with you this afternoon. I am the Chief Procurement Officer for the Department of Homeland Security and a career executive, with most of my 23 years in public service in the procurement profession.

Before addressing the responsibility determinations, I would like to convey my top three priorities, which are essential to enhancing DHS's ability to procure from responsible contractors. Those priorities are first, to build the DHS acquisition work force; second, to make good business deals; and third, to perform effective contract administration.

As the Chief Procurement Officer, I provide oversight and support to eight procurement offices within DHS. I provide the acquisition infrastructure by instituting policies and procedures that allow DHS contracting officers to operate in a uniform and consistent manner.

Mr. Chairman, I know that you are very interested in ensuring that DHS and its components procure goods and services on behalf of the American taxpayer from responsible contractors. I can assure you that we share your interest and take seriously our obligation to award only to responsible contractors.

In my written testimony, I outline in detail the processes and systems we rely on to ensure that we do business with contractors holding a good track record of performance. In addition to following the processes described in the regulations, we have developed further guidance within DHS to ensure contracting professionals make appropriate business decisions based on the particular facts of each given situation.

Our Homeland Security acquisition regulations and Homeland Security acquisition manual supplement the Federal guidance and reiterate the requirement that our contracting officers are to perform responsibility determinations prior to making a new contract award. Thus, if a contracting officer finds that a company has a record that includes negative information, he or she must assess its relevance in the requirement before award.

The role past performance plays in DHS-negotiated best-values procurements is receiving increased attention. Just last month my office issued an extensive, practical guide to source selection to all components. The guide stresses the requirement for evaluating past performance on all negotiated competitive acquisition above the simplified acquisition threshold.

At the Department we are increasingly emphasizing comparative adherence to the processes and the mechanics of contracting processes. Very recently, the Under Secretary for Management issued a memorandum to all members of the DHS acquisition community, reinforcing the requirement to perform performance evaluations on all of our contractors.

In response to the central question of this hearing, why do poor performers keep winning, we are making concerted efforts to im-

prove contractor accountability and minimize those instances where a poor performer receives a DHS contract award.

This fiscal year our eight components have executed over 59,000 contract actions representing total obligated dollars over $6.5 billion, involving 12,000 different vendors. In compliance with the FAR, contracting professionals are consulted and we participate in the Interagency Suspension and Debarment Committee.

I will address two specific businesses, Wackenhut and Bechtel. In April 2006, DHS awarded a contract for guard services for our Nebraska Avenue complex to Paragon Systems incorporating lessons learned from DOD and more stringent requirements. The predecessor Wackenhut contract was a legacy, made, awarded and based on a operations contract vehicle for significantly less robust security requirements. That contract was with armed Navy active duty personnel.

The Wackenhut contract awarded Customs and Border Protection to transfer immigration detainees to consider past performance as a key evaluation factor as part of the source selection process. Positive feedback from two Federal agencies was received by Customs and Border Protection, and thus far performance has been satisfactory.

The Wackenhut contract awarded by Immigration and Custom Enforcement [ICE], for guard services were awarded as task orders of the General Services Administration schedule. GSA makes the required responsibility determinations and monitors contract performance on key aspects of contractor compliance through the life of the contract.

With regard to Bechtel, the past performance questionnaires were sent to the company and individuals, returned in sealed envelopes, and past performance was considered in the competition of the Individual Assistance-Technical Assistance Contract at FEMA.

We continue to grow and train our work force in DHS and look forward to answering questions this afternoon.

Mr. TOWNS. Thanks you very, very much, Ms. Duke.

[The prepared statement of Ms. Duke follows:]

FEDERAL CONTRACTING: DO POOR PERFORMERS KEEP WINNING?

STATEMENT OF
ELAINE DUKE
CHIEF PROCUREMENT OFFICER
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES
JULY 18, 2007

Chairman Towns, Ranking Member Bilbray, and Members of the Subcommittee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security (DHS) acquisition program and our contracting procedures as they relate to responsibility determinations, our process by which we seek to award our contracts only to responsible contractors. I am the Chief Procurement Officer (CPO) for the Department of Homeland Security. I am a career executive and I have spent most of my 23 years of public service in the procurement profession.

Before addressing responsibility determinations, I would like to convey my top three priorities, which are essential elements to enhancing DHS' ability to procure from responsible contractors.

- First, to build the DHS acquisition workforce.
- Second, to make good business deals.
- Third, to perform effective contract administration.

As the CPO, I provide oversight and support to eight procurement offices within DHS – Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), United States Coast Guard (USCG), United States Secret Service (USSS), Federal Law Enforcement Training Center (FLETC), and the Office of Procurement Operations (OPO). As the CPO, my primary responsibility is to manage and oversee the DHS acquisition program. I provide the acquisition infrastructure by instituting acquisition policies and procedure that allow DHS contracting offices to operate in a uniform and consistent manner.

Mr. Chairman, I know that you are very interested in ensuring that DHS and its Components procure goods and services on behalf of the American taxpayer from responsible contractors. I can assure you that we share your interest and take seriously our obligation to award only to responsible prospective contractors.

Not just at DHS, but throughout Federal agencies, there is an emphasis on conducting business with responsible contractors. The Federal Acquisition Regulation (FAR) provides the guiding principles, processes, and procedures the acquisition community uses to ensure that Federal agencies procure goods and services only from responsible contractors. When making their responsibility determinations, Contracting Officers are required to consider various sources of information such as:

- The Excluded Parties List System (EPLS);
- Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices;
- The prospective contractor-including their submitted bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
- Commercial sources of supplier information of a type offered to buyers in the private sector;
- Preaward survey reports (if determined necessary);
- Other sources such as publication; suppliers, subcontractors, and customers of the prospective contractor, financial institutions, Government agencies, and business and trade associations; and
- Contractor performance evaluation reports.

At DHS, our Homeland Security Acquisition Regulation, the HSAR, and our Homeland Security Acquisition Manual, the HSAM, supplement the FAR guidance and reiterate the requirement that our Contracting Officers are to perform responsibility determinations prior to making a new contract award. DHS Components use DHS Form 700-12 to guide the responsibility determination process. The list of factors required by the form expands upon those required by FAR 9.104 and 9.105 to include drug free workplace, small business subcontracting compliance, equal employment opportunity, and environmental/energy considerations.

Our Contracting Officers' assessments with respect to determining a contractor's responsibility are based on a number of inputs, ranging from information collected in response to a specific procurement to centrally available information. For example, when assessing financial responsibility, a DHS Contracting Officer may review and evaluate the latest company financial statements. Other considerations may include how long the company has been in business, any bankruptcies declared by the company, the bond rating by Moody's or Standard and Poor's, etc. Since April of 2003, DHS has had a memorandum of understanding in place with the Defense Contract Audit Agency that makes available their expertise in determining financial responsibility of prospective contactors.

A more expanded pre-award survey may be conducted if the Contracting Officer has reason to believe that one or more of the responsibility standards I mentioned earlier is in doubt, or if information is not readily available. Of course, there are instances where during the course of a responsibility determination, the Contracting Officer becomes aware of serious systemic problems or a single serious breach that warrants suspension and debarment based on actions under a single contract; but, generally, responsibility determinations are confined to a single

award scenario and focus on answering the question: Does the contractor have the integrity, past performance record and resources to meet the Government's requirement?

The record of performance on previously awarded contracts is regarded as an important measure of a company's future performance. The FAR requires that Contracting Officers consider this record of performance when awarding a contract. Pointedly, the FAR states that, "*the currency and the relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered.*" Thus, if a Contracting Officer finds that a company has a record that includes negative information, he/she must assess its relevance to the requirement being competed. Is the work similar? How recent was the poor performance? Was the effort performed by the same division of the company? And, while a prospective contractor cannot be determined non-responsible solely based on a lack of relevant performance history, it is also true that for some negotiated procurements, a contractor's record of performance can be the deciding factor in the award decision.

Contracting Officers at DHS are required to use the Past Performance Information Retrieval System, known as "*PPIRS*", to obtain and assess information on contractor past performance. PPIRS is a Government-wide data warehouse which contains information on past performance of contractors with whom the Government does business. DHS Contracting Officers and Contracting Officer Technical Representatives (COTRs) use a feeder system to input information on DHS contractor performance into PPIRS. The feeder system, the Contractor Performance System (CPS) is managed by NIH, and allows us to input performance information on our DHS contract actions. This data then feeds into the PPIRS data warehouse.

Prior to making an award, the Contracting Officer also reviews the web-based Excluded Parties List System (EPLS) operated by the General Services Administration to ascertain whether the contractor is debarred or suspended from Government contracting; those on the list are excluded from doing business with the Government. EPLS and the Government's debarment and suspension procedures are well-established and well-understood within the Government and by companies who do business with the Government. EPLS provides the single comprehensive list of individuals and firms excluded by Federal Government agencies from receiving Federal contracts or subcontracts. A single agency's suspension or debarment decision, with limited exceptions, precludes all other agencies from doing business with an excluded party.

An overall responsibility determination also is dependent on contractor representations and certifications – "*reps & certs*" as they are known. Contractors provide these FAR- required statements by using the Online Representations and Certifications (ORCA) system. As part of the submission, the contractor certifies, to the best of its knowledge and belief, whether it and/or any of its principals, within a three-year period preceding the offer, have been convicted of or had a civil judgment rendered against them for the following: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local Government contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion,

or receiving stolen property. The Contracting Officer is responsible for reviewing the "*reps and certs*" prior to award to ensure that the company does not present information that would prevent an affirmative finding of contractor responsibility.

Mr. Chairman, a responsibility determination is required for each contract award; however, Contracting Officers use their discretion when evaluating the information before them. What I mean by this is, our acquisition professionals must make decisions based on the information available to them and the facts specific to the situation before them so that when applying the rules, there may be a different outcome in different situations. As you consider whether additional guidance, tools and Government-wide processes should be added to our existing approaches to determining responsibility and avoiding awards to poor performers, it is important to maintain this discretion. Our contracting professionals are able to make appropriate business decisions based on the particular facts of each given situation.

Additionally, it is critical that we maintain certain very important presumptions and considerations that are built into our current processes and procedures for responsibility. Where any small business has been determined "non-responsible" in reference to the award of a contract, our contracting officers refer those small businesses to SBA for a Certificate of Competency determination in accordance with the provisions of FAR Subpart 19.6. We strive to be fair, to be reasonable, to be aware of privacy concerns, to ensure due process is afforded where appropriate, and to craft regulations that allow for those that may not have been model citizens in the past to be rehabilitated such that they are eligible for Government contracts. To be sure there are competing interests at play when we are making our determinations, but in the end, we should be mindful that we have a very real responsibility to balance these competing interests. After all, the consequences of our actions with regard to responsibility determinations ultimately may mean that we are depriving an individual of their livelihood.

The rapid growth of Federal contracting has given rise to concerns Government-wide that contracts are being awarded to poor performers - and to unethical contractors. To that end, within the last six months, the FAR Secretariat published two FAR cases specifically related to responsibility matters. A proposed FAR rule, entitled *Contractor Code of Ethics and Business Conduct*, was published in the Federal Register in February. The rule, initiated by members of my OCPO staff, establishes a clear and consistent policy regarding contractor code of ethics and business conduct, and responsibility to avoid improper business practices. Additionally, the proposed rule requires contractors to provide their employees with information on contacting the appropriate Inspector General to report potential wrongdoing to include posting this information on company internal websites and prominently displaying hotline posters. The second proposed FAR rule, *Representations and Certifications -Tax Delinquency*, published in the Federal Register for public comment in March, proposes to amend the FAR clause governing offerors' "*reps and certs*" to specifically address delinquent Federal or State tax obligations within a three year period.

Another new FAR case, currently under consideration and not yet published, would amend Federal regulations to address updates to Past Performance procedures. The Office of Federal Procurement Policy's (OFPP) Best Practices Guide, last published in May of 2000, is also presently being updated as directed by OFPP through the Chief Acquisition Officers' Acquisition Committee for E-Gov (ACE), which has established an interagency working

group to review regulations, policies, and guidance associated with contractor performance information.

In response to the central question of this hearing – *Do poor performers keep winning?* - The vast majority of DHS contract awards are **not** made to poor performers. That said, there have been instances where poor performers have received an award. And, that is unfortunate. But to put those relatively small number of instances in perspective, at DHS so far this fiscal year, our eight operational Components have executed over 59,000 contract actions representing total obligated dollars of over $6.5B involving approximately 12,000 vendors.

The role Past Performance plays in DHS negotiated best value procurements is receiving increased attention. Just last month, my office issued an extensive *Practical Guide to Source Selection* to all Components. The guide stresses the requirement for evaluation of past performance for all negotiated competitive acquisitions above the simplified acquisition threshold. The guide recommends that for major acquisitions, a specific team be established within the Source Selection Evaluation Board to focus exclusively on the evaluation of past performance information and includes an exhibit with a suggested adjectival system for assigning ratings.

At the Department level as well, we are increasingly emphasizing and monitoring Component adherence to the processes and mechanics of the contracting process. For example, very recently, the Under Secretary for Management issued a memorandum to all members of the DHS acquisition community for the purpose of enhancing the robustness of DHS Component collection and use of contractor performance information. The memorandum highlights key policy objectives relative to Component compliance with FAR and HSAR requirements to evaluate contractor performance. The essence of the USM memo is:

- Contractors provide mission essential services to DHS and that properly documented performance information improves the outcome of our DHS source selections;
- The DHS Acquisition Community, including members of contracting, program and technical offices, as well as users, need to partner better to increase their participation in the collection of performance data in the electronic collection system; and
- Contracting Officers must consider performance data in the source selection process.

The memorandum provides on-line links to contractor performance information guidebooks, highlights training opportunities currently available, and advises of additional training development now underway.

We at DHS are making concerted efforts to improve contractor accountability and minimize those instances where a poor performer receives a DHS contract award. The following are examples of where we have taken action to ensure that contract performance is managed throughout the term of our contracts while meeting the agency's critical mission challenges.

Enterprise Acquisition Gateway for Leading-Edge Solutions (EAGLE)

The EAGLE contract is an enterprise wide procurement vehicle which allows our Components to place task orders for IT services. The contract award phase and planned administration of these contracts demonstrate our focus on contractor performance. Each of the fifty-three DHS

EAGLE contract awardees was subjected to a full responsibility review during the proposal evaluation phase. This review focused on the following:

- Offeror's accounting system;
- Financial viability (liquidity, debt, gross profit margin);
- Satisfactory performance record, based on review of NIH Contractor Performance System and discussion with individual Contracting Officers;
- Excluded Parties List System verification (to include confirmation there were no pending or current legal actions); and
- Offeror's organization, experience and technical skills.

All offerors were subjected to an extensive past performance review coupled with the responsibility determination, to assist in accessing the firm's capability and capacity to deliver high quality solutions within the proposed Functional Category. Specifically, offerors' performance on two recent efforts was evaluated, with a focus on the size, scope and complexity of the efforts, the relevance to the Function Category and the DHS mission, and the application of and results from performance measures and service level metrics. Past performance was the most heavily weighted non-price factor impacting the award decisions.

In addition, Contracting Officers assess the past performance of the offerors responding to individual task order solicitations under EAGLE. They review general recent past performance on efforts of similar size and scope. And, both during the term of the order and at completion, performance is evaluated. As more activity occurs on our EAGLE vehicle, and more EAGLE past performance data is accumulated, greater emphasis can be placed on EAGLE contractors' performance on future EAGLE efforts.

Executive Transportation Services

Using lessons learned on a previous transportation services contract for DHS Headquarters, we initiated a strategically sourced acquisition in an effort to meet mission needs and enhance performance. In late November 2006, DHS' Office of Procurement Operations (OPO) issued a small business set-aside solicitation for a strategically sourced transportation services contract for DHS and its components in the Washington D.C. Area. I note that this type of strategic sourcing has added value to the DHS investment review process, generated Department-wide savings on commodities such as aviation, boats, information technology, uniforms, weapons and office supplies. Since FY 2004, DHS has seen $201M in price savings and $9M in cost avoidance for a total of $210M in strategic sourcing program savings to date.

Since the Department-wide solicitation for transportation services was published, there have been two pre-award bid protests filed with the Government Accountability Office (GAO) and a complaint lodged with the U.S. Court of Federal Claims. GAO denied both protests, and the Court of Claims recently ruled in favor of DHS. While these legal proceedings have impacted the award time line, the Department is proceeding with the procurement process and OPO anticipates multiple awards for these services in August 2007.

eMerge2

When we determine that a contractor's poor performance can not be remedied, we initiate corrective action. Our experience with BearingPoint is one such example. eMerge2, the

Department's Electronically Managing Resources for Government Efficiency and Effectiveness project, undertaken to consolidate DHS' finance, accounting, procurement, asset management, and travel systems, was competitively awarded to BearingPoint. By aggressively tracking performance and applying increased management of the initial two task orders to BearingPoint, DHS recognized that the successful completion of the contract was unlikely. The first of two orders issued established a total ceiling of $20M for the development of an eMerge2 solution and conference room pilot testing. After several failed contractor efforts to perform or move forward, DHS directed BearingPoint to suspend its efforts and submit a settlement proposal to close the task order. The final negotiated settlement of $6M, based on the work that was satisfactorily completed by BearingPoint, was 64% less than BearingPoint's initial proposed settlement amount. The contract was subsequently allowed to expire with no additional expenditures.

Wackenhut Successor Contract

In April 2006, DHS awarded a contract for guard services for our Nebraska Avenue Complex. The predecessor Wackenhut contract, a legacy Navy base-operations contract vehicle, was for a significantly less robust security requirement; in addition to the Wackenhut contract security guards, the Navy relied on armed active duty Navy personnel. Our new DHS contract to Paragon Systems incorporated lessons-learned from DoD and established more stringent requirements including: mandatory employee Federal Protective Services training and certification and required security clearances ranging from Secret to Top Secret/SCI. Additionally, the contract is managed by an on-site Program Manager with a bachelor's degree who possesses a minimum of ten years of experience.

USCG Deepwater and ICGS - Fast Response Cutter A (FRC-A)

This project is another example of corrective action taken as a result of monitoring and managing performance. During the design of the proposed Fast Response Cutter A (FRC-A), the U.S. Coast Guard (USCG) identified technical issues with the original composite hull design and deferred the FRC-A's critical design review. The USCG then procured the services of an independent 3rd party to complete a Business Case Analysis (BCA) and a Technology Readiness Assessment (TRA) of the original hull design of the class, to determine its suitability. The analysis found that the initial composite design was not ready to meet USCG's requirements. While the "*cost to own*" for the FRC-A was reasonable, the risks associated with the composite hull represented a "*high*" risk to the USCG. The USCG, with DHS concurrence, released a request for proposal to procure a replacement craft, the FRC-B class, based on commercially proven designs requiring minimal modifications to meet USCG's mission requirements. The FRC-B craft contract will be awarded via a full and open competition.

Booz Allen Hamilton (BAH) "Recompetes"

DHS must balance mission accomplishment with prudent contracting strategies which on occasion may entail using sole source bridge contracts until re-competitions can be accomplished. A prominent example of this bridge strategy was employed for program office support with Booz Allen Hamilton (BAH). When the scope of work expanded significantly on legacy contracts from its predecessor organizations due to DHS' growing and dynamic mission, a deliberate decision was made to issue a sole source bridge contract vehicle to BAH. The bridge, which was scoped for minimum requirements, enabled the Department to

restructure the requirement into six unique requirements that were then competed. Although the competitions resulted in award of the six task orders to BAH, DHS went from a complete sole source environment for program requirements to an environment where competition was solicited for multiple program requirements.

Future long term acquisition strategy and planning by OPO is for these support services and other Headquarter organization requirements to result in "*multiple-awards*" contracts for various areas of DHS Headquarters business operations. Our current goal is to award a single program management support contract, multiple award Intelligence services contracts, multiple award training contracts, and multiple award studies/assessments contracts. For each multiple award contract, we intend to award three contracts. This strategy is designed to maximize competition, promote the use of small business, and ensure that the program benefits from competition throughout the life of the contracts.

Individual Assistance-Technical Assistance Contracts (IA-TAC)
In the immediate aftermath of Hurricane Katrina in 2005, sole source Individual Assistance-Technical Assistance Contracts were awarded to Bechtel, CH2M Hill, Fluor, and Shaw. The IA-TAC I requirements supported the disaster relief housing mission. The prime contractors performing under the IA-TAC I contracts were not Small or local businesses themselves; however, their subcontracting accomplishments to Small and local businesses were significant. Small Business utilization by the prime contractors ranged from 66.5% to almost 82%, and use of local business firms ranged from 44.8% to 78%.

This extensive use of subcontracting to Small Business and local subcontractors has provided qualified subcontractors with the opportunity to mature their skills in each mission area and build capacity to support future FEMA needs. As a result of these subcontracts, FEMA now has a much larger pool of highly-qualified local, 8(a) and Small Businesses that will be able to compete directly for future prime contracts and support its future disaster response efforts. To illustrate the success of the subcontracting relationships formed under IA-TAC I, many of the former subcontractors are now meeting requirements in the Gulf Coast as prime contractors under new contracts.

No additional IA-TAC I requirements currently exist, and these four large contracts are in a close-out phase. Follow-on competitively awarded efforts are now being supported using local Small Businesses, several of which were former subcontractors under IA-TAC I. These requirements include: (1) Trailer Maintenance and Deactivation; (2) Grounds Maintenance; (3) Mississippi Blocking, Leveling, and Anchoring of Travel Trailers; and (4) Security.

In keeping with my top three objectives I iterated earlier in my testimony, I have been growing both the size and capability of my staff, both in operations and in my policy, training, and oversight cadre. This is allowing us to approach our oversight responsibilities both on the front end of the procurement cycle and the post-award back end. We are developing a robust training program for acquisition professionals. Our Excellence in Contracting Training Series for DHS Headquarters and Component personnel is designed to enhance the acquisition workforce's understanding of contracting regulations and policies. Recent topics have included Contracting by Negotiations, Contract Financing, the SAFETY Act, and Strategic

Sourcing. Future topics include Time & Material contracting and use of the Contractor Performance System. The growth in the number of talented and experienced acquisition professionals in OCPO to serve as Desk Officers will enhance our ability to work closely with the Components on their specific acquisition issues, and the growth in the size of my Oversight group is already enabling OCPO to perform more structured procurement management reviews of the Components' acquisition programs.

Ethical behavior is a core DHS value. OCPO recently developed additional on-line ethics training, beyond what is required annually, which highlights ethical acquisition practices for our Government acquisition professionals Department-wide. To date, over 700 acquisition personnel within the Department who participate in DHS acquisitions have completed the online training.

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee about DHS contracting procedures. I am glad to answer any questions you or the Members of the Subcommittee may have for me.

Mr. TOWNS. Mr. Skinner.

STATEMENT OF RICHARD SKINNER

Mr. SKINNER. Good afternoon, Chairman Towns, Ranking Member Bilbray and members of the subcommittee. It is a pleasure to be here.

There are several points I would like to make. The first deals with acquisition resources. It should not be a surprise to anyone there is acquisition management crisis within the Federal Government today, the problem is not a new one.

For the past decade, management capabilities have been downsizing while procurement workload was on the rise. Procurement spending in the Federal Government has more than doubled just in the past 6 years alone from $203 billion to $412 billion.

I also think it is important to note that when the Department of Homeland Security was created, it was shortchanged. On one side of the ledger, it required the entire assets and programs of 22 disgruntled agencies. Yet on the other side of the ledger, it did not require proportionate share of the acquisition management assets needed to support those programs and operations.

DHS contract spending has tripled over the past 3 years from $3.4 billion to $15.8 billion. DHS is now one of the largest user of contractors in the Federal Government after the DOD and Energy; yet while its contract spending has grown significantly, its ability to manage those contracts has been unable to keep pace.

My second point goes to expediency over substance, schedule concerns trump performance concerns. Like many other Federal agencies, the Department of Homeland Security is in a catch 22 situation. The urgency of this mission demands rapid pursuit of major investments programs. The contracts, however, limit the time available for adequate procurement claims and development of technical requirements, acceptance criteria and performance measures.

Without the basic provisions that specify precisely the expected outcomes and performance measures, the government has no basis to assert that a contractor failed to perform and, thus, no basis to pursue suspension and debarment or other remedies to protect the taxpayer in future procurements. The government must lay the groundwork from the very beginning of the acquisition process, not after millions have been spent with little or nothing to show for it.

My final point is the contracting vehicles being reported today to ensure procurement of goods and services. The Department of Homeland Security, like many Federal agencies, has become increasingly reliant upon risky contract types that can be easily abused unless properly managed. These contracting vehicles, such as the performance based contract, indefinite delivery, indefinite quantity, IDIQ contracts, and time and material contracts should only be used in limited circumstances, fully justified, and only when an agency acquisition infrastructure is in place, to provide sufficient oversight.

Before I close my statement, Mr. Chairman, I would like to say a few words about contract performance information and the ability of agencies to share access to such information.

For many years, the Federal Government has pursued data bases that contain contractor performance information and provide easy access to agencies planning to award new contracts. In fact, several systems with varying levels of functionality exist today. Nevertheless we do not have a single system that includes all relevant information. For example, consent decrees, negotiated settlements, reports of investigation, audit reports, State government information are not readily available in these systems.

The current task force is with our inspector general at GSA. The Justice Department initiated this effort last fall and focused the resources and talents of U.S. attorneys, inspector generals and other parts of the government we're finding procurement fraud.

Our legislative committee is looking at what statutory changes would be needed to strengthen the tools to prevent and remedy misconduct in Federal contracts. One proposal we are exploring would address the issue of sharing contractor performance information.

I understand, Congresswoman Maloney, that you have introduced legislation just this past Friday, cosponsored with Chairman Towns.

Mrs. MALONEY. Yes.

Mr. SKINNER. I applaud you for that and look forward to working with you and exploring ways that we can improve information sharing in the Federal Government on procurement operations.

In summary, DHS and the Federal Government can do a better job protecting public interest in major acquisitions. The long-run solutions include strong, clearly articulated program goals, defined program technical requirements, performance measures and acceptance terms, well-structured contacts and sole costs and performance oversight.

In the near term, DHS mitigates risk exposure through such actions as writing shorter-term contracts with smaller incremental tasks, using contract vehicles that better share risk between government and the vendor and ensuring the government has a negotiating bar with decision points and options.

Mr. Chairman, this concludes my remarks. I will be happy to answer any questions you or the committee may have.

Mr. TOWNS. Thank you very much, Mr. Skinner.

[The prepared statement of Mr. Skinner follows:]

STATEMENT OF RICHARD L. SKINNER

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

"Federal Contracting: Do Poor Performers Keep Winning?"

July 18, 2007

Good afternoon, Mr. Chairman and Members of the Subcommittee. I am Richard L. Skinner, Inspector General for the Department of Homeland Security (DHS). Thank you for the opportunity to discuss acquisition management at the Department of Homeland Security.

The Department of Homeland Security Acquisition Structure

DHS began operations on March 1, 2003. It was created from components of 22 agencies of the federal government. In their transition into DHS, seven agencies retained their procurement functions, including USCG, FEMA, and TSA. The expertise and capability of the seven procurement offices mirrored the expertise and capability they had before creation of DHS, with staff size that ranged from 21 to 346 procurement personnel. DHS established an eighth acquisition office, the Office of Procurement Operations, under the direct supervision of the Chief Procurement Officer, to service the other DHS components and manage department-wide procurements. In FY 2006, the Office of Procurement Operations, FEMA, USCG, and CBP awarded nearly 75 percent of DHS' obligated contracts.

In October 2004, management directives governing acquisitions, human capital, financial management, and information technology were issued, providing that a "Chief" of each of these functions exercise leadership and authority over all aspects of that area within DHS. The acquisition management directive acknowledges the existence of the eight distinct procurement offices, and stipulates that under the concept of dual accountability, each component head shares responsibility for the acquisition function with the DHS Chief Procurement Officer. Additionally, the directive makes clear that the Head of Contracting Activity in each of the eight procurement offices is the individual responsible
for the direct management of the entire acquisition function within the component, and reports directly to the component head.

DHS Acquisition Management Challenges

Building an effective acquisition management infrastructure for the significant level of contracting activities in the department is a major challenge. DHS must have an acquisition management infrastructure in place that allows it to oversee effectively the complex and large dollar procurements critically important to achieving DHS' mission. Acquisition management is not just awarding a contract, but an entire process that begins with identifying a mission need and developing a strategy to fulfill that need through a thoughtful, balanced approach that considers cost, schedule, and performance.

Acquiring cost-effective goods and services is essential to DHS' ability to accomplish its important and complex missions. To accomplish its mission of securing the homeland, DHS spends billions of taxpayer dollars annually. DHS spends nearly 40 percent of its budget through contracts and other contracting vehicles. These acquisitions must provide good value or we risk spending excessive money on unproductive investments for our homeland security. Funds spent ineffectively are not available for other, more beneficial uses.

Suspension and debarment are the most serious methods available to hold government contractors accountable for failed performance and to protect the government's interests in future procurements. To ensure the government has the option of using these methods, along with other tools to hold contractors accountable, the government must lay the groundwork from the very beginning of the acquisition process. That is, contracts must specify precisely the expected outcomes and performance measures and the government must properly oversee contractor performance. Without these basic provisions, the government will have no basis to assert that a contractor failed to perform, and thus, no basis to pursue suspension and debarment to protect the taxpayers in future procurements.

Numerous opportunities exist for DHS to make better use of good business practices, such as well-defined operational requirements and effective monitoring tools, that would have preserved the government's ability to hold poorly performing contractors accountable. Several DHS procurements have encountered problems because contract technical and performance requirements were not well defined.

Implicit in each procurement is the desire to accomplish a mission need as reliably and as cost-effectively as possible. Due to our current homeland security vulnerabilities, however, DHS tends to focus its acquisition strategies on the urgency of meeting mission needs, rather than balancing urgency with good business practices. The urgency and complexity of the department's mission will continue to demand rapid pursuit of major investments. Excessive attention to urgency, however, without good business practices leaves DHS and the taxpayers vulnerable to spending millions of dollars with little improvement in homeland security and little chance of recovering money spent.

Programs developed at top speed sometimes overlook key issues during program planning and development of mission requirements. Also, an over-emphasis on expedient contract awards may hinder competition, which frequently results in increased costs. Finally, expediting program schedules and contract awards limits time available for adequate procurement planning and development of technical requirements, acceptance criteria, and performance measures. This can lead to higher costs, schedule delays, and systems that do not meet mission objectives.

To be fully successful, DHS must have an infrastructure in place that enables it to oversee effectively the complex and large dollar procurements critically important to achieving the DHS mission. While DHS continues to build its acquisition management capabilities in the component agencies and on the department-wide level, the business of DHS goes on and major procurements continue to move.

Furthermore, DHS continues to pursue high-risk, complex, system-of-systems acquisitions programs. One procurement method DHS uses is performance-based contracting. While this method has certain advantages over traditional, specifications-based contracting, it also introduces risks that, unless properly managed, threaten achievement of cost, schedule, performance, and, ultimately, mission objectives.

A performance-based acquisition strategy to address the challenges of DHS' programs is, in our opinion, a good one. Partnering with the private sector adds fresh perspective, insight, creative energy, and innovation. It shifts the focus from traditional acquisition models, i.e., strict contract compliance, into one of collaborative, performance-oriented teamwork with a focus on performance, improvement, and innovation. Nevertheless, using this type of approach does not come without risks. To ensure that this partnership is successful, the department must lay the foundation to oversee and assess contractor performance, and control costs and schedules. This requires more effort and smarter processes to administer and oversee the contractors' work. Therein lies the critical importance of describing mission needs, and the yardsticks by which to measure achievement, completely and precisely. Again, without clear agreement between the government and the contractor about what the procurement is to achieve, the government is vulnerable to cost overruns, delays, and, in the end, not receiving a good or service that meets its needs.

Performance-based contracting may have additional risks, but with forethought and vigorous oversight, the risks can be managed. "[R]isk management is the art and science of planning, assessing, and handling future events to ensure favorable outcomes. The alternative to risk management is crisis management, a resource-intensive process" with generally more limited options.[1]

While no one has yet formulated the perfect risk management solution, risks can be controlled, avoided, assumed, or transferred. For example, programs can develop alternative designs that use lower risk approaches, competing systems that meet the same performance requirements, or extensive testing and prototyping that demonstrates performance. Risk mitigation measures usually are specific to each procurement. The nature of the goods and services procured, the delivery schedule, and dollars involved determine what mitigation is appropriate.

A balanced approach is more likely to result in obtaining the right products and services at the right times for the right prices. Little disagreement exists about the need for our nation to protect itself immediately against the range of threats, both natural and manmade, that we face. At the same time, the urgency and complexity of the department's mission create an environment in which many programs have acquisitions with a high risk of cost overruns, mismanagement, or failure. Adopting lower risk acquisition approaches that better protect the government's interests enhances the department's ability to take action against bad actors.

Elements of an Efficient, Effective, and Accountable Acquisition Process

We recently published the first of what will be a series of scorecards identifying the progress made in selected acquisition functions and activities within DHS. The data included in the scorecards reflect our audits and inspections reports issued through March 2007, as well as additional fieldwork conducted in February and March 2007. Our focus was on specific areas within acquisition management.

[1] *Risk Management Guide for DoD Acquisition*, Department of Defense, Defense Acquisition University, Fifth Edition (Version 2.0), June 2003.

We used GAO's *Framework for Assessing the Acquisition Function at Federal Agencies* (September 2005) and DHS' *Acquisition Oversight Program Guidebook* (July 2005) as a baseline. These references identify the following five interrelated elements essential to an efficient, effective, and accountable acquisition process:

- **Organizational Alignment and Leadership.** The end goal of organizational alignment is to ensure that the acquisition function enables the agency to meet its overall mission and needs. The acquisition function needs proper management support and visibility within the organization to meet that goal. Leaders have the responsibility to set the corporate agenda, define and communicate the organization's values and culture, and remove barriers that block organizational change.

- **Policies and Processes.** Policies and processes embody the basic principles that govern the way an agency performs the acquisition function. Planning strategically requires determining and managing relationships of those involved in the acquisition process, analyzing aggregate agency needs, and devising strategic acquisition plans to meet those needs. Agency processes need to ensure that contracted goods and services will be delivered according to the schedule, cost, quality, and quantity specified in the contract. Particular attention should be given to capital investments since they require more analysis, support, and review than projects that cost less, have shorter timeframes, or have less agency-wide impact.

- **Financial Accountability.** Sound financial systems provide credible, reliable, and accurate information that can: (1) ensure that the agency meets its financial obligations, (2) enhance strategic acquisition decisions, and (3) enable effective evaluation and assessment of acquisition activities.

- **Acquisition Workforce.** Successful acquisition efforts depend on agency and management valuing and investing in the acquisition workforce. By focusing on hiring, training, and professional development, strategic planning outlines ways to help fill gaps in knowledge, skill, and abilities. Sufficient attention needs to be given to acquiring, developing, and retaining talent or federal agencies could lose a significant portion of their contracting knowledge base. Leading organizations foster a work environment in which people are empowered and motivated to contribute to continuous learning and mission accomplishment.

- **Knowledge Management and Information Systems.** Leading organizations gather and analyze data, generally through information systems, to identify opportunities to reduce cost, improve service, measure compliance, and provide better management. Data collected in support of meaningful metrics can assist agencies to track achievement of plans, goals, and objectives and to analyze the differences between actual performance and planned results. However, it is essential that acquisition management systems contain appropriate, cost-effective controls to: (1) safeguard assets, (2) ensure accurate

aggregation and reporting of information, and (3) support the accomplishment of organizational objectives. Appropriate and cost-effective controls provide accessible, timely, and accurate data to managers and others needing acquisition information.

We determined that significant improvements were needed in all five of the elements identified above. Major concerns for the acquisition programs include: (1) an integrated acquisition system does not exist; (2) full partnership of acquisition offices with other departmental functions has not been realized; (3) comprehensive program management policies and processes are needed; (4) staffing levels and trained personnel are not sufficient; (5) financial and information systems are not reliable or integrated; and (6) timely, corrective actions have not been taken in response to many our and GAO report recommendations. Following is a summary of our assessment:

The Office of the Chief Procurement Officer

The Office of the Chief Procurement Officer is the DHS organization with responsibility for all department acquisition activities and services. This includes management, administration and oversight, financial assistance, and strategic and competitive sourcing. Responsibilities also include the development and publication of department-wide acquisition and financial assistance regulations, directives, policies, and procedures. However, as mentioned previously, each component head shares responsibility for the acquisition function with the DHS Chief Procurement Officer. Therefore, the Chief Procurement Officer has used collaboration and cooperation with the components as the primary means of managing DHS-wide acquisition oversight. Specifically, some of the collaborative methods in use include: integrating the diverse departmental components through common policies and procedures, meeting monthly with Heads of Contracting Activities to discuss issues and to work out problems, and providing input regarding new hires and employee performance for Heads of Contracting Activities staff.

In FY 2006, DHS obligated $15.7 billion in contracts, of which 83 percent was for services. Recent congressional testimony, audits, and reviews cited significant deficiencies in DHS' overall acquisition program, including the following: (1) DHS leadership has not firmly established strong centralized acquisition authority in the Office of the Chief Procurement Officer; (2) DHS has not maintained effective internal control over financial reporting, with recurring significant weaknesses reported; (3) DHS Information Systems are not integrated and do not provide helpful reports and analysis; (4) improvements are needed in the description of technical and performance requirements in contracts; and (5) additional staffing is required for program management activities.

DHS acquisition leaders identified some progress, but significant work remains before the acquisition program is fully functional. While many of the remaining acquisition challenges impact the Office of the Chief Procurement Officer, some of these challenges fall outside of its control. Based on conditions recently disclosed by our office and GAO, interviews with DHS officials, and review of data, we rated the five interrelated elements essential to an efficient and effective acquisition process. The ratings and a brief summary of each element are discussed below.

Organizational Alignment and Leadership. Since March 2003, DHS' executive leadership has made modest progress in ensuring the department's acquisition program achieves the organizational alignment needed to perform its functions. One area of improvement is the increased communication by acquisition leadership to inform staff about the role and importance of their mission to DHS. The atmosphere for collaboration between DHS and its component agencies on acquisition matters has also improved.

Important problems still exist in this area, however. Deficiencies previously reported by our office and GAO are largely uncorrected in critical areas necessary for effective acquisition organizations. The acquisition program continues to be viewed by many as a support function, i.e., contract processing office, instead of a partner. Furthermore, acquisition management has only recently begun receiving sufficient resources from DHS leadership for adequate staffing and training. Strong executive leadership is needed to ensure that the importance of the acquisition function is acknowledged and integrated with all other functions involved in, or affected by, procurement activities.

Policies and Processes. DHS has made modest progress over the past four years in developing policies and processes to ensure components comply with regulations, policies, and processes to achieve department-wide goals. In 2005, a management directive, accompanied by the *Acquisition Oversight Program Guidebook*, established policies and procedures for oversight of DHS acquisitions, with the common goal of delivering mission results while maintaining compliance with applicable laws, regulations, policies, and procedures. An acquisition manual and additional acquisition regulations for DHS have also been developed.

According to GAO and our recent reports and interviews with DHS officials, the need still remains for a comprehensive DHS approach to program management standards. Across various parts of DHS, expediency and poorly defined requirements have caused problems for the department's acquisition efforts.

Financial Accountability. DHS has made limited progress in ensuring that there is financial oversight and accountability within the acquisition function. DHS financial information is generally unreliable, and the financial systems do not have the internal controls and integration that acquisition personnel require. Also, the acquisition and finance offices have not successfully partnered on acquisition planning and strategic decision-making. DHS has numerous and persistent issues with inadequate internal controls and data verification. Improper payments have been made, and there are few checks on data once it is recorded in the system. This problem is exacerbated by the use of multiple, nonintegrated information technology systems across the department. Without a reliable data system, it has been very difficult for the financial office to make an impact in the broader acquisition process.

Acquisition Workforce. DHS has made modest progress in building a skilled acquisition workforce. An increase in the personnel budget has allowed DHS to fill many needed acquisition staff positions. However, until a fully trained acquisition workforce is developed, it

will be difficult to achieve further progress needed for an efficient, effective, and accountable acquisition function.

In previous reports, our office and GAO identified the need for additional certified program managers. The Office of the Chief Procurement Officer subsequently created a Program Management training program that should greatly increase the pool of certified program managers. Additional training and personnel are necessary, however, to reach an adequate number of certified program managers.

In addition to awarding contracts, the Office of the Chief Procurement Officer helps DHS components adhere to standards of conduct and federal acquisition regulations in awarding and administering contracts. This oversight role involves developing department-wide policies and procedures, and enforcing those policies and procedures.

Both our office and the GAO have reported that the Office of the Chief Procurement Officer needs more staff and authority to carry out its general oversight responsibilities. The Government Accountability Office recommended that DHS provide Office of the Chief Procurement Officer sufficient resources and enforcement authority to enable effective, department-wide oversight of acquisition policies and procedures. We made a similar recommendation. The DHS, in response to our December 2006 report, *Major Management Challenges Facing the Department of Homeland Security*, said that it disseminated the Acquisition Professional Management Directive to identify and certify appropriately trained and experienced program managers, contracting officer's technical representatives, and authorized buying agents. It also has certified 348 program managers since 2004, and continues to focus on qualifications and placement.

During fiscal year 2006, the Under Secretary for Management established policies for acquisition oversight and directed each of the eight heads of contracting activities to measure and manage their acquisition organizations. Also, the number of oversight specialists in the Acquisition Oversight Division is authorized to expand to nine during fiscal year 2007. The Office of the Chief Procurement Office has undertaken an outreach program to involve DHS component staff to manage effectively and assist in acquisition oversight.

Finally, data from OPM indicates that more than 40 percent of DHS' contracting officers will be eligible to retire in the next 5 years. To counteract these problems, DHS plans to use additional appropriations to hire more personnel and implement an acquisition internship program that will bring in junior staff. The results of these efforts, unfortunately, are not yet apparent.

Knowledge Management and Information Systems. DHS has made limited progress since its creation in developing and deploying information systems to track and analyze acquisition data, and improve user efficiency. Current systems are not fully integrated, contain unreliable input, and do not have internal controls to verify data. As a result, the acquisition program cannot effectively provide information to all of its stakeholders and does not have the tools necessary to perform analysis for planning or monitoring its transactions.

Many DHS components still maintain their legacy contract writing systems, and a need for integration between contract writing and contract management systems increases the risk of data error. DHS has selected PRISM as its standard contract writing system, but the department-wide rollout is behind schedule. Integration and data accuracy problems will continue to exist until all components migrate to the same contract writing system.

Federal Emergency Management Agency

FEMA is the primary federal agency that leads the United States in preparing for, preventing, responding to, and recovering from disasters. FEMA's mission includes:

- Maintaining preparedness of emergency response personnel throughout the United States;
- Providing logistical support for disaster mitigation and recovery efforts;
- Disbursing funds for rebuilding required as a result of a disaster; and
- Providing relief for individual citizens and businesses.

FEMA coordinates the response to disasters that would otherwise overwhelm the resources of state and local authorities. FEMA's Office of the Chief Acquisition Officer provides acquisition services and solutions to support the
agency's mission.

For FY 2006, FEMA obligated $7 billion in contracts, of which 89 percent was for services. FEMA spent $6.2 billion in services, such as construction and family housing, and $727 million for goods, such as trailers and plastic fabricated materials.

As demonstrated after Hurricane Katrina, FEMA was not well prepared to provide the kind of acquisition support needed for a catastrophic disaster. FEMA's overall response efforts suffered from:

- Inadequate acquisition planning and preparation for many crucial needs;
- Lack of clearly communicated acquisition responsibilities among FEMA, other federal agencies, and state and local governments; and
- Insufficient numbers of acquisition personnel to manage and oversee contracts.

To support emergency and disaster response efforts in the aftermath of Hurricane Katrina, FEMA hastily purchased supplies, commodities, equipment, and other resources from numerous vendors because requirements' planning before Katrina was inadequate. In many instances, the government did not pay reasonable prices for its purchases because competition was limited. Additionally, the government's contract oversight and monitoring were inadequate, resulting in payment of questionable costs.

In February 2006, we reported that FEMA purchased mobile homes without having a plan for how to use them. As a result, FEMA now has thousands of surplus mobile homes. Similarly, in

September 2006, we reported that FEMA spent $7 million renovating a facility to shelter evacuees. However, due to inadequate planning, the facility was never needed and the money spent to renovate it was wasted.

We conducted several investigations concerning FEMA's programs and operations, such as the Short Term Lodging Program. The Flagship Hotel's owner and others have been indicted for over billing the government for more than $250,000, by submitting bills to FEMA's hotel billing contractor, Corporate Lodging Consultants, for Dallas, Texas, hotel rooms that Hurricane Katrina evacuees never occupied.

Based on conditions disclosed by our office and other independent reviews, and discussions with FEMA personnel, we rated the five interrelated elements essential to an efficient and effective acquisition process. These ratings reflect the performance capabilities of the acquisition process. The ratings and a brief summary of each element are discussed below.

Organizational Alignment and Leadership. FEMA's acquisition office is viewed more as a support function than as a partner, and it is not aligned organizationally to ensure efficiency and accountability. The actions taken by DHS have been too few and the process too slow to ensure that FEMA's acquisition function will meet the department's goals.

FEMA had reorganized its divisions and offices five times since 1995. In February 2007, I testified that a need for clear lines of acquisition authority among states, local, and federal authorities contributed to the poor response to Hurricane Katrina.

Since Hurricane Katrina, FEMA has made some improvements, such as increasing the number of standby contracts in place and ready to be executed when disaster strikes. Also, DHS created a Disaster Response/Recovery Internal Control Oversight Board to address many of FEMA's acquisition problems.

It also created an Acquisition Business Office to assist with strategic planning, and the establishment of a Project Integration System, which will create teams consisting of staff from different offices to draw up acquisition proposals. Additional positive signs include the restructuring of two Heads of Contracting Activities into one, and the development of the new Acquisition Tracker, to monitor status of all acquisitions from beginning to end.

Remaining significant issues include the need for more funding and staffing, especially for strategic planning. Internal reviews of management structure need to be completed so that improvements can be implemented. Also, acquisition personnel are frequently left out of key decisions, sometimes leading to "buying the wrong thing quickly." Finally, the Acquisition Business Office is not yet recognized in FEMA's financial system, and therefore has no money for travel or training.

Policies and Processes. FEMA has not formed the necessary relationship with stakeholders to analyze agency needs and ensure goods and services are delivered according to the contract terms.

Some progress has been made, however, since Hurricane Katrina, in the following areas: an increase in readiness contracts; the development of a Contract Management Guide to assist new employees; and the creation of an Emergency Acquisition Field Guide to assist disaster response staff. FEMA has exceeded its goals for procurements from small businesses and drafted a new set of FEMA policies and procedures for acquisitions.

Significant issues still remain, however. FEMA still lacks all the resources it needs to provide oversight of contractor performance, increasing the risk of waste, fraud, and abuse. Also, FEMA does not have an automated system or checklist for identification of high-risk contracts. Finally, outdated policies and limited training for staff using the Emergency Acquisition Field Guide present additional concerns.

Financial Accountability. FEMA's financial systems hinder strategic planning and contract administration. Our prior reports have disclosed a need for internal controls and proper accounting. FEMA does not have disaster contract information readily available and it was unable to fully support the accuracy and completeness of $22.3 billion in unpaid obligations and $1.5 billion in accounts payable, as of November 2006.

FEMA's new Acquisition Tracker, which includes data from the procurement, program, and finance offices, is seen as an important first step to integrate FEMA's finance and acquisition offices. Unfortunately, current financial systems do not have important analytical capabilities and FEMA does not have an information technology strategy for integrating financial and acquisition management data. Several other remaining significant issues included immature partnerships between FEMA offices with acquisition functions, frequently irrelevant or unusable financial reports, and incomplete assessments of payment accuracy.

Acquisition Workforce. FEMA continues to experience problems with fully staffing its acquisition office and giving the workforce necessary skills and training. The acquisition staff in FEMA is improperly trained and too small to oversee the large number of Katrina-related contracts, and prevent fraud, waste, and abuse.

FEMA acquisition leaders have plans for improvements in this area, including a formal process for reviewing and adjusting workloads, the creation of a Strategic Workforce Plan, and the development of an Acquisition Intern Program. Moreover, steps have been taken to expedite hiring, align performance plans with FEMA's goals, and measure acquisition effectiveness and efficiency.

Unfortunately, further work is needed on many issues, including finalizing the Strategic Workforce Plan, which remains in draft form. Further work is also needed to decrease the length of the hiring process, improve FEMA's image in order to attract staff, and decrease attrition in an office where half of the contracting officers will be eligible to retire over the next 5 years.

Knowledge Management and Information Systems. Information technology systems are not meeting the needs of the acquisition management function, and while a need for improvement is widely recognized, FEMA leadership and acquisition personnel disagree on the best way to rectify these deficiencies.

Previous reviews and audits have identified several problems with FEMA's information technology systems. Our November 2006 report said that FEMA's National Emergency Management Information System was unable to compare actual purchases in the field to the maximum amount authorized. In January 2007, a FEMA contractor performed an independent assessment and reported that FEMA had no clearly communicated information technology strategy. Another report said that FEMA's information technology tools were deficient, outdated, or nonexistent.

The use of the department's PRISM contract writing system throughout FEMA, beginning in February 2008, should be a positive development. Currently, however, the use of several outdated and nonintegrated systems frequently requires manual data input from one system to another. Also, systems are not user friendly and training is inadequate, which lends itself to data inputting errors.

Customs and Border Patrol's SBInet Program

In the fall of 2005, the White House and the department announced the Secure Border Initiative (SBI), a comprehensive multiyear effort to secure the borders and reduce illegal immigration, which included a U.S. Immigration and Customs Enforcement-led plan to increase and improve the apprehension, detention, and removal of illegal aliens; a U.S. Citizenship and Immigration Service-led plan for expanding the guest worker program and streamlining immigration benefits processes; and a U.S. Customs and Border Protection (CBP)-led program to gain control of the Nation's land borders. This DHS program, referred to as SBInet, is intended to improve border control operations, deploying more infrastructure and personnel with modernized technology and tactics.

The objective of SBInet is to develop solutions to manage, control, and secure the borders using a mix of proven, current and future technology, infrastructure, personnel, response capability, and processes. SBInet is a new-start major acquisition program that replaces and expands upon two previous efforts to gain control of the borders: the Integrated Surveillance Intelligence System (ISIS) and the America's Shield Initiative (ASI).

The department recognized that differences in the geography and conditions among sectors of the border require a different mix of technology, infrastructure, and personnel. Therefore, the department selected a performance-based acquisition strategy that solicited solutions from industry, and then selected a systems integrator to develop solutions to manage, control, and secure the borders. The department awarded the SBInet systems integration contract to the Boeing Company in September 2006.

The department awarded an indefinite delivery, indefinite quantity contract, leaving the work tasks and deliverables largely undefined until the government negotiates a specific delivery task order. The contract base period is 3 years with three 1-year options. The initially awarded task was for Boeing to provide and integrate equipment to achieve operational control of a segment of the border near Tucson, Arizona, by June 2007.

In FY 2006, CBP was provided $325 million in supplemental funding for tactical infrastructure and technology. With the subsequent SBInet program initiation, Congress appropriated $1.2 billion in the CBP Border Security, Fencing, Infrastructure, and Technology appropriation for FY 2007. However, Congress withheld $950 million of the FY 2007 appropriation contingent upon approval of the FY 2007 SBInet Expenditure Plan. On March 22, 2007, the House of Representatives approved the release of $405 million of the withheld funds. The Senate has not commented on the FY 2007 SBInet Expenditure Plan. The FY 2008 President's Budget requests an additional $1 billion to fund the SBI Program offices, the operations and maintenance of new and legacy equipment, and to continue to develop and deploy SBInet solutions for technology and tactical infrastructure, as well as the common operational picture.

Due to its size and scope, the SBI procurement presents a considerable acquisition risk. DHS is embarking on this multibillion-dollar acquisition project without having laid the foundation to effectively oversee and assess contractor performance and effectively control cost and schedule. DHS has not properly defined, validated, and stabilized operational requirements and needs to do so to avoid rework of the contractor's systems engineering and the attendant waste of resources and delay in implementation. Moreover, until the operational and contract requirements are firm, effective performance management, and cost and schedule control are precluded.

Also, the department does not have the capacity needed to effectively plan, oversee, and execute the SBInet program; administer its contracts; and control costs and schedule. The department's acquisition management capacity lacks the appropriate work force, business processes, and management controls for planning and executing a new-start, major acquisition program such as SBInet. Without a preexisting professional acquisition workforce, Customs and Border Protection has had to create staffing plans, locate workspace, and establish business processes, while simultaneously initiating one of the largest acquisition programs in the department. DHS needs to move to establish the organizational capacity to properly oversee, manage, and execute the program.

While the department has taken steps to establish adequate oversight of this contract, there are risks similar to those occurring in other DHS acquisitions where contract management and oversight has failed. Prior to award of the SBInet contract, the department did not lay the foundation to oversee and assess contractor performance, and control costs and schedule of this major investment.

Management and Oversight Capacity. The department's acquisition management capacity does not have the appropriate work force, business processes, and management controls for planning and executing a new-start major acquisition program such as SBInet. Without a preexisting professional acquisition workforce, CBP had to create staffing plans, locate workspace, and establish business processes, while simultaneously initiating one of the largest acquisition programs in the department. At the time of the contract award, the organizational structure was in flux and key positions were still being identified and filled.

The emerging organization proposed 252 positions; however, it is unclear whether that organization will be up to the challenges ahead. Staffing the SBInet program office has been a critical problem for the department. Other specific management oversight risks also existed at the time the award:

- Whether organizational roles and functions will be assigned appropriately for employees and contractors. While contractors are appropriate for support services, only federal employees should perform inherently governmental functions. The emerging organizational structure identified 65 percent of the 252 positions as contractors. This appears excessive for the management control environment that will be needed for such a large, complex acquisition.

- Whether the staff will have the appropriate qualifications and necessary training in acquisition management, as well as the right skill mix. A question remains whether the emerging organizational structure will adequately provide for the use of integrated product teams, as required by OMB capital budgeting regulations.

- How workforce turnover and fluctuations will be managed. As a stopgap measure, CBP is detailing agents and other staff on temporary assignment to identify and perform tasks for which they are not experienced or trained. The program office had no clear plan for replacing the detailees and transferring their institutional knowledge. Without turnover procedures and documentation of decisions and deliberations, new personnel could be at a disadvantage in managing implementation.

Operational Requirements. Until the department fully defines, validates, and stabilizes the operational requirements underlying the SBInet program, the program's objectives are at risk and effective cost and schedule control are precluded.

The department deferred fully defining operational requirements until after award of the systems integration contract. In selecting the systems integrator, the department used a broad statement of objectives as part of its acquisition strategy in order to allow industry to be creative in its solutions and, consequently, deferred setting contract requirements, including performance metrics, until delivery task order negotiations.

While the SBInet broad statement of objectives is an appropriate algorithm for encouraging the systems engineering desired, success in accomplishing this macro algorithm cannot be

practically measured. By not setting measurable performance goals and thresholds, the government was at increased risk that offerors would rely on unproven technologies and high-risk technical solutions that would delay implementation or be unaffordable.

To mitigate this risk, the solicitation asked for solutions that used commercial off-the-shelf and government off-the-shelf solutions, even as the department publicly encouraged use of high-risk, developmental items, such as unmanned aerial vehicles. Also, the department aggressively pursued Quality Assurance Surveillance Plans and included Earned Value Management requirements as part of the proposals to mitigate this risk. However, it remains to be seen whether the contractor's quality assurance plan will satisfy the department's needs or whether the department's criteria for gauging program success is sufficient to evaluate the contractor's performance. To control this risk, the department needs to refine, validate, and set stable operational requirements for SBInet, enabling the program office to define and set contract requirements in task order negotiations, including the performance metrics needed to ensure accomplishment of the program's objectives.

At the time, the department also needed to define and document the underlying operational requirements, i.e., translating mission needs, describing shortcomings with the status quo systems and tactics, setting thresholds and objectives for key performance parameters including affordability, and prioritizing among competing needs and conflicting goals. Without operational requirements, the department will not have a common understanding of what it is to be accomplished, and program managers will not have the guidelines needed to balance competing objectives in cost, schedule, and performance objectives through the life of the program. Furthermore, until operational requirements are fully defined and validated, providing firm support and validated assumptions for the program's cost estimates, the credibility of budget estimates is undermined.

The department took steps during the competition for the systems integration contract to compensate for the lack of fully defined, validated, stabilized, and documented requirements. While the participating DHS and CBP officials had a strong sense of the underlying operational requirements they expected the SBInet program to fulfill, such an understanding was not reduced to writing and conveyed to others. However, the department provided industry with a library of documents and videos that describe mission goals, current operations, and desired improvements over current operations. Also, the department conducted an extensive "due diligence" process and held oral presentations and question-and-answer sessions with the competitors to exchange information. Additionally, the department developed a structure to frame analysis of the offerors' approaches. The department then modified the solicitation, requiring offers to be mapped to this structure; thereby clarifying proposed approaches, assumptions, and costs and facilitating comparisons. Eventually, this work breakdown analysis should facilitate comparison of the winning industry approach to the validated operational requirements.

However, until the operational requirements are validated and stabilized, the SBInet program will be vulnerable to changing direction. Changing the program's direction will likely require

contract changes and equitable adjustments; rework of the contractor's planning, management, and systems engineering efforts; and add cost and delay.

With firm requirements, the program office can and should move to implement performance management processes. A deferred, but critical, first step in establishing control of cost, schedule, and performance is the setting of an "acquisition program baseline." This baseline of performance and schedule requirements and total cost estimates is needed to monitor the health of the program. The absence of an acquisition program baseline is a significant risk to the success of the SBInet program. The department deferred setting a baseline until after contract award because of the uncertainties related to industry solutions. Without an "acquisition program baseline," however, it is impossible to gauge the effectiveness of the program. An acquisition program baseline is a necessary first step in implementing "earned value management." The department plans to rectify this omission through the Investment Review Board, and Joint Requirements Council review and approval process.

"Earned value management" is a comprehensive management information and analysis system, fed by cost accounting data arrayed against work breakdown structures and program schedules. It is essential to the department's understanding of the program status, the contractor's performance, and reliability of program budgets and cost estimates. The program manager must know at all times how the actual cost of the work performed compares to the budgeted cost of the work scheduled. Automated analyses of this data across the many tasks and activities being undertaken by all personnel working on the program should focus management's attention where needed and trigger early corrective action. "Earned value management" is not only a best practice, it is an OMB capital budgeting requirement.

The department included provisions for "earned value management" in the solicitation, and the program office is developing plans to start and implement the process. Until it is put in place, the department does not have a sound basis for its program cost estimates. Early, effective "earned value management" implementation will be key to understanding the effect that changes will have on the program, including trade-offs needed to balance progress across the many components of the program.

In addition to the prior mentioned steps, the SBInet program has taken the following steps to mitigate risks and avoid the problems encountered by other DHS programs:

- Unlike ISIS, CBP retained decision authority.
- SBInet included contract provisions ensuring government insight and involvement into subcontract management and make or buy decisions. The systems integrator is not necessarily the source of supply.
- SBInet adopted short contract terms and included exit clauses in the contract.
- SBInet is using concept demonstrations and incremental approaches before committing to a long-term solution and investment.

Based on conditions disclosed by our office and other independent reviews, and discussions with SBInet personnel, we rated the five interrelated elements essential to an efficient and effective acquisition process. These ratings reflect the performance capabilities of the acquisition process. The ratings and a brief summary of each element are discussed below.

Organizational Alignment and Leadership. The organizational structure has the SBInet Systems Program Office (SPO) reporting to a SBI Program Executive Office (PEO). The PEO reports directly to the CBP Commissioner's office. While this organizational structure now closely resembles the recommendations of a contracted staffing study completed in December 2006, the SBInet program's organization structure has been unstable and evolving. In March 2007, CBP reorganized the Procurement Directorate to commit procurement specialists to the planning of SBInet acquisitions. The new SBI Acquisition Office reports directly to the CBP Chief Financial Officer and has its own Heads of Contracting Activities.

In addition, CBP created the Executive Steering Council to provide senior management oversight of the SBI program. However, gaps remain among program management, planning, and contract administration.

Further, CBP faces challenges overcoming cultural change and improving planning and acquisition through cooperation, teamwork, and defined roles and responsibilities.

Policies and Processes. CBP did not have a pre-existing program management workforce to establish, implement, and refine SBInet policies and processes. The SBInet SPO had to create staffing plans, locate workspace, and establish business processes while simultaneously initiating one of the largest acquisition programs in the department. The SBInet SPO has begun identifying and generating program management policies and processes and recently created a Process Library to communicate program management policies and processes. In addition, the Executive Steering Council meets frequently and communicates lessons learned from CBP's other major systems acquisition programs.

DHS has a Memorandum of Understanding with the Defense Contract Audit Agency (DCAA) for audit services. Interagency Agreements were issued for audits of cost incurred on future Cost-Reimbursable Tasks Orders and Cost/Price Proposals. However, a planned interagency agreement with the Defense Contract Management Agency to provide contract oversight services at The Boeing Company facilities is not in place.

The SBInet SPO has not finalized an acquisition program baseline to establish program cost, schedule, and technical performance goals from which to gauge progress. Further, an EVMS to measure program and contractor performance was not operating because a performance management baseline has not been finalized.

On March 6, 2007, CBP created the SBI Acquisition Office to enhance upfront communications with the SBInet SPO and to administer SBI-related acquisitions, including SBInet. The SBI Acquisition Office adheres to the Federal Acquisition

Regulation, DHS Acquisition Regulation, and CBP policies and processes administered by the CBP Procurement Directorate. However, acquisition planning and program management systems and processes need improvement. Additionally, roles and responsibilities under the new office have not been clarified.

Financial Accountability. New legislative mandates and policy direction required the use of FY 2007 appropriations to accelerate fence-building projects and to begin addressing Northern Border vulnerabilities. At the SBInet program initiation in FY 2006, CBP used supplemental funds and the CBP Salaries and Expenses appropriation to fund program start-up. The House of Representatives continues to withhold $545 million of the FY 2007 appropriation contingent upon CBP's demonstration of how the SBInet program will achieve a certain, defined, and measurable level of border control. The Senate has not provided comment on the FY 2007 SBInet Expenditure Plan. Progress in meeting SBInet mission needs is contingent upon the release of the $950 million withheld from the FY 2007 appropriation and upon the continued funding of the program through FY 2011.

CBP uses Systems Applications Products (SAP) and the Intelligent Procurement System (IPRO) to record and manage budgets and expenditures. These systems provide key functionality for financial management of major systems acquisition program. The IPRO facilitates contract writing and records obligations, and SAP provides tools to display obligations and expenditures graphically, which is useful for gauging contractor progress. However, the latter product has limited interface with the DHS Federal Procurement Data System Next Generation, requiring information transferred to be manually verified for accuracy.

Acquisition Workforce. In November 2006, we reported that the department did not have the capacity to effectively plan, oversee, and execute the SBInet program; administer its contracts; and control costs and schedule. The SBInet SPO has made significant progress since November. For example, the department conducted an independent study of the organization and staffing needs for the program, and CBP has implemented an organizational structure that closely reflects the study's recommendations. The PEO consisted of approximately 25 positions and the SBInet SPO consisted of approximately 124 positions. However, additional staff with the requisite skills is needed to perform analysis of alternatives, prepare and administer task orders, and manage contractor cost, schedule, and performance. Furthermore, CBP does not have a performance-based rating system to link performance with organizational goals and SBInet does not have a Human Capital Plan.

Filling the positions in the SBInet organizational structure has been and continues to be a difficult challenge, which adversely affects the program. The transfer of 14 positions originally assigned to the CBP Procurement Directorate comprised the SBI Acquisition Office. Five Procurement Directorate specialists supplemented the SBI Acquisition Office staff on a part-time basis. The PEO was recruiting personnel to fill 26 positions and the SBInet SPO was recruiting to fill 235 positions. The SBI Acquisition Office was also actively recruiting to fill 17 positions concurrently with the Procurement Directorate's attempts to fill 50 contract and acquisition specialist positions. On-board staff, while focused and motivated, has unsustainable workloads.

While SBInet officials assert sufficient staff are on-hand to administer the four task orders issued, more contract actions are planned. Moreover, as a result of unfilled positions, work on tasks for major systems acquisition programs, especially the analysis of alternative solutions and logistics support analysis and planning, which are key to managing and reducing lifecycle costs, is deferred. The SBInet program's ambitious schedule of work planned for summer 2007 will exceed the staff's capacity to manage the program without significant staff increases.

Knowledge Management and Information Systems. The SBInet SPO used electronic-Program Management Office System (*ePMO*), a government off-the-shelf management information system, to record deliverables, track program documentations, and support document flow through development, review, and approval processes. The SBI Acquisition Office was able to access *ePMO*. However, *ePMO* does not interface with other DHS systems, and CBP does not have a knowledge management system. The SBInet program uses two automated systems to collect procurement data. SAP is used to record and access financial information and IPRO is used to generate contract documents and track basic procurement data such as requisition numbers, obligations, and the date of contract awards. However, SAP and IPRO information uploaded to Federal Procurement Data System Next Generation must be manually verified for accuracy. In addition, the Boeing Company was not providing cost, schedule, and performance data to the Earned Value Management Reports to help the SBInet SPO exercise oversight of the program.

Coast Guard's Deepwater Program

The Integrated Deepwater System Program (Deepwater) is a $24 billion, 25-year acquisition program designed to replace, modernize, and sustain the USCG's aging and deteriorating fleet of ships and aircraft. In June 2002, the Coast Guard awarded Integrated Coast Guard Systems (ICGS) a 5-year contract to serve as the Deepwater systems integrator. ICGS is a joint venture of Northrop Grumman and Lockheed Martin. The 2002 award decision followed a multiyear competitive phase in which two other industry teams vied with ICGS. The current base contract expired in June 2007. Between FYs 2001 and 2007, Deepwater was allocated more than $4 billion, or 66 percent of the USCG's Acquisition, Construction, and Improvements budget. The Coast Guard announced its decision to award ICGS an extension of the Deepwater contract for 43 out of a maximum 60 months for the next award term beginning in June 2007.

The Deepwater acquisition strategy uses a nontraditional system-of-systems approach in which private industry was asked to develop and propose an optimal mix of assets, infrastructure, information systems, and people solutions designed to accomplish Deepwater's missions. Additionally, the private sector was to provide the assets, the systems integration, integrated logistics support, and program management.

Over the past year, a number of audits, studies, and internal reviews were conducted on the Deepwater Program. These reviews identified management challenges and risks that include: (1) inadequate definition, understanding, and stability of requirements; (2) excessive reliance on the system integrator to manage the Deepwater Program; (3) inability to properly assess

programmatic risk; (4) need for expertise in cost estimation; (5) Deepwater Program management did not easily adapt to the environment of changing missions and requirements, and major systems integration; and (6) a Deepwater acquisition workforce that does not have the requisite training, experience, certification, and structure to acquire assets and systems of significant scope and complexity.

Systems Integrator Approach. The Coast Guard's decision to outsource program management to the systems integrator fully empowered the contractor with authority to make day-to-day decisions regarding all aspects of the contract. According to the Coast Guard, its acquisition workforce did not have the requisite training, experience, and certification to manage an acquisition the size, scope, and complexity of the Deepwater Program. Further, the Coast Guard was reluctant to exercise a sufficient degree of authority to influence the design and production of its own assets. As a result, ICGS assumed full technical authority over all asset design and configuration decisions while the Coast Guard's technical role was limited to that of an expert "advisor."

Furthermore, there was no contractual requirement that the Systems Integrator accept or act upon the Coast Guard's technical advice, regardless of its proven validity. There are also no contract provisions ensuring government involvement into subcontract management and "make or buy" decisions. The Systems Integrator decides who is the source of the supply. The effectiveness of the contractor-led Integrated Product teams (IPTs), which were originally intended to be the vehicle for managing the Deepwater Program and resolving Coast Guard's technical concerns, has been called into question by the General Accountability Office and our office.

Contractor Accountability. Our reviews have raised concerns about the definition and clarity of operational requirements, contract requirements, performance specifications, and contractual obligations. For example, in our National Security Cutter (NSC) report, we reported that the Coast Guard and the American Bureau of Shipping jointly developed standards that would govern the design, construction, and certification of all cutters acquired under the Deepwater Program. These standards were intended to ensure that competing industry teams developed proposals that met the Coast Guard's unique performance requirements. Prior to the Phase 2 contract award, the Coast Guard provided these design standards to the competing industry teams. Based on industry feedback, the Coast Guard converted the majority of the standards (85 percent of the 1,175 standards) to guidance and permitted the industry teams to select their own alternative standards without a contractual mechanism in place to ensure that those alternative standards met or exceeded the original guidance standards. The competing teams were allowed to select cutter design criteria.

Additionally, the Deepwater contract gave the Systems Integrator the authority to make all asset design and configuration decisions necessary to meet system performance requirements. This allowed ICGS to deviate significantly from a set of cutter design standards originally developed to support the Coast Guard's unique mission requirements, and permitted ICGS to self-certify compliance with those design standards. As a result, the Coast Guard gave ICGS wide latitude to develop and validate the design of its Deepwater cutters, including the NSC.

Deepwater Performance Requirements Are Ill-Defined. Vague contract terms and conditions have also compromised the Coast Guard's ability to hold the contractor accountable by making possible competing interpretations of key performance requirements. For example, the performance specifications associated with upgrading the information systems on the Coast Guard's 123-foot patrol boat fleet did not have a clearly defined expected level of performance. Also, in our review of the Helicopter Interdiction Tactical Squadron (HITRON) lease, we determined that vague contract performance requirements inhibited the Coast Guard's ability to assess contractor performance. In another example, the performance specifications for the NSC were not clearly defined, which resulted in disagreements, both within the Coast Guard and between the Coast Guard and ICGS, regarding the intent behind the cutter performance requirements.

Deepwater Cost Increases. The cost of NSCs 1 and 2 are expected to increase well beyond the current $775 million estimate, as this figure does not include a $302 million Request for Equitable Adjustment (REA) submitted to the Coast Guard by ICGS on November 21, 2005. The REA represents ICGS's re-pricing of all work associated with the production and deployment of NSCs 1 and 2, which was caused by adjustments to the cutters' respective implementation schedules as of January 31, 2005. The Coast Guard and ICGS are currently engaged in negotiations over the final cost of this REA. ICGS has also indicated its intention to submit additional REAs for adjusted work schedules affecting future NSCs, including the additional cost of delays caused by Hurricane Katrina.

Additionally, the $775 million cost estimate for NSCs 1 and 2 does not include the cost of structural modifications to be made to mitigate known design deficiencies. The cost of these modifications and the cost of future REAs could add hundreds of millions of dollars to the total NSC acquisition cost. We remain concerned that these and other cost increases within the Deepwater Program could result in the Coast Guard acquiring fewer and less capable NSCs, FRCs, and Offshore Patrol Cutters (OPCs) under the Deepwater contract.

To its credit, the USCG recognizes that urgent and immediate changes are needed in its management of major acquisitions. For example, the USCG recently issued its *Blueprint for Acquisition Reform* (Blueprint), which catalogs and proposes solutions to many of the aforementioned challenges that have historically impeded the execution of Deepwater projects. According to the USCG, implementing the Blueprint will enhance its ability to execute asset-based traditional projects, effectively employ a governmental or commercial entity as a systems integrator for complex acquisitions, and efficiently execute non-major acquisitions for necessary goods and services.

Based on conditions disclosed by our office and other independent reviews, and discussions with USCG personnel, we rated the five interrelated elements essential to an efficient and effective acquisition process. These ratings reflect the performance capabilities of the acquisition process. The ratings and a brief summary of each element are discussed below.

Organizational Alignment and Leadership. USCG is making modest progress in ensuring it achieves the organizational alignment needed to perform its acquisition functions. One sign of progress was the reestablishment of a single USCG acquisition structure, after the creation of a separate Deepwater acquisition structure proved problematic.

Significant changes to the USCG's acquisition organization are necessary to successfully merge the two acquisition components, both structurally and culturally. In its Blueprint, the USCG has identified action items that it plans to implement in order to improve its Deepwater Program. These include: (1) ensuring overarching roles and responsibilities of the acquisition function and acquisition personnel are well defined; (2) incorporating the Heads of Contracting Activities into the consolidated acquisition structure; (3) determining measures that assess the health of the acquisition function; and (4) expanding and building upon existing USCG surveys to solicit views on the effectiveness of communications, effectiveness of acquisition processes, and areas needing improvement.

Policies and Processes. USCG needs to strengthen its policies and processes to perform acquisitions effectively and efficiently. It is notable that, in advance of Blueprint implementation, the USCG has taken key steps toward improving Deepwater Program management and contractor oversight, including: (1) issuing a Commandant's Instruction reaffirming the Assistant Commandant for Systems as the USCG's "Technical Authority" for all acquisition projects; (2) revising Deepwater contract award terms to more accurately and objectively reflect past contractor performance; and (3) establishing a Risk Management Board to support a comprehensive approach to determining, assessing, documenting, and mitigating programmatic risks.

However, USCG recognizes that it must take further action to establish and strengthen policies and processes for its realigned acquisition function. In its Blueprint, USCG has identified action items that it plans to implement. They include updating the Major Systems Acquisition Manual to reflect collaborative requirements process, systems program management, acquisition strategy process, and conducting independent verification and validation of cost, schedule, and performance measurement baselines for major systems. The USCG also plans to institute third-party, independent programmatic assessments, determining technical maturity, and verifying design stability, while also ensuring that any modifications to the Deepwater contract for the performance period beginning in June 2007 will sufficiently support improved program management and increased contractor oversight.

Financial Accountability. USCG needs to improve its financial management capabilities and systems to ensure its acquisition function achieves the financial accountability needed to perform efficiently. It must address issues raised in the Defense Acquisition University review of the Deepwater Program. This review identified financial accountability as a special interest area. It reported that: (1) Deepwater financial management is distributed to a number of offices and individuals, and that no one person is responsible for oversight of financial planning; (2) the USCG does not routinely conduct independent third-party cost estimates; (3) there are an inordinate number of requirements changes and undefinitized contract actions; (4) Deepwater

decisions were not supported or needed business case studies; (5) the USCG needed flexibility in the reprogramming of funds during execution; and (6) the USCG does not routinely develop independent life cycle cost estimates.

In its Blueprint, the USCG has identified action items that it plans to implement in order to improve its Deepwater Program. These include: (1) integrating all three USCG accounting systems into a complete data set useable by all acquisition personnel; (2) developing business cases in support of all key Deepwater acquisition decisions; (3) developing an independent third-party cost estimates for the Deepwater Program; and (4) reducing the number of requirements changes and undefinitized contract actions.

Acquisition Workforce. USCG does not have the numbers and skills of acquisition workforce needed to support Deepwater acquisitions. The USCG has taken the first steps to revitalize its acquisition workforce. It is currently finalizing almost every acquisition position description to ensure the right personnel with the best skills are properly placed into the right acquisition positions, as needed to aid program success. It has added Deputy Program Manager positions to the various acquisition domains, and it has begun filling these positions with Senior Executive Service and General Schedule 15 level personnel, to build continuity into the acquisition program.

However, USCG has serious concerns regarding the size and capabilities of the acquisition workforce handling the Deepwater major systems acquisitions. Recently, the Defense Acquisition University reported the USCG does not possess a sufficient number of acquisition personnel with training, major acquisition experience, and certifications to properly manage the Deepwater Program. It also reported that the three major acquisition areas in greatest need of an infusion of experience are program management, contracting, and financial management.

In its Blueprint, USCG has identified action items that it plans to implement in order to improve its Deepwater Program. These plans include: (1) developing and implementing a comprehensive long-range Strategic Workforce Plan; (2) recruiting, hiring, and retaining experienced and certified acquisition professionals in program management (military), contracting (civilians), and other required acquisition career fields; (3) determining and applying creative pay, recruitment, retention, and other incentives to entice and retain qualified, experienced acquisition personnel; and (4) transitioning or developing specific individual acquisition skills through training, education, and internships.

Knowledge Management and Information Systems. USCG does not have the knowledge management and information systems needed to perform its acquisition functions. The GAO and the Defense Acquisition University have both reported concerns with the reliability and accuracy of USCG's Deepwater Program Earned Value Management System and Integrated Master Schedule information management systems. These information management systems are intended to help Deepwater Program managers make well-informed programmatic decisions and exercise oversight of the Deepwater contract.

However, both the GAO and the Defense Acquisition University have reported that these management systems were not properly maintained and therefore impaired the Coast Guard's ability to effectively manage the Deepwater Program. The Defense Acquisition University reported that the earned value metrics used in the Deepwater Program neglected to determine trends or highlight re-baselines.

The GAO reported in June 2004 that USCG was only maintaining the schedules of individual assets at the lowest, most detailed level and not at the integrated level. The need for an accurate integrated acquisition schedule for the Deepwater Program was a symptom of larger issues that they had raised questioning whether the Deepwater acquisition was being properly managed and the government's interest was being safeguarded.

In its Blueprint, USCG has identified action items that it plans to implement in order to improve its Deepwater Program. These planned items include: (1) implementing Earned Value Management on all required acquisition projects according to DHS requirements; (2) developing metrics to assess the effectiveness of the acquisition function for major systems; (3) developing an Acquisitions Directorate Integrated Master Plan and Integrated Master Schedule for all projects and to track status; and (4) developing key financial/schedule/Earned Value Management reports and provide training for all program and project managers.

Federal Protective Service

Contract guard services represent the single largest item in the DHS Federal Protective Service (FPS) operating budget, about $577 million for fiscal year 2007. FPS has fewer than 1,000 FPS officers nationwide. However, its contract guard workforce has more than doubled to around 15,000, since the 1995 Oklahoma City bombing.

Based on our review of FPS' contract guard efforts within its National Capital Region, we concluded that FPS' National Capital Region was not consistently deploying qualified and certified contract guards. Contract guards were on post without current suitability determinations or with expired certifications. Also, security contractors were not consistently performing their services according to the terms and conditions of their contracts. These deficiencies occurred because FPS personnel were not effectively monitoring the contract guard program. While the contractor has the primary responsibility for ensuring that all contract provisions and requirements are met, FPS is required to actively monitor and verify contractor performance. In addition, FPS was not paying invoices in a timely manner for its contract guard services nationwide and was in violation of the *Prompt Payments Act*. Since we issued our October 2006 report, FPS has made progress implementing our recommendations to improve management of its contract guard program.

Separate from this audit, our investigation led to an FPS contracting officer's technical representative (COTR) pleading guilty to conspiracy to commit bribery, receiving an illegal gratuity, and making false statements to mislead investigators. The COTR monitored the

security guard contract for Superior Protection, Inc. (SPI), and in this role, approved FPS expenditures for additional SPI guard services and acted as a liaison between the FPS and SPI. Our investigation determined that SPI paid for the COTR's travel to Houston, Texas, to participate in charity golf tournaments with SPI management. In exchange, the COTR provided SPI with favorable references to obtain additional FPS guard services contracts. The contracting officer told us that the COTR's reference was critical to her decision to award SPI a $1.9 million contract.

Transportation Security Administration

As a brand new agency, Transportation Security Administration (TSA) did not have the staff or infrastructure necessary to plan and manage its acquisitions, such as the mammoth effort to hire airport passenger and baggage screeners after September 11, 2001. As a result, TSA decisions, such as delayed issuance of and revisions to the airport federalization schedule and staffing requirements, greatly increased costs for NCS Pearson, TSA's recruiting contractor. TSA directed NCS Pearson to establish temporary assessment centers. Applicant rejection rates were higher than expected, causing NCS Pearson to assess more than nine times the number of applicants originally estimated. The increased candidate volume necessitated larger and more accessible assessment centers. These and other factors, such as mapping subcontractor labor rates to NCS Pearson labor rates, increased contract costs from the original $104 million estimate to the $742 million settlement amount. In addition, TSA's delay in recording contractual obligations may have increased its risk of violating the *Antideficiency Act*.

Another example of where an expedited schedule led to procurement problems is TSA's information technology managed services contract with Unisys. In 2002, the TSA Office of Information Technology and contracting office had small staffs overseeing numerous high value acquisitions. TSA started the rollout of airport security operations under congressionally mandated timeframes with significant budget constraints. Using a broad statement of objectives, TSA awarded Unisys a $1 billion contract to establish an information technology and telecommunications infrastructure that would support employees at headquarters and locations across the United States. By early fiscal year 2006, TSA had spent 83 percent of the contract ceiling without receiving many of the contract deliverables critical to airport security and communications. TSA issued numerous requests for tasks and deliverables, but did not always ensure that technical proposals included required contracting elements, such as statements of work with delivery dates and acceptance criteria. Two years into the contract, TSA did not have adequate performance measures. Instead, performance measures evolved during the life of the contract and were added too late in the contract cycle to be effective in assessing the contractor's performance. Moreover, they applied to a small portion of contract work.

Wackenhut Services, Inc. and Bechtel Group, Inc.
In your invitation for me to testify at this hearing, you requested that I discuss DHS' security contract with Wackenhut Services, Inc. and FEMA's disaster contracts with Bechtel Group, Inc.

Wackenhut. In February 2006, Senators Dorgan and Wyden wrote to me about current and former Wackenhut employees who reported limited and inadequate training for DHS headquarters security guards and glaring security problems there. Employee concerns about DHS headquarters included unguarded entrances, lack of training on handling toxic substances, 24-hour shifts with dozing guards, unsecured firearms and ammunition, and other problems. Moreover, the employees said the company did not fix known security weaknesses and retaliated against whistleblowers. The Senators pointed out that the Wackenhut contract was scheduled to expire at the end of March 2006.

We examined the information and determined that before Congress created DHS, the Department of Defense (DoD) contracted with Wackenhut to provide maintenance services at the Nebraska Avenue Complex (NAC), a military facility at the time. DoD subsequently expanded the contract to include guard services, also prior to creation of DHS. The contract was to expire March 31, 2006. In the interim, the facility became the DHS headquarters. Rather than take over the existing DoD contract, DHS solicited competitive bids for NAC security services. Unable to complete the new contract award by March 31, 2006, DHS awarded Wackenhut a 120-day sole source contract.

We also determined that the Wackenhut employee allegations concerned pay disputes, time sheet discrepancies, and excessive overtime. The security allegations also concerned lack of training, insufficient and improper equipment, access issues, persons without security clearances entering secured areas, and weapons carriers without appropriate permits. We ended our investigation in March 2006 at the Senators' request to prevent disclosure of the employees' identities.

Bechtel. Shortly after Hurricane Katrina struck, FEMA awarded four major Individual Assistance contracts for technical assistance (IA TAC) in the gulf region to Shaw Environmental & Infrastructure, Fluor Enterprises Inc., Bechtel National, and CH2M Hill. Technical assistance primarily involves the installation, operations, maintenance and deactivation of housing facilities such as travel trailers and mobile homes. We currently have an ongoing review looking at the original sole source contracts worth about $3 billion. Bechtel contracts exceeded over $500 million. Though all four companies were among the top 50 construction contractors in the country, the contract files did not contain documentation describing the process used to select these firms over other large firms. In addition, some of the task orders on these contracts were not definitized for several months, and FEMA initially did not have trained and experienced staff to monitor the costs or performance of these contracts. Our forthcoming work will determine the adequacy of contract documents, price reasonableness, the effectiveness of the inspection and payment processes, the effective use of warranties, and FEMA's adherence to effective contracting practices.

To date we determined that Bechtel cannibalized 36 travel trailers at its forward staging area in Mississippi and used the cannibalized trailer parts, including batteries, propane tanks, and other small items, to repair trailers that were either damaged or not mission capable. Bechtel did not comply with its contract requirement to report the damaged travel trailers to FEMA, and, FEMA did not inspect the trailers before accepting them into inventory. Bechtel's decision to cannibalize some of the deficient trailers may have voided the manufacturer's warranty. Our assessment is ongoing.

Sharing Performance Information

Before I close my statement, Mr. Chairman, I would like to say a few words about contractor performance information and the ability of agencies to share and access such information.

For many years, the federal government has pursued databases that contain contractor performance information and provide easy access to agencies planning to award new contracts. In fact, several systems with varying levels of functionality exist now. Nevertheless, we do not have a single system that includes all relevant information. For example, consent decrees, negotiated settlements, and state information are not readily available. Data on contracts closed more than three years ago are not included. At the same time, we are cognizant of industry concerns about due process, fairness, consistency, and relevance.

In July 2006, we reported on the challenges that DHS faces in planning, monitoring, and funding efforts to ensure the accurate and timely reporting of procurement actions to interested stakeholders. The Executive Branch, the Congress, and the public rely upon such procurement information to determine the level of effort related to specific projects and also to identify the proportion of government contracts that are awarded to small businesses. Currently, however, DHS has several different contract-writing systems that do not automatically interface with its Federal Procurement Data Systems—Next Generation (FPDS-NG)—a government-wide procurement reporting system that is accessible by the public. Some of the systems may need to be replaced. Additionally, not all DHS procurements are entered into FPDS-NG. For example, grants, mission assignments, and purchase card data may not be entered into FPDS-NG, resulting in an understatement of DHS' procurement activities.

I currently co-chair the legislative committee of the National Procurement Fraud Task Force. The Justice Department initiated this broad effort last fall to focus the resources and talents of U.S. Attorneys, Inspectors General, and other parts of the government on fighting procurement fraud. Our legislative committee is looking at what statutory and regulatory changes would be needed to strengthen the tools available to prevent, detect, remedy, and prosecute misconduct in federal contracting. One proposal we are exploring would address the issue of collecting and sharing contractor performance information.

More attention is needed to address this important and complex issue. The Honorable Mrs. Maloney introduced legislation in the previous Congress to address this issue, expand federal resources, and strengthen accountability in contracting. I understand she plans to

reintroduce it. My legislative committee and I look forward to working with her, this Committee, and others on solutions that will improve contractor performance information availability, reliability, accuracy, and usefulness.

In conclusion, DHS can protect public interests in major acquisitions. The long-run solutions include strong program and procurement offices; clearly articulated program goals; defined program technical requirements, performance measures, and acceptance terms; well-structured contracts; and thorough cost and performance oversight. In the near term, DHS can mitigate risks and limit government's exposure through such actions as writing shorter-term contracts with smaller, incremental tasks; using contract vehicles that better share risk between government and vendor; and ensuring that the government retains negotiating power with decision points and options.

We will continue a vigorous audit and investigation program to uncover DHS acquisition vulnerabilities and recommend swift, cost-effective improvements. Acquisition management is and will continue to be a priority for my office and an area where we focus considerable resources. Our plan is to continue examining such crosscutting acquisition issues as workforce qualifications, competition, and corporate compliance, in addition to individual programs, such as Deepwater and SBI. We share your concerns about proper use of suspension and debarment to protect the government. We are currently refining our fiscal year 2008 performance plan, which will likely include an audit of DHS' use of suspension and debarment proceedings. We welcome your input into our planning process.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or the Subcommittee Members may have.

Mr. TOWNS. Mr. Desmond.

STATEMENT OF WILLIAM J. DESMOND

Mr. DESMOND. Good afternoon, Mr. Chairman, Ranking Member Bilbray and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss your concerns with the performance of Department of Energy security contractors.

Let me briefly begin by introducing myself and providing a description of the roles and responsibilities of the Office of Defense Nuclear Security within the National Nuclear Security Administration. I have worked in various security positions since July 1967, encompassing a wide range of activities, including the implementation of security programs at nuclear facilities, the formation of nuclear security policy and site security program direction and management. These positions have spanned the U.S. Department of Energy and the Nuclear Regulatory Commission. I believe my experience affords me a unique perspective on nuclear security.

As the Associate Administrator, I am responsible for the overall direction and management of physical security programs at these sites. I serve in the organization for providing engineering, technical operational and administrative security support and oversight to both headquarters line management and field elements. This includes physical security, personnel security, nuclear materials control, accounting, sensitive information protection and technical security programs.

In carrying out my responsibilities, I work with the NNSA site offices which, in turn, has many service security programs at the laboratories and the plants. I have also been designated as the Chief, Defense Nuclear Security, pursuant to section 3232 of the National Security Administration Act. As such I am responsible for the implementation of security policies as directed by the Secretary and the Administrator.

With respect to the recent selection of Wackenhut Services, Inc., as the protective force contractor at the Oak Ridge Reservation, I served as source selection official and made the final decision to award the contract to WSI. This was after reviewing the proposals and the evaluation report prepared by the source evaluation board. I made the best-value decision in selecting the winning proposal.

As part of the evaluation and selection process, they carefully reviewed the materials submitted by each offeror for a technical approach, business management approach and relevant past experience. The SEB also evaluated responses to customer feedback questionnaires, interviewed references contained within the RFP submissions and reviewed independent reports as a DOE Inspector General, and the Defense Contract Audit Agency.

We also evaluated the information available from the governmentwide past performance information retrieval system and the Excluded Parties List system. We paid particular attention to four recent DOE IG reports providing security at the Oak Ridge site. As with most criticisms, some of the findings were precisely on target, some we disagreed with and some seemed exaggerated.

In one report it was alleged that protective force personnel cheated on force and force exercise. While NNSA agreed that the scenario of information control procedures were insufficient, we noted

that the performance test was conducted for training, not protection evaluation purposes; therefore, the loss had no impact on Y–12 security. The Y–12 site office took coordinated action with the operating contractor and WSI management to improve the planning, coordination and execution of performance tests to ensure the integrity of the results. There have been no recurrence of this problem.

In another case, NNSA disagreed with the IG in its conclusion that protective force personnel had been given credit for training that they did not receive. However, NNSA concurred with the findings and recommendations as a means to improve the quality in the administration of the protective force program. My written testimony, Mr. Chairman, provides more details on these and other issues raised by the IG.

Based on the information we received in the evaluation and selection process that was followed, this award was thorough, fair and honest; the process followed departmental acquisition guidelines.

As you have mentioned, I am accompanied by Mr. Thomas Przybylek, the Senior Adviser to the NNSA Administrator and the NNSA's former General Counsel. Mr. Przybylek served on the Source Evaluation Board for the Los Alamos National Laboratory management and operations contract, which was awarded in December 2005, and was the source selection official for the Livermore National Laboratory management and operations contract, which was awarded this past May. He and I will be pleased to answer your questions, Mr. Chairman.

Mr. TOWNS. Thank you very much, Mr. Desmond.

[The prepared statement of Mr. Desmond follows:]

Statement of William J. Desmond
Associate Administrator for Defense Nuclear Security
National Nuclear Security Administration
and
Chief, Defense Nuclear Security
U.S. Department of Energy
Before the
House Oversight and Government Reform Committee
Subcommittee for Government Management, Organization and Procurement

July 18, 2007

Mr. Chairman, Ranking Member Bilbray, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss your concerns with the perceived poor performance by Department of Energy security contractors.

I am the Associate Administrator for Defense Nuclear Security (DNS) and am responsible for the overall direction and management of security programs at the National Nuclear Security Administration (NNSA) facilities. I am the Cognizant Security Authority for NNSA. My office provides engineering, technical, operational and administrative security support and oversight to both line management and field elements. The support and oversight is provided in order to assure effective security at NNSA facilities, to include the physical, personnel, materials control and accounting, classified and sensitive information protection, and technical security programs. My office also acts as a liaison, and provides advice and assistance to DOE Office of Health, Safety and Security (HSS) in the development of Departmental security policy. I have also been designated as the Chief, Defense Nuclear Security, pursuant to section 3232 of the National Nuclear Security Administration Act (Title 32, Public Law No. 106-65), with the following responsibilities:

- Implement the security policies directed by the Secretary and Administrator.

- Develop and implement security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.

With respect to my relationship to the recent selection of Wackenhut Services, Inc. (WSI) as the protective forces contractor at the Oak Ridge Reservation, which includes the Oak Ridge National Laboratory, the Y-12 National Security Complex, and the East Tennessee Technology Park, I served as the Source Selection Official and made the final decision to award WSI the contract, after reviewing the proposals and the evaluation report prepared by the Source Evaluation Board (SEB). The SEB consisted of the contracting officer and several senior security personnel from the Y-12 and Energy Department's Oak Ridge facility familiar with the requirements of both locations. I found the SEB report to be thorough in all respects and I made a best value judgment in selecting the winning proposal.

This procurement was a joint effort involving the Department of Energy (DOE) Office of Science and the National Nuclear Security Administration (NNSA), under the lead of the DOE Office of Science. The acquisition strategy was to issue a single solicitation for Protective Force Services required by both organizations. A single contractor was selected in accordance with procedures in the Federal Acquisition Regulations (FAR) and the evaluation criteria included in the Request for Proposals (RFP). Two contracts were awarded to the selected contractor; one to provide support to the DOE Oak Ridge Office (ORO) and the other to the Y-12 Site Office (YSO). The source selection for these services was conducted using a full-and-open, competitive process. The solicitation was crafted by a warranted NNSA contracting officer following standard procedures. NNSA is a separately organized agency within the Department of Energy with its own procurement authority, however, procurement policy and procedures followed are those of the Department of Energy. This particular solicitation utilized FAR and Department of Energy Acquisition Regulation (DEAR) procedures and included standard clauses. In all respects, it was a standard government acquisition process using full and open competition. I will address specific source selection factors shortly; however, I would

like to assure you that past performance was a selection factor for this best-value selection as is required by the FAR and DEAR. NNSA utilizes past performance in all procurement evaluations. The evaluation board and I were extremely cognizant of this and attempted to gather all known information for all offerors.

The RFP identified two separate contracts with distinct statements of work to be awarded to a single contractor. One contract was for the Y-12 scope of work and the second contract for the balance of the ORO scope of work.

The SEB received timely offers and other written proposal information from four offerors. After completing initial evaluations, the Contracting Officer, with my concurrence, determined that discussions were necessary and in the best interest of the Government. A competitive range of the most highly rated offerors was established. After establishment of the competitive range, the RFP was further amended to incorporate changes in the Federal Acquisition Regulations and DOE directives. Discussions were held with the companies in the competitive range. These companies were provided a list of identified weaknesses, significant weaknesses, and deficiencies, if any. The Contracting Officer met with the offerors to respond to questions and conduct technical and cost discussions.

The "Evaluation Factors for Award" incorporated in the RFP detailed the evaluation factors, the relative importance of the evaluation factors, and provided the basis for contract award. The Evaluation Criteria were: Technical Approach (Protective Force Operations, Training, Key Personnel, and Technical Surveillance Countermeasures); Business Management Approach (Management, Communications, Human Resources, and Transition); and Relevant Experience & Past Performance (Relevant Experience and Past Performance). The pool of bidding contractors for this particular solicitation was evaluated equally against these selection factors.

In evaluating past performance, offerors were required to send past performance questionnaires to their referenced customers. The questionnaires asked customers to rate

the Offerors' performance in various areas as Excellent, Good, Fair, Poor, or Unsatisfactory and to provide comments about their performance. The SEB reviewed all questionnaires received from previous customers, the individual responses, ratings, and any additional comments that were provided in response. If questionnaires were not received, the SEB contacted the references identified by each Offeror and requested they complete and return the questionnaire. The SEB also contacted the references provided by the Offerors (e.g., contracting officer representative, contracting officer, or contract specialist) by telephone to determine if there were any contract performance, Environment, Safety and Health, or security issues that were not identified in the evaluation questionnaires. The Contracting Officer and the Source Evaluation Board utilized the Federal Past Performance Information Retrieval System database, commonly called PPIRS, to obtain past performance information on all offerors. PPIRS was designed as a single source, web-enabled, government-wide application to provide timely and pertinent contractor past performance information for use in making source selection decisions. The SEB did not rely solely upon the PPIRS and offeror furnished information. Copies of government award fee reports were requested where relevant and other information was sought to include audits and other reports. In particular, WSI's past performance at locations other than Oak Ridge was considered, particularly at the Department's National Training Center (NTC) in Albuquerque, NM and the Nevada Test Site. The SEB evaluated this information and discussed all relevant information in the evaluation report.

Since 2004, The Office of the Inspector General (IG) issued four reports on WSI-Oak Ridge security and contract performance. In January 2004, the IG issued its report, "Protective Force Performance Test Improprieties" (DOE/IG-0636). This review was conducted in response to the DOE Site Office Manager's concerns that the details of a major force-on-force performance exercise had been compromised, resulting in a flawed validation of the Y-12 security plan. The IG's review identified that trusted information regarding the scenario was inappropriately shared with protective force members prior to the test during VA training of protective force supervisors. While the DOE/NNSA agreed that procedures were insufficient, it should be noted that the performance test was

conducted for training, not protection validation purposes. Therefore, the loss of exercise integrity had minimal impact. The Y-12 Site Office took coordinated action with BWXT Y-12 and WSI management to improve the planning, coordination, and execution of performance tests to ensure the integrity of the results. There has been no recurrence of this problem.

Following an investigation in response to an allegation that a security police officer had been given credit for training he had not received, The IG issued "Protective Force Training at the Department of Energy's Oak Ridge Reservation" (DOE/IG-0694), dated June 24, 2005. After reviewing the report, NNSA did not agree with the IG that there was a basis for the allegation, however, NNSA formally concurred with the findings and recommendations as means to improve the quality and administration of the Y-12 protective force program. The report's major issues concerned WSI's reporting of training hours and amount of overtime routinely scheduled, since much of the training is scheduled as overtime. WSI tracked individual training activities based on the number of hours scheduled, rather than the number of hours actually expended for training. Under this process, an individual exhibiting the necessary competence level and meeting qualification requirements could complete the training activity even if the scheduled training time has not yet expired. WSI only charged the government for time actually spent training. DOE/NNSA agreed with WSI's practice of training to a performance standard rather than to a standard number of training hours, which saves the government money without compromising competence or performance. Based on the IG's recommendation, training records now reflect hours expended instead of hours planned, however either method is effective at tracking completed training. As for the overtime issue, DOE/NNSA concurred with the IG's recommendation to review the number of overtime hours and, based upon that review, made no changes to overtime practices.

The third report, titled "Protective Force Contracts at the Oak Ridge Reservation" (DOE/IG-0719), dated February 2, 2006, criticized the WSI contract because it did not provide necessary incentives to reduce or minimize costs. Specifically, as the security posture dramatically changed due to the increased security requirements resulting from

the September 11th attacks, WSI may have realized an unanticipated gain due to the increase in the overtime. At no time did WSI violate the terms of the contract awarded by the government. The originally established labor rates continued to apply. The Oak Ridge Operations Office and Y-12 Site Office management generally non-concurred with the findings and recommendations in the inspection report; however, management did realize that in the future the contract structure could be modified to the government's benefit. The new contract was re-structured to minimize contractor gains if a similar situation occurs again by establishing alternate labor rates once overtime thresholds have been reached.

The most recent report, "Concerns With Security Barriers at the Y-12 National Security Complex," (DOE/IG-0741) was issued in October 2006 in response to allegations that weapon port openings in newly constructed concrete barriers were designed without the space required to accommodate the sight system of protective force weapons. The IG's recommendations were directed toward perceived deficiencies in both BWXT's and WSI's performance. NNSA disagreed with the IG because the specifications for the weapon ports were developed prior to the decision to purchase a new weapon sight system. NNSA determined the costs of the barriers, including the necessary modifications to the weapon ports, were reasonable.

During the source selection process, I asked the SEB if WSI's performance at the NTC (also known as the Nonproliferation and National Security Institute - NNSI) was considered in evaluating WSI's past performance. The SEB solicited and reviewed the past performance information on the NTC/NNSI contracts, which included two Defense Contract Audit Agency (DCAA) audit reports. As a result of the information received, the SEB learned that WSI had significant cost accounting issues at NTC.

In an April 20, 2004 audit report, DCAA found that WSI-NNSI had an inadequate accounting system. Cost accounting problems primarily were in the segregation, allocation and allowability of indirect costs. DCAA reviewed WSI-NNSI's corrective actions taken as a result of the 2004 audit and found the corrective actions had resolved

the prior conditions. DCAA conducted a follow-on audit November 22, 2005, and determined that WSI-NNSI's accounting system was adequate.

As a result of the DCAA audit findings, DOE and WSI mutually agreed to reduce the cost plus award fee contract term by approximately 18 months and awarded a new time and materials contract to WSI-National Training Center (WSI-NTC), which is consistent with the ORO and YSO contracts. WSI's performance ratings significantly and immediately improved from those under the cost plus award fee contract.

After considering the information on WSI's past performance at NTC/NNSI, the SEB concluded that this additional information did not lower WSI's overall past performance rating. First, the accounting system inadequacies were limited to the WSI-NTC/NNSI office and were resolved quickly pursuant to DCAA recommendations. WSI corporate management was very prompt and pro-active in correcting the problems, and its success is confirmed by both the DCAA follow-up audit and the recent award fee ratings. Second, of the six DOE sites where WSI has relevant contracts that the SEB received past performance information from, only NTC/NNSI reported accounting system issues. Third, the SEB asked the DCAA about its audits of the Oak Ridge WSI site office. DCAA stated that over the past five years, they performed 13 audits of Materials, Cost Accounting Systems and labor floor checks. DCAA has not encountered any accounting system problems at WSI-ORO. Fourth, the accounting system issues identified with respect to the WSI-NTC cost plus award fee contract, are not as critical to a competitively awarded time and materials (T&M) contract since the rates the Government pays are fixed at the time of contract award. The accounting problems discovered on the NNSI contract were resolved quickly to the satisfaction of DCAA and have not occurred on other WSI contracts.

As you can see, all information with respect to WSI's performance was considered by the SEB and by me. This evaluation process was thorough, fair, and honest. I hope that this serves to explain the general approach to the selection of WSI as the preferred security contractor at the Oak Ridge Reservation. It should also serve to justify the selection

decision. I am confident, as are the other members of the SEB and the senior management of DOE and NNSA, that the selection of WSI was fair and appropriate and that our East Tennessee facilities are secure.

I would be pleased to answer any questions you may have at this time.

Mr. TOWNS. Mr. Friedman.

STATEMENT OF GREGORY H. FRIEDMAN

Mr. FRIEDMAN. Mr. Chairman, it is entirely up to you. Given the size of the panel and the hour, I would be more than happy to waive my short statement, whatever you prefer.

Mr. TOWNS. Go ahead and proceed.

Mr. BILBRAY. You have been patient.

Mr. FRIEDMAN. I have done this before and am more than happy to pass, if you would prefer.

Mr. Chairman, Mr. Bilbray and members of the subcommittee, I am pleased to be here today, at your request, to testify on issues pertaining to contract management of the Department of Energy.

The Department is highly dependent on its contractor work force. There are about 15,000 Federal employees at the Department; in contrast, there are about 100,000 contract employees plus a significant number of subcontract employees who operate the Department's national laboratories, production facilities and all environmental remediation projects.

The operations performed by contractors consume at least three-quarters of the Department's project. As we have reported annually, contract administration is one of the most pressing management challenges facing the Department. This permeates every aspect of the Department's programmatic and administrative activities, including those of the National Nuclear Security Administration. Our work is documented and the Department administers its contracts.

Specifically, contract activities very often were not conducted in an economic, efficient manner; and health and security issues, which are extremely important in the Department of Energy setting, were not always given the attention they deserved. Most importantly, contractors were not always held accountable for their actions.

The subcommittee expressed its interest in agency contracts with Wackenhut Services, the Bechtel Corp., and the University of California, three of the Department's most prominent contractors. In my shortened testimony, I was planning to discuss our findings with regard to three examples; I refer you in my full testimony where those are described, and I will proceed from there.

Each of these reports is different in terms of scope and purpose, but they are representative of the Department's continuing challenge to effectively manage a contract work force.

As to those who have proceeded before me, there are a number of changes in process in the Department of Energy, but clearly the Department needs to do a better job in contract administration. As we have testified previously, the Department should first ensure that its contracts are structured properly and that competition is maximized, establish realistic expectations of desired outcomes and achievable contractor metrics, effect monitor performance and hold individuals in contractors accountable when expectations are not met.

With reference to accountability, contracting officials need to be aggressive in redirecting work assignments, making fee determina-

tion evaluations and making cost allowability determinations, and when called for, pursuing contractor suspensions and debarments.

Regarding suspensions and debarments, I would like to point out, the Department of National Nuclear Security Administration currently had 54 individuals and companies on their debarment, or excluded parties, list; each one of these actions resulted from the investigations and recommendations by the Office of Inspector General. To fully achieve the goals of the agency, the Department must place square emphasis on the deference to adopt and maintain salary contract administration practices.

Furthermore, as the Department explores new governance models, it is imperative fundamental oversight principles are maintained as a means of ensuring accountability and protecting against waste and mismanagement.

Mr. Chairman and the members of the committee, this concludes my statement, and I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Friedman follows:]

Statement of Gregory H. Friedman

Inspector General

Department of Energy

Before the

Subcommittee on Government Management,
Organization and Procurement

of the

Committee on Oversight and Government Reform

U.S. House of Representatives

FOR RELEASE ON DELIVERY
2:00 PM
July 18, 2007

Mr. Chairman and members of the Subcommittee, I am pleased to be here today at your request to testify on issues pertaining to contract management at the Department of Energy.

More than any other civilian agency in the Federal government, the Department of Energy places significant reliance on contractors. There are about 15,000 Federal employees at the Department. In contrast, there are approximately 100,000 contract employees plus a significant number of subcontract employees, who operate the Department's National Laboratories, production facilities, and environmental remediation projects. The operations performed by contractors consume at least three-quarters of the Department's budget. As we have reported annually, managing this type of operation is one of the most pressing management challenges facing the Department. This challenge permeates almost every aspect of the Department's programmatic and administrative activities, including the National Nuclear Security Administration.

The Department's dependence on contractors can be traced back to the origins of the agency and the Manhattan Project. Since that time, this unique partnership has allowed flexibility in the accomplishment of highly technical and scientific endeavors. Through this arrangement, the Department and its contractors have played a key role in developing and sustaining the Nation's nuclear weapons stockpile, uncovering the complexities of the human genome, advancing the capabilities of scientific computing, and developing treatments for cancer and other diseases.

Despite these successes, contract administration at the Department has not been without its problems. As a member of Congress recently remarked, "the agency has a long record of inadequate management and oversight of contracts... Although [the Department] has made some oversight improvements...problems [continue] to exist in contract management at the Department of Energy."

I would like to take a few minutes today to explore some of the issues related to the Department's administration of its contracts. Specifically, I will discuss the origins of the Department's contracting structure, the problems the agency has faced in contract administration, and the actions the Department needs to take to effectively and efficiently manage its contract operations.

CONTRACTING STRUCTURE

The Department of Energy contracting structure dates back to the 1940s. To address a wartime challenge, the Federal government sought the best scientific and technical expertise from industry and academia in developing the atomic bomb to meet the geopolitical threats facing the Nation. In undertaking this task, the Department's predecessor agencies provided some of the country's leading firms and academic institutions, through a cost-reimbursable contracting arrangement, with the land, facilities and operating resources necessary to solve this critically important assignment.

Many elements of that structure remain in place today as essential components of the Department's operations. Although the contractual documents that define the

Department's relationship with its contractors have become more detailed and the fees paid to its contractors have increased substantially, the basic structure remains largely unchanged. The agency's major facilities are wholly-owned and financed by the government, but these facilities are operated by contractors. The government generally indemnifies the contractors operating the Department's facilities for the activities performed at these locations.

The Department's arrangement with its contractors, however, continues to evolve. Within the last ten years, the agency has instituted two major modifications to its contracting practices. First, the Department has instituted performance-based contracting. Under this type of arrangement, the payment of fees is tied to the accomplishment of specific tasks and projects. Second, largely associated with congressional interest, the Department is in the process of recompeting virtually all of its major facility contracts. Some contract operations, like the Los Alamos National Laboratory, had been run by the same contractor for over 50 years. We believe that these changes, which have been expedited by Secretary Bodman, should enhance contract operations in the Department of Energy.

CONTRACT ADMINISTRATION CHALLENGE

Although the agency has taken several positive steps in recent years, our work has documented deficiencies in the way the Department administers its contracts. These deficiencies have led to significant security lapses and wasteful spending practices. For example, my office has identified contract activities that were not conducted in an

economic and efficient manner, and health and security issues that were not given the attention they deserve. Most importantly, contractors were not always held accountable for their actions.

In preparing for this testimony, we were informed by the Subcommittee of its interest in agency contracts with Wackenhut Services, Inc., the Bechtel Corporation, and the University of California, three of the Department's most prominent contractors. I would like to address three recent reports issued by my office pertaining to contractual issues specifically involving these institutions. These reports are representative of the Department's continuing contract administration challenge.

Selected Controls over Classified Information at the Los Alamos National Laboratory

The Office of Inspector General conducted a special review, which revealed a serious breakdown in security controls at the Los Alamos National Laboratory, one of the premier contractor-operated laboratories in the nuclear weapons complex. We found that, in many cases, the Laboratory, currently operated for the Department by Los Alamos National Security, LLC (a private limited liability company formed by the University of California, Bechtel, BWX Technologies, and Washington Group International), did not enforce existing safeguards or provide adequate attention and emphasis necessary to ensure a secure cyber security environment. Specifically, in a number of areas, security policy was non-existent, applied inconsistently, or not followed. In short, the findings of our report raised serious concerns about the Laboratory's ability to protect both classified and sensitive information systems.

Contributing to the situation were shortcomings in Federal management of laboratory operations. These included inadequate Federal review and inspection of the Laboratory's classified information systems. For example, National Nuclear Security Administration officials told us that they placed a great deal of emphasis on reviewing security plans and accrediting systems, but they did not perform physical inspections to validate that the plans were accurate and were actually being carried out as planned. As a consequence, Federal officials were not able to ensure that security controls were properly designed and put in place

in a manner that would effectively mitigate security risks at one of the nation's premier national weapons laboratories.

Quality Assurance Standards for the Control Network at the Waste Treatment Plant

In one of the largest and most important of environmental remediation projects in the world, the Department of Energy is constructing a Waste Treatment Plant at its Hanford, Washington, site. The $12.2 billion Plant is designed to treat and prepare 53 million gallons of radioactive and chemically hazardous waste for disposal. We recently completed a review of the computerized integrated control network that is being installed to monitor key processes of the Plant. Our review disclosed that the control system acquired by Bechtel National, the Department's contractor at the Hanford site, did not meet applicable quality assurance standards. Given this situation, we concluded that the Department could not be sure that the Plant will perform as needed, thereby potentially impacting the schedule, cost and safety of this $12 billion project.

We noted a number of problems in the process used by Bechtel to procure the control system. Specifically, Bechtel did not perform a supplier evaluation or consistently define quality assurance standards that were to be used for the control system of the Plant. We concluded, as well, that Department officials had not taken necessary steps to assure that Bechtel's actions were consistent with agency quality assurance standards. In fact, the Department was unaware of the nuclear quality assurance standards issue prior to our review. In responding to our report on this matter, the Department indicated that it planned to provide more rigorous oversight of the contractor's procurement process and it would ensure that the control network will meet current nuclear safety and quality assurance standards.

Protective Force Performance Test Improprieties

Deficiencies in the management of the guard forces at the Department's major facilities have also raised concerns in recent years. For example, on June 26, 2003, a test of the performance capabilities of the protective force at the Department's Y-12 National Security Complex in Oak Ridge, Tennessee, was conducted. The guard force at this site is charged with protecting one of the most sensitive facilities in the Nation's nuclear weapons complex. In response to an allegation, the Office of Inspector General examined the facts surrounding the June 2003 test as well as whether there had been a pattern over time of site security personnel compromising protective force testing.

Our review confirmed that the subject performance test may have been compromised. Several individuals told us that controlled information was shared

with security police officers prior to their participation in the tests. We were also informed that this practice spanned from the mid-1980s to the present. While several different contractors have held the protective force contract during this period, the contractor responsible for the protective force at the time of the June 2003 test was Wackenhut Services, Inc. Our review further disclosed that in addition to participating in the actual performance tests, contractor personnel also participated in the detailed planning and development of the tests – from our perspective a clear conflict of interest.

To address this situation, we recommended that the Department be more proactive in its management of the security contract at the Y-12 facility and consider the information disclosed during our review in making its award fee determination on the protective force contract.

As these reports illustrate, effective contract administration is not only key to the economic and efficient operation of the Department's programs and activities, but it is also central in helping to prevent security lapses as well as to address critical safety and health issues.

CONTINUING CONTRACT ADMINISTRATION CHALLENGES

While a number of relevant changes are in process, the Department needs to do a better job administering its numerous contracts. As we have testified previously, the Department should:

- Ensure that its contracts are structured properly and that competition is maximized;
- Provide the technical guidance as well as the human, financial, and related resources necessary for contractors to complete their critical work assignments successfully;

- Establish realistic expectations of desired outcomes and achievable contractor metrics;
- Effectively monitor contractor performance; and
- Hold individuals and entities accountable when expectations are not met.

In our judgment, emphasis on contractor accountability is particularly important. Given the expanding number, scope, and complexity of the Department's contracts, holding contractors strictly accountable for their performance is not an easy task. Nonetheless, contracting officials need to be more aggressive in redirecting work assignments as appropriate, making fee determination evaluations, making cost allowability determinations, and ultimately, pursuing suspensions and debarments. Each of these tools can and should be used in a tailored fashion to ensure that the government and the taxpayer receive value for their expenditures. With respect to debarment, the Federal government has promulgated regulations that prohibit it from contracting with, or extending certain benefits to, any company or person whom the government deems to be "nonresponsible." The Department of Energy exercises this authority and currently has 45 individuals and companies on its debarment, or excluded parties, list. Each one of these actions resulted from investigations by the Office of Inspector General.

In addition to these mechanisms, to effectively structure, monitor and enforce contracts, the Department of Energy in particular, and the Federal government in general, needs personnel experienced in contract management to effectively carry out agency missions. This has become more challenging in recent years as the number and value of contracts

has increased, while the number of personnel available to administer these contracts has remained relatively constant. For example, over the last eight years, the number of contract specialists at the Department has decreased slightly while the value of funds provided to contractors has increased by 40 percent. We are currently evaluating this very issue in a separate review. Further, as we look into the future, many of the individuals performing contract management functions at the Department are approaching retirement age. Therefore, the Department will need to develop human resource strategies to meet this continuing challenge.

CONCLUSION

In order to achieve the goals of the Department in areas of national security, science, and advanced technology, as well as to operate as an efficient steward of taxpayer dollars, we believe that the Department must place greater emphasis on efforts to adopt and maintain sound contract administration practices. Furthermore, as the Department explores new governance models, it is imperative that fundamental oversight principles are followed as a means of ensuring accountability and protecting against waste and mismanagement.

Mr. Chairman and members of the subcommittee, this concludes my statement. I will be pleased to answer any questions you may have.

Mr. TOWNS. Thank you very much. Now we would like to ask a few questions.

Mr. Desmond, I want to ask more about the Wackenhut contract at Oak Ridge. I don't understand how Wackenhut can be caught cheating on a drill and still receive—I heard your statement, a 97 or 98 score on the final evaluation.

When I was in school, if you were caught cheating on a test, your score was zero. You either flunked—in some instances, they would put you out.

It seems that a seventh grader is actually held to a higher standard than the nuclear security contractors. Could I get your answer? I heard you say—but I want to hear more about this, yes.

Mr. DESMOND. Mr. Chairman, there are a variety of tools in the toolkit that we use to assess the performance of our contractors. They range from full-scale exercises, red team against blue team, down to security surveys done by our—self-assessments done by contractors.

In the present exercise, which occurred in June 2004, a test was established to evaluate the adequacy of the strategy that was used to implement a brand-new design basis threat policy of the Department of Energy. It was not used to evaluate the performance of the contractor because the policy had just been instituted and was not fully required for implementation for several years. So this was determined a diagnostic test; in fact, it was a training exercise.

In this exercise there was a security system called JCATs, Joint Combat Assessment Tool, where blue and red teams will gain security strategy. Two of the supervisors of the protective force had access to the scenario the day before. And while it was not permitted, our procedures had been changed to prevent that from recurring in the future. This was not an organized activity by the part of the company, but initiative by two of the individual supervisors.

Nevertheless, the Department of Energy, NNSA, Wackenhut, took this as a very serious event, and have changed our procedures. And Wackenhut was, in fact, penalized during that award period for this activity, for not having better controls in place. So, hence, I say it had no impact, sir, on the security of Y–12, but it did impact the diagnostic evaluation at that particular time.

Mr. TOWNS. Can you give me an example of a security contract in DOE where the contractor got low scores?

Mr. DESMOND. No scores?

Mr. TOWNS. Low scores, l-o-w.

Mr. DESMOND. Within the National Nuclear Security Administration we have a variety of models of security contracting, from direct contracts to the government to proprietary contracts——

Mr. TOWNS. What led to the low scores?

Mr. DESMOND. When there are instances of low scores, it would be based upon performance, inadequate or performance that did not meet our expectations. There have been examples, Mr. Chairman, at Nevada in a particular test in December—excuse me, August 2004—in which the contractor was given a very low score for that reporting period. We have only two contractors who are separately evaluated for security purposes and those are the security contracts at Y–12 and at Nevada.

Mr. TOWNS. OK.

Let me ask—I guess this is to all of you—are contracting officers really the most objective people to be grading performance? Don't they have a stake in the success of the contract?

Let me go down the row here very quickly.

Mr. WOODS. Well, certainly when we enter into a contract, we want the contract to be successful certainly. But the contracting officer is not the customer of the required goods or services; in many cases, he is acting on behalf of a program official, for example, to acquire goods or services from the private sector. So—he is not directly impacted by the quality of the goods and services, so he may be in a better position to provide that kind of evaluation.

Mr. TOWNS. Well, if you lose a contract they won't have anything to evaluate, that is—I mean, doesn't that play into it? For instance, if for any reason they lose a contract and the person that is responsible for it, you know, isn't that a reflection?

Mr. WOODS. As I said all, parties want the contract to be successful—the contractor, the contracting officer and the end user of the goods and services, they all want the contract to be successful. But they all have an interest in ensuring that the performance is what it needs to be, particularly the end user; and we've seen a number of instances where that end user has not been reluctant to provide low scores to contractors that don't perform as required.

Mr. TOWNS. Let me run just down the line, and ask about procurement.

Ms. DUKE. Sure.

I agree with Mr. Woods: The person that owns the budget, owns the mission, is the program office, the customer. They are in the best position to valuate the contractor's performance. They are the ones responsible for delivering performance by in-house personnel or contractor, and the contracting officer provides the business partnership to that program office.

In DHS, we require the COTRs and contracting officers, the technical representatives, to evaluate performance so that, from the technical side, they are talking about the technical issues of performance; from the contracting officer's side, we evaluate their business abilities, whether they are performing in the right business fashion.

So I think both are important.

Mr. PRZYBYLEK. Mr. Chairman, the way we do it in the National Nuclear Security Administration is that each program that has funding at a particular facility and a statement of work has a contracting officer representative. That person, at the end of the year, is responsible for providing to our contracting folks an evaluation of the performance of that specific piece of work. So it is very much the way Ms. Duke described it.

The contracting officers then roll out the overall evaluation of that contractor's performance, and at the end of the year our administrator looks across all eight of our facilities to make sure we consistently evaluate the performance of the contractor, so that we are neither too severe nor too lax in terms of evaluating the performance, and then he ultimately sets the amount of fee that they earn for the year.

Mr. TOWNS. Mr. Friedman.

Mr. FRIEDMAN. Mr. Towns, I think you hit upon it and you have it right. It is a partnership, and it has to be on a wholistic approach. It needs the program officials, as well as the procurement officials, to make those kinds of evaluations intelligently. And there have to be metrics in place, because you evaluate the contract and they have to be quantifiable and outcome oriented. So I agree with your point.

Mr. TOWNS. Any other comments?

Mr. SKINNER. I agree with Ms. Duke and Mr. Woods and others on this panel.

The CO is in a good position to put together an evaluation of the contractor's performance, but we have to ensure that there are, in fact, performance measures, metrics in place so there is consistency when we do those evaluations.

Also, I think there has to be discipline. A lot of our contracting officers are spread very, very thinly, and therefore they cannot always go out to do outreach, to ensure those performance measures, performance reports are, in fact, obtained and input into any systems that we may have. We need discipline, we need metrics.

The final thing, I think, that concerns me most is, we are not always reaching out to other parties that have input. For example, audit reports are now oftentimes overlooked when they do the performance evaluation, reports of investigation, whether they turn anything up, criminal or not, nonetheless should be taken into consideration. But there are no avenues or means to do this at this point in time, and that is one of the concerns we have.

Mr. TOWNS. Also you indicated that there were 3 billion, and now up to 15 billion, and the staff has been decreased to be responsible for the monitoring of it. That, to me, is very disturbing.

Mr. SKINNER. I didn't want to discuss that the staff has been decreased. As a matter of fact, the Department of Homeland Security and Ms. Duke recognize the situation that we are in here, that our procurement activity is increasing faster than our ability to hire staff to manage these contracts. It is not an easy task to bring in and train the program managers and the COTRs and project managers and other experts necessary to provide oversight to these complex, large contracts that—the projects that the Department has ongoing. We have a long way to go before we can reach a level of assurance that we have the resources needed to manage these contracts.

Mr. TOWNS. Thank you very much.

I yield to the ranking member, Mr. Bilbray.

Mr. BILBRAY. Thank you.

Mr. Skinner, in a small way, it reminds me of what happened with the Roosevelt administration in the late 1930's- early 1940's, when there was no way the bureaucracy was ever on line to be able to do that contracting. Would that be a fair comparison?

Mr. SKINNER. Yes.

Mr. BILBRAY. Mr. Woods, I have to agree with the chairman, I think we hear a lot of hoopla about private contractor accountability, but it does come into the system—the in-house employees' accountability, bureaucracy—inherently the Civil Service system insulates bureaucracy so often that when we were talking about the concept of having the outcome reflect on the future employment or

future engagement of private contractors, some say maybe the outcome doesn't affect the bureaucracy and their future employment, future engagement.

Is there a way we can sort of put the heat on those who are actually administering these contracts, so they have a personal, vested interest in success and a dread of failure here, along with the taxpayers?

Mr. WOODS. Of the things that can be done, No. 1, Mr. Skinner mentioned the number of personnel that we have assigned to this area. I couldn't agree more that we need more folks that are involved in the administration of contracts. No. 1, that is a challenge across the Federal Government.

The other response that I would have is, we looked in-depth at the Department of Defense, at their ability to monitor contracts and the mechanism, the bureaucracy, that they had in place to do that. Ms. Duke mentioned the contracting officer's technical representatives; those are really the frontline people that are responsible for monitoring contractor performance.

We found a number of deficiencies at the Department of Defense in that regard. They were not properly trained. There were not enough of those people, they were not properly motivated, and they did not have—as you were alluding to—the right incentives to do their job. For many of them, it was other duties assigned; it was not their primary responsibility, and frankly, it became a secondary consideration for them.

So I think there are actions that can be taken across the board in that regard.

Mr. BILBRAY. We run across these problems, and it is inherent, basically, with the public service system that there is job protection. We don't want to go to the score system, but the flip side is, that insulation may create the feeling that I really don't—my job is invested with the outcome—just as long as the process looks good and I keep my supervisor happy one way or the other. I guess what we need to look at here is how to turn the heat up on this.

Mr. Skinner, one of the things you were saying about the exchange of information, a lot of this I looked at as fire walls, basically information fire walls. A lot of these were created after Watergate with a lot of information about agencies not sharing information, individuals not sharing information; and when you say it is time to put that behind us and start sharing information more and more in the Federal Government, rather than always being paranoid worrying about Big Brother knowing too much about us——

Mr. SKINNER. I don't think the worry is so much fire walls. We do have systems to provide information on contractor performance. We looked at some of those systems as we prepared to do our reviews as DHS contract management. We are finding that there are gross inconsistencies on how people put information into these systems. It doesn't appear that there is any discipline or standards on what needs to be put in, what format should be put in.

As we looked at several of the contractors that we knew had historic problems, we found nothing in these systems there across the government saying anyone ever had a problem with these contractors; and we know, in fact, there were problems. So there is not so

much the fire wall as it is the discipline; it is the standards, the guidelines to ensure that certain basic information, in fact, is input into the system.

Mr. BILBRAY. It is not exclusive to this operation. Lateral transfer has been the greatest scam, for one government agency to shift problems over to somebody else, Yeah, he was a great guy; go ahead and take him.

The Wackenhut test supposedly—let's face it, we make statements up here, our staff gives us these statements, everybody is cheating, whatever, when you are doing this exercise. As the head of the Public Protection Agency for San Diego County, we did exercises. We said, we are going in because a cruise ship has sunk and everybody has to respond.

They knew the test was coming. Rather than someone screaming that it was cheating, cheating, it sounds to me more like what every teacher in America is doing now, that is, teaching to the test.

Was that a situation where you use a testing process as part of the learning process and actually throw the test out there, because, I mean, cheating is pretty hard work?

Mr. DESMOND. The test was a training exercise. There was not a conscious attempt to train to the test, but in fact, that is what happened, sir, yes.

Mr. BILBRAY. So if we want to be outraged at Wackenhut, maybe we ought to be outraged at the national education system that is basically doing the same thing with our children year after year. I just think it is fair. You can take these situations, spin it a certain way and really put them out there.

I don't think any reasonable person would say the American educational institution is teaching our kids to cheat, though some would love to say that, but I think that in all fairness we ought to be balanced in the approach.

Thank you very much for my time, Mr. Chairman.

Mr. MURPHY [presiding]. I would like to ask Mr. Friedman if he has any comments on that last issue.

Mr. FRIEDMAN. First, it is my report that covered this issue; you have very lofty goals for this hearing.

We got into this at the request of the Federal site manager at Y–12. He was concerned because the actual results of this test were far superior to the computer-generated, anticipated results, and he could not make the—he could not understand—there was a disconnect which he could not understand.

He initiated his own inquiry and found, in fact, there was a compromise of the test, but he wanted a third party to look at it; and as many Federal administrators do in terms of the inspector general, we took on the responsibility and our results speak for themselves. I think the report stands on its own, and it is one that I stand behind. We did not use the word "cheating" in the report, but the test was compromised.

Mr. BILBRAY. So, in other words, you think they—would it be fair to say, they were teaching to the test in this exercise?

Mr. FRIEDMAN. I am not sure teaching to the test is the right way to characterize it, Mr. Bilbray. But what I will tell you is that the defender force was given information about the offender force's

strategy. When you have that information prior to the test, obviously the test is compromised and the results are questionable.

Mr. MURPHY. Thank you.

Mrs. Maloney.

Mrs. MALONEY. I want to thank all of the panelists for their testimony, and I want to really followup on Mr. Skinner's offer to look at the legislation and put your input in it. I will send it to you and maybe we can make an appointment next week to meet on it and see where it goes.

You were saying that we could put standards and format in place, and I think we could do that, but how long do you think it would take to fix this? You say it is not working. How many systems are there out there? You say there is no centralized system, but——

Mr. SKINNER. There is no single system, and I can't say how many systems are out there categorically—Elaine might know that better than I.

The point I am making, there is no consistency as far as what we are putting in there from our Departments—from DHS, Department of Energy, DOD. It is all across the board.

Mrs. MALONEY. It seems simple to come out with a list of format and standards and have everyone follow them. There should be some performance metrics in place.

If we could hear from you, what you think they should be—I think it should be whether or not they have the history of the company, whether or not they have financial standing, whether or not they have gotten prior contracts, if they were completed on time, whether there are cost overruns, are they listed with the organized crime businesses—there are just a few.

What else would you put in as a metric?

Mr. SKINNER. Those are exactly the types of things that we had in mind as well, to deliver the product or service as a contractor. Do we do it on time? Do we do it within budget? These types of basic information in a standard format that is consistent across the board.

Also using other input, the evaluations from OIGs or others that—including GAO. If we can come up with an inventory of things that need to go into this system, we can do it in a standard fashion, I think it will help the contracting officer when they query these systems.

Mrs. MALONEY. It would remove really the intuition; you would have specific indicators there.

I would like to ask all the panelists to submit to the committee and to my colleagues what you think would be the indicators that should be part of a centralized system. I think that would be helpful.

Can anyone answer my original question: How many systems are out there and why are they not working?

What gets me is, you always say—a lot of times we will say, oh, we have a system, and it is OK; but repeatedly, you see usually the same people get the contracts again and again, and there are billions of dollars oftentimes in cost overruns and waste on the previous work, and this is really an example of a process that is not working.

So could you elaborate, Ms. Duke, on how many systems or centralized data processing areas are out there now?

Ms. DUKE. There are three primary systems we use to make your responsibility determinant. One is Dun & Bradstreet, a commercial system we use principally for financial responsibility-type issues.

The second is the Excluded Parties List, administered by the GSA, where we look to see if a party, an individual or company has been suspended or disbarred. Past Performance Retrieval System [PPIRS], that is where we store past performance information. So as Federal agencies do past performance evaluations, they are required to put it into the PPIRS system.

There is no system for some of the things Mr. Skinner talked about—IG reports, GAO reports, other indicators; I would put those all in the administrative realm.

In terms of, if we cross into the legal realm—potential indictments, cases going on, legal areas—I believe right now there is consciously no system to either allow access or to aggregate that information.

Mrs. MALONEY. Are you required to access the three existing systems now before making a decision as a procurement officer?

Ms. DUKE. We are required to check PPIRS and the Excluded Parties List. Dun & Bradstreet was discussed. It doesn't mandate that you use Dun & Bradstreet, that's just the standard practice.

Mrs. MALONEY. Why are there so many mistakes? How do the same people get contracts over and over again?

Why can't we break them down into smaller ones? Sometimes they hand out huge contracts to manage an entire country. Why are there so many scandals in our contracting process now?

Ms. DUKE. I think when we look at the scandals in our contracting process—Mr. Skinner in his opening statement talked about setting the requirements up front.

The contracting officer has always talked about procurement; procurement is the result of a process where the government says what it wants, how it wants it and negotiates a deal with industry. I think if you don't have that solid foundation, then that is where the deals go awry.

It is not only selecting the right contractor, but it is having the right requirements and having clarity of what you want from that company, or not having clarity. And that is a very big challenge, especially in Homeland Security as we have the urgency of our mission; where a new mission arises, we have to very quickly develop the program and go with a contract.

I think sometimes we are choosing to meet the mission and choosing to consider that over some of the more deep processes, and then we end up having to manage out of that or do some of the partnership steps later in the process; where if we had more time, I think we would set a more solid foundation.

It is just like someone renovating your home. You want a real meeting of the minds between you and your contractor before they bring a sledge hammer to your basement. And that is really the key.

Mrs. MALONEY. I am told by staff that there are actually more than 50 existing data bases that can be used; is that true?

Ms. DUKE. I am not familiar what specific ones. There are many data bases. The ones I listed are the three principal ones for responsibility.

Mrs. MALONEY. Could you look into how many data bases are out there? I am sure my colleagues would like to see the list, in addition to the three that you have given us.

My time has expired, thank you very much.

Mr. MURPHY. Thank you, Mrs. Maloney.

Mr. Platts, we have votes coming up in 10 minutes, we will try to finish this panel.

Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. I will try to be quick. I would like to thank all of the witnesses here for your participation in this hearing.

Mrs. Maloney has introduced legislation to try to strengthen the information available. I know there are various sources of information—past performance, an information retrieval system that is easily accessed.

I want to focus, Ms. Duke and Mr. Przybylek, with your direct involvement in procurement, on the other information that is also out there and specifically deals with liens, tax debt owed that is not automatically included in that retrieval system.

How easy do you find it to become aware of that information, and what do you and your staff seek out regarding potential contractors?

Ms. DUKE. Right now, there is a requirement in the Representations and Certifications for Contractors to disclose any criminal activity, as specified in the Federal Acquisition Regulations, for a company in the specified period, and that specifies what type of activity, convictions they have to disclose.

There is also a Federal Acquisition Regulation case ongoing that will require contractors to certify if they have similar problems with the Internal Revenue Service in terms of taxes.

Other types of activity—criminal activity, current tax issues—that is not information that contracting officers can receive, unless it is available in the public. We have no more rights to that information than the public in terms of receiving that.

Mr. PRZYBYLEK. In addition to what Ms. Duke just described, we looked at the Nuclear Regulatory Commission Data base on notices of violation, our own departmental nuclear safety rules, Price-Anderson data base.

We try to get information concerning environmental noncompliances, and as I mentioned to staff, we actually use common search engines to see if we can find any more information to help us in making that judgment.

Mr. PLATTS. Is that a common practice at DHS as well, proactively searching in open domain information of potential contractors?

Ms. DUKE. Not totally. It is more, principally—looking at past performance references on other similar Federal and commercial contracts would be the principal driver of the decision.

Mr. PLATTS. On the information required under FAR to disclose regarding criminal record activity or civil liability, such as tax debt,

are there instances that you have had contractors not disclose that, that you later learned they had a tax debt?

Ms. DUKE. Yes, we can consider that. There is one caveat; if we are going to use negative past performance information gathered from other than the contractor as part of our decisionmaking, we have to give the contractor an opportunity to comment on that.

Mr. PLATTS. If they submitted a contract bid, not disclosed a tax debt they should have, what action does the Department take in response to that failure to disclose as required by law?

Ms. DUKE. That isn't in play yet. Once it is finalized, that is certification, and we would consider that potential fraud, and we would turn it over to the inspector general, because any suspected fraud we immediately turn over to the inspector general.

Mr. PLATTS. I am going to run out of time.

Mr. Skinner, how would you approach that? Would that be grounds for pursuing debarment, that failure to disclose?

Mr. SKINNER. I personally think it would be grounds for debarment, and therein lies the problem, when you start talking about the bad behavior or criminal past. Or it may not reach the level of criminality; there is no one place you can go to identify whether anyone has had fees, fines, penalties, has been indicted, has negotiated settlements. Working under PTAMs, there is just no place for the contracting officer to go to determine whether these people have a history.

It is particularly problematic when you start thinking about State of New Jersey has just debarred one of DHS's contractors for the State of New Jersey. But there is no place for anyone in the Federal Government to go find——

Mr. PLATTS. That is automatically made available to you?

Mr. SKINNER. It doesn't exist. This is something we are exploring right now.

Mr. PLATTS. I see my time is up.

In relation to that Mr. Skinner and other procurement officials, I assume the effort of Mrs. Maloney in terms of trying to better legislate that requirement so that there is a one-stop shop per se is something that in theory would be beneficial to your efforts to ensure that credible individuals are doing business, and those who are less trustworthy are identified early on?

Ms. DUKE. I would add one caveat to your statement. We have to be careful not to put contracting officers in the position of GS–9s, in the position of having to judge whether an indictment in a particular peculiar area of law, be it labor or tax, is grounds for debarment from the government.

I think it is clear-cut that this is right or wrong if they have a tax lien, but I think when we start in the area of indictments and fines, the regulations require us to consider mitigation. I really think we have to be careful that there is a system in place that adequately can use that information and appropriate uses it so we don't end up creating in essence a blackballing system without the right people in charge of that.

Mr. PLATTS. Thank you, Mr. Chairman. My thanks again to all the witness.

Mr. MURPHY. Mr. Welch.

Mr. WELCH. Why isn't it possible, as part of the application process, to require the person or company seeking a multimillion dollar contract from the taxpayers to disclose whether they have been indicted, whether they have had labor disputes that have resulted in actions, that they have had ethical complaints?

Does somebody want to answer that question?

Mr. WOODS. If I could start, there are provisions in the standard solicitation for contractors to make those kinds of disclosures. It may not be a totally comprehensive list, but as Ms. Duke pointed out, efforts are under way, for example, to add tax liens to that.

Mr. WELCH. Why doesn't that work? If the governmental entity is going to issue a contract, why isn't it known immediately upon receipt of the application whether the person or the company seeking the contract is a felon?

Why do we have to set up some elaborate process that requires an enormous amount of computer software, another expense, to get information that nobody's going to read?

Mr. WOODS. They are required to make certifications in terms of criminal activity, etc., but the problem is they are not required to certify to a whole range of other actions that some may want to consider in determining whether this is a responsible contractor.

Mr. WELCH. The obvious things are, A, have they had disputes with the government where they have had to repay because of poor billing, ripping off the taxpayer, any number of things that your office investigates. Why can't that simply be on the form?

If they have had disputes with labor that have resulted in action, that result—as a result of that action that they had poor labor relations. That is relevant to the contracting officer; that information can be made immediately available on the application process. You do not have to have a G–9 make an evaluations about whether this is a threshold event or not.

Is there a problem in doing that, in getting the information that Representative Maloney, in her effort, is seeking?

Mr. PRZYBYLEK. We routinely in large competitions ask for and provide a questionnaire that we want the customer—a Federal contracting officer, for example—to fill out and send back to us, so our evaluation board can take that into account.

The other thing——

Mr. WELCH. Wait. Is it done or is it not done?

Mr. PRZYBYLEK. We do it routinely.

Mr. WELCH. I am mystified because, in a short time, there has been one example after another of colossal rip-offs of the taxpayers. I have yet to find anyone—anywhere, for any reason, for performance, for just massive fiscal rip-off—pay any consequence whatsoever. And it is mystifying to all of us that it doesn't seem to matter what you do, why you do it or how you do it.

You all are coming in to investigate, and I would think it would be kind of frustrating to you if your work was ignored, in effect.

Mr. WOODS. There are some consequences. For example, in preparing for this hearing and going through some of our bid protest decisions, there are many instances where, in rating past performance contractors, contractors will be downgraded in some cases very severely for the kinds of abuses that you identified.

Mr. WELCH. Mr. Friedman, let me ask you—when you have to make a decision about when and whether to investigate, let me ask you about that incident about the anthrax out there at the nuclear facility where Wackenhut had a contract, and there was an envelope that was opened in the vicinity of Mr. Chertoff, I think, of Homeland Security; and no investigation occurred, even though that was potentially a very serious national security issue.

What is the threshold to make you decide, "yes" or "no," to do an investigation when the mistake, negligent or intentional, goes to the heart of the performance required, namely national security?

Mr. FRIEDMAN. Maybe this is the ultimate answer to your question. I am not aware of that situation.

Mrs. MALONEY. Wackenhut. That is Skinner.

Mr. WELCH. Mr. Skinner. Thank you.

Mr. SKINNER. Yes, with the Wackenhut incident, that contract was actually a Department of Defense contract. It was—we received allegations in, I believe, February 2006, and the contract was about to expire in March 2006. That—coupled with the fact that we were doing the preliminary work on those allegations, we were asked to step down by the two Senators who referred the allegation to us for fear that those who made the allegation would become known to the contractor.

Given those variables——

Mr. WELCH. You were asked by what?

Mr. SKINNER. The allegations came to us through Congress. They came from employees of Wackenhut through Congress and were referred to us.

We were in the process of taking a close look at those allegations to determine whether they merited a close investigation or a further review, when we discovered the contract was not a Department of Homeland Security security contract, but it was a DOD contract. Because the facility at that time, early on, was in fact a DOD facility, and the Department of Homeland Security had just moved in in March 2003.

And Department of Homeland Security—Elaine, I believe you were involved in this as well—was in the process of rebidding a security contract, the contract that was about to expire in March; and I believe we actually took and bid and hired another contractor in June.

Mr. WELCH. The investigation was never completed, correct?

Mr. SKINNER. That is correct. That does not mean that we will not continue to take a very close look at that.

Mr. WELCH. Take a close look at that now?

Mr. SKINNER. The contract expired. The contractor is no longer providing services for that facility; however, they are providing services at other facilities, so our concern now is, if they, in fact, had problems at that facility, who is to say they are not going to have problems at other facilities?

Mr. WELCH. If it happened a while ago and you think it is still relevant, why hasn't it been investigated?

Mr. SKINNER. The incident at the unit—because that contractor is no longer employed there.

Mr. WELCH. This is not making sense to me, with all due respect.

Mr. MURPHY. You may want to wrap up. We are about to——

Mr. WELCH. You say it is still relevant to you because Wackenhut has other contracts at other places and it is relevant, what happened there, to determine whether the work they do elsewhere meets the requirements of the taxpayer.

So obviously it means that if you want to get that information, getting it sooner is better than later, right?

Mr. SKINNER. Yes. And we are, in fact, planning to do that.

You have to understand, we have very limited resources as well; and it had to work its way up the chain. It is something that is on our to-do list.

Mr. WELCH. We are all saved by the vote.

Mr. MURPHY. Thank you very much, Mr. Welch.

One of the downsides of being a substitute chairman: We have nine votes that we expect to take about an hour, so we will be back here in approximately an hour to reconvene with our second panel.

We thank all of our six panelists this afternoon, and we thank you very much.

[Recess.]

Mr. TOWNS. I'd like to welcome our second panel.

As with the first panel, it is our committed policy that all witnesses are sworn in. So please rise and raise your right hands.

[Witnesses sworn.]

Let the record reflect that they have all responded in the affirmative. You may be seated.

Robin Smith was a Wackenhut security officer at DHS headquarters. Robin is a veteran of the U.S. Air Force where she guarded aircraft on alert with nuclear weapons for the Strategic Air Command, and she has worked as a security contractor at other Federal facilities.

Welcome to the committee.

Lawrence Brede is senior vice president at Wackenhut Services, Inc. He has worked on security at several Federal nuclear sites and has retired from the U.S. Army.

Welcome to the committee.

Scott Amey is general counsel for the Project on Government Oversight where he has worked on investigations of government waste, fraud and abuse since 1993.

Your entire statements will be put in the record, so I ask that you summarize in 5 minutes and, of course, allow us the opportunity to be able to raise some questions with you.

So why don't we start with you, Mrs. Smith—Ms. Smith.

STATEMENTS OF ROBIN SMITH, FORMER WACKENHUT SECURITY OFFICER AT DHS HEADQUARTERS; LAWRENCE BREDE, SENIOR VICE PRESIDENT, WACKENHUT SERVICES, INC.; AND SCOTT AMEY, GENERAL COUNSEL, PROJECT ON GOVERNMENT OVERSIGHT

STATEMENT OF ROBIN SMITH

Ms. SMITH. Chairman Towns, Ranking Member Bilbray and distinguished members of this committee, thank you for the opportunity to tell you about my experience as a Wackenhut security officer.

My work in private security has been an extension of my military service. It's a privilege to serve my country and keep it safe. I knew that serving in Homeland Security made my work even more important, but I see my managers didn't take the work that seriously.

While working for Wackenhut at the Department of Homeland Security, my duties included monitoring the cameras located in different buildings on the site, ensuring that all individuals entering the building were properly identified, cleared and documented. That gave me a lot of experience witnessing the problems we had before access control: lack of training, careless weapon-handling, open posts, failed security tests, security breaches, falsified documentation, and the irresponsible handling of hazardous substance attacks. I saw the careless storage of weapons that could have had grave results. On several occasions, I saw the weapon armory wide open and unattended. When officers come off post, they go to the armory to return their weapons and ammunition. The armory was in the Program Manager's office. There have been times when I saw the sergeants leave the armory open and unattended. I also saw unattended weapons left in the lead weapon barrel instead of being secured. There were times when the door to the armory was left open, unlocked and unoccupied. If the door is open, anyone can access the weapons armory.

There are many contractors working onsite at the Department of Homeland Security. There have been times when I have walked through the armory and have seen a loaded weapon there, a weapon that could have been accessed by anyone. Any disgruntled contract employee could easily walk through the open door, pick up a weapon and ammunition, and any terrorist could do the same.

There is a reason for some of this. We had a really high turnover for the officers who worked extended shifts. Some officers were so tired that they would make up for their lost sleep on the job. On many occasions, there were supervisors and officers caught sleeping on the job, but management never reprimanded them.

But you can't blame sleeplessness for the way Wackenhut security managers handled a suspicious letter that came to the building where Secretary Chertoff's office was. This was at the height of the anthrax scare. A DHS employee opened the letter which contained an unidentified white powder. Some of it spilled onto the employee's body. Two security officers got a report of this incident and notified their superiors. When the two lieutenants arrived at the scene, they could have isolated the contaminated area and kept other DHS employees from entering the area, but they didn't do that. Instead, they told the employee to wash the powder off of herself, so she did that by crossing the hall, passing Secretary Chertoff's office and potentially contaminating a larger part of the building. The white powder should be considered to be potentially dangerous, but it was apparent that proper safety precautions were not taken. Everyone in the vicinity could have been contaminated if the white powder had been a chemical threat. The two lieutenants observed and handled the envelope from all angles. They didn't evacuate the section. The ventilation system was still on, which left easily carried particles of the white powder to other buildings with the—to other sections of the building. The building was only evacuated when Federal Protective Services arrived at the

very late stages of the event. I firmly believe that Wackenhut knew of these problems and did nothing to rectify the situation.

I hope that my testimony today will help paint a more complete picture of Wackenhut's performance, which I think deserves congressional investigation.

I thank you, once again, for the opportunity to meet with you today.

Mr. TOWNS. Thank you very much, Ms. Smith, for your testimony.

[The prepared statement of Ms. Smith follows:]

Testimony of Robin Smith, former DHS officer, for the Towns' Subcommittee, July 18, 2007

Chairman Towns and distinguished members of this subcommittee, thank you for the opportunity to tell you about my experience as a Wackenhut security officer. But before I do, I'd like to tell you a little bit about my background.

Prior to my civilian service, I served for three years with the US Air Force. I'm proud to say that I achieved the rank of Airman First Class with a Sharpshooter badge. I was one of 125 women selected for an Air Force test program to receive combat training. As an Air Force Security Officer, I guarded aircraft that were on alert with nuclear weapons for the Strategic Air Command. I also did work in assembly, maintenance and repair of sophisticated electronics including positions requiring security clearance.

For me, my work in the private sector was an extension of my military service. I consider it not only a job, but also a privilege to serve my country and to keep it safe. I have always treated my job as a security officer with the utmost pride and importance, and I recognized that being stationed at the department that secures our nation made my work even more important.

Before working for Wackenhut, I worked with a private company called Omniplex and later as an airport screener for the Transportation Security Administration (TSA).

At Wackenhut Security Services Inc. (WSI), I was a security officer assigned to guard the Department of Homeland Security (DHS) in Washington, D.C. from June 19, 2005 until April 2006 when the contract with Wackenhut was terminated.

While working for Wackenhut at the Department of Homeland Security, I was posted at Building 3, which is a Sensitive Compartmented Information Facility (SCIF), because a lot of classified documents are located there. Building 3 also houses a central video monitoring system, so my duties included monitoring the cameras located in the different buildings on the site as well as ensuring that all individuals entering the building were properly identified, cleared and documented.

Unfortunately, I felt that Wackenhut took their government contract and responsibility for our nation's safety too lightly and they provided a shoddy and low level of service to the DHS, which could have had dire consequences for our nation's capital. The problems I witnessed included poor access control, lack of training, careless weapons handling, open posts, failed security tests, security breaches, falsified documents, and irresponsible handling of a hazardous substance attack. I will recount a few incidents for you today.

Security clearances were not taken seriously by Wackenhut management. Controlling access is a basic part of security. It would be reasonable to assume that the security officers Wackenhut stationed in high security buildings would have the necessary security clearances. But, unfortunately, that was not the case. In fact, one of the sergeants whose duty was to investigate all alarms and secure buildings, including the compound where the Secretary of Homeland Security's office and his top aides were, did not even have all the required security clearances.

For example, up until or about November 9, 2005, Sergeant Moore would be responsible for investigating alarms that would go off in any building, and he responded specifically to alarms in high security buildings, but he did not have the proper security clearance for this job. Such security clearance is necessary to access certain sensitive corridors and rooms of high security clearance. In many instances, I saw Sergeant Moore conduct building investigations in top-secret buildings on the Department of Homeland Security jobsite with no security clearance whatsoever. I believe, at the time, Sergeant Moore was working with an interim secret clearance, which means that his background check had not yet been completed.

It's especially important for you to know that as security officers at the Department of Homeland Security, we never had any previous training nor did we receive any written protocol such as a standard operating procedure

when responding to a chemical attack. There was no proper training, whatsoever, when responding to attacks with weapons of mass destruction (WMDs), or for the handling of suspicious packages, or response to bomb, chemical, or biological threats. Training was also lacking when it came to de-escalation and evacuation procedures.

As a Wackenhut officer, I also saw careless storage of weapons that could have had grave results. On more than five occasions, once at the beginning of the early morning shift and at numerous times during a late evening shift change, I saw the weapons armory wide open and unattended. Officers who come off post go to the armory to return their weapons and ammunition. The armory is located in the Program Manager's—Henry Thomas' office.

When a supervisor is not attending the armory, it results in high security risks. There have been times when I saw the Sergeants, who are supposed to be in control of the armory's safe-keeping, leaving the central weapons cache wide open to go to the bathroom or elsewhere. I also witnessed occasions in which an unattended weapon was left still lodged in the lead weapon barrel with its ammunition laying beside it, available for anyone to access. The requirement is that all officers must place their gun in a lead weapon barrel in order to prevent any accidental misfiring.

There were numerous times when the door to the office of Henry Thomas, the program manager of the Physical Security Division at the Department of Homeland Security, was left open, unlocked and unoccupied. If the door is open, anyone can access the weapons armory. There are many contractors working onsite at the Department of Homeland Security. Any disgruntled contract employee could easily walk right through Henry Thomas' open office door and access the entire armory of weapons and ammunition. Any terrorist or ill-intentioned individual could do the same.

It is not difficult to enter the Department of Homeland Security gates, especially when there is no guard or appropriate security measure guarding entry into the site. Many vehicle entrances to the Department of Homeland Security were lightly guarded or not even guarded at all. At some entrances, there are small barriers used to prevent vehicles from entering, but there is still enough space for a smaller vehicle such as a motorcycle to pass through an unguarded entrance. There were several occasions in which there were failures to stop test vehicles that were sent to checkpoints with improper identification.

On most occasions, there was only one security officer stationed outside Secretary Chertoff's office as opposed to the required posting of two officers.

There was one incident in which an employee entered the Department of Homeland Security buildings without her identification badge. This breach was only discovered because we happened to have a fire drill that day, which required all DHS employees to evacuate the site. Only when this employee attempted to re-enter the building after the drill was she stopped and sent home to retrieve appropriate identification. If this woman could get past two posted guards—one at the gate and the other at a SCIF building without a badge, any ill-intentioned individual could do the same.

Another problem was the high turnover among security officers, forcing officers to work extended shifts. Some officers were so tired that they would make up for their lost sleep while on the job. On many occasions, there were supervisors and officers caught sleeping on the job, but management never reprimanded them.

The falsification of documents and records was not uncommon among supervisory staff. I saw Sergeant Moore filling out his 139 Form, which is his timesheet, a month in advance in the office of Henry Thomas. Two lieutenants were also present in the office at the time Sergeant Moore was filling out his 139 Form. Captain Carraway was onsite at the time, but I do not recall if he was also in the office during this specific incident.

Noticing that nobody else in the office seemed concerned about the matter, I confronted Sergeant Moore about falsifying a federal document, and he just told me to mind my own business. I told him that as a sworn officer of the law, I was minding my own business. Unfortunately, that wasn't the first time that Sergeant Moore falsified his timesheets.

There was one occasion in which I personally witnessed the falsification of a report, which pertained to non-performance of security services in the face of a suspected access breach. An alarm in a high security building went off, where the offices of the Secretary of Homeland Security and his top staff were situated. There were Wackenhut supervisors and Lieutenants onsite at the time. The alarm sounded, but not one of them went to the building to investigate the situation.

Henry Thomas responded to the situation by holding Lieutenant Johnson solely responsible for the incident and demoting him to the rank of a regular officer. I was the only eyewitness present at the time the alarm sounded, but Henry Thomas never approached me for questioning. When I asked him why, he simply stated that a full investigation had taken place supporting the decision to ascribe blame to and demote Lieutenant Johnson. But I wondered, "How could a credible investigation have taken place when the only eye witness account was never sought?"

In addition, there was never any kind of further investigation of the building to determine if it had in fact been inappropriately entered or if any of the sensitive materials located in the building had been inappropriately accessed, taken or altered. I believe that a full and thorough investigation to identify the delinquent party or parties was unquestionably warranted.

Wackenhut Services, Inc. also failed to provide officers with the proper and necessary equipment to efficiently serve and protect the Department of Homeland Security and its employees. Some officers did not have radios to communicate with each other, and those who did have access to radios, had trouble hearing each other. Officers also lacked pepper spray and batons, leaving us with few options beyond lethal force with our handguns.

Management also decided to replace chemical-sniffing dogs with ineffective equipment that falsely indicated the presence of explosives.

One incident that truly stands out in my mind is the unpleasant mishandling of a potential chemical agent by the highest level ranking of Wackenhut security programming. This was at the height of the Anthrax scare in our nation's capitol. A suspicious letter was sent to the building that used to house Secretary Chertoff's office. A DHS employee opened the letter, which was found to contain an unidentifiable white powder. Some, if not most, of this white powder spilled onto the employee's body.

Two security officers received a report of this incident, and they notified their superiors, Lieutenant Waller and Lieutenant Carraway. When the two Lieutenants arrived at the scene, they were in a position to isolate the contaminated areas and to prevent other Department of Homeland Security employees from entering a potentially contaminated area. But they didn't do that.

Lieutenants Waller and Carraway told the employee who had opened the envelope to go and wash the white powder off of herself. She did so by walking across the hall, passing Secretary Chertoff's office and potentially contaminating a larger part of the building.

The white powder was unidentified and should have been considered to be potentially dangerous, but it was apparent that proper safety precautions were not taken into account. Everyone in the vicinity could have been contaminated if the white powder had been a chemical threat.

The two Lieutenants observed and handled the envelope from all angles. They didn't evacuate the section. The ventilation system was still on, which could easily have carried particles of the white powder to other sections of the building. The building was evacuated only when the Federal Protective Services arrived at the very late stages of the discovery.

I firmly believe that Wackenhut knew of these abuses and did nothing to rectify the situation.

Though Wackenhut no longer provides security at the Department of Homeland Security, I know that it is a foreign-owed, global security company, and is still contracting more federal security work than any other company, apparently without regard its poor performance record. Personally, I was appalled that Wackenhut was awarded a contract for border transportation by the Department of Homeland Security in the same year that they failed so miserably at that department's headquarters.

I hope that my testimony today will help paint a more complete picture of Wackenhut' performance, which I think deserves Congressional investigation. I thank you once again for the opportunity to meet with you today.

Mr. TOWNS. Dr. Brede.

STATEMENT OF LAWRENCE BREDE

Mr. BREDE. Chairman Towns, Ranking Member Bilbray, and members of the subcommittee, I too appreciate the opportunity to participate in this subcommittee hearing today.

My name is Dr. Lawrence Brede, and since 2005 I have served as the senior vice president and executive general manager for the Department of Energy Operations in Wackenhut Services, Inc.

In that role, I oversee our protective services contracts at five Department of Energy facilities: Oak Ridge, the Savannah River Site, the Nevada Test Site, the Office of Secure Transportation, and the Department of Energy headquarters. Prior to that time, I managed our contract at the WSI Savannah River Site for more than 12 years.

For 26 years, I was privileged to serve our country in the U.S. Army, including service in three armed conflicts: Vietnam, Operation Just Cause in Panama, and Operation Desert Storm in Iraq. I commanded the elite military forces during my last two combat tours.

Today, I am privileged to oversee other elite forces. Wackenhut Services' operations include paramilitary protective services, response teams equipped with rapid fire and other special weapons, armored vehicles, helicopters marine patrol, and other state-of-the-art security technologies. We are proud to have served the U.S. Government for more than 40 years at the Nevada Test Site, nearly 25 years at the Savannah River Site and, since the year 2000, at Oak Ridge where we were recently awarded a 5-year contract.

During that entire period, we have consistently been awarded high performance ratings. For example, in 9 of 10 DOE performance ratings over the past 5 years at the Nevada Test Site, we have received scores over 95 percent. In our last 10 DOE performance ratings at Savannah River Site, we have scored 96 percent or higher, including five perfect scores of 100 percent. And at Oak Ridge, all of our performance ratings were 93 percent or higher, with an average score of 97 percent.

In addition, we have won numerous awards for our work, including the South Carolina Governor's Quality Award, the highest level of recognition in the South Carolina State Quality Award process, and we won a similar award in the State of Nevada. Underscoring our technical competence, WSI Security Police Officers have won the national level Department of Energy's Security Police Officer training competition 4 years in a row.

I understand the primary reason we were invited to this hearing is because of DOE IG reports regarding our contract sites at Oak Ridge, TN. The conclusions drawn from each of those reports have been challenged by senior Federal officials at both the local and headquarters levels. It has been incomplete because of a failure to consider all pertinent information provided to the inspector general during those investigations. In at least one case, the DOE's Office of Independent Oversight—the technical oversight organization within DOE—conducted an inspection of our training practices and arrived at an entirely different conclusion than the DOE IG.

Our security contracts receive extensive repeated scrutiny by the government, not only by contracting officer technical representatives at the local level, but also by the DOE's Office of Independent Oversight, the GAO, the Defense Contract Audit Agency, and other ad hoc special review teams.

Given the subject of this hearing, I am surprised and, quite frankly, disturbed at how WSI's past performance on government contracts could possibly be characterized as "poor," considering the overwhelming evidence to the contrary. The 8,000 men and women who work for Wackenhut Services are dedicated, hardworking, patriotic individuals. Most come from a military or a law enforcement background, and our protective forces include former Army Rangers, Navy SEALs and personnel from other Special Operations Forces.

I welcome this opportunity to address any concerns you may have about our service to the government. We are proud that many of our Security Police Officers have taken leave to serve on Active Duty in Afghanistan and Iraq. We look forward to their return, and we honor the memory of those Wackenhut employees who, sadly, will not be returning to us, having made the ultimate sacrifice of dying for our country in the war on terror.

Mr. Chairman, I have submitted some additional materials concerning our performance for the record. I thank you for this invitation to set the record straight.

In summary, I will just reiterate how proud I am of the work we do for the U.S. Government. Our protective forces are well-trained and are as capable as any of the elite forces with which I have served.

I will be glad to take your questions this afternoon.

Mr. TOWNS. Thank you very much, Dr. Brede.

[The prepared statement of Mr. Brede follows:]

TESTIMONY OF DR. LAWRENCE BREDE
SENIOR VICE PRESIDENT, DOE OPERATIONS
WACKENHUT SERVICES INCORPORATED

HOUSE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION AND PROCUREMENT
JULY 18, 2007

Mr. Chairman and Members of the Subcommittee, my name is Dr. Lawrence Brede and since 2005 I've served as the Senior Vice President and Executive General Manager for Department of Energy Operations for Wackenhut Services, Inc.

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For 26 years, I was privileged to serve our country in the United States Army, including service in three armed conflicts – Vietnam, Operation Just Cause in Panama, and Operation Desert Storm in Iraq. I commanded elite military forces during my last two combat tours.

Now I oversee other elite forces. Wackenhut Services operations include paramilitary protective services response teams equipped with rapid fire and other special weapons, armored vehicles, helicopters, marine patrol, and other state-of-the-art security technologies.

We're proud to have served the United States government for more than 40 years at the Nevada Test Site, nearly 25 years at the Savannah River Site, and since 2000 at Oak Ridge, where we were recently awarded a new five-year contract.

During that entire period, we have consistently been awarded high performance ratings. For example, in 9 of 10 DOE performance rating over the past five years at the Nevada Test Site, we've received scores over 95%. In our last 10 DOE performance ratings at Savannah River Site, we've scored 96% or higher, including five perfect scores of 100%. And at Oak Ridge, all of our performance ratings were 93% or higher, with an average score of 97%.

In addition, we've won numerous awards for our work - including the 'South Carolina Governor's Quality Award,' the highest level of recognition in the South Carolina State Quality Award process - and WSI Security Police Officers have won the national level Department of Energy's Security Police Officer Training Competition four years in a row.

(more)

2-of-2

I understand the primary reason we were invited to this hearing is because of a series of five DOE IG reports regarding our contract sites in Oak Ridge, Tennessee. The conclusions drawn from each of those reports have been challenged by senior federal officials at both the local and headquarters levels as being incomplete because of a failure to consider all pertinent information provided to the IG during those investigations. In at least one case, the DOE's Office of Independent Oversight conducted an inspection of our training practices and arrived at an entirely different conclusion than the DOE IG.

Our security contracts receive extensive, repeated scrutiny by the Government, not only by contracting officer technical representatives at the local level, but also by the DOE's Office of Independent Oversight, the GAO, the Defense Contract Audit Agency, and other ad hoc special review teams. Given the subject of this hearing, I am surprised and disturbed at how WSI's past performance on Government contracts could be characterized as "poor," considering the overwhelming evidence to the contrary. The 8,000 men and women who work for Wackenhut Services are dedicated, hard-working, patriotic individuals. Most come from a military or law enforcement background and our protective forces include former Army Rangers and personnel from other special operations forces. I welcome this opportunity to address any concerns you may have about our service to the Government.

We're proud that many of our Security Police Officers have taken leave to serve on active duty in Afghanistan and Iraq. We look forward to their return. And we honor the memory of those Wackenhut employees who sadly will not be returning to us, having made the ultimate sacrifice of dying for their country in the War on Terror.

Mr. Chairman, I have submitted some additional materials concerning our performance for the record. However, in summary, I'll just reiterate how proud I am of the work we do for the United States Government. Our protective forces are well-trained and are as capable as any of the elite military forces with which I have served.

I'll be glad to take your questions.

# # #

WACKENHUT SERVICES INCORPORATED

Performance Information

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Department of Energy

Oak Ridge Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—

May 3, 2007

Mr. Jean (Jim) F. Burleson
Senior Vice President and General Manager
Wackenhut Services Incorporated
7121 Fairway Drive Suite 301
Palm Beach Gardens, FL 33418-3766

Dear Mr. Burleson:

NOTICE OF SELECTION OF WACKENHUT SERVICES INCORPORATED FOR THE PROTECTIVE FORCE SERVICES FOR THE OAK RIDGE RESERVATION PROCUREMENT – DE-RP05-05OR23193

This serves as official notification that the Source Evaluation Board has completed its review of your proposal and the Source Selection Official has selected your firm as the successful offeror.

Wackenhut will assume full responsibility for the new contract on June 3, 2007. Congratulations on your selection for these important contracts with the Department of Energy Oak Ridge Office and National Nuclear Security Agency Y-12. We look forward to working with you.

Four proposals were received on this procurement. Using an adjectival rating system, your proposal received an overall rating of Excellent. The enclosure provides written debriefing information regarding the strengths of your technical proposal. The Government noted no weaknesses in your proposal.

In accordance with Federal Acquisition Regulation 15.506, you must submit a written request for a post-award oral debriefing by close of business Monday, May 7, 2007. You will be provided an opportunity to discuss the process and your evaluation during the debrief. Please contact me on (865) 241-2513 or Belynda Thompson on (865) 576-2362 if you have any questions.

Sincerely,

Jeffrey R. Burgan
Contracting Officer

Enclosure

PRINTED ON RECYCLED PAPER

Department of Energy
National Nuclear Security Administration
Service Center
P. O. Box 5400
Albuquerque, NM 87185

May 9, 2006

Mr. David Foley
Chief Operating Officer
Wackenhut Services, Inc.
7121 Fairway Drive, Suite 301
Palm Beach Gardens, FL 33418

VIA FACSIMILE: (561) 472-3641

Dear Mr. Foley:

The purpose of this letter is to notify you that your proposal was selected for award under the U.S. Department of Energy National Nuclear Security Administration's (NNSA) Request for Proposal DE-RP52-05NA14390, Security Protective Force Services.

In accordance with Federal Acquisition Regulation (FAR) Subpart 15.506, we have scheduled your post-award debriefing on May 23, 2006 at 1:30 p.m. in the Sedan Room, A-110, Nevada Site Office, 232 Energy Way, North Las Vegas, Nevada. The following is provided for your information:

Number of Proposals Received: Nine (9)

Summary of Rationale for Award: Wackenhut Services, Incorporated's proposal was determined to be the Best Value for the Government. In determining Best Value to the Government, the technical evaluation criteria (Technical Capability, Business Management Plan, Organizational Structure, Key Personnel, Past Performance and Transition Plan) when combined were considered significantly more important than the Cost Evaluation criteria.

Attached you will find the Source Evaluation Board's evaluation for each of the criteria which contains strengths and weaknesses for WSI's proposal.

If you accept this postaward debriefing date, please respond within three working days to the undersigned at eespinosa@doeal.gov with a copy to the Contract Specialist at tolson@doeal.gov. The facsimile transaction report for this notice will serve as written confirmation of your receipt.

If this date cannot be met, a later debriefing date will be scheduled by the Source Evaluation Board. So that we may adequately address your issues, please submit your questions for the debriefing no later than 48 hours prior to your debriefing time. If you have any general questions about this notification, you may contact me at (505) 463-0942 or pager (888) 488-8289, or the Contract Specialist, Tammy Olson, at (505) 845-5658.

Sincerely,

Eusebio M. Espinosa
Contracting Officer

Enclosure
1. WSI Evaluation

WSI Criterion #1: Technical Capability
(Excellent-95%)

Initial Rating: Excellent (95%)	Final Rating: Excellent (95%)

The proposal demonstrated an excellent understanding of contractual requirements and capability to perform the SOW. The proposal contains strengths, including three significant strengths. No weaknesses were identified. WSI demonstrated a comprehensive understanding and technical capability, an excellent training and implementation program, a nucleus of highly trained employees and the extensive corporate experience required to successfully accomplish the SOW.

WSI demonstrated its understanding of performance requirements by outlining an "*integrated defense in-depth strategy.*" This would involve the use of roving patrols, electronic sensors, and MIRVs equipped with ground radar, color and infrared cameras, electronic sensors, forward looking infrared and closed circuit television. These multiple layers of personnel and technology control measures complement one another in a manner that precludes unauthorized access or malevolent acts. WSI demonstrated an excellent understanding of protection requirements as they relate to the missions as outlined in the SOW. WSI demonstrated a strong understanding of need for and use of over-time hours in meeting fluctuating mission requirements associated with the conduct of sub-critical experiments and the presence of SNM on site to meet the continuous protective services that are required 24 hours per day, 365 days per year.

Additionally, WSI demonstrated a comprehensive understanding of the Special Response Team requirements needed to support current and future NTS missions. WSI also demonstrated a strong understanding and working knowledge of Human Reliability Program (HRP), Material, Control and Accountability (MC&A), and Technical Surveillance Countermeasures (TSCM) requirements. In its proposal WSI demonstrated a comprehensive understanding of Emergency Response and Emergency Management training exercises. They also identified the NNSA/NSO Consolidated Emergency Management Plan and the key roles required by the Incident Commander in security emergencies supported by the Tactical Operations Center.

Another vital aspect addressed by WSI in their proposal was training. The proposal demonstrated excellent training experience and implementation approaches. These technical approaches included training needs assessments, protective force annual training, sensitive assignment specialist refresher training, Security Police Officer (SPO) III training, and physical fitness training as required by 10 Code of Federal Regulations (CFR) Part 1046 and DOE M 473.2-2 Change 1.

As requested in the RFP, WSI demonstrated its understanding of the needs of a highly qualified nucleus of employees who possess the necessary skills and flexibility to perform the breadth of the SOW. The Offeror demonstrated they have trained and qualified guard forces, professional security, administrative, and management staff at various DOE/NNSA sites (Y-12, RFETS, SRS, and NTS) that would be brought to bear to meet the requirements of the SOW.

WSI, in its proposal, demonstrated a thorough understanding in the planning and coordinating of protestor activities. The Offeror identified specific anti-nuclear demonstration planning

activities. The Offeror also identified the need to liaison with local law enforcement to ensure appropriate response as required. Throughout their proposal WSI demonstrated a complete understanding and implementation of DOE Orders, Manuals and requirements. WSI in its proposal demonstrated a thorough understanding of technical risks associated with the accomplishment of the SOW and measures to mitigate those risks.

Finally WSI demonstrated 74 years of relevant combined work experience at four DOE/NNSA sites (NTS, Y-12, SRS, and RFETS), including experience with protection of the SNM found at NTS. This corporate experience is highly desirable in performing DOE security requirements at NTS.

(WSI) Criterion 1: Technical Capability
Consensus is Excellent – 332.5 points

GENERAL COMMENTS:

The Technical Capability proposal demonstrates an excellent understanding of contractual requirements and capability to perform the SOW. The proposal contains strengths including significant strengths. No weaknesses were identified.

SIGNIFICANT STRENGTHS

- The Offeror demonstrated a comprehensive technical capability and thorough understanding and technical approach, risk identification and risk mitigation strategies to successfully accomplish the SOW as listed below (M.05, Criterion 1, (i)):
  - The Offeror demonstrated a detailed understanding of the over-time requirements needed to meet SOW activities specific to the NTS. WSI demonstrated a strong understanding of need for and use of over-time hours in meeting fluctuating mission requirements associated with the conduct of sub-critical experiments and the presence of SNM on site to meet the continuous protective services that are required 24 hours per day, 365 days per year.
    - Reference: - VOL II, Figure (1-13), page 16; VOL II, page 26
  - The Offeror demonstrated a thorough understanding of a "*...integrated defense in-depth strategy...*". This would involve the use of roving patrols, electronic sensors, and MIRV's equipped with ground radar, color and infrared cameras, electronic sensor, forward looking infrared and closed circuit television. These multiple layers of personnel and technology control measures complement one another in a manner that precludes unauthorized access or malevolent acts.
    - Reference: VOL II, pages 9 to 11
    - Reference: VOL II, Figures (1)(iii)-1, -2, -4 to -12, pages 31 to 36
  - The Offeror demonstrated a comprehensive understanding of the Special Response Team requirements. The Offeror proposed site-specific SRT capabilities. This included rifle/observers, tactical entry specialists, and

assaulters. Additionally, the Offeror identified specific equipment required to support SRT operations.

- Reference: VOL II, (1) page 3

- The Offeror demonstrated a strong understanding of HRP requirements. The Offeror also demonstrated a strong technical approach in how to implement HRP while minimizing risks that could impact NTS missions. The Offeror demonstrated three years of HRP experience with over 77 years of PAP/PSAP experience.
  - Reference: VOL II, (1) Figure (1)-16, page 23; (1) 4 B, pages 35 and 36; (1) Figure (1)(iii)-12, page 36
- The Offeror demonstrated a superior understanding and thorough technical approach to meet MC&A program requirements. The Offeror demonstrated specific plans and procedures to be utilized to address MC&A requirements. This included recognition of shipper/receiver agreements, input to the Nuclear Materials Management and Safeguards System and Tamper Indicating Device programs.
  - Reference: VOL II, (1) pages 21 and 22; Figure (1)(iii)-11, page 35

- The Offeror demonstrated a comprehensive understanding of Emergency Response and Emergency Management training exercises. The Offeror identified the NNSA/NSO Consolidated Emergency Management Plan and the key roles required by the Incident Commander in security emergencies supported by the Tactical Operations Center.
  - Reference: VOL II, (1) page 6; Figure (1)-7, page 7

- The Offeror detailed training experience and implementation approaches. These technical approaches included training needs assessments, protective force annual training, sensitive assignment specialist refresher training, SPO III training, and physical fitness training as required by 10 CFR 1046 and DOE M 473.2-2 Change 1.
  - Reference: VOL II, (1), page 12

- The Offeror demonstrated a strong technical approach for TSCM. The Offeror identified a TSCM Officer position to implement the classified TSCM procedural manual and Director Central Intelligence Directives for both the M&O and Protective Force Contractor.
  - Reference: VOL II, (1) C1, page 20

- The Offeror demonstrated a thorough understanding in the planning and coordination of protestor activities. The Offeror identified specific anti-nuclear demonstration planning activities. The Offeror also identified the need to liaison with local law enforcement to ensure appropriate response as required in documented anti-nuclear demonstration plans. The Offeror referenced past experience with 439 demonstrations involving 74,000 protestors.
  - Reference: VOL II, (1) C, page 6

- The Offeror demonstrated a thorough understanding and implementation of DOE Orders, Manuals and requirements.
  - Reference: VOL II – (1) 2, page 3; (1) Figure (1)-7, page 7; (1) F, page 10; (1) 1, page 11; (1) page 12

- The Offeror demonstrated a thorough understanding of technical risks associated with the accomplishment of the SOW. The Offeror's proposal identified measures used to mitigate those risks. Examples include the risk and mitigation strategies identified after each section of the proposal. Listed below are examples:

  - Protective Force --- The Offeror's proposal identified multiple credible risks with mitigation strategies for each. Risks ranged from compromise of SNM to staffing issues.
    - Reference: VOL II, Figure (1)-13, pages 15 and 16

  - Technical Security Systems --- The Offeror's proposal identified several credible risks with mitigation strategies for each. Risk range from failure to maintain classified computer security programs to inability to find replacement parts.
    - Reference: VOL II, Figure (1)-14, page 21

  - Administrative activities --- The Offeror's proposal identified numerous valid risks with mitigation strategies for each.
    - Reference: VOL II, Figure (1)-20, page 29

- The Offeror's proposal demonstrated a highly qualified nucleus of employees who possess the necessary skills and flexibility to perform the SOW. The Offeror demonstrated they have trained and qualified guard forces, professional security, administrative, and management staff at various DOE/NNSA sites (Y-12, RFETS, Savannah River Site and the NTS) that would be brought to bear to meet the requirements of the SOW. (M.05, Criterion 1, (ii)).

  - Reference: – VOL II, Figures (1)(iii)-1, -2, -4 to -12, pages 31 to 36

- The Offeror demonstrated strong corporate experience in performing all aspects of the SOW (M.05, Criterion 1(iii)). This was demonstrated through their proposals identification of 74 years of relevant combined corporate experience at four DOE/NNSA sites (NTS, Y-12, Savannah River, and RFETS). This corporate experience is specifically related to DOE/NNSA security requirements.

  - Reference: VOL II, Figures (1)(iii)-1 through -12, pages 31 to 36

STRENGTHS

- None

SIGNIFICANT WEAKNESSESS

- None

WEAKNESSES

- None

WSI Criterion #5: Past Performance
(Excellent-95%)

Initial Rating: Excellent (90%)	Final Rating: Excellent (95%)

The Offeror demonstrated excellent past performance at multiple DOE sites with work comparable to the SOW as identified in the strengths below. The Board evaluated the initial proposal that contained significant strengths, strengths and a weakness. In the Board considered input from two external performance reports that identified performance issues considered as concerns by the Board but not categorized as weaknesses pending responses from WSI. Results of those external reports were addressed with WSI during discussions. WSI's responses to the Board's discussion questions and the Board's verification of facts with sources independent of WSI resolved the Board's concern with all potential negative performance issues. The weakness initially cited by the Board has been eliminated and the WSI past performance score increased by 5 percentage points.

- In the January 2004 IG Inspection Report, allegations regarding protective force performance testing improprieties were evaluated. On page 13 of the report under Management Response, "Concur.... However, consideration of alleged improper actions referenced prior to WSI assuming the contract in January 2000, would not be appropriate in the determination of fee allowance during the remaining years of the WSI contract." The Board looked at the performance period during which the incident occurred and saw that the Y-12 Site awarded WSI with a rating of 93%. As the Board found that DOE/NNSA management at the respective sites did not support the allegations in the IG Report and because the amount of fee awarded indicates a high degree of performance (i.e. greater than 90%), the Board did not find the assess a weakness to the cited information. However, the IG report was addressed with WSI during discussions.

Results of Discussions

Discussion Question 2:

The U.S. Department of Energy Inspector General reports entitled "Protective Force Performance Test Improprieties," DOE/IG-0636, January 2004, was critical of identified improprieties of protective force performance testing. Please respond to the Observations and Conclusions section on page 3 of the report.

WSI Response:

WSI responded to the Office of Inspector General report that while the IG identified this as a Force-On-Force (FOF) exercise, WSI provided information that it was a Diagnostic Evaluation Exercise (DEE). This difference is that instead of personnel being tested it was a specific

portion of the protection strategy that was being tested and thus being given the scenario ahead of time was credible and not improper.

In their Final Proposal Revision WSI provided the following:

In the January 2004 IG Inspection Report, allegations regarding protective force performance testing improprieties were evaluated. On page 13 of the report under Management Response, *"Concur... However, consideration of alleged improper actions referenced prior to WSI assuming the contract in January 2000, would not be appropriate in the determination of fee allowance during the remaining years of the WSI contract."* The Board looked at the performance period during which the incident occurred and saw that the Y-12 Site awarded WSI with a performance rating of 93%. In an e-mail, dated July 23, 2003, from Ms. Sharon Daly (an attendee at the June 19, 2003 in brief) Assistant Manager, Safeguards and Security, YSO to Mr. Toby Johnson, Chief Nuclear Security, NNSA, Ms. Daly stated, *"...the exercise was not the usual FOF type, it was a 'diagnostic' exercise – translation: to ensure it would simulate the scenario that JCATS ran, the adversary was not allowed 'free play' in some areas of the scenario. This is documented and was briefed up front during planning sessions. The ideas is valid if you are trying to compare 'apple to apple' so you can claim a good comparison – basic scientific approach or having a constant. Do not see an issue with this. They do call this 'type' of exercise something else – A DEE since it relates to a diagnostic eval."*

An investigation of performance test improprieties was directed by Mr. Toby Johnson, NNSA. The investigator concluded that: (1) the DEE was a valid and credible test design: (2) it had been conducted with integrity; (3) it was clearly designed not to be a win/lose and; (4) was executed in accordance with its well documented and well communicated design objectives. He further found that the IG did not pursue the opportunity to review test results and other pertinent data, which could have changed their observations and conclusions.

In a March 4, 2005 response to a letter dated February 17, 2005 from Congressman Edward J. Markey, which stated, in part, *"In January 2004, the DOE IG also found that Wackenhut supervisory personnel had cheated on (and) they were tipped off in advance during a DOE drill..."* Ambassador Linton Brooks, Administrator, NNSA, stated that the reported improprieties were *"not categorized as 'cheating', nor were personnel "tipped-off" in advance."*

Board Finding:

The Board in its evaluation of the WSI Final Proposal Revision found the issue to be fully and satisfactorily addressed.

Discussion Question 3:

The U.S. Department of Energy Inspector General report entitled "Protective Force Training at the Department of Energy's Oak Ridge Reservation," DOE/IG-0694, June 2005, identified allegations with training at the Oak Ridge Reservation. Please respond to these findings of the Inspector General.

WSI Response:

WSI responded to the Office of Inspector General report. WSI contends that NNSA management as well as WSI disagrees with the interpretation of training requirements.

In their Final Proposal Revision WSI submitted the following:

As quoted in the report, *"Management's comments indicate a fundamental disagreement on the core issues in the report."* WSI in its Final Proposal Revision thoroughly discussed "training to time" and "training to standard" identified in the IG Report. In a letter dated May 25, 2005, to the DOE/IG Michael Kane, NA-60, NNSA wrote, *"...there is no indication that results obtained through training to a standard is any less effective or efficient than to generic training plans. Contractually and administratively the reporting of training accomplished citing planned hours rather than actual hours is a consequence of requirements."*

During the FY 2005 OA inspection, conducted May-July 2005, the WSI-OR training program was rated "Effective Performance" (Green), the highest rating possible, even after special attention was paid to this area as a result of the IG Report. In fact, in his response to the Draft Report, Mr. Glenn Podonsky, Director, Office of Security and Safety Performance Assurance (SSA), stated, *"Currently, OA is inspecting the Y-12 Protective Force program. As part of the Y-12 inspection scope, OA will assess the adequacy of the training program and the effectiveness of training to prepare the Y-12 Protective Force to perform its mission. The Y-12 final inspection report will be issued in July 2005."* The OA Team lead, Mr. Arnold Guevara, stated in the OA out briefing that the OA failed to understand what the IG's issues with the WSI-OR training program were an that they would discuss the subject with them.

Board Finding:

The Board evaluated the IG June 2005 report regarding deficient training requirements at the DOE Oak Ridge reservation. The NNSA Management response to the IG states that NNSA accepts the manner in which Oak Ridge does its training. With the additional finding of an Effective Performance during the OA 2005 Inspection, the Board finds that the issue has been resolved.

Summary:

Discussion Question 1 was characterized as a Weakness in the Competitive Range Report. Through the evaluation of the Final Proposal Revision, the Board felt that this weakness was fully mitigated and is no longer considered a weakness by the Board. Discussion Questions 2 and 3 were not identified as weaknesses but were identified as Past Performance issues worthy of response from the Offeror. The WSI Final Proposal Revision fully and satisfactorily addresses their actions and the action of the related site offices and NNSA Headquarters. The Board does not feel that these discussions questions are issues and the Board revaluated Criterion 5 Past Performance and made the following determination.

WSI demonstrated excellent past performance at multiple DOE/NNSA sites with work comparable to the SOW. In evaluating the prior five years of past performance information, the Offeror demonstrated the protection of SNM, SPO III programs, HRP, training, technical security programs, and other security functional areas identified in the SOW at NTS, Y-12, SRS, RFETS, BWXT-Pantex and LANL. As a result, of eliminating the weakness and satisfactorily addressing other past performance information, the SEB increased the WSI rating as show below.

(WSI) Criterion 5: Past Performance
Consensus is Excellent – 135.0 points

SIGNIFICANT STRENGTHS

- WSI provides nuclear security services, as identified in the SOW, for the DOE Oak Ridge and NNSA Y-12 complexes. The magnitude of this contract exceeds $376M over the last five years. For the DOE Oak Ridge Operations Office, WSI has received, on average, a performance rating of 96% over the last 10 performance periods with no rating lower than 94%. The previous six adjectival ratings were "Outstanding". For the NNSA Y-12 plant, WSI has received an average of 95.5% of performance points since the start of the contract in 2002.

- WSI current provides nuclear security services, as identified in the SOW, for the DOE Savannah River Operations Office. The magnitude of this contract exceeds $454M over five years. In this five year performance period, WSI has earned available performance points of 98.8%. The adjectival rating ranges from 'Superior to Excellent" during this five year period.

- WSI provided nuclear security services to Kaiser Hill, LLC at the RFETS. The magnitude of this work was $230M over eight years. Although no performance ratings were noted in the proposal, the adjectival rating given by the DOE Office was "Satisfactory/Effective"; which is the highest rating an organization can receive.

  - Reference VOL. II Past Performance
    - YSO – pages 23 to 40
    - SRS – pages 41 to 55
    - RFETS – pages 56 to 64
    - BWXT Pantex – pages 65 to 70
    - LANL – pages 71 to 76

STRENGTHS

- WSI has provided nuclear security services, as stated in the SOW, for the NNSA/NSO for over 40 years. Since October 1, 1999 to present, WSI has earned an average available score of 96.8%. WSI had earned on eight difference occasions an available score of 98% - Outstanding. Since the Satisfactory performance (85%) from April 1, 2004 to September 30, 2004, WSI has earned 96% and 97% of fee for the performance periods of October 1, 2004 to March 31, 2005; and April 1, 2005 to June 30, 2005.

- Reference VOL II, Past Performance
  - NSO – pages 3 to 20

SIGNIFICANT WEAKNESSES

- None

WEAKNESSES

- For the rating period April 1, 2004 to September 30, 2004, WSI received a 85% for deficiencies found during an OA inspection of the NTS (See Discussion Question 1 below).
  - Reference VOL II, Past Performance, pages 3 to 20

Results from discussions

Discussion Question 1 (Weakness):

The Office of Oversight and Assessment (OA) review conducted July-August 2004 found deficiencies of Wackenhut's performance at the Nevada Test Site in the Safeguards and Security topical area of protective force operations. As a result, Wackenhut received significantly lower ratings in the areas of safeguard and security operations and safeguards and security program management in the performance evaluation report covering the period of April 1, 2004 to September 30, 2004. Please respond to the OA assessment of Wackenhut's performance in the mock terrorist drill.

WSI Response:

WSI responded that the deficiencies identified by OA assessment of NTS protective force operations were a result of chronic insufficient funding by DOE/NNSA resulting in reduced protective force manpower for the future mission identified in April 2004. WSI responded in their Final Proposal Revision with the following.

Following the 2004 OA evaluation, the WSI Protective Force strengths was authorized to increase from 160 to 265, including the first ever direction to implement an SRT. Additionally, WSI was authorized to establish a Performance Testing capability that was required for a site with an SNM mission. In conjunction with NSO, WSI immediately implemented an intensive retraining program. Off-site support to other sites was canceled and support was obtained from various NNSA sites as part of the training program. An intensive evaluation program of SPIO fitness was implemented and training was basically ongoing on a 24 x 7 basis. On November 4, 2004, less than 90 days after the OA evaluation, the NSO was subjected to an NNSA HQ (NA-70) Operational Readiness Review (ORR) to determine the capability to support a Category I SNM mission. Although the Protective Force staffing level was viewed as significant weakness that must be remedied through the hiring, training and qualification process, the Protective Force

and NSO overall were rated by NNSA (NA-70) as capable of protecting the material and accepting the mission.

At the time the DAF was selected for a full time SNM mission in mid-2004, WSI identified a significant number of improvements that were necessary to establish full compliance with DOE Orders and Manuals, many of which required significant funding and time to implement, plus the addition of appropriate staff. These improvements had not been funded prior to that time, since the NTS and DAF security postured did not require them. Once the funding was approved, and with the concurrence of the NSO Assistant Manager for Safeguards and Security (AMSS), WSI did implement those improvements.

Subsequent to the 2004 OA inspection, WSI has undergone a number of satisfactory reviews by NA-70, including an operation readiness review and observation of force on force exercises. The OA inspection of 2005 noted marked improvement in all evaluated Protective Force areas, including a 98% pass rate for over 200 limited scope performance tests. It was also noted that those areas that require significant time and/or funding to complete corrective actions, specifically implementation of a SPO-III/SRT program and improved facilities, still require improvement. OA personnel specifically state they did not question the site's ability to protect SNM at our critical facility.

Award fee determination since the 2004 OA inspection recognized this improved performance, with recent scores of 95 and 97 respectively.

Board Finding:

In evaluating WSI's response to this adverse past performance issue in the Final Proposal Revision the Board found that WSI has satisfactorily explained its performance. This explanation and the high ratings for WSI in the two most recent reviews at the NTS (95% and 97% respectively) has fully mitigated the concern of the Board, which has decided to remove this item as a weakness.

Department of Energy
National Nuclear Security Administration
Service Center
P. O. Box 5400
Albuquerque, NM 87185

May 08, 2007

Mr. Edward P. Shedlick
Director, Contracts
Advanced Science and Engineering Technologies, LLC
2411 Dulles Park South
Herndon, Virginia 20171

VIA FACSIMILE - (703) 713-4083

Dear Mr. Shedlick:

On behalf of the Department of Energy (DOE) National Nuclear Security Administration (NNSA), we appreciate your and Advance Science and Engineering Technologies, LLC's (ASET), efforts in preparing and submitting a proposal in response to Request for Proposal No. DE-RP52-06NA27344 (RFP) for the Management and Operation of the Lawrence Livermore National Laboratory.

As communicated to you earlier in the day by Walter C. Lips, Chairman, NNSA Source Evaluation Board, after a thorough review and evaluation of your proposal performed in accordance with the RFP, Section M-2, entitled, "Basis for Contract Award," the NNSA Source Selection Official did not select your proposal for contract award. The proposal submitted by Lawrence Livermore National Security, LLC, was determined to be the best value to the Government and was selected for contract award. The award was made on May 8, 2007, and a redacted copy of the signed contract will be placed on the NNSA Source Evaluation Board web site established for this competition.

Pursuant to Federal Acquisition Regulation Subpart 15.503(b), the following information is provided:

(i) The Number Of Offerors Solicited: 59

(ii) The Number Of Proposal Received: 3

(iii) The Name And Address Of Each Offeror Receiving An Award:

Source Selection Information – See FAR 2.101 and 3.104

Summary – Past Performance Evaluation

ASET team members' past performance over the last five years is applicable to relevant portions of the Statement of Work activities and to the experience cited by the offeror.

Northrop Grumman is expected to perform the Science and Technology (S&T) elements of the SOW. Two of Northrop Grumman's contracts, Earth Observing System Common Spacecraft and ICBM Prime Integration Contract, started as TRW contracts. These became Northrop Grumman contracts following their merger with TRW and performance on both contracts improved noticeably in that time frame in the areas of cost control, project planning and subcontract management. Northrop Grumman earned a high percentage of award fee on the Earth Observing System Common Spacecraft and received strong ratings in the questionnaires. Northrop Grumman's performance on the ICBM Prime Integration Contract was generally rated as "Excellent". Northrop Grumman's performance on the Optical Research and Field Services contract was also generally considered as "excellent", but had some management issues and one of Northrop Grumman's references indicated he would not hire Northrop Grumman again

AECOM is expected to perform the architectural, design and engineering services in support of S&T and Laboratory Operations elements of the SOW. AECOM has had strong performance at LANL and was rated "Very Good" to "Exceptional". AECOM's performance at the Pentagon Renovation and Construction Project was also very strong where it was rated "Excellent" and earned a very high percentage of its award fees. AECOM's performance at Ft. Polk received strong performance reviews but had systemic safety problems which have been corrected.

Wackenhut is expected to perform the Safeguards and Security, Counterintelligence and Counterterrorism, and Emergency Operations elements of the SOW. Wackenhut has shown outstanding performance at Y-12, Oakridge, Savannah River, the Kennedy Space Center, and the Office of Secure Transportation contracts. Wackenhut has quickly identified problems and corrected them. At SRS, they received special recognition for implementation of the Design Basis Threat. Wackenhut is a recognized leader across the NNSA/DOE complex in Safeguards and Security, Counterintelligence and Counterterrorism, and Emergency Operations support.

CH2M HILL is expected to perform ES&H, Environmental Management, Facilities Operations and Laboratory Management elements of the SOW. CH2M HILL has had strong performance under the Rocky Flats Closure Contract where it received very high provisional fees and has a strong safety record. CH2M HILL's performance at ENRAC has been rated as "Outstanding" resulting in several follow on contracts. CH2M HILL's performance at Miamisburg was rated "Good" to "Outstanding" in the questionnaires. CH2M HILL completed a difficult cleanup and closure contract within budget, ahead of schedule and with a strong safety record. CH2M HILL performance on the Richland Tank Farm has been rated as "Satisfactory" to "Good" in the questionnaire. CH2M HILL

Source Selection Information – See FAR 2.101 and 3.104

Section I – Team Member Contract's Submitted to the SEB

The following is a table that summarizes the SEB's analysis of the individual contracts provided by ASET team members.

Summary Findings Table – Past Performance – ASET:

Team Member	Contract	Value	Rating
Northrop Grumman	NASA Earth Observing System Common Spacecraft	Cost & Fee: $601.6M	Significant Strength
Northrop Grumman	ICBM Systems Wing, USAF ICBM Prime Integration Contract	Cost & Fee: $4.9B	Strength
Northrop Grumman	USAF/Air Force Research Laboratory Optical Radiation Branch	Cost & Fee: $54M	Strength
AECOM	Architecture, Design and Engineering Services/LANL/	Cost & Fee: $65M	Significant Strength
AECOM	DOD – Pentagon Renovation and Construction Program	Cost & Fee: $176M	Significant Strength
AECOM	U.S Army Ft. Polk and Joint Readiness Training Center	Cost & Fee: $173M	Strength
Wackenhut	Oak Ridge Operations Safeguards and Security Protective Force	Cost and fee: $372.6M	Significant Strength
Wackenhut	Paramilitary Security Services	Cost and fee: $5.6B	Significant Strength

	for the Savannah River Site		
Wackenhut	Kennedy Space Center Security and Fire Protective Services	Cost and fee: $2.8B	Significant Strength
CH2M HILL	Rocky Flats Closure Project	Cost & Fee: $3.995B	Significant Strength
CH2M HILL	Miamisburg Closure Project	Cost & Fee: $373.4M	Strength
CH2M HILL	U.S. Air force Center for Environmental Excellence	$97.9M	Significant Strength
NFS	Naval Fuel Production	Cost & Fee: $138M	Strength
NFS	U-233 Disposition and Building 3019 Complex Shutdown Project	Cost & Fee: $140M	Strength
NFS	TVA Off-specification or Blended Low Enriched Uranium (BLEU) Program	Cost & Fee: $150M	Strength

The following is the SEB's findings with regard to each of the LLNS team members contracts submitted to the SEB:

Northrop Grumman – National Aeronautics and Space Administration (NASA), Earth Observing System Common Spacecraft (EOS CS) – Significant Strength

Relevance of Contract

Northrop Grumman is responsible for the launch and operation of the Aqua and Aura spacecraft under the NASA EOS CS program. Northrop Grumman also provides design, development, and support to NASA for these two spacecraft. The contract was initially awarded in 1995 to TRW, which was subsequently merged into Northrop Grumman, and it became a Northrop Grumman contract in 2003. This contract is relevant to the S&T

Source Selection Information – See FAR 2.101 and 3.104

Two Past Performance Questionnaires were received: one from the Contracting Officer and one from the Director of Contracting. The CO rated AECOM's performance in the "Satisfactory" to "Good" range. The CO rated AECOM's overall performance as "Good". The Director of Contracting rated AECOM's performance in the "Good" to "Outstanding" range. The Director of Contracting rated AECOM's overall performance as "Good Plus". Both individuals indicated they would hire AECOM again. Both individuals provided positive remarks including a statement from the Director that AECOM was proactive and has very good internal quality controls.

Overall Assessment

The past performance provided is relevant to the portions of the LLNL Statement of Work to be performed by AECOM and to the experience cited. AECOM's performance in the operation of Ft. Polk has been mainly "Excellent" to "Outstanding" with strong performance reviews in the questionnaires. However, AECOM's strong performance is diminished by AECOM's systematic problems resulting in a fatality, although subsequently corrected. Overall, the SEB assessed AECOM's performance at Ft. Polk as a Strength.

Wackenhut Services Incorporated (WSI) – Oak Ridge Operations (2000-2003) and Y-12 Plant – Significant Strength

Relevance of Contract

Wackenhut Services Incorporated WSI managed the protective force services at Oak Ridge Operations (Oak Ridge National Laboratory, the East Tennessee Technology Park, Federal Office Building Complex) and the Y-12 Plant under a single contract from 2000 until 2003, at which time the contract was split into separate DOE and NNSA Time, Materials, and Award Fee type contracts. WSI continues to provide security to both sites under separate contracts. This contract is relevant to the Safeguards and Security, Counterintelligence and Counterterrorism and Emergency Operations support elements of the SOW. These contracts are also relevant to the experience cited in the proposal.

Quality of Service

The primary indicator of quality of service received by the SEB was five years of performance evaluation documentation between 2001 and 2006. The performance of WSI at Oak Ridge Office for the period following 2003 will be addressed separately.

Under the single Oak Ridge /Y- 12 contract in FY 2001, FY 2002, and FY 2003, WSI received Outstanding ratings and collected between 96% and 98% of the available provisional fee. In 2003, WSI received special recognition for implementing Integrated Safeguards and Security Management (ISSM) ahead of schedule. WSI at Y-12 received ratings of 97% and 98% respectively in 2004 and 2005. In FY 2005 WSI received special recognition for its successful implementation of the Design Basis Threat improvements and its innovative Security Readiness Index at Y-12 and was singled out for recognition by the Department of Energy for its Operations Security Program.

WSI has a self assessment process in place at Y-12 that is widely acknowledged as being an industry standard. It is well documented and credited with enabling Wackenhut to implement effective corrective measures.

Two completed questionnaires were received: one from the Y-12 Contracting Officer and one from the alternate COR. Both individuals rated WSI' performance in the "Good" to "Outstanding" range. Both individuals rated WSI's overall performance as "Outstanding". Both reviewers indicated they would hire WSI again.

There were no Type A or B accidents experienced by WSI at Oak Ridge or Y-12 in the last five years. This is indicative of excellent safety and health performance.

Overall Assessment

The past performance provided is relevant to the portions of the LLNL statement of work to be performed by WSI, and to the experience cited. WSI earned a significantly high percentage of the available fee, received an "Outstanding" rating for its overall performance in the questionnaires, and has a strong safety record. Overall, WSI's performance at both sites through 2003 and at Y-12 is considered to be a Significant Strength.

Wackenhut Services Incorporated (WSI) – Savannah River Site – Significant Strength

Relevance of Contract

WSI has been providing protective force services at Savannah River Site under a Cost Reimbursement, Award Fee and Incentive Fee arrangement since 1999. This contract is relevant to the Safeguards and Security, Counterintelligence and Counterterrorism and Emergency Operations elements of the SOW. This contract is also relevant to the experience cited in the proposal.

Quality of Service

The primary indicator of quality of service received by the SEB was three years of Award Fee Determinations between May 2003 and March 2006. During the three-year period, WSI has consistently earned an average 98% of the available award fee and its work was evaluated as "excellent" or "superior".

WSI's self assessment identified one problem in their protective force's tactical training process. Their corrective actions resulted in improvements to the preparation and evaluation of force-on-force exercises.

Two Past Performance Questionnaires were received: one from the Director of Safeguards and Security and the other from the Contracting Officer. Both individuals

rated WSI's performance as "Outstanding" in all applicable questions including rating WSI's overall performance as "Outstanding". Both individuals indicated that they would hire WSI again.

There were no Type A or B accidents experienced by WSI at Savannah River Site in the last five years. This is indicative of excellent safety and health performance.

Overall Assessment

The past performance provided is relevant to the portions of the LLNL Statement of Work to be performed by WSI and to the experience cited. WSI's overall performance has been "excellent" or "superior", WSI earned a very high percentage of its award fees, has a strong safety record, and received "Outstanding" ratings in the questionnaire's. Overall, the SEB assessed WSI's performance at the Savannah River Site as a Significant Strength.

Wackenhut Services Incorporated (WSI) – NASA and USAF, Kennedy Space Center (KSC)– Significant Strength

Relevance of Contract

WSI, along with Northrop Grumman, have been providing protective force services at KSC/Cape Canaveral Air Force Station under a Cost Plus Award Fee arrangement since 1998. This contract is relevant to the Safeguards and Security, Counterintelligence and Counterterrorism and Emergency Operations elements of the SOW. This contract is also relevant to the experience cited in the proposal.

Quality of Service

The primary indicator of quality of service received by the SEB was three years of Award Fee Determinations between FY 2001-FY 2005. WSI's performance ratings during the five-year period were in the "excellent" range and they earned an average of 92% of the available fee.

WSI's self assessment identified one problem concerning the fire and security command centers at the five independent facilities where operations were conducted and non-standard weapon types. Corrective measures taken by WSI's management resulted in standardization of weapon types used and the implementation of a common emergency communications system. These actions improved services and lowered costs.

One Past Performance Questionnaires was received from the Contracting Officer's Technical Representative (COTR). The COTR rated WSI's performance from "Good" to "Outstanding" range including rating WSI's overall performance as "Good". The COTR also indicated that she would hire WSI again.

Source Selection Information - See FAR 2.101 and 3.104

Relevance of Contract

CH2M HILL has been the cleanup contractor for the River Corridor Closure Project since March 2005. This Contract is relevant to the Environmental Management portion of the SOW to be performed under the LLNL contract.

Quality of Service

There have been no PNOVs, enforcement letters, or Type A or B accidents related to this contract. Given the complexity of the work at Hanford, this is indicative of outstanding performance in regards to safety.

One Past Performance Questionnaire was received from the Contracting Officer. The Contracting Officer rated CH2M HILL's performance in the "Marginal" to "Good" range. The Contracting Officer also gave an overall assessment of CH2M HILL's performance as "Good". The Contracting Officer indicated that she would hire CH2M HILL again.

Overall Assessment

The past performance provided is relevant to the portions of the LLNL Statement of Work. CH2M HILL received good ratings in the questionnaire and has a strong safety record. Overall, the SEB assessed CH2M HILL's performance at Hanford to be a Strength.

Wackenhut Services Incorporated – Office of Secure Transportation– Significant Strength

Relevance of Contract

Wackenhut Services Incorporated (WSI) provided a full range of support services, including training, planning, logistics, project management, property control, intelligence and security to the Office of Secure Transportation at the NNSA Service Center. This contract is relevant to the Safeguards and Security, Counterintelligence and Counterterrorism and Emergency Operations elements of the SOW. This contract is also relevant to the experience cited in the proposal.

Quality of Service

The SEB obtained three years of performance assessments reports and fee information. Performance was rated in the "Good" to "Excellent" range. WSI also earned 90-93 percentage of available fee for periods FY 2004-2006. The only series of the tasks which received less than a "Good" rating in all of the periods which were reviewed occurred in the 5th rating period of 2006 (Administration and cost efficiency); these tasks were improved upon in the first 2007 rating period, where WSI received 90% of available fee.

Three Past Performance Questionnaires were received: one from a former Contracting Officer, one from the contracting program analyst and one from the Principal Deputy Program Administrator. WSI's ratings were predominantly in the "Good" to "Outstanding" range, with the only "Satisfactory" rating in the areas of subcontractor and financial management and retention of well qualified key personnel. WSI's overall performance was rated as an overall "Good" by one respondent and "Excellent" by two respondents, and all three indicated that they would rehire WSI again.

Overall Assessment

The past performance provided is relevant to the portions of the LLNL statement of work to be performed by WSI. WSI's overall performance has been "Good" to "Excellent", WSI earned a very high percentage of its available fee, and WSI received "Good" to "Outstanding" overall ratings in the questionnaires. Overall, WSI's performance at the Service Center is considered to be a Significant Strength.

Wackenhut Services Incorporated – Nevada Test Site – Significant Strength

Relevance of Contract

Wackenhut Services Incorporated (WSI) has provided a full range of Protective Force services to NTS since 1998, including physical protection of security interests, to include nuclear explosive devices, Special Nuclear Material, Stockpile Stewardship Operations, and Classified and Sensitive Information. The current contract, in effect since FY 2006 is relevant to Wackenhut's ability to manage the following statement of work elements: Safeguards and Security, Counterintelligence and Counterterrorism, and Emergency Operations support. This contract is also relevant to the experience cited in the proposal in the Laboratory Operations areas.

Quality of Service

WSI provided services to Nevada Test Site under two separate prime contracts with the NNSA Nevada Site Office since 1998. A questionnaire response was received from the Assistant Manager for Safeguards and Security at the Nevada Site Office for the most recent rating period. Ratings were predominantly in the "Outstanding" range, with six "Good" ratings in the areas of compliance with ES&H contract requirements, subcontractor and financial management, project management, retention of well qualified key personnel, corporate office support and quality assurance. WSI's performance in support of this multifaceted contract at the Nevada Test Site was rated "Outstanding" overall by the respondent, who indicated that he would rehire WSI.

Mr. TOWNS. Mr. Amey.

STATEMENT OF SCOTT AMEY

Mr. AMEY. Good afternoon, Chairman Towns and Ranking Member Bilbray and members of the subcommittee. Thank you for inviting me to testify today about the state of the Federal contracting system. I am Scott Amey, general counsel and the senior investigator with the Project on Government Oversight, a nonprofit, public interest, watchdog organization founded in 1981.

POGO investigates and exposes corruption and other misconduct in order to achieve a more accountable Federal Government. Throughout its 26-year history, POGO has created a niche in investigating, exposing, and helping to remedy waste, fraud and abuse in government spending.

The subject of today's hearing is near and dear to POGO, and I am excited to share POGO's view about contractor accountability. I agree with everything that IG Skinner said on panel I, except for one fact. There is one central depository—repository for responsibility determinations, and that is the Project on Government Oversight. POGO back in 19—or back in 2002 introduced a Federal contracting misconduct data base. Today, we are re-releasing that data base that is more user-friendly and with more instances. Currently, it has the top 50 government contractors, and it will eventually be expanded to the top 100.

The difference—and I talked to IG Skinner after his testimony—is we are a "dot org" rather than a "dot gov," but it is a repository that government contracting business should go to.

For years, POGO has been scaring public sources to compile instances of misconduct for the top 50 Federal contractors. The new data base, which covers instances of misconduct from 1995 to the present, includes the source documents for each instance, drawing on government documents. That is DOJ press releases, U.S. Attorney press releases, DOE press releases, and the like. POGO hopes that the contracting officers will use it as a resource when awarding contracts, to assure that taxpayer dollars are only being sent to responsible contractors. POGO will expand the Federal contractor misconduct data base to 100 contractors later this year.

Contractor misconduct is not on the wane. Currently, there is widespread evidence of waste, fraud and abuse in Federal contracting. The Department of Justice has recovered $18 billion since 1986, and just last year they reported a record $3.1 billion that has been returned. The President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency reported last year that they have $9.9 billion in potential savings from audit recommendations and $6.8 billion in investigatory findings. These councils identified procurement and management—or "procurement and grant management" and "performance management and accountability" as two of the most serious management and performance challenges facing Federal agencies. Federal contracting officers need to have comprehensive information on contractors' culture of responsibility that is more readily available than what we have here, than what we have now—misinformation.

The Federal Acquisition Regulations state that contracts are only supposed to go to responsible contractors. I argue that they are not.

Without this information, major contracts continue to be awarded to risky contractors.

As we can see by the discussions that we had earlier today with panel I and also by even the Army's recent awarding of the LOGCAP IV contract, Dyncorp has 3 instances of misconduct in our data base; KBR has 5; and Flour has 21 instances of misconduct. Their misconduct histories include false claims against the government in violations of the Anti-Kickback Act, fraud, conspiracy to launder money, retaliation against worker complaints, and environmental violations. Some of those companies have had questionable histories in Iraq and also in responding to Hurricane Katrina.

First, the Federal Contractor Misconduct Data base reveals that 50 percent of our contract dollars are going to those top 50 government contractors. As Representative Maloney stated earlier, we also have instances where—we have 376 instances that account for $12.5 billion. I don't claim that we have every instance of misconduct. That's only what we've been able to find, as someone mentioned on panel I, doing Google searches and also going through Federal press releases. There are eight contracts which have zero instances. So I have heard the complaint before that when you have so much Federal contracting dollars that it's just inherent that you're going to have misconduct. But with 8 of the 50 having zero instances, I think there are good contractors out there for the government contractors to turn to.

Monetary penalties range from a relatively small $2,400 penalty paid by Honeywell in a State environmental enforcement action to a record-setting $3.56 billion civil verdict against ExxonMobil for gas royalty underpayments. The legislation proposed by Representative Maloney, the Contractors and Federal Spending Accountability Act, H.R. 3033, which mandates that the government create a contractor performance and responsibility data base and requires contractors to report such instances when bidding on the contracts, will help to ensure taxpayer dollars are going to responsible contractors.

For example, it will provide governmentwide access to administrative agreements that are not shared by agencies. Nearly a year ago, POGO FOIA'd administrative agreements, and I have yet to have that for you in an insert. Why is H.R. 3033 needed, and why is POGO into this business? Because there isn't currently a central repository for this type of information. The government claims that they search papers, that they go to the excluded parties' list. Past performance isn't the same as contractor responsibility in all terms, and the excluded parties' list had 7,300 cases last year in 2006. None of them were—no large contractor was on the suspension and debarment list. In our research, we have shown that Boeing is the only contractor in the last 10 or 15 years to be on that list, and they've had that suspension waived on three occasions, and it only lasted 18 months.

I will just sum up that—I conclude by quoting President Bush, who earlier this year stated "Accountability is not a way to punish anyone. Accountability to taxpayers isn't punishment. It's a way to improve the way the government works."

Thank you again for this opportunity to share POGO's views on responsibility in contracting. I am pleased to answer any questions that you may have.

Mr. TOWNS. Thank you very much for your testimony.

[The prepared statement of Mr. Amey follows:]

Testimony of Scott Amey, General Counsel
Project On Government Oversight (POGO)
before the
House Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform

Federal Contracting: Why Do Risky Contractors Keep Getting Rewarded With Taxpayer Dollars?

July 18, 2007

Good afternoon Chairman Towns, Ranking Member Bilbray, and Members of the Subcommittee.

Thank you for inviting me to testify today about the state of the federal contracting system. I am Scott Amey, General Counsel and a Senior Investigator with the Project On Government Oversight (POGO), a nonpartisan public interest group. Founded in 1981, POGO investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government.[1] Throughout its twenty-six-year history, POGO has created a niche in investigating, exposing, and helping to remedy waste, fraud, and abuse in government spending. One of POGO's most celebrated investigations uncovered outrageously overpriced military spare parts such as the $7,600 coffee maker and the $436 hammer.

The subject of today's hearing is near and dear to POGO. In 2002, POGO created, and has since maintained, a Federal Contractor Misconduct Database (www.contractormisconduct.org/). POGO is releasing a new and improved Federal Contractor Misconduct Database (FCMD) today, which serves as the model for the kind of database the government should create for use by acquisition professionals and the public. POGO's FCMD includes criminal, civil, and administrative cases, as well as investigative findings. Misconduct cases fall into the following fifteen misconduct types: (1) antitrust, (2) cost/labor mischarge, (3) defective pricing, (4) environment, (5) ethics, (6) government contract fraud, (7) health, (8) human rights, (9) import/export, (10)

[1] For more information on POGO, please visit www.pogo.org.

intellectual property, (11) labor, (12) non-governmental contract fraud, (13) securities, (14) tax, and (15) other.

With federal contract dollars doubling over the past few years, POGO hopes that the FCMD will be used by government officials to make well-informed contracting decisions. Additionally, POGO hopes that the FCMD will be used by Congress, the media, the public, and other contractors when reviewing a contractor's history of responsibility, an important prerequisite for receiving taxpayer dollars.

The Changing Contracting Landscape

Many acquisition reforms have been implemented over the years. The reforms, however, have not been all they were cracked up to be. The problems created by the reforms became starkly apparent during the Afghanistan and Iraq Wars, and after Hurricane Katrina devastated the Gulf Coast. These events showed that contracting decisions often place taxpayer dollars – and sometimes lives – at risk. They also highlighted how drastically different the federal government's contracting landscape is now from what it was in the past:

- "Best value" contracting[2] eroded taxpayer protections and allowed contracts to be steered to well-connected, influential, risky, and sometimes undeserving contractors.
- Contract award dollars have increased from $219 billion in fiscal year 2000 to nearly $420 billion in fiscal year 2006.[3]
- Contract administration and oversight have decreased.
- The acquisition workforce is stretched too thin.
- Approximately 50 percent of all contract dollars were awarded on a sole source (a rarity in the private sector because competition benefits the buyer)[4] or a one-bid basis in fiscal year 2005.[5]
- Spending on services now outpaces spending on goods – this shift is important because the government has moved away from buying tangible items to intangible services.[6]
- Although the number of contractor bid protests have fluctuated, the sustain rates (when GAO agrees that a contract was awarded improperly) have increased to

[2] "Best value" contracting had been used in certain instances, but was added to the Federal Acquisition Regulation (FAR) in August 1997. A policy debate continues pitting "low price" against "best value" (FAR Subpart 1.102) as the preferred method for buying goods and services. Buying goods and services at the "lowest practical cost" would allow for some buying flexibility and provide more objective criteria that would prevent the unjustified steering of contracts to risky or politically-connected companies.
[3] Federal Procurement Data Service – Next Generation, "Agencies Submitting Data to FPDS-NG," as of July 12, 2007. Available at http://www.fpdsng.com/downloads/agency_data_submit_list.htm.
[4] Acquisition Advisory Panel, "Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress," December 2006, at p. 2-3.
[5] 1423 Panel Data, at p. 3, 7. Available at http://acquisition.gov/comp/aap/documents/FPDS-NG%20Data%20Presentation%2007%2024%2006.pdf.
[6] 1423 Panel Report, at Executive Summary, at p. 2. Available at http://acquisition.gov/comp/aap/documents/DraftFinalReport.pdf.

nearly 30 percent.[7] That sustain rate illustrates that flaws in contract award decisions – both honest and egregious – are being made at a higher rate than in the past.

Detecting and Preventing Federal Contractor Misconduct

Contractor misconduct is not on the wane. Currently, there is widespread evidence of waste, fraud and abuse in federal contracting. According to the Department of Justice, the federal government has collected $18 billion in settlements and judgments in cases involving allegations of fraud against the government since 1986; a record $3.1 billion of that amount was collected in 2006 alone.[8] The President's Council on Integrity and Efficiency's (PCIE) and Executive Council on Integrity and Efficiency's (ECIE) fiscal year 2006 "Progress Report to the President" also states that Office of Inspectors General activities resulted in $9.9 billion in potential savings from audit recommendations and $6.8 billion in investigative recoveries.[9]

However, those Councils identified "procurement and grant management" and "performance management and accountability" as two of the most serious management and performance challenges facing federal agencies.[10] The government officials who are making the decisions about contracting are at a disadvantage because they do not have the tools they need to make genuine decisions regarding a contractor's history of responsibility.

Although the government is recovering federal funds from prosecutions and enforcement actions, more can be done preventively to ensure contract dollars are not awarded to risky contractors at the contract award stage. The problem is that agencies do not have comprehensive contractor responsibility information readily available to use to make award determinations. A federal contractor responsibility database will shine additional light on agency audits, investigative findings, criminal and civil actions, and suspensions and debarments. This information can be used to benefit contracting decisions by ensuring that government contracts go to responsible contractors.

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[7] GAO Report (GAO-07-155R), Letter to The Honorable J. Dennis Hastert, Speaker of the House of Representatives, November 15, 2006, at p. 2. Available at http://www.gao.gov/special.pubs/bidpro06.pdf.

[8] DOJ Press Release (06-783), "Justice Department Recovers Record $3.1 Billion in Fraud and False Claims in Fiscal Year 2006," November, 21, 2006. Available at http://www.usdoj.gov/opa/pr/2006/November/06_civ_783.html.

[9] It is important to note that the changed contracting landscape has made it more difficult to detect misconduct. The contracting reforms of the 1990s focused on increasing contracting efficiency, but in the process, transparency and accountability were left by the wayside, making it harder for the Department of Justice and Inspectors General to identify misconduct. For example, as a result of these reforms, the government generally does not have access to contractor cost or pricing data, and it no longer awards contracts based on tangible best price practices. The government has moved away from awarding contracts based on specific performance requirements with specific materials and specific tests. Instead, contract awards are made based on contactor promises and "spiral acquisitions," which essentially prevent the government from holding contractors to any fixed standards.

[10] President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), "A Progress Report to the President, Fiscal Year 2006," no date provided, at p. Results in Brief & Foreword. Available at http://www.ignet.gov/randp/fy06apr.pdf.

Instead of relying on post-award and post-performance audit actions, the government needs to prevent contractors with risky responsibility and performance histories from receiving taxpayer dollars from the beginning of the contract process.

POGO's Federal Contractor Misconduct Database (FCMD)

Contractor misconduct is a term used by POGO to highlight instances when companies that sell goods or services to the government violate laws or regulations, or are accused of wrongdoing in their dealings with the government, persons, and private entities. POGO has compiled this Federal Contractor Misconduct Database (FCMD) because there is no government repository for federal contractor misconduct information. At best, the General Services Administration's (GSA) Excluded Parties List System (EPLS) lists suspended or debarred individuals and contractors, but it does not document a contractor's overall performance or responsibility track record.[11] Additionally, the government's Past Performance Information Retrieval System (PPIRS)[12] provides contractors' past performance information to the federal acquisition community for use in making responsibility determinations. But PPIRS is not publicly available and, because bad actors continue to receive federal contract awards, it is not being used effectively.

POGO's new and improved version of its FCMD is a compilation of misconduct and alleged misconduct committed by the top 50 federal government contractors between 1995 and the present. POGO compiled these instances through searches of public records. We do not claim to have identified every instance of misconduct and alleged misconduct involving these contractors. We have attempted, however, to find and categorize specific instances of misconduct that should help government officials. One of the major upgrades in this version of the FCMD is the upload of the primary source documentation about each instance. POGO has tirelessly scanned the internet and utilized the Freedom of Information Act (FOIA) to find government and contractor press releases, settlement agreements, court documents, and other government reports to get these primary sources.

In an effort to provide an accurate database, and to allow the contractors to respond for the record, POGO contacted every contractor featured in the FCMD. POGO's correspondence and the contractor's reply (if received) are included on each contractor's page.

What Does the FCMD Show Us?

First, the FCMD reveals that in fiscal year 2005 the top 50 federal contractors received nearly 50 percent of taxpayer dollars awarded in contracts -- $178 billion of the approximately $384 billion awarded in contracts.[13] Second, since 1995, the 50 contractors

[11] The Excluded Parties List System (EPLS) lists individuals and contractors prohibited, for a specified time period, from receiving future government contracts. A search can be performed for both current and archived individuals or contractors. Available at http://www.epls.gov/.
[12] Available at https://www.ppirs.gov/.
[13] Federal contract award totals are available at http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls.

featured in this database – some of the world's largest military hardware manufacturers, information technology consultants, construction firms, education institutions, and energy companies – paid fines, penalties, restitution, or civil settlements totaling over $12 billion, averaging roughly $1 billion per year. Specifically, POGO has identified over 370 instances of misconduct totaling over $12.6 billion,[14] (See Attachment A, "Top 50 Contractors"). Monetary penalties range from the relatively small, such as a $2,400 fine paid by Honeywell in a state environmental enforcement action, to the record-setting $3.56 billion civil verdict returned against Exxon Mobil in a natural gas royalties underpayment case. Nearly half of the penalties were under $1 million.

In an effort to prevent contracting with the "usual suspects" that have misconduct rap sheets, government officials must look for alternative, responsible vendors. Some of the largest contractors hired to respond to Hurricane Katrina have checkered histories of misconduct: Bechtel has 11 instances; Halliburton/KBR has 13; and Fluor has 21. Instances of misconduct include: false claims against the government, violations of the Anti-Kickback Act, fraud, conspiracy to launder money, retaliation against workers' complaints, and environmental violations.

Despite these repeat offenses, the Army recently awarded its LOGCAP IV (the Army's logistics support services contract) contract to Flour and KBR. Dyncorp, which under its parent company Veritas Capital Fund, L.P. [15] only has 1 instance of misconduct in POGO's FCMD, could also receive a portion of the LOGCAP contract. According to the Army's press release,[16] three other contractors bid on the LOGCAP contract – one can only wonder if they were less risky contractors.

The government is shirking its responsibility to protect its constituents, the American public, by not vetting contractors to determine whether they are truly responsible. POGO is concerned that pre-award contractor responsibility determinations have fallen by the wayside. Federal agencies seem more concerned with awarding contracts quickly rather than ensuring that the government gets the best goods or services at the best practical price from responsible contractors. POGO hopes that the FCMD will be used by government officials to make well-informed contracting decisions.

Award Contracts to Responsible Contractors ONLY

Government contracts are predicated on a basic principle – taxpayer dollars should only be awarded to responsible contractors. The Federal Acquisition Regulation (FAR) Subpart 9.103 states:

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[14] If a single incident resulted in several distinct violations, such as when one act of wrongdoing results in the filing of separate criminal, civil, or administrative cases (for example, the ethics violation involving Darleen Druyun, Michael Sears, and Boeing), POGO treated these violations as separate instances to prevent bundling of names, case types, and financial terms. This system is not intended to artificially inflate the total number of instances. Rather, it is intended to be user-friendly by allowing better sorting and searching.

[15] Dyncorp was acquired by Viritas Capital Fund in 2005.

[16] Available at http://www.army.mil/-news/2007/06/28/3836-asc-selects-logcap-iv-contractors/.

> (a) Purchases shall be made from, and contracts shall be awarded to, **responsible prospective contractors only**.
>
> (b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. (Emphasis added.)

For a government contracting officer to determine whether a contractor is responsible, the contractor must meet the following standards. These standards, however, are extremely vague and provide no concrete definitions of responsibility. According to FAR Subpart 9.104-1, contractors must:

> (a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));
>
> (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
>
> (c) **Have a satisfactory performance record** (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
>
> (d) **Have a satisfactory record of integrity and business ethics**.
>
> (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)
>
> (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and
>
> (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.[17] (Emphasis added.)

These standards, especially subparts and (c) and (d), require contractors to prove that they have a satisfactory performance and responsibility record. However, there is no

[17] FAR Subpart 9.104-1.

established government-wide definition of satisfactory. As a result, these standards have not prevented the government from awarding contracts to risky contractors. These include contractors that have defrauded the government, violated laws and regulations, had poor work performance during a contract, or had their contracts terminated for default. Continuing to award contracts to such contractors undermines the public's confidence in the fair-play process and exacerbates distrust in our government. It also results in bad deals for the agency and for the taxpayer.

Even the president of the contractor industry association, the Professional Services Council, agrees. In an April column in *Washington Technology*, Stan Soloway wrote: "After all, no one advocates the award of government contracts to proven crooks.... No one wants to see his or her tax dollars go to companies or individuals that routinely and blithely violate the law."[18] He argues, however, that there are too many subjective contractor responsibility factors, placing contractors at a disadvantage.

POGO agrees that responsibility determinations should not be overly subjective. A comprehensive government-operated federal contractor misconduct database would be an objective tool, which can only improve contracting officers' ability to make well-informed contract awards. If contractors are as clean as they claim, and the government and the contractors' internal systems for holding them accountable are working well, contractors should not have anything to worry about by adding transparency to the responsibility determination process.

Current Tools To Discourage Misconduct Are Not Working

The award fee system is one example of a contracting tool that is not working. The Government Accountability Office (GAO) has criticized the government for awarding fees to programs that were behind schedule or over budget.[19] The GAO found:

> DOD practices—such as routinely paying its contractors nearly all of the available award fee, amounting to billions of dollars, regardless of whether the acquisition outcomes fell short of, met, or exceeded expectations; rolling an estimated $669 million in unearned or withheld award fees to future evaluation periods; and paying a significant portion of the available fee for what award-fee plans describe as "acceptable, average, expected, good, or satisfactory" performance—all lessen the motivation for the contractor to strive for excellent performance.[20]

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[18] Stan Soloway, *Washington Technology*, "The debate on contractor responsibility flares anew," April 9, 2007. Available at http://www.washingtontechnology.com/print/25_05/30430-1.html.
[19] GAO Report (GAO-06-66), "Defense Acquisitions: DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes," December 19, 2005, at p. 2. Available at http://www.gao.gov/new.items/d0666.pdf.
[20] Ibid, at p. 14.

This reward system actually provides incentives to perform poorly. The award fee system is so broken that James I. Finley, Deputy Under Secretary of Defense, Acquisition and Technology, had to issue a memorandum stating:

> Award fee contracts must be structured in ways that will focus the government's and contractor's efforts on meeting or exceeding cost, schedule, and performance requirements. The ability to earn award fees needs to be directly linked to achieving desired program outcomes.[21]

Another problem that faces the government is the under-utilization of the suspension and debarment system as a tool to weed out risky contractors. According to PCIE's and ECIE's joint report to the President, there were 7,300 suspensions or debarments in 2006. This number is alarming because it shows that the suspension and debarment tool is only used against small and mid-sized contractors because no large contractors were suspended in 2006.[22] All federal agencies under-use suspension and debarment against large contractors that supply the majority of the nearly $420 billion worth of goods and services to the federal government each year. In the future, the government needs to emphasize the importance of preventing risky contractors from receiving taxpayer dollars.

Only one of the top 50 contractors in POGO's FCMD, Boeing, has been suspended or debarred from doing business with the government since 1995. In July 2003, several Boeing individuals and its launch vehicle unit were suspended from receiving new federal contracts for approximately twenty months because of a pending criminal investigation into Boeing's unlawful possession and use of another contractor's proprietary data. The only time that the government used this system is when the misconduct harmed another company, rather than the numerous instances in which misconduct harmed taxpayers or public health. In the end, even that one instance of suspension was undermined when the government granted Boeing a waiver on three occasions to award the company new contracts.

Furthermore, POGO could only find one other instance of suspension/debarment of a large contractor in the past 20 years – the General Electric Aircraft Division was suspended for five days. In other words, in almost twenty years – during which billions of taxpayer dollars were spent and countless acts of contractor misconduct took place – the federal government ceased doing business with large federal contractors on only two occasions.

Currently, suspension and debarment officers do not believe that contractor misconduct should be used to hold contractors accountable because it would constitute a punishment,

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[21] James I. Finley, Deputy Under Secretary of Defense, Acquisition and Technology, Memorandum on "Award Fee Contracts," March 29, 2006. Available at http://www.acq.osd.mil/dpap/policy/policyvault/2006-0334-DPAP.pdf.

[22] For more information on the suspension and debarment system, please visit POGO's investigative report, Federal Contractor Misconduct: Failures of the Suspension and Debarment System. Available at http://www.pogo.org/p/contracts/co-020505-contractors.html.

which is not permitted under contracting laws and regulations. POGO believes, however, that instances of misconduct should be considered when evaluating a contractor's current level of responsibility. The suspension and debarment system should be used to protect the government from risky contractors at both the bidding and award stage.

Why Is The Government So Reluctant To Disrupt Business-As-Usual?

In 2006, the top 50 contractors spent over $146 million on lobbying. During the 2006 election cycle, they donated over $15 million to federal campaigns. These totals are only a conservative estimate – the campaign spending total only includes contributions made by contractors' eponymous Political Action Committees (PACs) to federal candidates, and both the campaign spending and lobbying totals do not include the expenditures of business or trade organizations to which contractors belong. None of these numbers include the money spent on lobbying the Executive Branch.

The big political contributors were General Electric, Northrop Grumman, Exxon Mobil, Lockheed Martin, General Dynamics, and Boeing, each with combined 2006 lobbying and 2005-2006 campaign expenditures exceeding $10 million. Perhaps it is not a coincidence that Lockheed Martin, Boeing, Northrop Grumman, and General Dynamics were the top four recipients of federal contractors in FY 2005.[23]

At the same time, contractors were subsidizing the travel of high-ranking government officials. While most of these government trips, retreats, and junkets are touted as educational or "fact-finding," the inescapable fact is that travelers are often treated like vacationing VIPs, while contractors enjoy many hours of valuable face time with policymakers.

According to the Center for Public Integrity, the top 50 contractors sponsored nearly 400 trips taken by Members of Congress, their staffers, and families between 2000 and 2005. More than half of the trips were underwritten by just five contractors – the University of California, Boeing, General Electric, BNFL Corporation, and L-3 Communications. Again, this does not take into account the trips sponsored by the various industry-wide trade groups which represent the interests of nearly all the contractors in the database.

Admittedly, outsourcing government functions to the private sector and the changes in contracting laws have made adequately safeguarding taxpayers' interests an incredibly daunting challenge. As a result, speed and convenience frequently trump accountability and oversight.

In addition to agency and contractor accountability, the government has a large task in ensuring that competition drives its decisions. Yet, in some instances only a handful of contractors can provide the needed services or goods. As a result, as time goes on, the government becomes increasingly dependent on particular contractors to fulfill particular functions – if one of the contractors is suspended or debarred, competition is seriously

[23] GE and Exxon Mobile rank 16th and 41st in contract award dollars respectively.

diminished. In the aforementioned Boeing suspension case, for example, the Air Force found it necessary to temporarily lift the suspension because it had important work to do and hiring Boeing was in the best interest of the government.

All of these factors help to explain why agencies do no find large contractors risky, the rarity of contractor suspensions and debarments, as well as why, more and more, the government is cutting corners in the contracting process itself, awarding open-ended contracts in non-competitive circumstances. Still, POGO believes that contractor responsibility should be a primary consideration when awarding contracts and holding contractors accountable.

The Contractors and Federal Spending Accountability Act of 2007

Since 2002, POGO has worked with Representative Carolyn Maloney (D-NY) and supported her on contractor accountability issues. The most recent version of the bill (the Contractors and Federal Spending Accountability Act of 2007 – H.R. 3033), which was introduced on July 12, 2007, is a great step forward in preventing risky contractors from receiving federal contract awards. The bill orders the government to create a contractor performance and responsibility database, directs agencies to debar certain repeat wrongdoers, and requires contractors to report during the bid process suspensions, debarments, criminal, civil, and administrative proceedings and agreements, and contract terminations for default that occurred in the past five years. H.R. 3033 will help ensure that taxpayer dollars are going to responsible contractors.

H.R. 3033 would also bring closed-door agreements into the light. In 2005, the GAO reported that agencies sometimes use administrative agreements and compelling reason determinations as alternatives to suspension and debarment.[24] Those actions are believed to improve contractor responsibility, ensure compliance through monitoring, and maintain competition. The GAO report stated:

> [N]either ISDC [Interagency Suspension and Debarment Committee] nor any other entity collects or reports data on administrative agreements or compelling reason waivers. Increased sharing of information on the terms and effectiveness of past and current administrative agreements would be helpful to officials in considering new agreements. Similarly, reporting information on compelling reason determinations would allow suspension and debarment officials to assess the use of these waivers and would promote greater transparency and accountability.[25]

In the past, there has also been Senate support for a federal contractor responsibility database. On October 6, 2005, Senator Frank Lautenberg (D-NJ) introduced the "Truth in

[24] GAO Report (GAO-05-479), "Federal Procurement: Additional Data Reporting Could Improve the Suspension and Debarment Process," July, 2005, at p. 3. Available at http://www.gao.gov/new.items/d05479.pdf.
[25] Ibid, at p. 3.

Contracting" Amendment to the Department of Defense Appropriations Act of 2006.[26] That amendment passed the Senate by voice vote, although it was later removed in conference. Senator Lautenberg's amendment attempted to require "the Pentagon to maintain a list of ALL contractor misconduct"[27] (Emphasis in original). The amendment stated:

> Publication of Information on Federal Contractor Misconduct.--The Secretary of Defense shall maintain a publicly-available website that provides information on instances of improper conduct by contractors entering into or carrying out Federal contracts, including instances in which contractors have been fined, paid penalties or restitution, settled, plead guilty to, or had judgments entered against them in connection with allegations of improper conduct.

The contractor responsibility movement has expanded as Congress and the public learn more about federal contracting decisions. Bills or amendments have been proposed that would prevent war profiteering,[28] hold contractors accountable for abuse of the federal tax system,[29] and debar government contractors that hire undocumented workers.[30]

What is clear is that the current system is not preventing risky contractors from receiving new contracts. There is already an anti-misconduct system in place. Contractors have codes of business conduct. The Defense Industry Initiative (DII) sets standards for ethical conduct.[31] Federal contracting laws permit withholding future federal funds.[32] Federal laws require contracts only to be awarded to responsible contractors.[33] There is a suspension and debarment system to prevent risky contractors from receiving future taxpayer dollars.[34] But yet, the contractors that have been found again and again to have engaged in various types of misconduct, some of which are very serious violations of the law, continue to receive federal contract awards.

Clearly something needs to be done. Full and open transparency is required to improve the responsibility determination system, agencies should prevent risky contractors from receiving taxpayer dollars, the Department of Justice must hold contractors accountable, and contractors with repeat instances of misconduct or poor performance have to alter their corporate cultures.

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[26] Senate Amendment 1963 (109th Cong. - H.R. 2863).
[27] Senator Lautenberg Press Release, October 6, 2005. Available at http://lautenberg.senate.gov/newsroom/record.cfm?id=254543.
[28] S. 119, the War Profiteering Prevention Act of 2007, introduced on January 4, 2007, by Senator Leahy.
[29] "The FAR does not currently require contracting officers to take into account a contractor's tax debt when assessing whether a prospective contractor is responsible." GAO Report (GAO-07-742T), "Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System," April 19, 2007, at p. 3. Available at http://www.gao.gov/new.items/d07742t.pdf.
[30] H.R. 2 (Fair Minimum Wage Act of 2007), Sec. 249.
[31] For more information visit http://www.dii.org/.
[32] FAR Subpart 52.216-26(a)(3) (Payments of Allowable Costs Before Definitization) allows the government to withhold up to 15 percent of reimbursements to a contractor for specified contracts.
[33] FAR Subpart 9.1. Available at http://www.arnet.gov/far/current/html/Subpart%209_1.html#wp1084058.
[34] For more information visit http://www.epls.gov/.

Conclusion

For years POGO has heard the same argument from contractors that "no more regulations are needed." The contractor industry associations generally contend that good contractors should not be placed in the same basket as one or two bad apples. That argument is usually followed with the caveat that bad actors must alter their corporate culture to promote accountability.

It is POGO's position that there is no better way to compel contractors to make that cultural shift than to add light to a very dark system. POGO's database is a step in the right direction. Representative Maloney's bill (H.R. 3033) is a giant leap toward better contracting decisions and the ability to weed out risky contractors, especially those with repeated histories of misconduct or poor performance.

Thank you for inviting me to testify today. I look forward to working with Chairman Towns, Ranking Member Bilbray, and the entire Subcommittee to further explore how the government can hold agencies and contractors accountable.

Attachment A

POGO Federal Contractor Misconduct Database

Top 50 Contractors

Contractor	Federal Contract $ (FY2005)	Instances of Misconduct (Since 1995)	Misconduct $ (Since 1995)
1. Lockheed Martin	$24944.6m	39	$ 288.5m
2. Boeing Company	$19718.2m	23	$ 856.0m
3. Northrop Grumman	$15111.3m	21	$ 382.0m
4. General Dynamics	$12592.0m	8	$ 58.9m
5. Raytheon Company	$9218.2m	15	$ 475.6m
6. Halliburton	$5907.2m	13	$ 194.2m
7. BAE Systems	$5392.5m	1	$ 0.0m
8. United Technologies Corporation	$5050.4m	10	$ 322.6m
9. L-3 Communications	$4737.1m	0	$ 0.0m
10. SAIC	$4540.4m	8	$ 7.6m
11. University of California	$4364.4m	17	$ 37.4m
12. McKesson	$4332.4m	4	$ 982.4m
13. Computer Sciences Corporation	$4143.1m	3	$ 31.7m
14. Bechtel Corporation	$4007.3m	11	$ 2.1m
15. ITT Industries	$2608.0m	3	$ 100.0m
16. General Electric	$2526.3m	26	$ 29.0m
17. Honeywell International Inc.	$2355.2m	23	$ 573.4m
18. Humana	$2220.2m	7	$ 121.4m
19. United Space Alliance	$2041.6m	1	$ 0.0m
20. Booz Allen Hamilton	$1963.1m	1	$ 3.4m
21. Health Net, Inc.	$1932.5m	10	$ 349.8m
22. Triwest Healthcare Alliance Company	$1810.0m	0	$ 0.0m
23. URS Corporation	$1806.4m	3	$ 0.6m
24. Alliant Techsystems Inc.	$1798.5m	2	$ 8.3m
25. Textron, Inc.	$1769.1m	6	$ 105.9m
26. Electronic Data Systems	$1734.1m	3	$ 259.3m
27. Fluor Corporation	$1698.2m	21	$ 186.3m
28. BP Amoco P.L.C.	$1523.6m	10	$ 691.9m
29. California Institute of Technology	$1519.2m	0	$ 0.0m
30. GM/GDLS Defense Group	$1513.3m	0	$ 0.0m
31. Oshkosh Truck Corporation	$1480.2m	0	$ 0.0m
32. Public Warehousing Company KSC	$1425.3m	0	$ 0.0m
33. FedEx Corporation	$1410.3m	11	$ 72.4m
34. MacAndrews AMG Holdings	$1406.2m	0	$ 0.0m
35. BNFL Corporation	$1338.5m	9	$ 4.6m
36. Stewart & Stevenson Services	$1312.1m	1	$ 7.0m
37. Veritas Capital Fund, L.P.	$1251.1m	1	$ 0.0m
38. IAP Worldwide Services, Inc.	$1227.7m	2	$ 0.2m
39. Battelle Memorial Institute	$1142.9m	1	$ 0.3m
40. AmerisourceBergen	$1077.6m	7	$ 9.2m
41. Exxon Mobil	$1072.9m	25	$4836.9m
42. Bell Boeing Joint Program	$1051.3m	0	$ 0.0m

43. Royal Dutch Shell PLC	$1029.5m	7	$ 828.7m
44. CACI International, Inc.	$1000.7m	1	$ 0.0m
45. IBM Corporation	$ 992.4m	7	$ 800.6m
46. Alliance Contractor Team	$ 985.9m	2	$ 1.1m
47. Harris Corporation	$ 953.4m	3	$ 1.6m
48. UT-Battelle LLC	$ 944.3m	2	$ 0.3m
49. Dell, Inc.	$ 934.5m	3	$ 0.9m
50. Washington Group International	$ 902.5m	3	$ 0.1m
Total	**$177817.8m**	**374**	**$12632.3m**

Mr. TOWNS. Let me begin with you, Ms. Smith. You indicated certain things.

Were top DHS officials aware of the problems with the performance at Wackenhut? Were the top officials aware of it?

Ms. SMITH. I would say yes.

There was an incident where Secretary Chertoff came in and caught guards, several times, acting inappropriately; and maybe about 2 weeks into it, in one incident they lost control; they lost the building, building 1, which was his office. At one time, we had his office. There were guards that weren't performing, and I don't know if he personally said something, but shortly after that, we lost that one building.

Mr. TOWNS. So you think that he might have known about the unprofessional behavior?

Ms. SMITH. I think it probably took some time before certain things got to his attention, but at a certain point in time, it was just so blatant that you'd have to be blind not to see it.

Mr. TOWNS. All right. Well, you have served in sensitive security posts in both the Air Force and with other private-sector employers. Were there any differences in the approaches of delivering security services for a classified installation between these experiences and the experiences you had with Wackenhut? Was there any difference?

Ms. SMITH. I've never seen anything like the way Wackenhut ran Homeland Security. Homeland Security, I think, on any other contract would have been considered the most prestigious contract you could have next to the White House. I've worked with other security companies, and any time there has been an issue of officers' sleeping, inappropriate behavior, falsifying documentation, I have never seen 24 hours go past without someone from corporate headquarters coming down to investigate, and I've never seen a situation in which people will repeatedly do the same thing and report to duty the next day. I have never seen it. I have never seen—I have never seen officers falsify documentation, fill out their time sheets for the month in a guard mount and the supervisors never say anything. I have never seen officers leave a site with a weapon in D.C. not being an SPO, and not being reprimanded for it. I have never seen an armory left wide open. I have never seen an armory in a project manager's office. I have never seen—I've never—I've been—I worked at the Department of Interior, and we've had several incidents with suspicious powder. I have never seen it handled that way. I have never seen anyone take an envelope and not know what the substance was and walk down the hall, walk past the Secretary's office, look at it, call people over to witness what they have, take it outside, let a few other people see it, discuss it with people, and then call FPS Services to investigate. I have never seen, never seen anything run the way Wackenhut ran Homeland Security. I have never seen any company disrespect a government contract to that proportion.

Mr. TOWNS. Let me just ask you some questions.

Were you ever terminated for poor performance?

Ms. SMITH. Never.

Mr. TOWNS. What were your on-the-job performance evaluations while you were with the company? Was it——

Ms. SMITH. In the year that I worked there, we never got a performance determination.

Mr. TOWNS. So, I guess we would have to say it was good. You weren't fired.

Ms. SMITH. I wasn't fired.

Mr. TOWNS. I think that's the conclusion there.

Do you have any lawsuits against Wackenhut?

Ms. SMITH. No.

Mr. TOWNS. Why did you come forward at this time with what you saw?

Ms. SMITH. I have to be honest. Initially, I didn't come forward. Another officer came forward and called me and asked if—I was one person there who had access and knowledge of several events, of probably any major event that would go on, because I monitored the cameras and because I was emergency dispatcher. So if something happened, I would get the call first, and then I would notify the supervisors.

So I was one of three people, because there was three different shifts that would have firsthand information. And the other officer was really disgusted with some of the things he'd seen. He went to the press, and I guess he got a lot of flack for it, because nobody else would validate what he said. And I have to be honest. I told him that I wouldn't bring the information forward because I didn't believe anyone would really act on it. I felt that this was Homeland. I knew Wackenhut's top officials knew what was going on, because I witnessed several phone calls, and I've made several myself, so I knew that the head of the company knew, and I knew that nothing had been done. And I really didn't think anyone was going to investigate, and if they did, I thought it would probably be handled—that it would make a news article; you know, a lot of people would read it, and then, the next day, it'd be shoved under the cover like so many things are.

So I really didn't believe that anyone really cared how the contract was working on that site, but another officer asked me, and I told him that—you know what? If somebody asks me, if someone asks, I'd be open and honest and tell what I knew. And someone asked me, and that's why I'm here today.

Mr. TOWNS. Thank you very much.

At this time, I yield to Ranking Member Bilbray.

Mr. BILBRAY. Thank you.

Mr. Amey, you were discussing the problems with Boeing. Do you think that they should be eliminated from consideration for any contracts? Should they be disqualified based on what you know about them?

Mr. AMEY. Should they be disqualified? That's a judgment call where I think you need some flexibility. But what I think we need is we need openness in the system; we need to make sure that contracting officers are taking a look at their overall record, not just their performance record.

Like I would imagine, and as the doctor has testified, his company has a wonderful performance record. I'll predict that contractors have satisfactory performance grades. But are contracting officers taking a look at their criminal history, their civil history and

their administrative history? If they're not, then the taxpayers aren't getting the best deal.

Mr. BILBRAY. Well, wait. Whoa, whoa, whoa, whoa.

Now I'm asking you about somebody you do know. And first of all, when you talk about some of these histories, I have a real problem in trying to figure out—if it wasn't a company, if it was an individual, and I was a public employee saying, I'm going to consider—I'm going to now—you've worked for me in the past and I find out that you've got something in your record that you didn't disclose.

Now that's the question you get into. Are you talking about something they were required to disclose or are you talking about something like—a good example is misconduct. Are we talking about—what constitutes misconduct? Is that being charged with misconduct? Is that being proven with misconduct, or is it both?

Mr. AMEY. In our data base, we do have both. We have actual instances of misconduct, and we have pending cases.

Mr. BILBRAY. You know, I'll tell you something. If it's an individual—and if I tried to do this as a mayor, to somebody who is one of my employees—I'd be dragged out before the courts right and left, based on charges.

The fact is, you know, we've had to abandon the concept of "Have you ever been arrested?" in the State of California. You have to say, "Have you ever been convicted or sentenced?" Just to be charged has never in this country been an assumption of guilt.

Mr. AMEY. Well, our pending cases aren't. Our pending cases are left very open, and I think our data base is very fair. In instances of misconduct when they move over from a pending case, when we combine instances where there's been a fine, a settlement, a penalty, we do have what we call "investigative findings," but those are left as administrative and with a zero balance. We include them in there only so that contracting officers and government officials have the full scope of a contractor's performance and responsibility record.

Mr. BILBRAY. Do you agree that allegations being included play suspect on the whole thing because it becomes part of an angle? I know the fact that—competing companies. You have competing companies who love to play these games. You have people at organized labor that will use this as part of a tactic to be able to—as part of the negotiation games. The fact is—we can get so many employees to charge, but the fact is, if allegations are given weight, that raises a whole lot of concerns about the credibility of the entire process.

Mr. AMEY. I agree with you, and that's—the purpose of our data base is, actually, not to include a labor violation where somebody didn't have their hardhat on.

What we've tried to do is get to real instances of misconduct in which there's a violation of Federal law—arms export violations, false claims—you know, things that are very germane to the government.

Mr. BILBRAY. But where it has been proven——

Mr. AMEY. Yes.

Mr. BILBRAY [continuing.] Not just where somebody has accused them?

Mr. AMEY. Yes.

Mr. BILBRAY. OK.

Mr. AMEY. Down to—also, into administrative agreements. We do include those, which I know the contracting industries do get upset with us for including those types of cases. But we do include them when they're fined penalties and settlements that are attached to them.

Mr. BILBRAY. You start by saying we consider—we include the charges without their being proven. Now you're saying that you want to go back and say it should be only those things that have been adjudicated.

Mr. AMEY. No. I said that we do include pending cases. We do have them on a side column, but they are not part of our instances of misconduct.

Mr. BILBRAY. Well, pending cases can last for 10, 15 years.

Mr. AMEY. No doubt about it.

Mr. BILBRAY. You're putting a cloud over somebody's head who's just been charged, and I'll tell you that's a big concern. But I'm back to Boeing.

Mr. AMEY. Right.

Mr. BILBRAY. You identified Boeing as being a bad character in this process. If we struck Boeing out of the process, would that be good or bad?

Mr. AMEY. Well, personally, the Project on Government Oversight would say, "Well, that's probably a good thing because I think there are other places you can go for that business."

Mr. BILBRAY. And where would we go?

Mr. AMEY. I think there are other contractors out there. I think if we debundle contracts, there are other vendors that we can go to to provide that work.

Mr. BILBRAY. OK.

Mr. AMEY. What I heard from the government in asking about the listing of Boeing's suspension when I talked to the official was they said, "Off the record, I will tell you we had to waive it on three occasions because we had nowhere else to turn." It ended up being a consolidation of the industry issue, which is bad for the taxpayer overall; which POGO's fought consolidation for many years in the defense industry, and I think we'll have to get into it in the IT sector, but——

Mr. BILBRAY. Well, let me tell you something. You talk about the big guy. The fact is that I've seen again and again in my 30 years in politics where Washington, DC, and government intervention has killed the little guy, killed the little guy. And then it complains when there's a monopoly for the big guy because the little guy did it.

I mean—I'll just digress, Mr. Chairman, but people are wondering why big oil has such an influence in this country. It's because we've killed little oil with government regs and with tax cuts. We've basically run the competitors out of the market. And it's Washington doing this, saying, "We're going to protect the consumer." And we've shafted the consumer down the line, and I'm just concerned that when we do this oversight, we make sure we do it with an outcome that matters. And, you know, I have to say

that effect on competition has to be a consideration; wouldn't you agree?

Mr. AMEY. 100 percent. We have been fighting the bundling issue for many, many years.

Mr. BILBRAY. And bundling is there. You heard my reference to the liquidation of the savings and loan assets.

Mr. AMEY. Right.

Mr. BILBRAY. A classic example. Now, that was in-house. That was Federal Government employees making a decision——

Mr. AMEY. Right.

Mr. BILBRAY [continuing.] And throwing billions of dollars of taxpayers' money away because they didn't want to bother with the little guy.

Mr. AMEY. Right.

Mr. BILBRAY. Wouldn't you agree?

Mr. AMEY. Yes.

Mr. BILBRAY. Mr. Chairman, I just want to make sure that as we get into this that we make sure that we keep an eye on the fact that—let's not go in and do more damage and then wonder about the problems we've done in the past. The outcome of how we handle this is what is going to be really critical, and I think—I appreciate your testimony on that. I just want to make sure that when we go in there and start whipping, we understand that we may be whipping the only, you know, horse that can pull us on here, or keep as many horses in so we can pick the best one, so we don't end up in a situation of not having a choice into it.

Now let me just say publicly—I want to say something because I happened to have the privilege, when I was very young, of building the most cost-effective transit system in America in a place where people said you couldn't do it: San Diego, CA, Southern California. And we built that line, and there were people that built political careers on that. Congressmen went out there. You've got Pete Wilson, who became Governor and Senator, if you'll remember, and Bechtel built that line, and I will go to my grave knowing—I don't know what they're doing with these other contracts, but there was no way in the world I wouldn't testify that Bechtel was the best company that I could ever work with. It created miracles, and they did great things.

Now, people may want to attack them—and they're not here today to defend themselves—but I will say for the history that when I built a system in San Diego County with some—the toughest problems in the world, Bechtel delivered in a way that the people of San Diego County are going to benefit for 100 years on.

With that, Mr. Chairman, I will yield back.

Mr. AMEY. If I may just say, I agree with the ranking member and your comment earlier with the first panel.

This isn't to point fingers at contractors. This is really a genuine issue of contracting officers and the way we're awarding contracts. It really gets down to a very circular argument about government contracts. And you hit the nail on the head with competition. If you only have five different or two different vendors that come forward, then at that point you do have to make a best-value determination and pick the best of those two.

My hope here is that we can incorporate all of these things together, get more competition and pick the best vendors available without picking risky vendors. That's where I think the question comes in. Are we picking responsible vendors or are we picking risky vendors?

Mr. BILBRAY. And I appreciate that, and I thank you very much. And let me just say, because we brought up this hearing and we're specifically looking at security in some of these facilities—if I could ask the chairman to consider one thing, which is that one of the shocks I've had working on Homeland Security stuff when I—when the voters gave me my 5-year sabbatical from Congress, is that today, as far as I know, the Pentagon is still using the same antiquated access system/swipe card that it was using on 9/11, with no biometric confirmation, with no face recognition technology. It's basically using technology that's 30 years old and have not—anybody who ends up being able to acquire one of those cards, either by theft or by persuasion, could enter that facility. And I think that we ought to be looking at what we're doing to make sure that we're doing the right thing so contractors can do the right thing.

I yield back, Mr. Chairman.

Mr. TOWNS. Thank you very much.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

I want to thank the panel for being here today and sticking with us throughout our votes.

Mr. Brede, I want to thank you for being here, especially given the fact that the other subject of our hearing today chose not to attend.

Ms. Smith, I want to thank you very much for your service, prior to your work in private security, in the U.S. Air Force and would appreciate you opining for a moment on the comparison between the training. You've talked a little bit about your experience on the job. I want to talk for a second about the training that you received prior to your time in preparation for your service in the Air Force and during your service there, versus the training that you received as an employee of Wackenhut.

Ms. SMITH. The training—I want to be fair to Wackenhut also. The training doesn't compare to the training I received in the Service because it was intense. It was a test program. They enlisted—at that point in time, there weren't women combat-trained in the Air Force; other branches, but not the Air Force. So when they enlisted the 125 women, the training was intense.

We went to Camp Bolus. We trained at an Army base. The training was very, very intense. And as far as the Air Force goes, you had women in there, and the government wanted to make sure that if those women went to war, we could stand beside any man and do our job. And I believe we could.

As far as the training with Wackenhut, I went to the range and I qualified, and that was pretty much it. I wanted to qualify at the range, and I'd already known how to shoot. I'd been trained previously. When I went to Wackenhut, I went with my credentials. So me personally, I felt I was already very well-trained. What I have to say is that—taking me out of the situation—I ask, how were the rest of the guards as far as training?

At Homeland Security, there were guards who never qualified at the range. They were still allowed to carry a weapon. We had several—we had three—to my knowledge, we had three guards and there probably were more, but I'm only going to talk about what I know personally. We had three guards who failed the range five times and were still working, still carrying a weapon, never passed the range. At a certain point in time when we knew there was a new contractor coming in when the contract—when the contract was almost at its end—and I'm going to say 2 months before the contract officially ends is when they started sending us to training so that we'd have something official on the record.

But initially, when I came in, I came in with my SPO. I have a license in Maryland and Virginia, and the only thing I had to do was qualify at the range, which I did. So I said it to say that the person sitting on my right and my left may or may not be able to handle a weapon, may or may not be able to shoot.

Mr. MURPHY. How about training in the disposition of suspicious packages or training in regards to the proper response to a chemical attack or a nuclear attack?

Ms. SMITH. We had extensive training in the military on that, obviously, training on crowd control, training as far as—we played war games. It was Strategic Air Command, so I was always on alert. For a week at a time, the alarm would go off, and once that happened, you had to react. So, being in the SAC, it was 24 hours a day of playing war, and we played it serious. There were consequences if you didn't perform.

As far as Wackenhut goes, other than qualifying at the range, I worked there 8 months without any kind of official training. The only time training took place was at the end of the contract when the rumor was that there was going to be—the new contract was going to require GSA training, GSA certification. So at that point in time, when that information was given out at the last few months of the contract, they had a GSA class that we went to. But prior to that, I worked on that contract 8 months with no training.

Mr. MURPHY. And had you not had training in the Armed Forces related to terror attacks and suspicious packages, you would not have received the training up front?

Ms. SMITH. No. Actually, I worked for another company, and the HAZMAT training I received from them and the weapons training and the crowd control—all of that I received at another company, and I brought that to Wackenhut. As far as being trained by Wackenhut, the only official training I received was qualifying at the range.

Mr. MURPHY. Dr. Brede, that leads to an obvious question. I take Ms. Smith's testimony. I put it together with articles in the paper referencing interviews of 14-some-odd employees under the same contract, one of which testified that when he was presented with a suspicious package, he said, "I didn't have a clue what to do."

And I wonder whether that makes you reconsider a statement made under oath here today, that you believe that the employees of Wackenhut are as well-trained and as capable as a member of the U.S. Armed Forces.

It strikes—and I guess I ask that question because I'm not sure that they should be as well-trained as members of the U.S. Armed

Forces. I think that they should receive much more training than it sounds like they have. But your statement today strikes me as a bit out of line, given the testimony that we've received today and testimony of other employees, and I would like to know if you would like to reconsider that statement.

Mr. BREDE. I will consider that statement, and I stand by it. What I said was—and I oversee elite forces that are equivalent to the forces that I served with in the United States—and I do. I oversee our DOE Special Police Officers, Security Police Officers.

You have to understand the contract that we had at the DHS building was not a DHS contract. In fact, what it was—it started out as a facilities maintenance contract with the Department of the Navy. There was a small security piece of 12 officers. Our contract with the Navy required minimal security training. DHS later moved into that facility and, over time, eventually took over the building but not the contract. In fact, we were held to contractual requirements by the Department of the Navy. We still have that contract today and continue to serve the Navy. The training that we provided our officers met the requirements of the contract.

To a point made by the ranking member earlier, allegations are easy to come by and we are hearing some of them for the first time today from Ms. Smith. We've heard a few others in the past from disgruntled employees who'd been terminated and, in fact, who have been co-opted by the Service Employees International Union, an organization with an agenda that has mounted a campaign against us, a corporate campaign to besmirch our reputation. They have——

Mr. MURPHY. Are you alleging that Ms. Smith is part of that——

Mr. BREDE. I don't know if she is or not.

I'm saying that the only allegations we have previously heard are those who have—those that had been made by disgruntled, terminated employees who have gone to the press and which we have investigated. I am hearing others today for the first time.

Mr. MURPHY. You draw issue with the reports of that contract in which individuals were not properly trained in terms of how to dispose of suspicious packages or with regard to potential instances of terrorism there. Do you believe that there was proper training for those potential incidents at that facility?

Mr. BREDE. No. What I said was that there were—the training that we conducted at that facility met the requirements of the Navy contract. I would tell you that DHS expected a higher level of security training, and when they let out—let their procurement, they looked for a higher level of security. We did not win that contract, but we never had one with them there in the first place. It has been mischaracterized as a DHS contract and one which we've had, and we have not—we did not have one with them there. We have several contracts with DHS elsewhere.

For example, during Katrina, we were called upon because no other security company—or at least security companies called before us, could not deliver the number of officers to be trained and put out to the field in time to meet that awful disaster.

Mr. MURPHY. Mr. Chairman, I know I've gone well over my time here. I understand the tried-and-true method of deflecting accusations is to try to dispute the integrity of those who would accuse.

I think we have made it very clear that Ms. Smith here has no ax to grind; in fact, she was an accomplished employee. And I would just say that I think the allegations that have been made are not necessarily that you didn't live up to the terms of the contract. It was the allegations being made here that the compromise—that the safety of that institution was compromised. That may be related to the work of Wackenhut. That may be related to the specs of the contract. But I think at least we leave here understanding that those—that those accusations that have been leveled in the Associated Press report and those by Ms. Smith today are ones that I hope we can all agree need to be addressed going forward.

Mr. BREDE. I have invited the DHS IG to look at the incident. I hope he does, as he was asked to do earlier; to look at the incident involving the white powder, an incident in which no WSI employee handled that powder. We wrote to the Secretary, pointing that out, and we would—we will certainly welcome any investigation looking at that particular incident.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. TOWNS. Thank you. Thank you very much.

Let me just sort of go further here, Dr. Brede. You know, Ms. Smith came here and I asked her some questions. I asked her, I said, "Were you terminated because of poor performance?" she said, "No." I asked her were you—"What were your evaluations?" she said, "Good." Then I asked her did she have any lawsuits, you know, with the company, and she said "No." And then I asked her, you know, "Why would you wait until this point to come forward?" she indicated, you know, and gave an answer that, I think, was very acceptable, you know, and I'm sure that she was struggling with it and finally made a decision, you know, to come. And she indicated some things there that—and I would like to just hear you respond to them because, you know, she didn't get fired, you know.

Mr. BREDE. She did not.

Mr. TOWNS. She didn't have a bad evaluation. She didn't have any of those things. She comes to us, as I get it, out of real concern. And to me that's important.

So I would like for you to sort of respond to the things that she talked about here in terms of—you know, could you just sort of go over that and let me know in terms of what happened, you know, as far as you're concerned?

Mr. BREDE. I can respond to two of them.

As I pointed out earlier, I am hearing the others for the first time today. One of the allegations, I believe, had to do with access control. Once again, it's a criticism leveled at us through the news media, again, by a terminated employee co-opted by the SEIU. We performance-tested that particular measure and, quite frankly, did quite well at it. We had layers of security. And you have to understand, in a facility like that, you've got layers of security, and the closer you get to potential targets, the tougher that security is.

The other, I believe, in her testimony had to do with time sheets. We conducted an internal audit of that. I am not familiar with the results of that audit, but I could certainly take that for the record and make that available to you.

Those are the only ones that I'm familiar with. I'm not familiar with the others, and I'm not, quite frankly, prepared to address them today.

Mr. TOWNS. Ms. Smith, let me ask you, did you ever report any of this to Wackenhut or to DHS, any of this?

Ms. SMITH. When I worked at Wackenhut, I was there 2 weeks, and so I can't tell you how what I am about to explain came into it. I can only tell you that 2 weeks into the job, an official from Wackenhut, from their corporate office from Florida—I don't know if it's the corporate office. An official from Florida came to the site because, I'm assuming, prior to that there were so many complaints from officers that somebody from Wackenhut came to the site to see what was going on. I'd only been with the company 2 weeks. I was actually going offsite when someone said, "There's a meeting you're supposed to be at," and I said, "Well, I didn't know about it." So I went to the meeting, and what happened was this:

The officers started telling them different issues that were—that was going on. As they went around the table, when they got to me, I said, "Well, you know what? I've only been here 2 weeks, so anything I can say can only be based on a 2-week observation." And I don't remember the gentleman's name—I could find out—but he said, "Well, in 2 weeks, what have you seen, and what do you think?" I said, "In the 2 weeks that I've been here, I would seriously, seriously make some changes." I said, "You have employees who—you're working them—some employees are working pretty close to 24 hours a day." I said, "You have an employee who came in to work"—my shift started at 6 a.m. I said, "When I came to work, he was there," which meant he had been there on the night shift. I said, "When I went to lunch, he was here." I said, "When I came back from lunch, he was gone." I said, "But when I left—when I went to go home, he was here," which means he lives someplace near, got about 2 to 4 hours' sleep and came back. I said, "He's been here for 24 hours. He's carrying a weapon."

I said, "In the 2 weeks I've been here, the weapon I drew out the other day fell apart." The barrel came off the .38, which means that it had just been placed up there, which means it had to be damaged. I said, "So you have several weapons in there that don't even have handles on them."

I said, "In the 2 weeks I've been here, you have officers who are sleeping on posts." I said, "So my concern is that there are things going on here that your corporate office may not know about." I said, "The things—all the things that I see are things that can be addressed. I do not see any—I've only been here 2 weeks, so I don't see anything major," I said. "but I see something that's starting to build, and if it were my site, I'd be concerned and I would start asking the supervisors what is going on here."

And he said they were going to do a thorough investigation. He pulled me to the side later. We talked a little bit about my previous experience, and he said—he guaranteed and assured me that, you know, he appreciated me telling him the things I'd seen. And I even told him, I said, "I don't know. I said this is the first time I've ever met the project manager of this site. I didn't even know who he was," I said, "so I don't want him in a situation that maybe he doesn't know, but these are the things that are going on that I've

seen within 2 weeks," I said, "and they need to be addressed," you know. And he assured me that it was going to be taken care of. He left. I never heard from him again, and it escalated. It just went from bad to worse.

Mr. TOWNS. Well, you know—thank you very much, Ms. Smith.

You know, Dr. Brede, I come from the school of thought that where there's smoke there's fire. And of course, you know, there's a lot of allegations that have been passed along here in reference to the company. Now I'd say maybe one was not accurate, two maybe, but there's just too many things here, you know. And I'm just listening to Mrs. Smith—Ms. Smith—who indicated in terms of her experiences here—and she has no reason, you know, to make up or to create, you know, and I just want to hear you.

I think that there's some things here that need to be corrected. I mean—and I think they're very serious because of the fact that when it comes to security, that's a very serious matter in this day and age, and more than ever. And I think that you need to revisit this and to try and straighten these things out, I think, rather than saying, you know—you know, there are allegations, but the point is that there's a lot of allegations here, and I think that there's just too many for me to just sort of brush them off or push them off as just statements or somebody, you know, making some comments or some union that's upset.

There's a lot going on here. And of course, I need to hear you respond to that. I mean, of course, I know you're saying that you weren't aware of it and you didn't know about it, only two of them. But this is a lot not to know about. I mean, let me ask you this: Do you read the paper?

Mr. BREDE. I certainly do read the paper, and I would tell you once again—and I don't think we can easily dismiss the reports that are prompted by—specifically by the Service Employees International Union.

One of the things I would wonder is if Mrs. Smith has been prompted in any of this, for example, by the SEIU. There are distortions of fact. There is misinformation continuously put out in an effort for that union to displace—the unions that I'll represent are fine officers. It's something that we have refused to submit to. We don't take allegations lightly.

For example, the allegation of cheating at Oak Ridge. I am very much offended by that. Once the IG looked at that, we did an internal investigation. Not only that, but there was yet another review conducted by the National Nuclear Security Agency. They came to a completely different conclusion than the—than the IG.

For example, someone asked the question earlier, you know, was that really cheating? What that incident had to do with was a validation of a computer model, using an exercise on the ground to validate the validity of a training tool. Hence, people were indeed briefed on the scenario. We found that there was a difference between the computer simulation tool and the way our response would be executed on the ground. So that information was provided to the IG. We never heard anything again back.

So we do take investigations—allegations seriously. We investigate them. If we knew of all of these at the time Ms. Smith was there, believe me, we would certainly investigate them. And I in-

vite an investigation of them now, as I told the IG from the Department of Homeland Security today.

Mr. MURPHY. Mr. Chairman, can I ask just one last question? Thank you, Mr. Chairman.

I just want to note for the record this isn't just promotional material sent out by SEIU. This hearing is convened because of reports from the IG's office, because of independent media reports by fairly reputable organizations such as the Associated Press. So this is not simply one particular group with an agenda. These are independent sources as well. That's a comment.

The question is this: In our interchange, you talked about the changing circumstances on the ground in that contract, and you created a distinction between meeting the parameters of the requirements of the contract versus doing what may or may not be necessary to truly secure that facility.

As the—if you believe—and this is a question I'm just curious about: If you believe as a contractor that the requirements of the contract are not sufficient in order to meet the security needs of the building, if the tenant changes in this case, which would prompt the security force to be elevated, do you believe it's the responsibility of the contractor of the agency providing security to either change of their own volition the security standards for that facility or to go back to the contracting agency and suggest that the contract be changed?

Mr. BREDE. That's a fair question.

I believe it is our responsibility as a security contractor to offer our professional advice to the agency and advise them as to what is needed.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. TOWNS. Thank you very much.

Let me just ask you something really quickly.

You know, Carolyn Maloney, who is a member of this committee, has a bill, and of course—in terms of data base and on the contract performance, and I know you have.

What's the difference between what she has and what you're doing?

Mr. AMEY. Very little. And we've supported Representative Maloney with that bill for many years, back to when she first introduced it in 2002. That was when our original contractor misconduct data base came out, and we've supported her every year since then. So I've actually taken a look at the bill. I've seen the provisions in the bill. The things that she's added has changed a little bit this year from the previous years, but I think she's getting two—what Inspector General Skinner stated earlier was she's getting two very objective standards that can be used by contracting officers to evaluate the responsibility level of Federal contractors, and that's what we need. We have a real gap there.

Mr. TOWNS. Let me thank all three of you for your testimony, and I think that it's very, very important that we do not take this lightly and—because, as I indicated early on, you know, security is very important. And I don't think we can just sort of like pass this off as some labor union is creating an issue or creating a problem, you know. I think this is something that needs to be addressed and needs to be addressed very seriously. And I want you to know

that's my views and my feelings on it, and we're not going to go away. We're not going to go away. There's just too much of this going on, and we have to do something. And of course, this is the committee to do it.

Thank you very, very much. I appreciate your testimony.

This hearing is adjourned.

[Whereupon, at 5:50 p.m., the subcommittee was adjourned.]

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