

**WASTE, ABUSE AND MISMANAGEMENT:
CALCULATING THE COST OF DHS FAILED
CONTRACTS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON MANAGEMENT,
INVESTIGATIONS, AND OVERSIGHT**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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**WASTE, ABUSE AND MISMANAGEMENT:
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Wednesday, September 17, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS, AND
OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in Room 311, Cannon House Office Building, Hon. Christopher P. Carney [Chairman of the subcommittee] presiding.

Present: Representatives Carney, Thompson, Pascrell, and Rogers.

Mr. CARNEY. The subcommittee will come to order.

The subcommittee is meeting today to receive testimony on "Waste, Abuse and Mismanagement: Calculating the Cost of DHS Failed Contracts."

Today's hearing is the final Management, Investigations and Oversight Subcommittee hearing of the 110th Congress. By my count, this is the 19th hearing this subcommittee has held since February 2007. That doesn't even take into consideration the full committee hearings that built upon our work in this subcommittee and our work with other subcommittees.

Looking back at what we have investigated and discussed in this venue over the last year and a half leads back to what is really at the root of today's hearing: a broken acquisition process at the Department of Homeland Security.

We have heard countless times how difficult it is for corporate mergers between two businesses to be successful; how, on average, it takes 7 years; how much more difficult it is when 22 agencies are combined to form a new Federal bureaucracy, et cetera. This is nothing new. When Representative Rogers chaired this subcommittee, I am sure he heard the same thing. What happened to lessons learned?

I think what is most frustrating for me during this Congress is hearing from DHS about taxpayers' dollars being wasted. As the only contact that many people in my district have with the Federal Government, how do I explain to them why DHS has spent tens of millions on a virtual fence along the southern border that hasn't given us any more protection? They ask how the Coast Guard could have so seriously botched upgrades to some ships that they now are floating scrap in the Baltimore Harbor instead of patrolling our

coasts. Why did FEMA purchase so many trailers with such high levels of formaldehyde and then continue to place people in them even after it became aware of the dangers contained in the trailers?

I was shocked to hear the Department was considering contracting with DynCorp to supplement the Border Patrol when DynCorp was simultaneously recruiting Border Patrol agents to become private security contractors in Iraq. Sure, the procurement process is a small piece of the acquisition process, but we have seen billions of taxpayers' dollars wasted in failed procurement. That is simply unacceptable.

Our country's safety and preparedness is one of my top priorities, but DHS shouldn't have a blank check to buy anything it wants, nor should it be immune from any of the laws requiring it to conduct its business with due diligence. Tens of millions have been paid out to contractors for what amounts to nothing more than bad ideas and empty promises. We must look no further than Secure Flight or Emerger II for glaring examples. It all comes down to the fact that the acquisitions work force at DHS was overlooked and underdeveloped from the start, despite warnings from Congress, GAO and the best think tanks this country has to offer.

The Department has gone through various senior executives since its inception, but three chief procurement officers in that amount of time really hasn't done much to solidify the acquisition shop. Independent Government investigators have told the tale, as have many testimonies before Congress, that there simply aren't enough personnel at the DHS acquisition shop itself.

This isn't limited to DHS. There has been no shortage of criticism recently regarding the Federal Government's reliance upon lead systems integrators. We saw this with Deepwater. In DHS's case, if they are serious about righting the ship, they need to take some recently retired, very skilled Federal acquisition and procurement staff and take a tiny fraction of the taxpayers' dollars that have been wasted on DHS efforts to bring these people back to train the much-needed next generation of Federal acquisition and procurement officers.

I am sure I am not alone in my frustration when it comes to Government waste. Unfortunately, no matter how many times DHS is told what they are doing wrong and how to improve what they do, nothing changes. Hopefully shining more light on the situation today at a point when DHS leadership can incorporate proposals for acquisition and procurement improvement in administration transition policies will make a difference.

The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Alabama, for an opening statement.

Mr. ROGERS. Thank you, Mr. Chairman.

I, too, would like to thank the witnesses for taking the time out of their schedule to be with us today as we talk about this very important area of procurement acquisition contracting.

It is the first hearing I can remember since being on this committee that I was able to read in *The Washington Post* what took place in the hearing before we even had it, so you never know what is going to happen.

When I was Chairman of this subcommittee in the 109th Congress, we conducted rigorous oversight of the Department's con-

tracting and held numerous hearings in this area, so it is not a new phenomenon that we are experiencing here.

In addition, this committee reported H.R. 5814, the Department of Homeland Security Authorization Act for Fiscal Year 2007, which included provisions on procurement reform, procurement training and stronger background reviews of contractors. An effective authorization bill covers these issues and is an integral part of this committee's work.

To assist DHS in strengthening its procurement function, it is essential that this committee develop and pass an annual DHS authorization bill before Congress acts on the Homeland Security appropriations bill. However, since this does not appear possible at this late stage, Congress should at least move the annual appropriations bill. If an appropriations bill is not passed and DHS is forced to operate under a continuing resolution, the folks at the Department may not have all the resources they need to fulfill this critical mission.

The Department has made significant improvements in acquisition management over the last several years. This subcommittee's oversight has helped the Department to craft long-term strategies to address its procurement problems. As we have seen, positive and constructive oversight can help the Department address its weaknesses. While more work clearly remains to be done, the Department has come a long way.

I look forward to hearing from our witnesses today.

Mr. Chairman, I yield back.

Mr. CARNEY. Thank you.

The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you very much.

I would first like to thank Chairman Carney for holding this important hearing on an issue of vital concern.

I am holding in my hand a table, and I will share it with the other Members, a list of some—and I emphasize “some”—of the Department's programs that have been plagued with a litany of contract problems. Some of these programs were canceled due to contract failures, while others produced some results but never came close to fulfilling their proposed original intention. These planned contracts cost substantially more than their original budgets. DHS spent almost \$15 billion—not million, billions with a “B,” as in “boy”—of taxpayers' funds on these failed and planned programs.

This hearing is one of the last hearings we will have before the 110th Congress adjourns, and unfortunately I must end this Congress with the same message to DHS that I gave at the beginning of this Congress. At the beginning of the 110th, I set forth an 8-point platform for the Committee on Homeland Security.

The first plank in this platform set forth the need to improve the functionality, governance and accountability of the Department of Homeland Security. The heart of functionality, governance and accountability is simple: create an administrative and management system that is transparent and accountable. Agency officials must know where and how the money is being spent and must be able

to ensure that a program receives internal oversight prior to its rollout and after its completion.

DHS still has not created that kind of system. Instead, DHS leadership has permitted a system of waste, abuse, mismanagement, vague contractual terms, overspending, bonuses for bad performance, contractors being hired to oversee contractors in the same missteps over and over again. A casual look at some of the Department's efforts lead to disturbing findings: \$5 million a mile for a fence; TWIC cards that can't be read; no readers for the TWIC cards that we can read. Now we find that TWIC cards may or may not lose their identity if they are attached to other credit cards in one's wallet. So we have some problems. Ships that don't fit into ports; formaldehyde-laced trailers that make the occupants sick; an information-sharing program that law enforcement personnel do not want to use.

Taxpayers have had enough. Americans deserve a country that is safe, secure, and ready to respond in the event of a natural or manmade disaster. Americans expect that those given the responsibility of managing our scarce homeland security resources will do so responsibly, prudently, and with an eye toward avoiding waste.

While the fate of these contracts will be left to the next President and the next Secretary of Homeland Security, as Chair of the Committee on Homeland Security my job is to hold the Department accountable right now.

I have many things to say before, and I will say it again, Homeland Security's dollars are not to be wasted. They are dollars that could be used, if not wasted, to secure our borders like they should, but also to make our airports and airplanes safe and to help protect against those who wish to do us harm.

Mr. Chairman, I look forward to the testimony of the witnesses as well as the follow-up on the questions. Thank you.

Mr. CARNEY. Thank you, Mr. Chairman.

Other Members of the subcommittee are reminded that, under committee rules, opening statements may be submitted for the record.

I would now like to welcome the witnesses.

Our first witness is Mr. Richard K. Gunderson. He is a deputy chief procurement officer at the Department of Homeland Security. Mr. Gunderson is a career Federal employee with 20 years of public service in the acquisition career field. He came to DHS headquarters in April 2008, as the DCPO.

Prior to that, he served as the Transportation Security Administration's assistant administrator for acquisition and chief procurement executive from November 2005 to April 2008. In that capacity, he was responsible for an annual \$2 billion acquisition program in addition to providing acquisition support to TSA operations across the Nation's airports and other modes of transportation, as well as one of the largest, most complex acquisition programs in DHS.

Our second witness, Mr. James L. Taylor, is a deputy inspector general of the Department of Homeland Security. Mr. Taylor was selected as deputy inspector general effective October 16, 2005. He previously served as the deputy chief financial officer and the director for financial management at the Department of Commerce.

Prior to his work at Commerce, Mr. Taylor held the position of deputy chief financial officer at the Federal Emergency Management Agency, FEMA, where he was directly responsible for all financial operations, with expenditures of up to \$10 billion annually.

Our third witness, Mr. John P. Hutton, currently serves as the director of acquisition and sourcing management at the U.S. Government Accountability Office. In this capacity, he provides direct support to congressional committees and Members on a range of acquisition and sourcing issues aimed at improving Federal agencies' ability to buy products and services effectively and efficiently.

Throughout his GAO career, he has worked on a wide range of issues. This work led to several dozen reports and testimonies. Mr. Hutton began his GAO career in 1978. From 1983 to 1987, he served in GAO's former European office in Frankfurt, Germany, where he focused largely on defense and foreign affairs issues.

Without objection, the witnesses' full statements will be inserted into the record.

I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Gunderson.

**STATEMENT OF RICHARD K. GUNDERSON, DEPUTY CHIEF
PROCUREMENT OFFICER, DEPARTMENT OF HOMELAND SECURITY**

Mr. GUNDERSON. Thank you, Chairman Carney, Ranking Member Rogers, full committee Chairman Thompson and Members of the subcommittee. Thank you for this opportunity to appear before you to discuss the Department of Homeland Security acquisition program.

I am the deputy chief procurement officer for the Department, with 20 years of public service in the acquisition career field.

DHS has strengthened many aspects of its acquisition program over the first 5 years of the Department, and we continue to seek improvements to meet our mission and achieve acquisition excellence. In order to appreciate how far we have come, I would like to describe the growth in breadth of our organization.

In March 2003, there were approximately 600 contracting specialists throughout seven contracting activities supporting the legacy components. Supporting the newly established headquarters was a single contracting officer detailed to personally handle and coordinate procurement requests from all newly established offices within headquarters. Today there are over 1,000 contracting specialists across the Department.

Within the office of the chief procurement officer, there are 120 employees. Within the office of procurement operations, it has grown to a staff of 180. The chief procurement office is responsible for policy and oversight of the DHS acquisition program, including grants, competitive sourcing, strategic sourcing, e-business initiatives, acquisition work force analysis, cost analysis, and program management.

As the Department has organized and defined its many missions, the acquisition of products and services has been essential to successfully securing our Nation. The requirements have been complex and diverse, including core infrastructure needs, security equipment, aircraft and ships, facilities, and emerging technologies. The

threat is neither constant nor consistent, and, as a result, the acquisition program must be able to adapt and identify both near- and long-term solutions.

In order to meet this mission, we continue to strengthen and institutionalize an acquisition framework that will provide a disciplined process that integrates planning, requirements, budgeting and acquisition. Earlier this year, the chief procurement officer, Tom Essig, identified his top three priorities for fiscal year 2008: quality contracting, quality program management, and quality people. While we have made significant progress on these three priorities, more remains to be done. For that reason, the CPO will retain the same priorities as the Department advances into fiscal year 2009.

Priority No. 1: Quality contracting. We are focused on making good business decisions that enable us to meet mission and be good stewards of the taxpayer dollar. Our efforts in this area have not gone unnoticed. The Small Business Administration has notified DHS that we will receive our second consecutive "green" on the small-business procurement scorecard, recognizing the DHS acquisition community for its efforts in achieving various small-business and socioeconomic contracting goals.

Also this year, the Office of Federal Procurement Policy recognized our competitive and acquisition excellence award program, which recognizes efforts in promoting and achieving competition and realizing cost savings and cost avoidance.

Priority No. 2: Quality program management. In order to deliver mission capabilities, we are focused on strengthening other acquisition disciplines, including program management, cost analysis, logistics, systems engineering, and testing. Additionally, over the past 6 months, our Acquisition Program Management Division has worked with representatives from across the Department to develop and implement a revised management directive which will establish the acquisition management framework which will govern our investment programs.

Priority No. 3: Quality people. One of the most hard-to-fill occupational series within the Federal Government is the 1102 contracting series. Last week, there were more than 1,400 vacancy announcements for the 1102 job series across the Federal Government. At DHS, our targeted efforts include open and continuous job vacancy announcements at all grade levels, aggressive use of direct hire authority, expansive use of the Acquisition Professional Career Program, and the use of re-employed annuitants.

The same attention is being directed to the retention of our existing staff. We are committed to providing our employees with tools, developmental opportunities and workplace flexibilities inherent to best places to work.

I have been a part of this Department since it was established, and today I can tell you I have been able to say each year along the way that we are stronger and doing better business than before. We have grown in numbers of acquisition professionals, we have implemented new policies and procedures, and we have implemented new business strategies that are more cost-effective and meet our missions.

This is not an overnight process but one that requires a commitment to achieving excellence. I am proud of how far we have come and intend on pushing for continued change for the better.

Thank you for the opportunity to testify before the subcommittee. I am glad to answer any questions you or the Members of the subcommittee may have for me.

[The statement of Mr. Gunderson follows:]

PREPARED STATEMENT OF RICHARD K. GUNDERSON

SEPTEMBER 17, 2008

Chairman Carney, Ranking Member Rogers, and Members of the subcommittee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security (DHS) acquisition program. I am the Deputy Chief Procurement Officer (DCPO) for the DHS, the co-lead executive responsible for the management, administration and oversight of the Department's acquisition programs. In that capacity, I oversee and support ten procurement offices within DHS. The Office of the Chief Procurement Officer provides the infrastructure that provides the acquisition policies, procedures, training and work force initiatives that enables our acquisition professionals to support mission accomplishment while also being good stewards of taxpayer dollars.

I am a career Federal employee, with 20 years of public service in the acquisition career field. I came to DHS Headquarters in April 2008 as the DCPO. Prior to that, I was the Transportation Security Administration's (TSA) Assistant Administrator for Acquisition and Chief Procurement Executive from November 2005 to April 2008, responsible for an annual \$2 billion acquisition program. In this position, I provided acquisition support to TSA operations across the Nation's airports and other modes of transportation as well as to one of the largest and most complex acquisition programs in DHS.

As the Chief Procurement Executive, I provided executive leadership to TSA's acquisition program, including investment reviews, award and administration of contracts, financial assistance, interagency agreements and other transactions. I was also responsible for development of TSA's contracting work force and acquisition policy. I was a business advisor to TSA's leadership and instituted program management as a core competency at TSA. Before joining TSA in December 2002, I was a Contracting Officer for the Department of Defense's Naval Sea System Command, where I led contracting efforts associated with numerous major weapon systems.

DHS ACQUISITION PROGRAM OVERVIEW

As the Department has organized and defined its many missions, the acquisition of products and services has been essential to successfully securing our Nation. The requirements have been complex and diverse, including core infrastructure needs, security equipment, aircraft and ships, facilities, and emerging technologies. The threat is neither constant nor consistent, and as a result, the acquisition program must be able to adapt and identify both near- and long-term solutions. Since it was established, the Office of the Chief Procurement Officer's mission, in conjunction with the respective contracting offices, has been to provide the needed products and services to meet the DHS mission and do so in way that represents sound business and demonstrates we are good stewards of the taxpayers' dollars. In order to achieve this mission, we have and will continue to focus on our people and our processes. We recognize the need to have qualified professionals who are trained and certified to perform their respective duties in an increasingly complex and fluid regulatory and policy environment. We have made significant strides in creating an acquisition work force program that is focused on recruiting, training, and retaining a cadres of acquisition professionals in multiple disciplines. We recognized the need for sound business processes by publishing the Homeland Security Acquisition Regulation and Guidebook and have instituted internal controls for our investments through our Acquisition Oversight Program which has been favorably reviewed by the Comptroller General at Congressional Direction. In the near future we will be publishing our Program Review processes to further define program internal controls just as we have done for the procurement and contracting portion of Acquisition Management. DHS is continuing to strengthen its policies and processes to institutionalize an acquisition framework that will provide a disciplined process that integrates planning, requirements, budgeting and acquisition.

BUILD-UP AND GROWTH OF THE OFFICE OF THE CHIEF PROCUREMENT OFFICE AND THE OFFICE OF PROCUREMENT OPERATIONS

In March 2003, there were seven contracting activities supporting legacy components: TSA, USCG, USSS, CBP, ICE, FLETC and FEMA. Supporting the newly established Department Headquarters was a single contracting officer detailed to DHS Headquarters to personally handle and coordinate procurement requests from all newly established offices within Headquarters, including the newly formed Science and Technology Directorate (S&T), the Information Analysis and Infrastructure Protection (IAIP) Directorate, and the Border and Transportation Security (BTS) Directorate. The first Chief Procurement Officer, Greg Rothwell, came on board in the summer of 2003.

In fiscal year 2004, the OCPO began defining the specific functions of policy and oversight, as well as established the Office of Procurement Operations (OPO). As the newest DHS contracting activity, OPO had the responsibility to support the contracting requirements of the DHS Headquarters and any other organization that did not have its own contracting activity. OPO reports directly to the CPO while the other contracting activities report through their respective component's chain of command while receiving their Procurement and Contracting authority from the OCPO. In fiscal year 2004, OCPO had only four employees while the entire Department employed 603 GS-1102 contracting specialists. By the end of fiscal year 2005, OCPO had grown to 30 staff members performing procurement policy and oversight functions, to include grants oversight, competitive sourcing oversight, strategic sourcing and e-business initiatives and had added another function in support of acquisition work force management. In fiscal year 2007, OCPO established the Acquisition Oversight Division, dedicated to assessing the Department's procurements and acquisition programs. In fiscal year 2008, as the quantity and complexity of programs supporting DHS missions continued to increase, the need to evolve and establish additional functions within OCPO became necessary. OCPO established two new divisions to support critical acquisition functions, the Acquisition Program Management Directorate (APMD) and the Cost Analysis Division (CAD). APMD and CAD provide essential competencies that are core to the infrastructure of the Department's acquisition program. In addition to policy and oversight of their respective functional areas, the missions of APMD and CAD include providing outreach support to the various program offices to ensure sound program management principles are being applied to the programs.

OCPO recognizes a successful acquisition program is more than policy and oversight, it requires a talented work force. Therefore, another priority of our acquisition framework is to improve our ability to attract and retain needed resources. Currently, there are more than 1,000 contract specialists across the Department and we continue to recruit candidates at all grade levels. However, one of the most hard-to-fill occupational series within the Federal Government is the 1102 contracting series. The great demand far exceeds the number of qualified mid-level and senior level contracting professionals. As this testimony is being prepared there are 1,432 vacancy announcements for the 1102 job series across the Federal Government. At DHS, our targeted efforts include open and continuous job vacancy announcements at all grade levels, GS-9 through GS-15; aggressive use of the Department's direct-hire authority for the 1102 contracting series; expansive use of the OCPO's Acquisition Professional Career Program, and the use of re-employed annuitants to serve as mentors to our acquisition interns, in training and in oversight. Many of the individuals we are hiring, from our new interns to our seasoned professionals, appreciate the importance of DHS' mission and want to protect our homeland as much as those individuals with me today.

The same attention given to the recruitment of staff is being directed to the retention of our existing staff. Our contracting organizations are committed to providing their employees with the tools, developmental opportunities, and workplace flexibilities inherent to "best places to work." For example, the Head of Contracting Activity (HCA) of OPO instituted a tuition assistance program, an annual employee satisfaction survey, an exit survey, and structured rotational/development work assignments. Other initiatives are being finalized that include expanded alternate work schedule options and tele-commuting options. Similar programs and initiatives are being implemented across the Department.

As OCPO has concentrated on our acquisition work force and processes, the operational contracting activities have been focused on procuring the goods and services required in support of their programs. As I mentioned earlier, our acquisition portfolio is diverse, ranging from small purchases to commercial items to complex, cutting-edge solutions. In many cases, key mission capabilities cannot be satisfied by commercial or non-complex procurements. Rather, these capabilities will come from

solutions derived from developmental efforts at the initial stage of the acquisition lifecycle. In these situations, the program assesses alternatives and performs demonstrations to determine if the solution is effective and worthy of continued investment. For these reasons, OCPO is implementing an acquisition framework that establishes policies and procedures to enable the Department to better ensure good investment and business decisions. Over the past 6 months, the Acquisition and Program Management Division within OCPO has collaboratively worked with the representatives from across the Department to develop the revised Acquisition Management framework that will provide the governance of our investment programs. This effort, combined with a revised Requirements process, integrated together, will form the foundation of the investment decision process. Once a requirement is identified, validated and resourced, the program will be subject to reviews at critical decision points to ensure continued investment in the program is in the best interests of the Government.

Earlier this year, the CPO, Tom Essig, identified his top priorities for fiscal year 2008. While we have made significant progress on all three priorities, more remains to be done. We are committed to the Department's acquisition community to be one of that looks toward achieving excellence in what everything we do. The CPO will retain the following priorities as the Department advances into fiscal year 2009.

PRIORITY NO. 1: QUALITY CONTRACTING

We need to make business decisions that enable us to accomplish our mission, while also being good stewards of taxpayer dollars. Within the OCPO, we are developing and implementing a policy and oversight framework that will facilitate the Department's ability to achieve this objective.

We recognize that competition is good for both Government and industry. For this reason OCPO established in June 2007, the DHS Competition and Acquisition Excellence Award Program as an on-going program whereby Component HCAs are invited to provide the DHS Competition Advocate with nominations citing team or individual accomplishments in promoting and achieving competition and/or use of innovative and best practices. Competition advocacy and the use of innovative and best acquisition practices are a means of strengthening acquisition management. It provides greater value products and services, reduces risk, and is an underlying objective of the Secretary's goal to strengthen and unify DHS operations and management. This program was established as a means of motivating and recognizing individual and team accomplishments and sharing best practices in promoting and achieving competition, realizing cost savings/cost avoidance, and/or implementing improved acquisition practices. There were 13 efforts recognized for their fiscal year 2007 accomplishments. It is estimated that the Department's cost savings/avoidance was more than \$5.2 million. These achievements in promoting competition have long-term effects that result in improvements to the Department's investment review processes and the quality of our program/project management. In a July 18, 2008 memorandum to Agency and Department Chief Acquisition Officers, the Office of Federal Procurement Policy cited the DHS Competition and Acquisition Excellence Awards Program as an example for agencies considering establishment of recognition programs.

Another important aspect of making good business decisions involves the role of the Office of Small and Disadvantaged Business Utilization (OSDBU) to assist and counsel all types of small businesses (including veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns) on procedures for contracting with the Department of Homeland Security. Our goal is to help small businesses by fostering an environment where these firms can compete for a fair share of DHS contracts and subcontracts. Through our efforts, we are able to support the OCPO by engaging the cooperation of all members of the DHS team (senior management, contracting officers, program managers, and small business specialists) to work together. The OSDBU works closely with the DHS procurement offices to identify significant procurement opportunities for small business participation; participates in an extensive outreach program; maintains a robust small business procurement assistance web site at www.dhs.gov/openforbusiness; and works closely with SBA senior management to ensure all aspects of small business issues are reviewed and addressed to the benefit of all parties. In fact, the small business program managers and specialists are very active in communicating with industry, hosting or participating in more than 75 vendor sessions in fiscal year 2008 alone.

I am very proud to report that the Small Business Administration (SBA) has just notified DHS that it will receive its second consecutive "green" on the Small Business Procurement Scorecard; recognizing the efforts of not only the OSDBUs, but

the acquisition community for its efforts in achieving various small business and socio-economic goals.

PRIORITY NO. 2: QUALITY PROGRAM MANAGEMENT

In order to deliver the capabilities to meet DHS' mission on schedule and within budget, we are working to strengthen program management, including related functions such as cost analysis, logistics, systems engineering, and test and evaluation. Our goal is to make certain we have the policies, processes, and skilled people in place to effectively manage our programs and ensure the successful achievement of our mission objectives. During the past year, we established a core group within OCPO and partnered with the Defense Acquisition University and the Homeland Security Institute to ensure we have the skills and experience necessary to assess the status of DHS' acquisition programs and put policies and procedures in place to improve the management of our acquisition programs. We are also working to ensure that our program management teams are appropriately staffed and trained. The Program Management Council, chaired by APMD and consisting of acquisition professionals from across DHS, has been established and meets regularly to discuss policies, procedures, and current issues affecting Government acquisition.

As previously described, the Acquisition Program Management Division (APMD) develops, implements, and manages Departmental acquisition policies and processes, in parallel with providing in-process support to the DHS components in their acquisition efforts. This division developed and implemented multiple initiatives that significantly improve DHS acquisition and program management policy and processes. In a short time, this division has made great strides making significant operational improvements or notable innovation in support of the Department's missions. This division has completed a complete revamping of the DHS acquisition process. They have revised a management directive to establish a new process to be followed by all significant acquisition programs. This effort significantly improves the Department's ability to provide effective management oversight at key decision points throughout a program's lifecycle.

At the request of DHS Leadership, the APMD developed and executed "QuickLooks" during the period August–December 2007. These QuickLooks took a snapshot of selected Level 1 DHS programs and examined the Departmental acquisition policies and procedures used during their existing lifecycle. This was the first "cross-cutting" look taken at a top level of the DHS Acquisition portfolio. The findings provided the programs and components with an outside, expert look at the state of execution of their programs and helped to identify needed changes in the acquisition oversight management process. This division has jump-started the Investment Review Boards (IRB) by introducing a more streamlined process of operation. As a result, more focused and timely IRBs are held in either physical or virtual venues at the Under Secretary for Management or Deputy Secretary level as appropriate.

APMD also has developed a clear and practical guide for creating acquisition program baselines (APB) that provide meaningful content and strong programmatic documentation. This organization has provided expertise to a number of significant programs to strengthen their APB's. Last, but not least, a new Periodic Reporting System (nPRS) has been selected and is currently in a pilot phase. This is a web-hosted reporting system that allows program managers and their leadership quick access to meaningful information on a program's metrics, condition, and current issues. This system is a collaborative effort between the Chief Information Officer and the CPO leadership.

The Acquisition Oversight Division has the responsibility for ensuring the integrity of DHS's acquisition process through the oversight of all acquisitions that support DHS, including financial assistance programs (grants), strategic sourcing programs, and competitive sourcing programs. A key part of carrying out this responsibility is conducting effective oversight reviews to verify the integrity of DHS procurement practices. In early 2006, my office set a goal of completing baseline procurement management reviews for all nine components by the end of fiscal year 2008. In July 2008, the acquisition oversight division had completed the field work for all nine components, had issued final reports for six of those components, and was on schedule to issue the final reports for the remaining three components by the end of fiscal year 2008. These baseline reviews will serve as the foundation for future oversight reviews by providing: (a) A listing of best practices for distribution/consideration by the components; (b) identifying systemic issues, recommendations, and action plans across components; and, (c) a basis for conducting component specific risk assessments and tailoring future review programs to focus on key issues identified in past reviews (while reducing coverage in areas where issues have not

been found in the past). The accomplishment of these baseline reviews provides the oversight division with a strong underpinning of lessons learned that can be built on as the oversight function continues to assure integrity in DHS procurement.

PRIORITY NO. 3: QUALITY PEOPLE

A key enabler of our ability to make good business deals is a highly skilled and motivated acquisition work force. In fiscal year 2008, we are focusing on four acquisition work force initiatives: Establishment of an acquisition intern program; identification of certification and training requirements for all acquisition functional areas; a centralized acquisition training fund; and centralized recruitment and hiring of acquisition personnel. I greatly appreciate the funding we received in fiscal year 2008 in support of these initiatives.

The Acquisition Professional Career Program (APCP) serves as the pipeline for providing talented, trained acquisition personnel procuring goods and services in support of securing the homeland. The APCP Component working group has made significant progress in recruiting and determining needs across Component organizations. Over 40 percent of the DHS procurement work force is approaching retirement eligibility. In fact, more than half of those are currently eligible for retirement (over age 55 with 30 years of service). Current and continuing level of procurement professional employment is being sustained by an aging work force continuing to work even when eligible for retirement. The working group's efforts have resulted in the successful placement of 48 highly qualified procurement interns across the Department with plans for an additional 150 interns through fiscal year 2010. Once a participant graduates from the 3-year program, DHS will realize immediate results in its documented acquisition staffing shortfalls.

The success of this effort will position the Department to resolve potential critical procurement skill gaps. DHS hiring and attrition rates are in line with other non-DoD agencies, meaning we are competing with other agencies for scarce resources. Preliminary indications from our APCP indicates a quality work force can be grown and maintained as the program matures and expands, and this will increase our ability to better compete for the journeyman-level resources needed to ensure quality contracting and quality acquisition. The result will be a highly skilled work force effectively and efficiently executing the DHS acquisition mission. The working group's success in seamlessly absorbing 50 interns has further led to the expansion of the program beyond procurement and into other acquisition series. This is a key accomplishment. The tremendous growth of Federal and DHS acquisition-related actions combined with a stagnant number of Contracting Specialists would otherwise bring the availability and viability of the DHS acquisition work force in question.

While we have strengthened many aspects of our acquisition program over the first 5 years of the Department, we will continue to seek improvements in our processes and provide our acquisition professionals the tools they need to both meet our mission and achieve acquisition excellence.

Thank you, Mr. Chairman for your interest in and continued support of the DHS Acquisition Program.

Thank you for the opportunity to testify before the subcommittee about the DHS acquisition program. I am glad to answer any questions you or the Members of the subcommittee may have for me.

Mr. CARNEY. Thank you for your testimony, Mr. Gunderson.

I now recognize Mr. Taylor to summarize his statement for 5 minutes.

**STATEMENT OF JAMES L. TAYLOR, DEPUTY INSPECTOR
GENERAL, DEPARTMENT OF HOMELAND SECURITY**

Mr. TAYLOR. Good afternoon, Mr. Chairman, Mr. Rogers, Chairman Thompson and Members of the subcommittee. I am Jim Taylor, deputy inspector general for the Department of Homeland Security, and I appreciate the opportunity to come before you today to talk about the issues of acquisition management and challenges the Department faces.

Once, when asked about an opponent's strategy in the ring, Mike Tyson replied, "Everyone has a game plan until you are hit in the mouth." Even in the best of circumstances, the pace of change at DHS would be that punch in the mouth that would test any game

plan. However, in our work regarding DHS's contracting practices, common themes and risks have emerged, primarily the lack of sound game plans, the dominant influence of expediency, poorly defined requirements, and inadequate oversight that contributed to the ineffective or inefficient result and increased cost.

DHS has not consistently balanced the urgency of meeting mission needs with sound business practices, leaving DHS and the American taxpayer vulnerable to spending millions of dollars in unproductive homeland security investments. DHS acquisition practices must be stringent enough to meet sound business requirements, yet flexible enough to meet current needs.

The Department continues to face challenges associated with implementing an acquisition function it has not fully integrated. Each component had shared responsibility for the acquisition functions with the chief procurement officer. Without the appropriate policies in place, this structure can create ambiguity about who is accountable for acquisition decisions. In addition, the Department does not possess an accurate view of the activities of components. In a recent report, we found that as a result of separate procurement and management systems at the Department at component levels, DHS lacks insight into the status of procurement activities or even the qualifications of the contracting staff responsible for the success of these projects.

The lack of adequate oversight has not been found solely at the Department level. DHS's components have suffered from the desire for expediency over sound business practices. We have reported on TSA's lack of oversight of its billion-dollar contract to train airport screeners and the U.S. Coast Guard's inability to manage its \$24 billion Deepwater contract, both of which were initiated prior to the creation of DHS, which followed the same theme of a sense of urgency and lack of oversight capability.

In 2006, we alerted the Department of significant oversight weaknesses in the SBInet program. Last week, we released a report on FEMA's management of \$3.2 billion in noncompetitive contracts to provide comprehensive project management services for temporary housing units following Hurricane Katrina. We determined that the combination of deficiencies in acquisition planning and contract oversight led to waste of Government funds and questioned costs of \$46 million.

We observed a correlation between deficient procurement practices and contract management procedures and uncontrolled growth in the amount of funds obligated and expended under the contracts. Both our office and GAO have recommended that DHS provide the Office of the Chief Procurement Officer sufficient resources and authority to enable effective Department-wide oversight of acquisition policies and procedures. The OIG has also made specific recommendations to components regarding the staffing and training of their procurement functions.

However, we are seeing areas where some progress is being made. DHS's executive leadership has enhanced the role of the Procurement Review Board for major activities. The Department and components have significantly increased the number of acquisition staff positions, and the Department is establishing an acquisition internship program, among other initiatives.

In addition, the Coast Guard has restructured its procurement oversight function and completed the integration of three separate accounting systems into a single acquisition construction and improvement data set. FEMA has more than tripled the number of its acquisition staff.

It is difficult to overstate the complexity and importance of the task assigned to the Department of Homeland Security, and little disagreement exists about the need for our Nation to protect itself immediately against the range of threats, both natural and man-made, 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. A balanced approach between urgency and good business practices is most likely to result in the right products and services at the right times for the right prices.

The need to secure the homeland and strong internal controls and accountability need not be mutually exclusive. For our part, Mr. Chairman, our annual report on management challenges has identified acquisition as a key area of concern. Last year, we also initiated a series of scorecards identifying the Department's progress on those management challenges. The acquisition scorecard was the very first one we released. It is the Inspector General's intention to continually and annually update these scorecards and keep track of the Department's progress.

Mr. Chairman, this concludes my prepared remarks, and I would be pleased to answer any questions you may have.

[The statement of Mr. Taylor follows:]

PREPARED STATEMENT OF JAMES L. TAYLOR

SEPTEMBER 17, 2008

Good afternoon, Mr. Chairman and Members of the subcommittee. I am James L. Taylor, Deputy Inspector General for the Department of Homeland Security. Thank you for the opportunity to discuss the acquisition management challenges facing DHS.

The Department of Homeland Security is charged with extremely challenging and critical missions; be it reducing illegal immigration, preventing dangerous individuals and materials from entering our country, protecting our waterways, ensuring safe travel by air and rail, or working in collaboration with States and localities to prepare for, and respond to natural disasters, to name just a few. Contracting for goods and services is absolutely critical to achieving these missions and consumes nearly 40 percent of the Department's annual budget of \$47 billion. As a result, effective acquisition management is fundamental to DHS' ability to accomplish its 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. A successful acquisition process requires an effective acquisition management infrastructure. This is especially true when complex and large dollar procurements are involved.

Today, I would like to highlight acquisition management challenges facing the Department in the following areas:

- Organizational alignment and leadership;
- Policies and processes;
- Financial accountability;
- Acquisition work force;
- Knowledge management and information systems; and
- Balancing urgency and good business practices.

These interrelated elements are essential to an efficient, effective, and accountable acquisition process.

ORGANIZATIONAL ALIGNMENT AND LEADERSHIP

DHS was created from components of 22 agencies of the Federal Government. In their transition into DHS, seven agencies retained their procurement functions, including U.S. Coast Guard (USCG), Federal Emergency Management Agency (FEMA), and Transportation Security Administration (TSA). The seven procurement offices, called Heads of Contracting Activities, retained the expertise and capability they had before creation of DHS, with staff size that ranged from 21 to 346 procurement personnel. To manage Department-wide procurements and provide procurement services for the remaining components, DHS created an eighth office, the Office of Procurement Operations.

DHS also established a Chief Procurement Officer reporting directly to the Under Secretary for Management. Each component head shares responsibility for the acquisition function with the DHS Chief Procurement Officer. As a result of this dual accountability, the Chief Procurement Officer has used collaboration and cooperation with the components as the primary means of managing DHS-wide acquisition oversight.

The Department continues to face challenges associated with implementing an acquisition function that is not fully integrated. The structure of DHS' acquisition function creates ambiguity about who is accountable for acquisition decisions. Within FEMA, for example, we found that the agency's acquisition function is viewed more as a support function than as a partner, and it is not aligned organizationally to ensure efficiency and accountability.

DHS' executive leadership has made modest progress in ensuring the 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 the Department. The atmosphere for collaboration between DHS and its component agencies on acquisition matters has also improved.

POLICIES AND PROCESSES

DHS has made modest progress in developing policies and processes to ensure that components comply with regulations, policies, and procedures to achieve Department-wide goals. DHS has developed and begun to implement an acquisition oversight plan that incorporates policy, internal controls, and other elements of an effective acquisition function. While it is too early to assess the acquisition oversight plan's overall effectiveness, the initial implementation has helped the components prioritize actions to address identified weaknesses.

An effective acquisition function includes processes and procedures that ensure contracts are written with specific measurable criteria against which the contractor's performance may be evaluated. DHS components have struggled to implement this important practice, even before DHS stood up. For example, in August 2002 TSA awarded a \$1 billion performance-based contract for information technology managed services to Unisys Corporation, using a broad statement of objectives to describe requirements rather than a specific statement of requirements. At the time of our review,¹ TSA had expended 83 percent of the contract ceiling in less than half of the contract period and had not received many essential deliverables that were critical to airport security and communications, such as high-speed operational connectivity. Many airports were operating with archaic telephone systems, dial-up internet, ineffective e-mail connectivity, and land mobile radios that were not interoperable with other law enforcement agencies and did not have reception throughout the airport.

Also on this contract, TSA used service requests, which sometimes lacked statements of work with delivery due dates and acceptance criteria. As a result, TSA had no assurance that costs were fair and reasonable; the contractor was sometimes allowed to perform unauthorized contract work; and TSA did not effectively manage its project priorities.

FINANCIAL ACCOUNTABILITY

Financial accountability means having sound financial systems to 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. DHS has made limited progress in ensuring financial oversight and accountability within the acquisition

¹Transportation Security Administration's Information Technology Managed Services Contract, OIG-06-23, February 2006.

function. The acquisition and finance offices have not successfully partnered on acquisition planning and strategic decisionmaking. 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 on the broader acquisition process.

ACQUISITION WORKFORCE

Successful acquisition efforts depend on agency and management valuing and investing in the acquisition work force. The capabilities of DHS' acquisition work force will determine, to a great extent, whether major acquisitions fulfill DHS' urgent and complex mission needs. Contracting officers, program managers, and Contracting Officer Technical Representatives (COTRs) make critical decisions on a daily basis that increase or decrease an acquisition's likelihood of success. It is critical that DHS devote adequate resources to ensure that it has the right staff, in the right number, with the right skills, in the right places, to accomplish its mission effectively.

Both our office and the Government Accountability Office (GAO) have reported that the Office of the Chief Procurement Officer needs more staff and authority to carry out its oversight responsibilities. GAO recommended that DHS provide the 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.

Our recent audit of DHS' acquisition work force,² confirmed that DHS cannot provide reasonable assurance that qualified acquisition personnel are managing acquisitions. Federal policy requires each agency to collect, maintain, and utilize information to ensure the effective management of the acquisition work force. However, neither DHS, USCG, TSA, nor Customs and Border Protection (CBP) have complete, reliable information and supporting documentation about their acquisition personnel or their assignments. The majority of the acquisition training and certification files we reviewed were incomplete and did not have supporting training or certification documentation. Furthermore, major differences existed between the DHS Acquisition Workforce Development Office database and acquisition work force databases maintained by the components.

This audit also found that DHS had problems with policies and procedures associated with the acquisition work force. Management directives for the Federal acquisition certification programs related to contracting officers and program and project managers were not revised timely to reflect current Federal requirements. Additionally, DHS has not established a policy on the development, selection, assignment, and management of program managers, and certification levels for program and project managers were inconsistent among various management directives.

To its credit, DHS has made some progress in building and maintaining a skilled acquisition work force. Personnel budget increases have allowed the Department to fill many acquisition staff positions. GAO reported in April 2008 that approximately 61 percent of the minimum required staff are in place. However, this constitutes only 38 percent of the optimal level of contract specialists. Further, Office of Personnel Management data indicates that more than 40 percent of DHS' contracting officers will be eligible to retire within the next 5 years. Competition with other departments for acquisition personnel is intense. To mitigate these circumstances, DHS plans to implement an acquisition internship program that will bring in junior staff. Additionally, the Office of the Chief Procurement Office created a training program to increase the pool of certified program managers, and has also undertaken an outreach program to involve DHS component staff to assist in acquisition oversight.

Components within the Department such as USCG and CBP's Secure Border Initiative have initiatives to develop and retain a work force capable of managing complex acquisition programs, but they are still relying on support contractors to fill key positions. Until a fully trained acquisition work force is developed, it will be difficult to achieve further progress needed for an efficient, effective, and accountable acquisition function.

² Acquisition Workforce Training and Qualifications, OIG-08-56, May 2008.

KNOWLEDGE MANAGEMENT AND INFORMATION SYSTEMS

The Department's acquisition-related information systems are generally not integrated, contain unreliable data, and lack adequate internal controls. As a result, the acquisition program cannot effectively provide information to its stakeholders and does not have the tools necessary for planning or monitoring its transactions. Many DHS components maintain their legacy contract writing systems and DHS lacks integration between contract writing and contract management systems. Although DHS has selected PRISM as its standard contract writing system, 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. DHS also needs to improve the tracking of its acquisition work force training and qualifications to ensure work force development and appropriate assignment to acquisition projects.

DHS has made some progress in improving the integration of its information systems. For example, the USCG has completed the integration of three separate accounting systems into a single Acquisition, Construction, and Improvement data set that is usable by all Coast Guard acquisition personnel as part of their *Blueprint for Acquisition Reform*.

BALANCING URGENCY AND GOOD BUSINESS PRACTICES

Due to our current homeland security vulnerabilities, DHS tends to focus its acquisition strategies on the urgency of meeting mission needs, rather than balancing urgency with good business practices. Excessive attention to urgency without good business practices leaves DHS and the taxpayers vulnerable to spending millions of dollars on unproductive homeland security investments. Acquisitions must provide good value, because funds spent ineffectively are not available for other, more beneficial uses.

Common themes and risks have emerged from our audits and reviews of individual DHS contracts, primarily the dominant influence of expediency, poorly defined requirements, and inadequate oversight that contributed to ineffective or inefficient results, and increased costs. DHS has not consistently balanced the urgency of meeting mission needs with good business practices, leaving DHS and the taxpayers vulnerable to spending millions of dollars on unproductive homeland security investments. 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.

For example, as a result of the September 11, 2001 terrorist attacks, TSA faced a formidable challenge to hire a Federalized screener work force, while concurrently standing up an agency within a 1-year congressional mandate. Although TSA successfully recruited more than 56,000 airport screeners within the mandated period, success came at a high cost. The recruitment contract costs grew more than 600 percent over a 10-month period. In response to congressional concerns over press reports of perceived wasteful Government spending by TSA's recruitment contractor, NCS Pearson, we audited TSA's management and oversight of the recruitment program.³

As a relatively new agency, TSA did not have the staff or infrastructure necessary to adequately plan and manage contracts. As a result, TSA made critical decisions without the benefit of sound acquisition planning or adequate cost control, significantly increasing costs. The establishment of temporary assessment centers, delays, and revisions in issuance of the airport Federalization schedule and staffing requirements, and higher than expected applicant rejection rates significantly impacted the costs to establish and operate assessment centers. By the contract's end, NCS Pearson had assessed more than nine times the number of screeners originally estimated in less than half the time originally allotted. Consequently, the increased candidate volume necessitated larger and more accessible assessment centers. All of these factors contributed to the escalation of contract costs from the original estimate of \$104 million to the settlement amount of \$742 million.

Programs developed under a sense of urgency sometimes overlook key issues during program planning and development of mission requirements. An over-emphasis on expedient contract awards may also hinder competition, which frequently results in increased costs or improper sole-source contracts. For example, CBP did not comply with Federal regulations when it awarded Chenega Technology Services Cor-

³ Review of the Transportation Security Administration's Management Controls Over the Screener Recruitment Program, OIG-06-18, December 2005.

poration a sole-source contract under an incorrect industry classification code.⁴ Had CBP used the correct classification, the contractor would have been ineligible for the sole source award. This action prevented eligible small businesses from competing for a nearly \$475 million contract and might not have provided the best value for the Government.

In another example, in 2005 FEMA issued noncompetitive Individual Assistance—Technical Assistance Contracts to four large contractors in 2005: Fluor Enterprises, Inc., Shaw Group, CH2M Hill Constructors, Inc., and Bechtel National, Inc. These contractors were tasked to provide and coordinate comprehensive project management services. Our recently released report⁵ focused on the contractor costs incurred by FEMA for the delivery, installation and maintenance of temporary housing units for the Hurricane Katrina relief effort on group, commercial and private sites. We determined that the combination of deficiencies in acquisition planning and contract oversight led to waste of Government funds and questioned costs of \$45.9 million of the \$3.2 billion contract obligation. We observed a correlation between deficient procurement practices and contract management procedures, and uncontrolled growth in the amount of funds obligated and expended under the contracts. FEMA's ability to properly inspect and accept goods and services was hampered because of: (1) The number and complexity of contractor invoices it received; (2) inadequate FEMA staffing; and, (3) unclear contractor invoices. Of the \$45.9 million of questioned costs, \$37.2 million or 81 percent related to inspection and acceptance of goods and services.

We recognize that FEMA has already begun the process of improving its operation and controls. New competitively bid contracts were awarded in August 2006 and FEMA has been working to improve policy and procedures. It is well understood that one of FEMA's biggest challenges during disaster relief efforts is to balance the need to quickly provide assistance to victims while ensuring accountability to protect against waste, fraud, and abuse. However, FEMA should ensure contract terms are clear and enforced.

Although there were established procedures to inspect goods and services, and perform invoice reviews, amounts invoiced by the contractors needed to include adequate cost details to allow FEMA to link invoices to specific contractor activities under the statement of work. We question how FEMA determined that the amounts invoiced were allowable and reasonable. Overall, an adequate number of staff should be employed to: (1) Sufficiently plan acquisitions; (2) monitor contracts and hold contractors compliant to the terms of the contract; and (3) inspect and accept services rendered.

Numerous opportunities exist for DHS to make better use of good business practices, such as well-defined operational requirements and effective monitoring tools that preserve the Government's ability to hold poorly performing contractors accountable.

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 use good business practices to lay the groundwork from the very beginning of the acquisition process. That is, contracts must specify precisely 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.

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. DHS has been given a difficult and complex task in addressing these threats. However, we should not allow expediency to completely and consistently overrule sound business practices. When that happens, we fail to get the right products and services at the right times for the right prices.

OUTLOOK AND OIG OVERSIGHT

DHS can protect the public interest in major acquisitions. The long-run solutions include:

⁴ Customs and Border Protection Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support, OIG-08-10, October 2007.

⁵ Hurricane Katrina Temporary Housing Technical Assistance Contracts, OIG-08-88, August 2008.

- 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 the following:

- 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.

For our part, the OIG will continue a vigorous audit and investigation program to identify DHS acquisition vulnerabilities and recommend swift, cost-effective improvements. Acquisition management is and will continue to be a priority for my office. Our plan is to continue examining such cross-cutting acquisition issues as work force qualifications, competition, small and disadvantaged business utilization, and corporate compliance, in addition to individual projects such as Deepwater and the Secure Border Initiative.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you or the Members may have.

Mr. CARNEY. Thank you, Mr. Taylor.
I recognize Mr. Hutton for 5 minutes.

STATEMENT OF JOHN P. HUTTON, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. HUTTON. Chairman Carney, Ranking Member Rogers and Chairman Thompson of the full committee, I am pleased to be here today to discuss acquisition management at the Department of Homeland Security.

As you know, the Nation's homeland security mission calls for some of the Government's most extensive and complex acquisitions. Therefore, improving the acquisition management has been an ongoing challenge since DHS was established in 2003.

Based on prior work, we have identified three key performance areas for acquisition management: Assessing and organizing acquisition functions to meet the agency needs; developing clear and transparent policies and processes; and developing an acquisition work force to execute and oversee those acquisitions.

While DHS has made some progress by taking steps to organize and assess the acquisition function, more needs to be done to create clear and transparent policies and processes for all acquisitions and to develop and sustain an acquisition work force.

Today I would like to discuss two key areas needing improvement: acquisition planning and oversight. In doing so, I will highlight relevant functions drawn from our recent work on DHS's reliance on contractors and its use of interagency contracting and performance-based acquisitions for major investments.

With regard to acquisition planning, we found that DHS does not systematically assess the risk in using contractors who are in a position to influence Government decisions, such as those that support budget preparations, policy development and the acquisition function. While contracting for such services can provide increased flexibility to fulfill immediate needs, it is critical that the Department understand and mitigate the risks inherent in those contracts

to help ensure the Government does not lose control over accountability.

Similarly, DHS's decisions to use interagency contracts were often based on the benefits of speed and convenience, not on planning and an analysis of alternatives as called for in the DHS guidance. Comprehensive guidance, training and sound criteria for selecting interagency contracts are needed to better ensure the Department gets the best value from those contracts.

The use of performance-based acquisitions is another area where improved acquisition planning is needed. Earlier this year, we reported that four contracts related to eight major investments reviewed at three DHS components did not have well-defined requirements or a complete set of measurable performance standards, or both, at the time of the contract award or the start of the work. These contracts experienced cost overruns, schedule delays, or they did not otherwise meet the performance expectations.

I would now like to highlight our findings related to the need for improved oversight that help better ensure outcomes in acquiring services.

Of particular concern is DHS's oversight of contractors who perform services that closely support inherently governmental functions. Federal regulations in policy state that when contracting for these types of services agencies need a sufficient number of qualified Government personnel to plan and oversee contractor activities to maintain control and accountability. However, for the nine cases we reviewed, the level of oversight provided did not always help ensure accountability for decisions or the ability to judge whether contracts were performing as required. We also found that DHS program officials and contracting officers were not aware of the Federal requirements for enhanced oversight for these types of services.

Effective oversight has always been hindered by insufficient data on DHS acquisitions. Our review of the Department's use of interagency contracting and performance-based acquisitions found that DHS does not systematically collect data on its use of these contracts to assess whether these methods are being properly managed or to assess costs, benefits or other outcomes of those acquisition methods.

For example, with respect to interagency contracting, we found that DHS was not able to provide data on the amounts spent or the fees paid to other agencies for the use of their contracting services or vehicles. Without this information, DHS cannot assess whether the Department could achieve savings through another type of contracting vehicle.

We similarly found that DHS does not have reliable data on performance-based acquisitions to facilitate required reporting, inform their decisions and analyze acquisition outcomes.

Now on a more positive note, the CPO established the Department-wide acquisition oversight program in late 2005, designed to provide insight into component agencies' acquisitions and to disseminate successful acquisition management approaches throughout DHS. While this program is an important step toward improving contract processes and oversight, our work has found that the CPO continues to face challenges in maintaining the staffing levels

needed to fully implement the program, and CPO's authority to ensure components to comply with the procurement oversight plan is unclear.

In closing, improving acquisition outcomes has been an on-going challenge since DHS was established in 2003. Our prior work has found that sound acquisition planning, including clearly defining your requirements, as well as ensuring adequate oversight, are hallmarks of successful acquisitions. While DHS has made some progress over the past 5 years, it is clear that much more needs to be done if it is to ensure that acquisitions meet the Government's needs.

Mr. Chairman, this concludes my prepared statement, and I would be happy to respond to any questions that you or other Members of the subcommittee may have.

[The statement of Mr. Hutton follows:]

PREPARED STATEMENT OF JOHN P. HUTTON

SEPTEMBER 17, 2008

GAO HIGHLIGHTS

Highlights of GAO-08-1164T, a testimony before the Subcommittee on Management, Investigations, and Oversight, Committee on Homeland Security, House of Representatives.

Why GAO Did This Study

Since it was created in 2003, the Department of Homeland Security (DHS) has obligated billions of dollars annually to meet its expansive homeland security mission. The Department's acquisitions support complex and critical trade, transportation, border security, and information technology investments. In fiscal year 2007, DHS spent over \$12 billion on procurements to meet this mission including spending for complex services and major investments.

Prior GAO work has found that while DHS has made some initial progress in developing its acquisition function since 2003, acquisition planning and oversight for procurement and major acquisitions need improvement. This testimony discusses GAO's findings in these areas and is based on GAO's body of work on acquisition management issues.

What GAO Recommends

While GAO is making no new recommendations in the testimony, GAO has made numerous recommendations over the past several years to improve DHS's acquisition management. DHS has generally concurred with these recommendations, but actions still need to be taken to fully address them.

DEPARTMENT OF HOMELAND SECURITY.—PROGRESS AND CONTINUING CONCERNS WITH ACQUISITION MANAGEMENT

What GAO Found

Recognizing the need to improve its acquisition outcomes, DHS has taken some steps to integrate disparate acquisition processes and systems that the component organizations brought with them when the Department was formed. However, we have reported that more needs to be done to develop clear and transparent policies and processes for all acquisitions, and to develop an acquisition work force to implement and monitor acquisitions.

With regard to acquisition planning, DHS did not assess the risk of hiring contractors to perform management and professional support services that have the potential to increase the risk that Government decisions may be influenced by, rather than independent from, contractor judgments. Planning for services procured through interagency and performance-based contracting methods was also lacking. For example, DHS did not always consider alternatives to ensure good value when selecting among interagency contracts. Shortcomings in DHS's use of a performance-based approach for complex acquisitions included a lack of well-defined requirements, a complete set of measurable performance standards, or both, at the time of contract award or the start of work. Contracts for several investments we re-

viewed experienced cost overruns, schedule delays, or less than expected performance.

Acquisition oversight also has consistently been identified as needing improvement. While the Chief Procurement Officer (CPO) has recently implemented a Department-wide oversight program, evaluations of the outcomes of acquisition methods and contracted services have not yet been conducted. Further, the CPO continues to face challenges in maintaining the staffing levels needed to fully implement the oversight program, and CPO authority to ensure that components comply with the procurement oversight plan remains unclear.

Selected Department of Homeland Security Missions and Assets



Baggage Screening

Border Security Patrol

National Security Cutter

Source: DHS.

Mr. Chairman and Members of the subcommittee: Thank you for inviting me here today to discuss the Department of Homeland Security's (DHS) progress and areas for improvement in managing acquisitions. Over the past several years, as DHS has been developing its acquisition function, it has spent billions of procurement dollars annually to meet its expansive homeland security mission. The Department's acquisition portfolio is broad and complex, supporting critical trade, transportation, border security, and information technology investments. In fiscal year 2006, more than 80 percent of DHS's procurement spending was for services, which can be more complex and require different approaches to acquire than purchases of goods. Our prior work has found that appropriate planning, structuring, and monitoring of acquisitions is critical to ensuring the services provided meet the Government's needs.¹ The growing complexity of contracting for technically difficult and sophisticated services increases the challenges of setting appropriate requirements and effectively overseeing contractor performance. At the same time, other factors, such as pressure to get programs up and running, and technological challenges have impacted DHS's ability to achieve good acquisition outcomes.

My statement today is drawn from our body of work on DHS's acquisition management. I will discuss DHS's progress and areas for improvement in developing its acquisition function and DHS's acquisition planning and oversight. Specifically, I will highlight relevant findings from our work on contractors hired to perform management and professional support services, and the use of selected procurement methods, such as interagency contracting and performance-based acquisitions. We conducted these performance audits in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

SUMMARY

DHS has made some progress in acquisition management—recognizing the need to improve acquisition outcomes and taking some steps to organize and assess the acquisition function. However, we have reported that more needs to be done to develop clear and transparent policies and processes for all acquisitions and to develop an acquisition work force to execute and monitor acquisitions. Additionally, our work has found that acquisition planning and oversight for procurement and major acquisitions need improvement. With regard to planning, we found that DHS did not assess the risk of hiring contractors to perform professional and management support services that have the potential to increase the risk that Government decisions may be influenced by, rather than independent from, contractor judgments.

¹ For example, GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, DC: Nov. 9, 2006).

For services procured through interagency contracting, we found acquisition planning was lacking. DHS did not always consider alternatives to ensure good value when selecting among interagency contracts. We have also identified a number of shortcomings in DHS's use of a performance-based approach for complex acquisitions. Earlier this year, we reported that contracts for eight major investments at Coast Guard, Customs and Border Protection (CBP), and the Transportation Security Administration (TSA) did not always have well-defined requirements, a complete set of measurable performance standards, or both at the time of contract award or the start of work, and that these contracts experienced cost overruns, schedule delays, or did not otherwise meet performance expectations. With regard to oversight, while the Chief Procurement Officer (CPO) has recently implemented a Department-wide oversight program, evaluations of the outcomes of acquisition methods and contracted services have not yet been conducted. The CPO continues to face challenges in maintaining the staffing levels needed to fully implement the oversight program, and CPO authority to ensure that components comply with the procurement oversight plan remains unclear.

BACKGROUND

DHS has some of the most extensive acquisition needs within the Federal Government. In fiscal year 2007, DHS obligated about \$12 billion to acquire goods and services ranging from the basic goods and services Federal agencies purchase, such as information technology equipment and support, to more complex and unique acquisitions, such as airport security systems and Coast Guard ships.

DHS and its component agencies have faced a number of challenges related to procuring services and major system acquisitions. When DHS was formed in 2003, it was responsible for integrating 22 agencies with disparate missions. Of these, only seven came with their own procurement offices, only some of which had also managed complex acquisitions such as the Coast Guard's Deepwater program or TSA's airport screening programs.

While the Homeland Security Acquisition Manual and the Federal Acquisition Regulation (FAR) do not distinguish between the terms acquisition and procurement, DHS officials have noted that procurement—the actual transaction to acquire goods and services—is only one element of acquisition. The term acquisition can include the development of operational and life-cycle requirements, such as formulating concepts of operations, developing sound business strategies, exercising prudent financial management, assessing trade-offs, and managing program risks.

DHS HAS MADE SOME PROGRESS IN ACQUISITION MANAGEMENT

We have identified three key performance areas for acquisition management: assessing and organizing acquisition functions to meet agency needs; developing clear and transparent policies and processes for all acquisitions; developing an acquisition work force to implement and monitor acquisitions. Our prior work has shown that these are among the key elements of an efficient, effective, and accountable acquisition function.² We testified in April 2008 that, despite its initial positive acquisition management efforts, several challenges remained.³ The following summarizes each of these three areas:

- *Assessing and organizing the acquisition function.*—Since it was created in 2003, DHS has recognized the need to improve acquisition outcomes, and has taken some steps to organize and assess the acquisition function. DHS has worked to integrate the disparate acquisition processes and systems that the component organizations brought with them when the Department was created. To help assess acquisition management, in 2005 the Department developed an oversight program. This program incorporates DHS policy, internal controls, and elements of an effective acquisition function.⁴ This program has been partially implemented and monitors component-level performance through four recurring reviews: Self-assessments; operational status; on-site; and acquisition planning. However, DHS has not yet accomplished its goal of integrating the acquisition function across the Department. For example, the structure of DHS's acquisition function creates ambiguity about who is accountable for acquisition decisions because it depends on a system of dual accountability and

² GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, GAO-05-218G (Washington, DC: September 2005).

³ GAO, *Department of Homeland Security: Progress Made in Implementation of Management Functions, but More Work Remains*, GAO-08-646T (Washington, DC: April 9, 2008).

⁴ GAO, *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, GAO-07-900 (Washington, DC: June 2007).

cooperation and collaboration between the CPO and the component heads. DHS officials stated in June 2007 that they were in the process of modifying the lines of business management directive to clarify the CPO's authority; however, this directive has yet to be approved.

- *Developing clear and transparent policies and processes.*—DHS had made some progress in this area but has generally not developed clear and transparent policies and processes for all acquisitions. Specifically, DHS put into place an investment review process in 2003 that adopts many acquisition best practices to help the Department reduce risk and increase the chances for successful investment in terms of cost, schedule, and performance. However, in 2005, we found that the process did not include critical management reviews.⁵ Further, our work has identified concerns with the implementation of the investment review process. In 2007, we reported that DHS had not fully implemented key practices of its investment review process to control projects. For example, we reported that DHS executives may not have the information they need to determine whether information technology investments are meeting expectations, which may increase the risk that underperforming projects are not identified and corrected in a timely manner.⁶ We have on-going work on the implementation of DHS's investment review process scheduled to be released later this year.
- *Developing an acquisition work force to implement and monitor acquisitions.*—DHS has taken initial steps needed to develop an acquisition work force. In 2006, DHS reported significant progress in providing staff for the component contracting offices, though much work remained to fill the positions with qualified, trained acquisition professionals. DHS has also taken a positive step by authorizing additional staff for the CPO to provide staff for procurement oversight, program management and cost analysis functions. We have on-going work on DHS's acquisition work force scheduled to be released later this year.

PLANNING FOR PROCUREMENT AND MAJOR ACQUISITIONS NEED IMPROVEMENT

Our work on both services contracting and major investments has consistently identified the need for improved acquisition planning to better ensure taxpayer dollars are spent prudently. Acquisitions must be appropriately planned and structured to minimize the risk of the Government receiving services that are over cost estimates, delivered late, and of unacceptable quality.⁷ Specifically, we have emphasized the importance of clearly defined requirements to achieving desired results, and measurable performance standards to ensuring control and accountability. Too often, our work on Federal acquisitions has reported that unrealistic, inadequate, or frequently changing requirements have left the Government vulnerable to wasted taxpayer dollars.⁸ For services closely supporting inherently governmental functions, we found that DHS did not use risk assessment in its plans to hire contractors to provide these services.⁹ For services procured through methods such as interagency and performance-based contracting, we found acquisition planning was lacking.¹⁰ For major systems, acquisition planning includes establishing well-defined requirements and ensuring appropriate resources, such as adequate staffing and expertise, are in place to manage the investments; yet we have consistently found that these key elements are not in place.

Inadequate Procurement Planning

While there are benefits to using contractors to perform services for the Government—such as increased flexibility in fulfilling immediate needs—we and others have raised concerns about the Federal Government's increased reliance on contractor services. Of key concern is the risk associated with a contractor providing

⁵ GAO, *Department of Homeland Security: Successes and Challenges in DHS's Effort to Create an Effective Acquisition Organization*, GAO-05-179 (Washington, DC: Mar. 29, 2005).

⁶ GAO, *Information Technology: DHS Needs to Fully Define and Implement Policies and Procedures for Effectively Managing Investments*, GAO-07-424 (Washington, DC: April 27, 2007).

⁷ GAO-07-20.

⁸ GAO, *Federal Acquisitions and Contracting: Systemic Challenges Need Attention*, GAO-07-1098T (Washington, DC: July 17, 2007).

⁹ GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, DC: September 2007).

¹⁰ GAO, *Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable the Department of Homeland Security to Address Risks*, GAO-06-996 (Washington, DC: September 2006), and GAO, *Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions*, GAO-08-263 (Washington, DC: April 2008).

services that closely support inherently governmental functions: the loss of Government control over and accountability for mission-related policy and program decisions. Professional and management support services, including program management and support services such as acquisition support, budget preparation, intelligence services, and policy development, closely support inherently governmental functions. To help ensure that the Government does not lose control over and accountability for such decisions, longstanding Federal procurement policy requires attention to the risk that Government decisions may be influenced by, rather than independent from, contractor judgments when contracting for services that closely support inherently governmental functions. This type of risk assessment is also part of the acquisition planning process. While DHS program officials generally acknowledged that their professional and management support services contracts closely supported inherently governmental functions, they did not assess the risk of contractors providing these services. The nine cases we reviewed in detail provided examples of cases in which contractors provided services integral to and comparable to those provided by Government employees; contractors provided on-going support; and contract requirements were broadly defined. These conditions need to be carefully monitored to help ensure the Government does not lose control over and accountability for mission-related decisions. To improve DHS's ability to manage the risk of selected services that closely support inherently governmental functions, as well as Government control over and accountability for decisions, we recommended that DHS establish strategic-level guidance on and routinely assess the risk of using contractors for selected services and more clearly define contract requirements.

DHS's use of interagency contracting—a process by which one agency uses another agency's contracts and contracting services—is another area we have identified acquisition planning was lacking. While interagency contracting offers the benefits of efficiency and convenience, in January 2005, we noted shortcomings and designated the management of interagency contracting as a Government-wide high-risk area. Our work on DHS's use of interagency contracting showed that the Department did not always select interagency contracts based on planning and analysis and instead made decisions based on the benefits of speed and convenience. We found that DHS conducted limited evaluation of contracting alternatives to ensure good value when selecting among interagency contracts. While interagency contracting is often chosen because it requires less planning than establishing a new contract, evaluating the selection of an interagency contract is important because not all interagency contracts provide good value when considering both timeliness and total cost. Although DHS guidance has required planning and analysis of alternatives for all acquisitions since July 2005, we found that it was not conducted for the four cases in our review for which it was required. To improve the management of interagency contracting, we recommended that DHS develop consistent, comprehensive guidance and training and establish criteria to consider in selecting an interagency contract.

Major Investments Using a Performance-Based Approach

To help improve service acquisition outcomes, Federal procurement policy calls for agencies to use a performance-based approach to the maximum extent practicable. This approach includes: a performance work statement that describes outcome-oriented requirements, measurable performance standards, and quality assurance surveillance. In using a performance-based approach, the FAR requires contract outcomes or requirements to be well-defined, that is, providing clear descriptions of results to be achieved. Our prior reviews of complex DHS investments using a performance-based approach point to a number of shortcomings. For example, in June 2007, we reported that a performance-based contract for a DHS financial management system, eMerge2, lacked clear and complete requirements, which led to schedule delays and unacceptable contractor performance.¹¹ Ultimately, the program was terminated after a \$52 million investment. The DHS Inspector General has also indicated numerous opportunities for DHS to make better use of sound practices, such as well-defined requirements.¹²

Consistent with these findings, our 2008 report on performance-based acquisitions, for which we reviewed contracts for eight major investments at Coast Guard, CBP, and TSA, found that contracts for investments that did not have well-defined

¹¹ GAO, *Homeland Security: Departmentwide Integrated Financial Management Systems Remain a Challenge*, GAO-07-536 (Washington, DC: June 21, 2007).

¹² See for example, Department of Homeland Security Inspector General, *Major Management Challenges Facing the Department of Homeland Security*, OIG-08-11 (January 2008), and Department of Homeland Security Inspector General, *Transportation Security Administration's Information Technology Managed Services Contract*, OIG-06-23 (February 2006).

requirements, or a complete set of measurable performance standards, or both, at the time of contract award or the start of work—experienced cost overruns, schedule delays, or did not otherwise meet performance expectations.¹³ In contrast, service contracts for investments that had well-defined requirements linked to measurable standards performed within budget meeting the standards in all cases where contractors had begun work. For example, TSA's Screening Partnership Program improved its contracted services at the San Francisco International Airport to incorporate well-defined requirements linked to clearly measurable performance standards and delivered services within budget. To improve the outcomes of performance-based acquisitions, we recommended that DHS improve acquisition planning for requirements for major complex investments to ensure they are well-defined, and develop consistently measurable performance standards linked to those requirements. Following are examples of complex investments with contracts that did not have well-defined requirements or complete measurable performance standards and did not meet cost, schedule, or performance expectations.

Contracts for systems development for two CBP major investments—Automated Commercial Environment (ACE) and Secure Border Initiative (SBIInet)—lacked both well-defined requirements and measurable performance standards prior to the start of work and both experienced poor outcomes. The first, for DHS's ACE Task Order 23 project—a trade software modernization effort—was originally estimated to cost \$52.7 million over a period of approximately 17 months.¹⁴ However, the program lacked stable requirements at contract award and, therefore, could not establish measurable performance standards and valid cost or schedule baselines for assessing contractor performance. Software requirements were added after contract award, contributing to a project cost increase of approximately \$21.1 million, or 40 percent, over the original estimate. Because some portions of the work were delayed to better define requirements, the project is not expected to be completed until January 2011—over 3 years later than originally planned.

The second, Project 28 for systems development for CBP's SBIInet—a project to help secure a section of the United States-Mexico border using a surveillance system—did not meet expected outcomes due to a lack of both well-defined requirements and measurable performance standards. CBP awarded the Project 28 contract planned as SBIInet's proof of concept and the first increment of the fielded SBIInet system before the overall SBIInet operational requirements and system specifications were finalized. More than 3 months after Project 28 was awarded, DHS's Inspector General reported that CBP had not properly defined SBIInet's operational requirements and needed to do so quickly to avoid rework of the contractor's systems engineering. We found that several performance standards were not clearly defined to isolate the contractor's performance from that of CBP employees, making it difficult to determine whether any problems were due to the contractor's system design, CBP employees, or both. As a result, it was not clear how CBP intended to measure compliance with the Project 28 standard for probability of detecting persons attempting to illegally cross the border. Although it did not fully meet user needs and its design will not be used as a basis for future SBIInet development, DHS fully accepted the project after an 8-month delay.¹⁵ In addition, DHS officials have stated that much of the Project 28 system will be replaced by new equipment and software. However, Project 28 is just one part of the entire Secure Border Initiative, and our recent work has noted that requirements and testing processes for the initiative have not been effectively managed, and important aspects of the program remain in flux.¹⁶

Additionally, our work has found that the Coast Guard's Deepwater Program, ongoing since the late 1990's, is intended to replace or modernize 15 major classes of Coast Guard assets. In March 2007, we reported that the Coast Guard's Deepwater contract had requirements that were set at unrealistic levels and were frequently

¹³ GAO-08-263.

¹⁴ Begun in 2001, ACE is intended to replace and supplement existing cargo processing technology and will be developed and deployed in a series of increments. The goals of ACE include: (1) Supporting border security by enhancing analysis and information sharing with other Government agencies and providing CBP with the means to decide before a shipment reaches the border if it should be targeted or expedited; and, (2) streamlining time-consuming and labor-intensive tasks for CBP personnel and the trade community through a national trade account and single Web-based interface. Task Order 23 was the sole focus of our review.

¹⁵ GAO, *Secure Border Initiative: Observations on the Importance of Applying Lessons Learned to Future Projects*, GAO-08-508T (Washington, DC: Feb. 27, 2008).

¹⁶ GAO, *Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment*, GAO-08-1148T (Washington, DC: Sept. 10, 2008).

changed.¹⁷ For some of the Deepwater assets, this resulted in cost escalation, schedule delays, and reduced contractor accountability over a period of many years of producing poor results such as ships that experienced serious structural defects. In light of these serious performance and management problems, Coast Guard leadership has changed its approach to this acquisition.¹⁸ It has taken over the lead role in systems integration, which was formerly held by a contractor. Formerly, the contractor had significant program management responsibilities, such as contractual responsibility for drafting task orders and managing the system integration of Deepwater as a whole. Coast Guard project managers and technical experts now hold the greater balance of management responsibility and accountability for program outcomes. Coast Guard officials have begun to hold competitions for Deepwater assets outside of the lead system integrator contract, and cost and schedule information is now captured at a level that has resulted in improved visibility, such as the ability to track and report cost breaches for assets. The Coast Guard has also begun to follow a disciplined project management framework, requiring documentation and approval of decisions at key points in a program's life cycle. However, like other Federal agencies, the Coast Guard has faced challenges in building an adequate Government work force and is relying on support contractors in key positions, such as cost estimators and contract specialists.

OVERSIGHT CONSISTENTLY IDENTIFIED AS NEEDING IMPROVEMENT

Our work on contractors performing services closely supporting inherently governmental functions found that DHS program officials and contracting officers were not aware of Federal requirements for enhanced oversight for these types of services. Both the FAR and the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) policy state that when contracting for these types of services a sufficient number of qualified Government employees assigned to plan and oversee these contractor activities is needed to maintain control and accountability. For the nine cases we reviewed, the level of oversight provided did not always help ensure accountability for decisions or the ability to judge whether contractors were performing as required.¹⁹ We found cases in which the DHS components lacked the capacity to oversee contractor performance due to limited expertise and workload demands. DHS components were also limited in their ability to assess contractor performance in a way that addressed the risk of contracting for services that closely support inherently governmental functions. Assessing contractor performance requires a plan that outlines how services will be delivered and establishes measurable outcomes. However, none of the oversight plans and contract documents we reviewed contained specific measures for assessing contractor performance of selected services. To address this deficiency, we recommended that DHS assess the ability of its work force to provide sufficient oversight when using these types of contracted services.

Limited oversight also is due in part to insufficient data to monitor acquisitions. Our work on procurement methods, such as interagency contracting and performance-based acquisition, has found that DHS does not systematically monitor its use of these contracts to assess whether these methods are being properly managed, or to assess costs, benefits, or other outcomes of these acquisition methods. With regard to interagency contracting, we found that DHS was not able to readily provide data on the amounts spent through different types of contracts or on the fees paid to other agencies for the use of their contracting services or vehicles. This lack of information means that DHS cannot assess whether the Department could achieve savings through using another type of contracting vehicle. We similarly found that DHS did not have reliable data on performance-based acquisitions to facilitate required reporting, informed decisions, and analysis of acquisition outcomes. For example, our review of contracts at the Coast Guard, CBP, Immigration and Customs Enforcement (ICE), and TSA showed that, about 51 percent of the 138 contracts we identified in FPDS-NG as performance-based had none of the required performance-based elements: A performance work statement; measurable performance standards; and a method of assessing contractor performance against performance standards. The unreliability of these data makes it difficult for DHS to be able to accurately report on Government-wide performance targets for performance-based acquisitions. We have recommended that DHS work to improve the quality of FPDS-NG data

¹⁷ GAO, *Coast Guard: Status of Efforts to Improve Deepwater Program Management and Address Operational Challenges*, GAO-07-575T (Washington DC: Mar. 8, 2007).

¹⁸ GAO, *Coast Guard: Change in Course Improves Deepwater Management and Oversight, but Outcome Still Uncertain*, GAO-08-745 (Washington, DC: June 24, 2008).

¹⁹ FAR section 37.114, Special Acquisition Requirements; OFPP Policy Letter 93-1: *Management Oversight of Service Contracting*, Office of Federal Procurement Policy, May 18, 1994.

so that DHS can more accurately identify and assess the quality of the use and outcomes of various procurement methods.

Inaccurate Federal procurement data is not unique to DHS and is a long-standing Government-wide concern. Our prior work and the work of the General Services Administration's Inspector General have identified issues with the accuracy and completeness of FPDS and FPDS-NG data,²⁰ and OMB has stressed the importance of submitting timely and accurate procurement data to FPDS-NG. The Acquisition Advisory Panel²¹ has also raised concerns about the accuracy of FPDS-NG data.²² These circumstances illustrate the magnitude of the challenge DHS faces in developing timely and accurate data to monitor acquisitions.

To improve procurement oversight, the CPO established and has implemented a Department-wide program to provide comprehensive insight into each component's programs and disseminate successful management techniques throughout DHS.²³ This program, which is based on a series of component-level reviews, was designed with the flexibility to address specific procurement issues. As such, it could be used to address areas such as performance-based acquisitions, interagency contracting, and the appropriate use of contractors providing services closely supporting inherently governmental functions. Some of the four key oversight reviews have begun under this program, but management assessments, or evaluation of the outcomes of acquisition methods and contracted services, have not been conducted. Our work has found that the CPO continues to face challenges in maintaining the staffing levels needed to fully implement the oversight program, and CPO authority to ensure that components comply with the procurement oversight plan remains unclear.

CONCLUSION

Improving acquisition outcomes has been an on-going challenge since DHS was established in 2003. Our work has consistently noted that sound acquisition planning, including clearly defining requirements, and ensuring adequate oversight are hallmarks of successful service acquisitions. A sufficient acquisition work force is also key to properly managing acquisitions. Our body of work has also included many recommendations to the Secretary of Homeland Security to take actions aimed at improving acquisition management, planning, and oversight. While DHS has generally concurred with our recommendations, the Department has not always stated how the underlying causes of the deficiencies we have identified will be addressed. Until the Department takes needed action to address these causes, it will continue to be challenged to make the best use of its acquisition dollars.

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

Mr. CARNEY. Thank you, Mr. Hutton.

I would like to thank all the Members for their testimony.

I would like to remind everybody here, the three of us, that we will have 5 minutes to question the panel. I will start with myself first.

Mr. Gunderson, it has been noted the size of the Department's acquisition work force has not been large enough. I think you mentioned you have increased the number from 600 to 1,000 from 2003 to present, but still not large enough to manage the high level of procurements that you have today.

Do you think it is large enough?

Mr. GUNDERSON. No, I do not.

First, I also want to distinguish between the contracting staff needed as well as the other acquisition disciplines, because, obvi-

²⁰ For example, GAO, *Reliability of Federal Procurement Data*, GAO-04-295R (Washington, DC: Dec. 30, 2003); GAO, *Improvements Needed to the Federal Procurement Data System—Next Generation*, GAO-05-960R (Washington, DC: Sept. 27, 2005); and General Services Administration Inspector General, *Review of the Federal Procurement Data System—Next Generation (FPDS-NG)*, Report Number A040127/O/T/F06016 (March 2006).

²¹ Authorized by section 1423 of the Services Acquisition Reform Act of 2003 as part of the National Defense Authorization Act of 2004. Pub. L. No. 108-136.

²² Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Congress. January 2007.

²³ GAO-07-900.

ously, acquisition is made up of all the different disciplines I mentioned in my testimony.

Contracting career field, 1102 series, has been a significant challenge in ramping it up, given the demand that we have, especially in the D.C. area. We have looked at standing up offices across the country as well, where it makes sense for some of the components. But when you are competing in the D.C. area for a lot of these positions with the DOD presence, we continue to struggle there.

But we do have an intern program that we have instituted. In fiscal year 2008, we have brought on three cohorts, groups of interns. So, by the end of this month, we are going to have roughly 49 contract specialist interns that will be on board in our training program.

Mr. CARNEY. Of the thousand or so you have on board now, what is the rough ratio of Government employees to contractors in the procurement?

Mr. GUNDERSON. Performing contracting specialist roles?

Mr. CARNEY. Correct, yes.

Mr. GUNDERSON. I don't have the exact numbers, but I think the number is certainly under 5 percent. I think it is a small number of contractors that are providing that type of service.

When I was at TSA and we had roughly 100 people in the office, we had less than five people that were performing that type of role. We were phasing them out as we were able to grow the organic capability.

Mr. CARNEY. Okay.

Shifting gears slightly here, what do you think would be, sort of, the maximum amount in dollar terms that a single program manager should be responsible for overseeing?

Mr. GUNDERSON. I wouldn't look at it from a dollar perspective, because if you look at certain programs, you could have one—if you are in the Navy and you are buying an aircraft carrier, that is going to be one significant dollar figure. At the same time, you could have someone who is managing multiple programs. I would look at the different programs that you would have to manage from a workload perspective. You don't want to have people having multiple responsibilities managing multiple programs. You want to be able to focus on the given objectives of the mission that is put before you.

Mr. CARNEY. Okay, fair enough.

Now, several instances, like Secure Flight, SBIInet, HSIN, for example, the Department entered into a contract with the same contractor after the initial contract for the same or similar program failed.

How does the Department justify using the same contractors over and over again, in some instances in the sole source capacity? You have actually produced sort-of subpar results. Why do we continue to do that?

Mr. GUNDERSON. I am not familiar with each of the programs that you mentioned. You said SBI was one of the programs?

Mr. CARNEY. Yes.

Mr. GUNDERSON. Obviously a contract was awarded to Boeing there, and that contract has different pieces to it, both the technology side as well as defense. They performed different task or-

ders. It is a multiple award contract, so it is not that we are awarding new contracts, we are awarding new tasks under a basic contract that was awarded to them which allows for incremental evolution of the program, so that they are going to be—for example, in P28, Project 28, it was basically a proof of concept task order, where the contractor was asked to assess different technologies to see how they were suitable for meeting the operator's needs. Then they will continue to go off from there to take lessons learned from that.

Mr. CARNEY. I think one of the lessons learned, certainly that Boeing testified to, is that they didn't put their A team on that one. We weren't quite sure how far down the alphabet they did go, but they needed to do better.

So, you know, I think it is fair, I think the taxpayers deserve to know if we are hiring various contractors and it is subpar. You know, par is pretty good, but if it is—well, if we are going to use golf terms, if it is over par, which is bad, then we shouldn't be rewarding them for that efforts.

Okay, the Chair now recognizes the gentleman from Alabama.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. Taylor, one of the things I heard you offer as a recurring theme was that you saw in these poorly performed contracts a sense of urgency, was the phrase you used repeatedly.

Tell me more about how you saw that, historically, as being problematic.

Mr. TAYLOR. Starting with Deepwater, it was a pre-existing contract to DHS, but it was a situation where there was a perceived urgent need to replace aging fleet, as well as a lot of pressure from Congress because the Coast Guard wasn't moving as quickly as deemed necessary. So they essentially turned over the whole enterprise, the oversight itself, to contractors, a consortium. There was no competition. So they thought that was a streamlined approach. The consortium could tell them to address their requirements and could tell them how to address those requirements and build the correct ships to go forward.

In FEMA's case, the disasters that occur, they go out and they have a situation like Katrina. The one area where FEMA was the weakest was on catastrophic disasters, and particularly in catastrophic housing. When that occurred, they tried to do it on the fly. When you get that, you get some of the things we talked about last week in our report and you also get a lot of the other things you read about in the paper. There are—even though there are times you have to respond quickly and you have to do things.

Mr. ROGERS. You made reference to things you read about in the paper, and I want to go back to what was in today's Washington Post.

Mr. TAYLOR. I am sorry, sir, I was referring to our report we released last week.

Mr. ROGERS. Go ahead. I am sorry.

Mr. TAYLOR. This is the ITAC report. We released it last week.

In those situations, even though they are catastrophic occurrences, we shouldn't have to put ourselves in a place where we have to do it on the fly. That is exactly what happened in that case and in a bunch of other cases we reported on over the years.

Mr. ROGERS. Well, I do want to go to today's Washington Post article, because it talks about how \$200 million was mismanaged and poorly spent. However, in your opening statement, you made reference to the trailers and you mentioned \$46 million.

Which is the accurate figure?

Mr. TAYLOR. In our report, we specifically identified \$46 million that FEMA incurred in costs they shouldn't have because of their inability to identify and review vouchers and invoices that were coming in from the vendors.

The actual number—that is a conservative number—the actual amount of money that we spent we probably shouldn't have is probably higher because of the nature of the contracts. But the \$200 million I can't speak to.

Mr. ROGERS. Okay. So you don't know if that is accurate or not then?

Mr. TAYLOR. No, sir.

Mr. ROGERS. I also noticed, in the same Washington Post article, it made reference to the \$1.5 billion Boeing program for the Secure Border Initiative, SBI. It talks about how there was a shelving of that initiative, when, in fact, my understanding is that what was done was that they took the technological aspects of the Secure Border Initiative and put them aside while they made a priority of putting the fence up.

Have they shelved that technology, to your knowledge?

Mr. TAYLOR. I couldn't answer the question, sir. But, to my knowledge, they haven't shelved the technology. But we have not looked at that area.

Mr. ROGERS. Mr. Gunderson, I will talk to you a little bit about your response to the Chairman's question on numbers of procurement officers. Is it your sense that the problems that we are seeing in DHS procurement is solely a result of insufficient resources for the personnel?

Mr. GUNDERSON. It is not just resources. I mean, if you look at the three priorities that are put forth from the CPO, work force is one of those. Again, that is contracting and other acquisition disciplines. In addition to that, it is a process issue. The Department is moving forward in that area. I mentioned in my testimony that—

Mr. ROGERS. Give me a couple of examples about what you mean by moving forward.

Mr. GUNDERSON. Okay. To date, we have had what is called Management Directive 1400, which basically provided the framework for investment reviews. This system has been not linked with the other important aspects of an acquisition program, such as requirements and budgeting. So the new program that is being put in place should be released within the next couple of months. It is going to integrate all those pieces together and ensure that we are going to have requirements that are validated, planned and budgeted for, and be prepared to execute.

Mr. ROGERS. Do you have any idea why that wasn't taking place already?

Mr. GUNDERSON. The previous management directive that was put in place, again, it was a first step. I look at it from an evolutionary standpoint. When the Department stood up, again, back in

the 2003 time frame, there was only a handful of people within CPO. So, as we have now been able to bring in the right people who have the expertise—this group is being led by a former dean of Defense Acquisition University, as well as a very competent staff, and being able to do it right.

Mr. ROGERS. So, in sum, what I gather from what you just said is that, while it has been unfortunate, this has not been an unreasonable developmental stage over the last several years in this growing departmental responsibility.

Mr. GUNDERSON. I would concur with that.

Mr. ROGERS. Thank you.

I yield back, Mr. Chairman.

Mr. CARNEY. Thank you.

The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you.

I would assume from your answer to Mr. Rogers's last question that you would expect waste and mismanagement to be a part of your operation?

Mr. GUNDERSON. No, I don't believe waste is a part of the operation.

Mr. THOMPSON. Well, please feel free to elaborate on your last answer, because that was the interpretation I received from your answer.

Mr. GUNDERSON. What I was explaining is that the process for governing our acquisitions has taken an evolution from the beginning of our stand-up to where we are today. We are strengthening that process, making sure that we have the people to be able to make the right decisions in place and that the programs come up at the right points in time before they proceed any further.

Frankly, portraying some of these programs and contracts as wasteful, I don't necessarily agree with that. A lot of times these contracts have dealt with what I call preproduction environments, so we are dealing with a lot of design and development and testing, and we are qualifying things before we move out into production. I think it is the same thing that you would find at DOD.

Mr. THOMPSON. Well, we differ. Let me give you a couple of examples on how we differ on waste and abuse.

Do you have any knowledge of the Deepwater contract?

Mr. GUNDERSON. I have a little bit of familiarity with it.

Mr. THOMPSON. Are you aware that we lost several hundred millions of dollars on that contract and the boats didn't float?

Mr. GUNDERSON. Yes, I understand.

Mr. THOMPSON. So that, in our mind, is a problem. It was a procurement problem. So, I think our responsibility, as a committee, is to try to limit that. Part of the oversight responsibility is, if it is a matter of you needing more people to be trained, we would be happy to provide it, but we need in our oversight responsibility to get the facts.

The two gentlemen to your left have, for all intents and purposes, said that there are some things they would recommend that you do in order to get there. I did not hear whether or not you formally responded to the report or not. Have you?

Mr. GUNDERSON. Which particular report?

Mr. THOMPSON. The IG report from last week.

Mr. TAYLOR. Yes, they did, sir. The Department did respond to our ITAC report that was released last week, and they concurred with the majority of our recommendations.

Mr. THOMPSON. Okay. Well, and that is the point I am trying to get to, is now that we have a framework to work from, our goal is to try to get there as fast as we can.

One of the criticisms we hear is the overreliance on contractors. Your testimony today sort of gave us the fact that that is no longer a real problem within the Department because you have ramped up enough through your various programs that that is no longer a concern of yours.

Am I interpreting your testimony correct?

Mr. GUNDERSON. We always take a look at our acquisitions as we move forward to assess the role of contractors in them. So are we saying that we are 100 percent where we want to be with respect to that? No. But there are several examples of where we have gone from an original business strategy which did rely on contractors heavily and move forward to where we are using an organic capability to manage those programs.

So, while we are not totally to where we want to be, we have made significant progress. We will continue to assess each situation.

Mr. THOMPSON. So are you aware of any contracting conflicts of interest that might presently exist within procurement?

Mr. GUNDERSON. No.

Mr. THOMPSON. Can you provide this committee with any of those conflicts that have previously occurred that have been resolved? Or you don't know any?

Mr. GUNDERSON. I am not aware of any, but if you are asking for us to go back and examine that, we can.

Mr. THOMPSON. Well, let me give you one. Some of the contractors that were tasked with overseeing the SBInet contract were business partners of Boeing. Some of us think that is a potential conflict.

I would like to know, if that conflict is there, what, if any, measures are in place to prevent this type of conflict going forward?

Mr. GUNDERSON. Okay. I am not aware of the contractor you are referencing that was overseeing the Boeing contract.

Mr. THOMPSON. I will be happy to give it to you.

Mr. GUNDERSON. Okay.

Mr. THOMPSON. I am all right.

Mr. CARNEY. Thank you, Mr. Chairman.

Mr. Taylor, we see that there are several no-bid contracts out there that the Department awards, meaning that only one company gets an opportunity to bid on a contract. Can you, kind of, describe the potentials for abuse that exists in a situation like that?

Mr. TAYLOR. Sure. In situations where you have no-bid contracts, you are running the danger of not getting best value, not to mention best price. In some cases, depending on the nature of the contract, like we reported on last week in the ITAC report, depending on how you write the contract and oversee it, there is a potential for the contracts to have uncontrolled growth and for you not to get the results that you are seeking.

Mr. CARNEY. This is for any one of you. Do you know roughly how many no-bid contracts have been awarded in your tenure, Mr. Gunderson, for example?

Mr. GUNDERSON. Specific numbers, no. I mean, typically—we have that data back in the office, yes.

Mr. CARNEY. We would love to see it, please.

Mr. GUNDERSON. We usually are tracking percentages of competition versus noncompetitive actions.

Mr. CARNEY. Okay.

Mr. Hutton.

Mr. HUTTON. I do not have data on that particular question, sir.

Mr. CARNEY. Do you have any insight into that? What have you encountered?

Mr. HUTTON. Well, I think the IG representative clearly pointed out some of the issues associated with that type of contract.

Mr. CARNEY. But do you have any sense of the numbers?

Mr. HUTTON. No, sir, I do not.

Mr. CARNEY. Okay, okay. Thanks.

So do we know if we have seen a higher level of mismanagement of no-bids versus competitive contracts? Mr. Taylor.

Mr. TAYLOR. We actually have an on-going audit report now, a review going on as we speak, of noncompetitive contracts, and we are hoping to have that out by the first of the year.

Mr. CARNEY. Post haste, please.

Mr. TAYLOR. Yes, sir.

Mr. CARNEY. Appreciate it.

Mr. Gunderson, so what are some of the—let's think a little bit creatively here on what DHS is trying to do to increase the number of procurement officers and contracts. Is there anything else going on? You have this internship program, but do you have something else?

Mr. GUNDERSON. The internship I think is the primary mechanism to rebuilding our contracting community. But at the same time, as I mentioned, we continue to look at all grade levels.

Also, I think was mentioned at the beginning also about looking at folks that have maybe retired and bringing them back as rehired annuitants. Again, we think that this is a valuable tool, to bring those people in and to mentor the significant number of junior folks that we are bringing on board.

Mr. CARNEY. Now, the interns come from where? Within Government? From colleges? How does this work?

Mr. GUNDERSON. Primarily colleges. We do a significant amount of recruiting across the country. There are some people who have come in with previous business experience. While we are doing the recruiting at the colleges, we also have plenty of other advertisements in seeking people who are interested in that sort of training program.

It is a very appealing program. As we bring on the interns and we ask them what attracted them to the program, they say they liked the disciplined approach and the training that they were going to receive.

Mr. CARNEY. The training they were going to receive at DHS you mean?

Mr. GUNDERSON. Through the 3-year program, yes.

Mr. CARNEY. Can you describe—hopefully, I want a good number here—kind of, the growth in the number of interns? How long has this internship program been in place, and what have you noticed in trends so far?

Mr. GUNDERSON. As a centralized program at DHS, fiscal year 2008 was its first year. So, as I mentioned earlier, we were going to be about 49.

But previous to that, if you look at the individual components, they were also doing similar efforts. So we are now bringing it together into one centralized program.

While I was at TSA, we had 3 different years of junior specialists that were brought on, probably totally in the 50 range as well.

Mr. CARNEY. Okay.

Mr. Hutton, what do you think would be the optimum number of procurement officers for DHS? We are at a thousand now, and, according to the testimony, about 50 are contractors. Is that sufficient? Do we need more? If more, how many more?

Mr. HUTTON. Mr. Chairman, I don't have a number for you, but I wanted to make two key points here. I think it is instructive to think about the work force, acquisition work force, in much broader terms than the contract specialist. You have a lot of other disciplines and expertise needed, particularly when we are concerned about the large investments. You have people like systems engineers, you have people that are involved in cost estimating, you have program managers, you have those that are the contracting technical reps on contracts.

All of these folks are people that are involved in these large acquisitions. I think, by looking at it more broadly, it allows you to get a better handle on what the current condition is as to where we are with the acquisition work force. That is a particular issue that was touched upon, and maybe it is not fair to say even more than touched upon, by the Acquisition Advisory Panel. They had a whole section on reliance on contractors.

Mr. CARNEY. Okay.

Mr. Gunderson.

Mr. GUNDERSON. If you don't mind, I would like to add on to that to give a brief description of what we are doing at the Department to address those other career fields.

While we have started with the contracting 1102 series, we are also establishing the certification requirements and training requirements for our program managers and COTRs. Obviously COTRs, or contracting officer technical representatives, are critical to ensuring we get what we buy. Then also going into systems engineering and tests and evaluation; we recognize those as key functions. So working on the certifications and training required for those career fields.

Mr. CARNEY. Okay, thank you.

I have exceeded my time. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

I want to pick back up where I left off and address this to Mr. Taylor or Mr. Hutton.

I try to keep in mind when we are critiquing the Department in a host of areas that this is the second-largest reorganization of Government since the creation of the Defense Department. It has

been massive, and it has been taking place for 5 years. So I asked Mr. Gunderson a little while ago, given that they started with a handful of officers trying to handle this activity and now they are up to a thousand, is it a reasonable level of development to see those problems that we have seen happen?

I would ask that to you all. Do you all see the development progressing in a way that is satisfactory to you, given where they have come from and where they are now as a Department?

I would ask you, Mr. Taylor, first.

Mr. TAYLOR. Sure. As I mentioned before, we issued our first management scorecard on the procurement function last year. At that time, and this is nearly 18 months ago, at that time we gave them a modest progress report, that there was modest progress going on in many of the different areas that we were identifying.

The things that Mr. Gunderson has talked about are in the planning stage or implementation stage. But they have accepted over 90 percent of the recommendations we have made regarding procurement activities in the reports we have issued. So we think it is a very positive development.

There is a long way to go. We are extremely concerned about contracting and about overuse of contractors, things like that. But we do think the Department has a plan. Assuming that management, senior management, stays focused on this area during this critical transition, this is an area that could substantially improve over the coming years.

Mr. ROGERS. Overall, though, do you feel that, given where they came from 5 years ago and where they are now, they are making a satisfactory level of progress as time walks along?

Mr. TAYLOR. We are encouraged at the Department level. We have some concerns at certain components. So for the Department, yes. It would be component by component beyond that.

Mr. ROGERS. Thank you.

Mr. HUTTON, same question.

Mr. HUTTON. Certainly we all understand the challenges. They are taking steps. But just to put a few examples out there, we were discussing earlier the investment review process that was put into effect back in 2004, I believe. We looked at that at the time, and we thought that was a pretty good process. Yeah, we had some criticisms or suggestions to strengthen it, but we thought that was a pretty good process to help guide your major investments along the way.

But as time went on, there haven't been changes based on our recommendations in the areas that we discussed to date. I think that the fact that the process has been in revision since about 2005 raises questions about, well, are these serious impediments that are keeping us from making this process a little healthier than not? I am not sure what the answer is to that, sir.

But I do think that among many fronts you see activities under way, but I guess I am kind of hoping that we start seeing a little more closure on some of these activities.

Mr. ROGERS. I think we all do. Thank you.

I try to keep in mind when I am talking to folks about the growth and maturation that we are seeing in the Department where we have come from. I think evidence of some of the develop-

ment, good evidence, is what we just saw with the hurricanes that we just had on the coast and the way the Department responded, much more professionally. They had their act together. They clearly have been learning from past lessons. Then we had a tornado at Enterprise High School down in Alabama a few months ago. Again, nothing but rave reviews for the Department.

So I think that they are getting better in a lot of different ways. However, as the Chairman, both Chairmen have pointed out, we have got a long way to go, and we want to make sure we do better.

I now want to shift to what we can do better and see what your thoughts are on that. Congressional oversight—you know, we still have just broad jurisdiction across the Congress exercising oversight of this Department. I am of the opinion that is hindering the Department.

Just in a nutshell, I would like to ask each one of you to tell me, am I right or am I wrong?

Starting with Mr. Gunderson.

Mr. GUNDERSON. The oversight is significant and it does have a direct impact on the folks that are doing the business both at headquarters and at the components. Speaking from my experience, you know, we talked earlier about the number of folks that we have on board that are trying to get the job done well. So when we have the numerous reviews, sometimes overlapping unfortunately, that takes people away from doing their core work functional responsibility. It is not to say that we should not be supporting that and learning from it, but it does impact operations.

Mr. ROGERS. I agree. I think everybody wants oversight. We just want it to be consolidated in this committee if it is going to be of the Department of Homeland Security. Mr. Taylor.

Mr. TAYLOR. Yes, sir. When it comes to the oversight done at the level of GAO and the IG's office, we make it a point to coordinate our activities so that we try not to duplicate what we are doing and make it any worse in the department than we have to just to do our jobs. In terms of congressional oversight, yeah, I mean, there was the one 9/11 Commission recommendation that wasn't adopted. However, when it comes down to awarding a contract, barring a disaster, I don't think the number of congressional committees we respond to is going to have much of a direct impact on their job.

Mr. ROGERS. Mr. Hutton.

Mr. HUTTON. Mr. Rogers, I would just say that GAO, when we look at the activities over at the Department and we make our recommendation, what we are doing at that time is shedding light on some important issues and we bring them to the attention of Congress. I do think oversight hearings like this are very important because I think the oversight hearings and through our work and through the faithful efforts of DHS to implement these recommendations I think the hearings bring a little heat sometimes and when you bring a little heat you bring some change.

Mr. ROGERS. Thank you very much, Mr. Chairman.

Mr. CARNEY. Thank you, Mr. Rogers. Mr. Thompson, 5 minutes.

Mr. THOMPSON. Mr. Taylor, for the benefit of me, can you tell me whether or not there is any procurement standard that you are using to evaluate DHS that is not the accepted standard in fellow contracting?

Mr. TAYLOR. No, sir, we use the standard requirements and the FAR—we—

Mr. THOMPSON. So in other words, if you looked at another failed agency, the procurement standards are the same?

Mr. TAYLOR. Correct.

Mr. THOMPSON. So if you take an agency and combine it, all those agencies combined would use the same procurement standards? Am I correct?

Mr. TAYLOR. They are supposed to, sir.

Mr. THOMPSON. There we go. We are getting to the point. So if they don't use them, it is not the problem that we have used a different standard. It is just that some how the people who are doing it don't measure up.

Mr. TAYLOR. Or it is the nature of the contract is that the oversight isn't structured to man these kind of contracts and the volume.

Mr. THOMPSON. But the standard is the same?

Mr. TAYLOR. Yes, sir.

Mr. THOMPSON. Let us talk about a couple of items that GAO looked at. Mr. Hutton, you said that the Department kept inadequate record, the report. Can you elaborate a little bit on that if you care to?

Mr. HUTTON. Well, I will take it this way if you allow me. I think one key aspect of anything, if you really want to manage your acquisitions and get a handle on institutionally across the whole DHS enterprise how we are doing, you need good data. I think data is an issue we brought up in several of our reports. Just to throw out an example, we looked at performance-based service acquisitions, the extent to which DHS used them. If probably took us as long to get a handle on what the universe is as best we could so we could then go down and do drill-downs than might have taken to do the actual work? Why is that important?

I think if you have data just in this one example on the use of performance-based service acquisitions, what that is doing is it allows you to begin getting a sense of, okay, how well are we doing with those, where are we using them, are we using certain contracting arrangements that don't make sense for those type?

Ideally, you like to use fixed-price contracts. To what extent are we using time and materials for performance-based? You can only get that through data.

Mr. THOMPSON. Right. Now, some of your suggestions, if I am correct, came from an earlier report and you just kind of updated it when you looked at the Department again and you found out in many respects the problem was still there.

Mr. HUTTON. If I could, sir. Data is, I believe, a very key part of really again assessing what you are doing and how well you are doing it. But I would be remiss not to mention that while it—clearly you can see it as an issue at DHS, it is really a Government-wide issue in terms of the data systems we have to manage our procurements and understand exactly what the Government is buying and how they are buying it. So while it is DHS-focused as the acquisition advisory panel and GAO pointed out, it is broader than DHS.

Mr. THOMPSON. You know, for the record, Mr. Chairman, I would also just like to point out that, you know, we have had three procurement officers in 5 years. So, I mean, there is still a challenge to keep good people in the position long enough to follow some of what we are doing. Mr. Gunderson, I hope to see you around next year.

Mr. GUNDERSON. I plan on being here.

Mr. THOMPSON. Because part of the continuity of Government that we look at is having the same people in place long enough to get some things done. One of the concerns we hear too often is that every time people interface with the Department, it is a new face. In managing contracts, sometime, there is a different person handling a contract than before. So many times that business has to back up, bring that manager up to speed and it slows the contract down. Mr. Gunderson, one comment I will share with you. Some fellow agencies before a program manager can transfer to another agency or Government, they require that manager to meet certain tasks so that you just can't have a failed project and take another job and leave it to someone else's problem. Now, I think what the Department ought to look at, as an internal review is whether or not a policy is similar to that might provide a standard that would help both the Department and the contractors you are working with just as a suggestion.

Mr. GUNDERSON. Understood.

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. CARNEY. Thank you, Mr. Chairman. Mr. Gunderson, what happened to a first procurement officer? We are on the third one now. What happened—

Mr. GUNDERSON. Chief procurement officers. Greg Rothwell was the original chief procurement officer. He retired. I can't remember the exact time frame. The second one, Elaine Duke, has now been elevated to Under Secretary for Management, and certainly continues to champion our cause.

Mr. CARNEY. Good. We had a good conversation with her yesterday and I encourage that relationship to continue. I think that she will provide sort of continuity after November that we are certainly going to need. I hope so certainly.

Mr. GUNDERSON. Just to add on to that, a couple of examples of steps that she has taken in support of us in establishing this new framework, she has issued several memos this year for the entire Department, instituting some new policies and processes for the establishment of acquisition program based lines, life-cycle cost estimates and these all need to be reviewed by subject matter experts at the Department before these programs can advance.

Mr. CARNEY. What is going to be the impact of the election on your shop, turnover-wise?

Mr. GUNDERSON. Within the CPO office, I am not seeing it as any impact. We don't have any political appointees within our office. We are all career and from an operational standpoint, again, the folks that are doing the work at the components I am not anticipating an impact associated with the actual transition.

Mr. CARNEY. The answer I was looking for is that you will educate those coming in as to what you need.

Mr. GUNDERSON. Understood.

Mr. CARNEY. Okay. Thank you very much. Mr. Rogers, any further questions?

Mr. ROGERS. One last question. I want to visit the issue of the failure of this Congress to pass an authorization bill and perhaps not even an appropriations bill. What impact do you see, if any, that may or may not have on the Department's ability in the area—subject matter area we have been talking about. Mr. Hutton, would you start first?

Mr. HUTTON. That is a difficult question for me to respond to because I haven't really considered it in that light.

Mr. ROGERS. Mr. Gunderson.

Mr. GUNDERSON. We would request, or would like to have an authorization bill to provide more clarity and direction for where we should be going.

Mr. ROGERS. If you end up with nothing but a continuing resolution, what effect will that have on your ability to get your job done?

Mr. GUNDERSON. It would impact in a couple of ways. From an operational programmatic standpoint, there would be no new starts that we would be able to move forward on. It would slow down possibly some of the program initiatives. It would increase the workload for the staff because you would have to be, in some cases, doing multiple administrative actions. Most importantly from my perspective and near and dear to this organization is the—the budget request that we have forward is to—would allow to strengthen our acquisition program management division, as well as our intern program, a CR would stop those programs in their tracks and we would not be able to grow the way that everybody is saying we need to grow.

Mr. ROGERS. Mr. Taylor.

Mr. TAYLOR. I think the last area Mr. Gunderson spoke of is a critical area. But in general, CRs are extremely distracting for any organization. But in the case of DHS where the Congress has been increasing the budget and increasing the activities on an annual basis, it would—without going into any of the details of what specifically they couldn't do—it would obviously hinder their efforts to improve.

Mr. ROGERS. Thank you. That is all I have, Mr. Chairman.

Mr. CARNEY. Thank you. I would like to thank the panels for the testimony and their questions and their answers. You stand dismissed. We will likely be sending you some written questions and we would like a prompt response. Thank you very much.

Mr. CARNEY. I would like to welcome the witnesses, the second panel. Our first witness is Ms. Marcia D. Madsen. She served as the Chair of the acquisition advisory panel, a 14-member advisory panel mandated by Congress to review Federal contracting laws, regulations and policy. Ms. Madsen has over 20 years experience in Government contracting law. She has served as Chair of the ABA section of public contract law and was also President of the Board of Contract Appeals, Bar Association. Our second witness, Mr. Scott Amey, serves as general counsel for the Project on Government Oversight. Founded in 1981, POGO investigates and exposes corruption and other misconduct in order to achieve a more accountable Federal Government. Through its 27-year history,

POGO has created a niche investigating, exposing and helping to remedy waste, fraud and abuse in Government spending.

Our third witness, Mr. Mark Pearl is president and chief executive officer of homeland security and defense business council. Mr. Pearl previously served as a principal chairman of IT Policy Solutions, which he founded in 2003, and has recently been serving as executive director of the Consumer Electronics Retailers Coalition. His focus is public policy and Government relations expertise on technology and cyber security policy for more than a dozen years. Mr. Pearl's clients have included a wide range of Fortune 100 companies and CEO lead associations in all critical economic and infrastructure sectors. Prior to forming ITPS, Mr. Pearl was a partner and led the E-commerce policy practice group in the international law firm, Shaw, Piven, LLP. Without objection, the witnesses' full statements will be inserted into the record. I now ask each witness to summarize his or her testimony for 5 minutes beginning with Ms. Madsen.

**STATEMENT OF MARCIA G. MADSEN, CHAIR, ACQUISITION
ADVISORY PANEL**

Ms. MADSEN. Good afternoon, Chairman Carney, Congressman Rogers. Chairman Carney, I may take a small personal privilege and tell you that I worked for one of your predecessors more than 20 years and ago and I have a very soft spot in my heart for the 10th district of Pennsylvania, while I was in law school. I am here in my capacity today as chair of the Acquisition Advisory Panel, which was a group I was honored to chair today having finished that work. I am a lawyer in private practice. So I am kind of wearing 2 hats I Congress.[?] I am very pleased to be here today to talk about the panel's findings and recommendations. I think the Members of the committee and subcommittee have a copy of the panel's report.

After almost 2 years of work, our report was published in July 2007 and many of those recommendations and made their way into law in last year's defense authorization bill or they are the subject actually of pending legislation, including the Lieberman-Collin's amendment to this year's bill. They are also the subject of several regulatory initiatives by the FAR council and OFPP. I think I have got about now 4 minutes to summarize our report which given the 89 recommendations and 100+ findings might be a small challenge. But I will try give you at least a quick overview.

Acquisition reform in the mid-1990's emphasized streamlining the procurement process and relying more on commercial items and services and processes and a substantially reduced acquisition work force. The Packard Commission, which was in 1986, the 800 Panel in 1993, had emphasized the Government's needs to attract technology and expertise in the private sector, and the national performance review in 1993 pushed these changes which were enacted in the mid-1990's. Our panel was asked to look at many of these issues 10 years later and what we discovered was a complex landscape that had some unintended consequences, including the huge growth in procurement spending as a result of the war on terror and the Gulf Coast hurricanes in 2005.

Just to give you one statistic from our report which is loaded with them, between fiscal year 2000 and 2005, Government purchasing increased 75 percent from \$219 billion to more than \$380 billion. Our report uses fiscal year 2004 statistics. That was the latest data we could get out of the acquisition, Federal procurement database. There was also a diminished work force. Just to give you an example, in the mid-1990's, the DOD's acquisition work force was cut by more than 50 percent. So we have spending going this way and work force in the 1990's going down, but flat—flat in the—after the turn of the century.

As to the use of commercial practices, the evidence that our panel found was that the Government's practices, particularly for the acquisition of services by 2005 and 2006 did not approach the rigor of the commercial marketplace ironically enough with respect to requirement, development, the use of competition, the use of fixed-price performance-based contracts. With respect to commercial practices, the panel learned from commercial buyers of technology and related services that the keys to success were early investment and requirements definition and competition. We were able to determine that in 2004, one third of the Government's procurement dollars were awarded noncompetitively and even when competed, the percent of dollars that were awarded when only one offer was received had more than doubled from 9 percent in 2000 to 20 percent in 2005.

We also believe that the amount of competition was likely understated—or the amount of noncompetitive orders was understated—because of the use of orders under multiple award contracts and we could not get data on the competitiveness of orders under multiple award interagency contracts for large IDIQs. So that wasn't available to us. In fiscal year 2004, about \$142 billion of the total procurement spend of \$338 billion or 40 percent went through these interagency vehicles for which we could not get data on the competitiveness of the ordering process. We made a number of recommendations to improve competition that are set forth in the report, and I am happy to answer questions about those later.

We also made recommendations to improve the interagency contracting process, including looking at whether all of those contracts are necessary and OFPP has work underway in that regard. With respect to the Federal acquisition work force, our panel determined that there was a significant mismatch between the demands placed on the acquisition work force and the personnel and skills that were available to meet those demands. But we realized that there was not reliable information about the size, composition and competencies of the Federal acquisition work force or the role of contractors in supporting that work force. Obviously one cannot understand trends without data. So we made a number of recommendations, starting with getting an accurate definition of the work force and data and human capital planning and I just want to note and I am happy to provide the committee with a copy of this. But we commissioned our own work force study. We could not get accurate data on the Federal acquisition work force. So we commissioned our own study. This is the executive summary of that study. We went back to the 1960's, we looked at every study of the acquisition work force and all of the data that had been collected; it is on 9

CDs. You are welcome to have it. I would be happy to answer more questions later, but we would be happy to provide you with this. [The statement of Ms. Madsen follows:]

PREPARED STATEMENT OF MARCIA G. MADSEN

SEPTEMBER 17, 2008

Mr. Chairman, Congressman Rogers and Members of the subcommittee, I appreciate the opportunity to appear before you to address the Acquisition Advisory Panel's findings and recommendations. In addition to chairing this panel, I am a partner in the law firm of Mayer Brown LLP and I have more than 20 years of experience in Government procurement law.

You asked me to testify regarding the panel's findings and recommendations, particularly with respect to best practices. I thought it would be helpful to provide an overview of the recommendations made by the Acquisition Advisory Panel and the progress toward implementation of the recommendations. My testimony could not possibly cover the panel's 100 findings and 89 recommendations in their entirety. However, I will try to provide a good overview regarding competition and adoption of commercial practices, the management and use of interagency contracts, acquisition work force challenges, opportunities for small businesses, and the appropriate role of contractors supporting the Government—the “blended work force” issues. I also will talk briefly about the panel's data recommendations.

The Panel Report was published in draft form in January 2007 and was published in final form by GPO in July 2007. Since that time, many of the panel's recommendations have been enacted or are included in proposed legislation originating both in the House and the Senate. Several recommendations addressing competition under multiple award contracts and the acquisition work force were included in the National Defense Authorization Act for Fiscal Year 2008 (the 2008 DoD Authorization Act). Finally, as noted in the Government Accountability Office's (GAO's) December 2007 Report “Oversight Plan Needed to Help Implement Acquisition Advisory Recommendations,” the Office of Federal Procurement Policy (OFPP) agrees with almost all the panel's recommendations and has moved forward to implement many of them through changes in policy and regulation. DoD also has moved separately to implement several panel recommendations.

The panel was established pursuant to Section 1423 of the National Defense Authorization Act For Fiscal Year 2004. Its members, balanced between the public and private sectors, were appointed in February 2005. The panel held 31 public meetings and heard the testimony of 108 witnesses representing 86 entities or groups from industry, Government, and public interest organizations. The panel's public deliberations produced approximately 7,500 pages of transcript. In addition, we received written public statements from over 50 sources, including associations, individual companies, and members of the public.

I again would like to personally thank the 13 panel members for their dedication over the course of our deliberations. Each of them was a volunteer with a full-time and highly responsible position in “regular” life. The panel conducted its work under significant constraints with respect to staff and money. We had only one full-time staff member, the Executive Director. We are grateful to GSA and to the Director of Defense Acquisition and Policy for making staff available on a temporary basis to the panel. The level of participation by the members in the hearings, in developing findings and recommendations, and in writing the report was substantial.

The panel is grateful to the many witnesses and members of the public who helped shape the panel's report through their active participation and interaction with the panel. (There is a complete list of the witnesses in the appendices to the report.) The insight gained from the exchange with witnesses was invaluable. In many instances, approaches under consideration by the panel were revised or adjusted based on input from the witnesses who helped the panel see many different perspectives.

To summarize, significant observations from the panel's work:

Requirements Definition and Acquisition Planning Enhance Competition

- Commercial buyers invest heavily in planning and requirements analysis to obtain meaningful competition.
- Government practice focuses on rapid awards at the expense of planning, competition and performance.
- The Government must invest time and resources to enhance its ability to develop/maintain market expertise and define requirements.

Competition Drives Innovation and Fair and Reasonable Prices

- Commercial practice relies on competition for innovation and pricing.
- Government practice does not meet the standard commercial practice for competition.
 - Interagency Contracting:
 - Incentives to compete lacking.
 - Improve the ordering process competition and transparency of data.

Increased Accountability and Transparency Will Improve Interagency Contracting

- No consistent, Government-wide policy for agencies who manage or use interagency contracts.
- Accountability and transparency lacking in interagency contracting.
- Recommendations to require formal business cases to support interagency contracts, greater accountability in their management, and more transparent use.

Multiple Award Contracts Need to Provide More Opportunities for Small Businesses

- Agencies should be authorized to reserve awards to small businesses in full and open competition multiple award procurements not suitable exclusively to small businesses.
- Ordering procedures under multiple award contracts, including Federal Supply Schedules, should provide agencies with explicit discretion to limit competition for orders to small businesses.

The Acquisition Workforce Requires Immediate Attention

- Demands on the acquisition work force have outstripped its capacity.
- An expedited assessment of the work force is needed in order to improve capacity.
- Human capital planning and investment in the acquisition work force are imperative.

Appropriate Role of Contractors Supporting the Workforce

- Management challenges of a “blended” work force.
 - Blurring the distinctions between inherently governmental and commercial functions.
 - Rising concerns about:
 - Organizational and personal conflicts of interest;
 - Protection of contractor proprietary/confidential data.
 - Recommendations to promote ethical/efficient use of “blended” work force.

ENHANCE COMPETITION BY INVESTING IN REQUIREMENTS DEFINITION AND PLANNING

If there is one fundamental lesson to be learned from the panel’s review of commercial practices, it is the critical role that requirements development plays in the successful acquisition of commercial services. Sound requirements development is the key to improving contractor performance and saving taxpayer dollars. Sound requirements development increases competition, reduces costs, eliminates time-and-materials contracts, and increases the likelihood of successful contract performance. Commercial buyers do it well. Government buyers need to improve. Today, Government spends more on services than on major weapons systems. That fact has significant implications for acquisition. As reflected in the panel’s findings and recommendations, there are aspects in which the acquisition of services is different—or requires different skills and emphasis. Some of these aspects include the fact that technology-related services are sold in the private sector involving a wide variety of skills. Private sector buyers focus on bringing the right mix of skills together for a project and on the price of that project. The Government, tends to buy services on an hourly basis without adequate emphasis on the objection.

Commercial Practice.—Meaningful competition, pricing, contract type, and terms and conditions all are dependent on the time and effort commercial firms invest in the preliminary requirements development stage. Commercial buyers see acquisition of services as major transactions that can improve an organization’s performance and reduce its costs. The commercial buyers described a rigorous requirements definition and acquisition planning process. To them, requirements definition is of equal importance to the selection of the right contractor. These companies invest the time and resources necessary to clearly define requirements up-front in order to achieve the benefits of competition. They perform on-going rigorous market research and are thus able to provide well-defined, performance-based requirements conducive to innovative fixed-price solutions. They obtain a commitment on their requirements from all appropriate levels in the corporation.

Government Practice.—The panel’s work shows that the Government fails to invest in this phase of procurement, focusing instead on rapid awards. While at the conceptual level buyers appear to understand the importance of requirements definition to successful, cost-effective contracts, culture and the metrics focus on “getting to award” rather than contract results. In testimony, public sector officials and representatives of Government contractors expressed frustration that the Government is frequently unable to define its requirements sufficiently to allow for fixed-price solutions, head-to-head competition, or performance-based contracts.

Ill-defined requirements fail to produce meaningful competition for services solutions. Instead, agencies often rely on time-and-materials contracts with fixed hourly rates that lack incentives for innovative solutions. The testimony was consistent that the major contributors to this problem are the cultural and budgetary pressures to quickly award contracts or orders, combined with a lack of market expertise in an already strained acquisition work force. The Government’s lack of investment in acquisition planning is well-documented beyond the testimony heard by the panel. For instance, two audit reports from the Department of Defense Inspector General (DoD IG) that were reviewed by the panel found that of the \$217 million spent under 117 awards reviewed, 116 lacked acquisition planning or market research.¹

Recommendations: The panel recommendations are based on current commercial sector practices. For instance, to develop and maintain market expertise, the panel recommended that agencies establish “centers of expertise” to protect their high-dollar investments in recurring or strategic requirements. The panel also saw a need for a central source of market research information comparable to that maintained by private companies. We recommended that the General Services Administration (GSA) establish such a capability to monitor services acquisitions by Government and commercial buyers, collect information on private sector transactions that is publicly available, as well as obtain information on Government transactions, and make this information available Government-wide. Under our recommendations for improving Performance-Based Acquisition (PBA), the panel recommended that OFPP provide more guidance to agencies regarding how to define requirements in terms of desired outcomes, how to measure those outcomes, and how to develop appropriate incentives for contractors to achieve those outcomes. Because defining needs/requirements up-front is one of the most critical aspects of a PBA, the panel recommended that the FAR require the Government to develop and provide to contractors a “baseline performance case.” The panel’s report contains details about what this baseline performance case would entail, but it is essentially a framework to provide discipline in the Government’s requirements definition process. We also recommended an educational certification program for contracting officer representatives to help them become effective planners and monitors of PBAs. With respect to the concerns expressed by the GAO and Inspectors General (IGs) regarding ill-defined requirements for orders under interagency contracts, the panel recommended criteria for requirements planning by ordering agencies before access to an interagency contract is granted. OFPP has begun to implement these recommendations—for example, OFPP has tasked GSA to implement the panel’s recommendation regarding market research.

ENCOURAGE COMPETITION TO INCREASE INNOVATION AND PRODUCE FAIR AND REASONABLE PRICES

Commercial Practice: In addition to learning that basic commercial practice involves substantial investment in requirements analysis, the panel also was advised that commercial buyers rely extensively on competition to produce innovation and fair and reasonable prices. In fact, competition is fundamental to producing innovation and to determining fair and reasonable prices. Because there is no substitute for competition, commercial companies rarely buy on a sole-source basis. In those rare cases where they do not seek or cannot achieve competition, commercial buyers rely on their own market research, benchmarking, and often seek data on similar commercial sales to establish fair and reasonable pricing. In some cases, they may even obtain certain cost-related data, such as wages or subcontract costs, from the seller to determine a price range. But commercial buyers generally find these methods far inferior to competition for arriving at the best price. As a result, they mon-

¹DoD IG Report No. D-2007-007, “FY 2005 Purchases Made Through the General Services Administration,” Oct. 30, 2006, at 1-4 (general discussion of the issue); DoD IG Report No. D-2007-032, “Report on Fiscal Year 2005 DoD Purchases Made Through the Department of Treasury,” Dec. 8, 2006, at 32 (specific statistics cited).

itor non-competitive contracts closely, and eliminate such arrangements as soon as the requirement can be moved to a competitive solution.

Government Practice: It is instructive to compare the strong commercial preference for competition to the Government's competition statistics. In fiscal year 2004, the Government awarded \$107 billion, or over one-third of its total procurement dollars, non-competitively. Over one-fourth, or \$100 billion, was awarded non-competitively in 2005.² The number of competitions that result in the Government only receiving one offer doubled between 2000 and 2005. Spending on services in both 2004 and 2005 accounted for 60 percent of procurement dollars with 20 percent and 24 percent awarded without competition, respectively.³

Interagency Contracting.—The panel believes the amount of non-competitive awards may, in fact, be underreported for orders under multiple award contracts available for interagency use, generally known as “interagency contracts.” The panel's repeated attempts over several months to obtain information about the extent of competition for orders under these types of contracts were frustrated. The Government's database on Federal procurement spending, the Federal Procurement Data System—Next Generation (FPDS-NG) only began to collect data on interagency contracts in 2004. Due to a number of factors, including poor reporting instructions, faulty validations, and even DoD policy, the “extent competed” field in FPDS-NG for these orders overwhelmingly reflects the competitive nature of the master contract, rather than the actual level of competition for orders. This reporting problem skews the data such that it is unreliable. The lack of transparency into the nature of these orders is a significant weakness. FPDS-NG reports spending under contracts available for multi-agency use at as much as \$142 billion, or 40 percent of procurement spending, in fiscal year 2004.⁴

Despite the panel's overarching concern with data reliability and transparency, there certainly appears to be sufficient cause for concern in addition to these statistics. The panel was well aware that GAO put management of interagency contracting on its High Risk Series in 2005. Since the GAO high risk designation in 2005, more data regarding orders under these contracts has become available. In fact, in an audit report reviewed by the panel, the DoD IG found that 62 percent of reviewed orders, totaling nearly \$50 million, failed to provide a fair opportunity to compete as required by law. In addition, 98 of 111 orders valued at \$85.9 million were either improperly executed, improperly funded, or both.⁵

The Panel's Report sets forth the history and efforts by Congress to improve competition. The intent of interagency contracts, most of which are assumed to be multiple award contracts, was to lower administrative costs, leverage buying power and provide a streamlined acquisition process—all well-meaning goals. Such contract vehicles were never intended to be used to avoid competition.

Interagency contracts generally are indefinite-delivery/indefinite-quantity type contracts with very broad scopes of work, most of which provide for multiple awardees that will compete with one another for specific orders at a later point when an agency identifies a requirement. Therefore, where services are concerned, the initial competition is based on loosely defined statements of the functional requirements resulting in proposals for hourly rates for various labor categories. The expectation is that once an agency identifies a specific need, a more clearly defined requirement will be provided at the order level allowing the multiple awardees to submit task-specific solutions and pricing. Because this process narrows the number of eligible contractors at the order level, Congress has insisted that these multiple awardees be given a “fair opportunity” to compete for the task orders.

So why do interagency contracts seem to draw so much non-competitive activity? There appear to be a number of checks and balances missing that would otherwise contribute to healthier incentives for competition.

Incentives to Compete Lacking.—The panel found that there was no Government-wide requirement that all interagency contracts provide notification that a task order is available for competition. There was no visibility into sole-source orders, as there was no requirement for a synopsis or public notification for orders under multiple award contracts, regardless of the size of the order. Even where a best value selection is made at the order level, there was no requirement for a detailed debrief-

² Standard Competition Report from FPDS-NG, available on-line at <https://www.fpds.gov> under Standard Reports (last visited Jan. 29, 2007). The competitive/non-competitive base (against which the percentage is derived) is \$338 billion for fiscal year 2004 and \$371.7 billion for fiscal year 2005.

³ FPDS-NG special reports for the panel.

⁴ Id.

⁵ DoD IG Report No. D-2007-023, “FY 2005 Purchases Made Through the National Aeronautics and Space Administration,” Nov. 13, 2006, at ii.

ing, regardless of the amount of the order or the amount of bid and proposal costs expended by the eligible contractor, thus denying the contractor information that might enable it to be more competitive on future orders/contracts. Further, without regard to size of the order, there was no option for contractors to protest the selection process under multiple award contracts, reducing the pressure on the Government to clearly define requirements, specify its evaluation criteria, and make reasonable trade-off decisions among those criteria. For example, even issues that affect the integrity of the competitive process such as organizational or personal conflicts of interest could not be protested.

However, the panel also took testimony from agency officials who told us they could not meet their missions without the use of interagency contracts. Therefore, the panel sought to achieve a balance in its recommendations that would introduce incentives to encourage more competition while not unduly burdening these tools for streamlined buying. For instance, some of our recommendations only apply to orders over \$5 million. Why this threshold? We found that of the \$142 billion spent on orders under these interagency contracts in fiscal year 2004, \$66.7 billion, nearly half, was awarded in single transactions (at the order level) exceeding \$5 million. The fiscal year 2005 statistics show total spending on these contracts at \$132 billion with \$63.7 billion in single transactions over \$5 million.⁶

Nearly half of the dollars are spent on single transactions over this threshold, but the majority of transactions are actually below it. By using this threshold, we were able to impact a significant dollar volume, but not the majority of transactions. “Bite-sized” orders for repetitive needs can be placed using the current methods under this threshold, while large transactions involving the need for requirements in a Statement of Work, evaluation criteria, and best value selection procedures would be subject to a higher level of competitive rigor.

Recommendations: The panel recommended expanding Government-wide the current DoD Section 803 requirements that include notifying all eligible contractors under multiple award contracts of order opportunities. We also recommended that the 803 procedures apply to supplies and services. And while we agreed that a pre-award notification of sole-source orders might unduly burden the ordering process, the panel recommended post-award public notification of sole-source orders finding that it would improve transparency. For single orders exceeding \$5 million, the panel recommended that agencies adhere to a higher competitive standard by: (1) Providing a clear statement of requirements; (2) disclosing the significant evaluation factors and subfactors and their relative importance; (3) providing a reasonable response time for proposal submissions; and (4) documenting the award decision and the tradeoff of price/cost to quality in best value awards. We also recommended post-award debriefings for disappointed offerors for orders over \$5 million when statements of work and evaluation criteria are used. Concerned that the Government is buying complex, high-dollar services without a commensurate level of competitive rigor, transparency, or review, we recommended limiting the statutory restriction on protests of orders under multiple award contracts to orders valued at \$5 million or less. Of course, it should be noted that under existing law, any order under the GSA Schedules may be protested.

Specific to the GSA Federal Supply Schedules program, the panel recommended a new services schedule for information technology that would require competition at the task order level and reduce the burden on contractors to negotiate up-front hourly labor rates with GSA. The panel sees the exercise of negotiating (and auditing) labor rates as producing little in the way of meaningful competition given that solutions are project-specific and the price depends on the actual labor mix applied. In such cases, analyzing labor rates contributes little to understanding the price that the Government will pay for the project. Much time and effort are wasted by GSA and contractors in providing and auditing labor rates that do not provide useful information about the costs of a project.

The 2008 DoD Authorization Act adopted the panel’s recommendations requiring enhanced competition requirements and post-award debriefings for task orders exceeding \$5 million. The 2008 DoD Authorization Act also authorized bid protests for task orders exceeding \$10 million (the panel had recommended a \$5 million threshold). In addition, S. 680 and other measures currently under consideration in connection with the fiscal year 2009 DoD Authorization Bill would extend the Section 803 ordering procedures for the Federal Supply Schedules, Government-wide. At the same time OFPP has opened FAR Cases implementing several of the panel competition recommendations.

⁶FPDS-NG special reports for the panel.

ACCOUNTABILITY AND TRANSPARENCY INADEQUATE FOR INTERAGENCY CONTRACTING

The panel also separately addressed the issues of management of, accountability for, and transparency of interagency contracts. We included in our review the practice of using assisting entities that buy from interagency contracts. The panel found that while some competition among interagency contracts is desirable, there is no coordination regarding the creation or continuation of these contract vehicles to determine whether their use is effective in leveraging the Government's buying power or whether they have proliferated to the point of burdening the acquisition system. The panel also was concerned that recent focus on the problems of interagency contracting would result in an increase of so-called "enterprise-wide contracts." Such contracts are operationally the same as interagency contracts, except they are restricted for use by one agency. The panel found the trend toward such contracts to result in costly duplication if the existing problems with interagency contracts can be addressed through better management discipline and a more transparent competitive process.

Recommendations: Specifically, the panel found that the lack of Government-wide policy regarding the management of interagency contracts is a key weakness that can be addressed by OFPP. OFPP is well along in the development of just such a policy. (As the panel was developing its findings and recommendations in this area, panel members met with OFPP to provide input regarding the panel's work.) The panel also recommended that agencies, under policy guidance issued by OFPP, formally approve the creation, continuation, or expansion of interagency contracts using a formal business case. Agencies managing these contracts would, among other things, be required to identify and apply the appropriate resources to manage the contract, clearly identify the roles and responsibilities of the participants, and measure sound contracting procedures. As discussed above, there is little visibility into the numbers and use of interagency contracts. The data must be derived from FPDS-NG and is not, as discussed earlier, completely reliable. Therefore, the panel made a number of recommendations to improve the transparency and reliability of data on interagency contracts.

S. 680 includes panel recommendations regarding management of interagency contracts. At the same time, OFPP is working toward implementing management policies and procedures for the creation, continuation and operation of interagency contracts.

PROVIDING OPPORTUNITIES FOR SMALL BUSINESSES UNDER MULTIPLE AWARD CONTRACTS

Although not included in the topics specified in Section 1423 of SARA, the panel decided early on that because its recommendations likely would impact small businesses it needed to include an examination of small business issues in its work. The growth in multiple award contracts has created particular challenges for small businesses. The panel recognized the positive efficiencies of multiple award contracts, especially those available for multi-agency use. However, the goal of efficiency must be balanced against the negative impact these contracts can have on small business opportunities. The panel found that multiple award contracts often have a broad scope of work, geographically, functionally, or both, and that these broad scopes of work make it extremely difficult for small businesses competing against large businesses under full and open competition for multiple awards. Further, when small businesses do receive awards under multiple award contracts, there is no specific statutory or regulatory authority for agencies to reserve orders under multiple award contracts for small business competition to achieve agency small business goals.

Recommendations: The panel recommended specific statutory amendments that would allow contracting officers to reserve, for small business competition only, a portion of the multiple awards in a full and open competition not suitable for a total small business set-aside. The panel also recommended express statutory or regulatory authority to reserve orders, at the explicit discretion of the ordering agency, under multiple award contracts for competition among the small business multiple awardees only. These authorities will provide contracting officers with greater flexibilities in using multiple award contracts to meet agency small business goals. To date, there has been little movement in addressing these recommendations.

The panel considered mandatory reserves or set-asides of orders but instead recommended providing agencies with the discretion to reserve orders in order to meet small business goals. Agency discretion is consistent with the flexibility and inherent efficiency of multiple award contracts. That discretion, when combined with the flexibility of multiple award contracts can create an effective tool for creating opportunities for small business. For example, the panel considered the record of the Fed-

eral Supply Schedule program, which has been one of the most successful contracting programs for small businesses programs, with small businesses receiving over 36 percent of the dollar value of orders over the last 5 years. The Federal Supply Schedule does not have mandatory set-asides for orders. However, under the Federal Supply Schedule, agencies do have the discretion to consider socio-economic status during the ordering process.

A related issue is contract bundling. The panel found inconsistent implementation of contract bundling requirements across the Government. The panel recommended additional training and the creation of an interagency group to develop best practices and strategies to unbundle contracts and mitigate the effects of contract bundling. S. 2300 adopts this recommendation requiring a report on best practices to reduce bundling, followed by the issuance of additional policies to reduce bundling.

THE ACQUISITION WORKFORCE REQUIRES IMMEDIATE ATTENTION

The panel determined that a quantitatively and qualitatively adequate work force is essential to the successful operation of the acquisition system. But the demands on the acquisition work force have outstripped its capacity. Just since 9/11, the dollar volume of procurement has increased by 63 percent. While the current work force has remained stable since 2000, there were substantial reductions in the 1990's accompanied by relatively little new hiring. Compounding the problem, while a variety of simplified acquisition techniques were introduced by the 1990's acquisition reforms for low dollar value procurements, higher dollar procurements require greater sophistication by the Government buyer due to the growth in best value procurement, the emphasis on past performance, and the use of commercial contracting. Accompanying these trends is the structural change in what the Government is purchasing, with an emphasis on high dollar, complex technology-related solutions. However, due to the lack of a consistent definition of the work force and lack of ability to measure the work force, as well as the lack of competency assessments and systematic human capital strategic planning, determining the needs of this work force is difficult. The panel was very frustrated by the lack of useful and meaningful data regarding the Federal acquisition work force and undertook its own study—dating back to the 1960's in an effort to obtain information on the size, composition and skills of the work force.

The panel was struck by the difference from commercial practice. Private sector buyers of services invest in extremely well-qualified employees and consultants to define their requirements, design, and carry out their acquisition of services. Larger acquisitions—\$10 million and up—are subject to a tightly controlled and carefully structured process overseen by highly credentialed and experienced buyers.

Recommendations: An accurate understanding of the key trends about the size and composition of the Federal acquisition work force cannot be obtained without using a consistent benchmark. The panel recommended that OFPP prescribe a consistent definition and methodology for measuring the work force. The urgency of this task is reflected in another recommendation that OFPP collect data using this definition and measuring methodology within 1 year of the panel's final report. Consistent with this, OFPP should be responsible for creating and maintaining a mandatory Government-wide database for members of this work force. The panel noted that the Commission on Government Procurement recommended just such a system over 30 years ago—in 1972. While there are a great many recommendations for work force improvement in the panel's report, one of the key recommendations is that each agency must engage in systematic assessment and human capital strategic planning for its acquisition work force. Without such plans, it is impossible to know how and to what extent a given agency's work force is deficient. It is also difficult to know to what extent and how efficiently agencies are using contractors to support the acquisition function. In support of these recommendations, the panel has also suggested that these plans be reviewed by OFPP for trends, best practices, and shortcomings as part of an agency's overall human capital planning requirements. Finally, the panel recommended an SES-level position be established within OFPP responsible for acquisition work force programs, a Government-wide intern program, as well as the reauthorization of the SARA training fund. I am pleased to note that the 2008 DoD Authorization Act included a number of these recommendations that are now law. Most importantly, the 2008 DoD Authorization Act requires the Chief Acquisition Officers for each agency, in coordination with OFPP, to develop human capital succession plans for the acquisition work force. DoD completed a comprehensive assessment of its acquisition work force in June 2007, an assessment that is being used to develop a strategic human capital plan for its acquisition work force.

OFPP also recently conducted a Government-wide competency survey assessing the skills of the civilian acquisition work force. OFPP received over 5,400 responses to the survey, approximately half the civilian acquisition work force. OFPP has communicated the results of the survey to the respective agency Chief Acquisition Officers for human capital strategic planning purposes and closing skill gaps. OFPP currently has another survey under way. Two important steps have been taken to invest in the future of the acquisition work force. The 2008 DoD Authorization Act created the Defense Acquisition Workforce Development Fund for the recruitment, training, and retention of acquisition personnel. The 2008 DoD Authorization Act also made permanent the Acquisition Workforce Training Fund managed by OFPP and GSA. The Acquisition Workforce Training Fund supports Government-wide training of the acquisition work force through the Federal Acquisition Institute.

APPROPRIATE ROLE OF CONTRACTORS SUPPORTING THE WORKFORCE

Management challenges of a “blended” work force: The panel heard testimony regarding the use of and management of the “blended” work force, where contractors work side-by-side with Government employees, often performing the same or similar functions.

Blurring the Distinctions.—During the 1990’s, the Federal acquisition work force was reduced substantially. For example, DoD’s acquisition work force was reduced by nearly 50 percent during that time. The structural changes in what and how much the Government is buying since 9/11 have left agencies with no alternative to using contractors to deal with the pressures of meeting mission needs and staying within hiring ceilings. Agencies have contracted for this capability and contractors are increasingly performing the functions previously performed by Federal employees. To a significant degree, this has occurred outside of the discipline of OMB Circular A-76, with the result that there is no clear and consistent Government-wide information about the number of people and the functions performed by this growing cadre of service providers.

While the A-76 outsourcing process provides a certain discipline in distinguishing between “inherently governmental” and commercial functions, it is less clear if and how agencies apply these concepts to the blended or multi-sector work force that has arisen outside of the A-76 process. The challenge is determining when the Government’s reliance on contractor support impacts the decisionmaking process such that the integrity of that process may be questionable. A second challenge that arises is how the Government effectively manages a blended work force given the prohibition on personal services.

Rising Concerns.—The panel identified the increased potential for conflicts of interest, both organizational and personal, as a significant challenge that arises from the blended work force and from the consolidation in many sectors of the contractor community. Alongside this issue is the need to protect contractor proprietary and confidential data in such an environment when a contractor supporting one agency in a procurement function may be competing against other contractors for work that is in the subject area of its support contract at another agency.

Recommendations: The panel recommended that OFPP update the principles for agencies to apply in determining which functions must be performed by Federal employees, so that agencies understand that such principles apply even outside the A-76 process. Agencies need to identify and retain core functional capabilities that allow them to properly perform their missions and provide adequate oversight of agency functions performed by contractors. Agencies must ensure that the functions identified as those which must be performed by Government employees are adequately staffed with Federal employees.

The panel did not see a need for new statutes. Instead, it viewed the issues as contract-specific and suggested that the better approach would be policy guidance and new solicitation and contract clauses. Therefore, the panel recommended that in its unique role as developer of Government-wide acquisition regulations, the FAR Council review existing conflict of interest rules and regulations, and to the extent necessary, create new, uniform, Government-wide policy and clauses regarding conflicts of interest, as well as clauses protecting contractor proprietary and confidential data. In particular, the rules regarding organizational conflicts of interest need to be updated to address situations involving impaired objectivity. The panel also recommended that the FAR Council work with the Defense Acquisition University and the Federal Acquisition Institute to devise improved training for contracting officers to assist in identifying and addressing potential conflicts and to develop better tools for the protection of contractor proprietary and confidential data. OFPP and the FAR council have opened several FAR cases to provide additional guidance regarding organizational and personal conflicts of interest, the protection of contractor

proprietary and confidential data, as well as new training on the identification and resolution of conflicts of interest. Pending legislation also addresses these issues.

CONCLUSION

Mr. Chairman, Congressman Rogers, and Members of the subcommittee, thank you for your interest in the panel's efforts. We are available to provide any additional information or assistance that the committee or the staff may need.

This concludes my prepared remarks. I am happy to answer any questions you might have.

Mr. CARNEY. Thank you, I think.

Mr. Amey, for 5 minutes please.

STATEMENT OF SCOTT AMEY, GENERAL COUNSEL, PROJECT ON GOVERNMENT OVERSIGHT

Mr. AMEY. Yes. Good afternoon, Chairman Carney, Ranking Member Rogers and Members of the subcommittee. Thank you for inviting me to testify about the state of DHS contracting. I am Scott Amey, general counsel of the Project on Government Oversight, a nonpartisan public interest group. Over the years, particularly in the 1990's, many acquisition forms were implemented. The problems created by the reforms became starkly apparent after the beginning of the war on terror and after Hurricane Katrina. Those have shown that contracting decisions were placing taxpayer dollars at risk and sometimes lives at risk as well.

Last week we were in a meeting with the DHS insider and we were all reminded of the build-up in the Defense Department in the 1980's and many of the contracting snafus that occurred. My fear is that DHS is repeating some of the same mistakes, poor planning, poor contract administration and oversight and the result will be the same. Lost taxpayer dollars. If the problems with DHS spending are not corrected, POGO believes that the next management or IT contract will mirror the misspending characterized by the \$436 hammer and the \$7,000 coffee pot.

As a point of reference, the Government spends \$465 billion on contracts for goods and services in fiscal year 2007. No-bid contracts are a rarity in the private sector which was evidenced in the acquisition advisory panel report have become commonplace in Government. One-bid offers account for 20 percent of the competed contract spending. Government-wide bid protests are being sustained at a level of 27 percent, which indicates that contracting mistakes are being made. DHS spending has increased from approximately \$4 billion in 2003 to \$12 billion in 2007. That is a \$3 billion decrease from the number in 2006, which was well over, I think, \$15 billion. DHS sole-source spending is about 20 percent. I know you guys asked some questions. USA.gov has pie charts and all those graphics for you. It is all there now. But that number doesn't include contract spending that occurs without what we consider genuine competition.

There are few encouraging trends with DHS contracting. They are using risky contract vehicles, a little less. They have also met their 23 percent small business goal. But we—and we also applaud DHS for its movement to restore accountability and integrity to the Deepwater program. Nevertheless, POGO has many concerns. DHS fixed-price contracting is down, which places taxpayer dollars at risk. Moreover, as this subcommittee has found, nearly \$15 billion

has been wasted in 11 DHS programs. That certainly is the tip of the iceberg for those programs as well as DHS overall.

This is news and is the kind of a fallout of a full committee report that was put out last year that had given did DHS poor grades for emergency planning and procurement. The GAO and IG confirm those findings documenting problems with DHS's internal control, financial system, human capital and contracting systems that must be improved to prevent waste, fraud, and abuse.

I would like to highlight kind of two contracting problems that we saw. The first was during Hurricane Katrina, rather than going to the GSA schedules and buying rent-a-cars or leasing rent-a-cars through them, they actually set up their own contracts. Rather than paying about \$600 per month off of the schedules and even less if the contracting officer could have even drilled down and gotten a better price, GSA set up a contract for 18 vehicles at \$936 per month. I called one of the vendors on the schedule and asked why they weren't chosen. They were as confused as I was and said we were willing, ready, and able to provide GSA with those cars.

More troublesome was a comparison that POGO did after the first anniversary of Hurricane Katrina. We compared and took a look at some of the issues that were found after Hurricane Andrew back in 1992. The GAO report actually had cut and pasted language from one report to the next. So even though there was a 13-year difference, we ended up, see, they didn't implement the lessons learned from one report to another. That is one reason where you asked earlier is this really just a people issue, is this an acquisition work force issue? I think there are more systemic problems here that we need to worry about. The other problem is GSA—DHS contractors are obviously lining up to get a piece of this pie.

When they have seen the amount of money explode, go through the roof. There are seminars right now being given in the industry on how to get a piece of that pie, how to get around competition and how to know who contracting officers are to get the best bang for your buck in the industry. Another case that we have seen is an SBIInet subcontractor employee contacted POGO and said, "that his subcontracting employer is the poster child of Government waste." He adds that they are merely providing bodies to build more contracts and that they are not spending money, they are told they are not spending money fast enough.

POGO has also concerns with risky contractors continuing to get DHS money. We have issues with the revolving door. We are hearing a number of cases with the revolving door as well as with outsourcing within DHS that we are very concerned with. In my written testimony that I provided, we provided, I think, 10 different recommendations from everything from competition to looking at certain risky contract vehicles. So I ask the subcommittee to take a look at those. I am more than happy to answer any other questions that the subcommittee may have. Thank you.

[The statement of Mr. Amey follows:]

PREPARED STATEMENT OF SCOTT AMEY

SEPTEMBER 17, 2008

Good morning, Chairman Carney, Ranking Member Rogers, and Members of the subcommittee.

Thank you for inviting me to testify today about the state of Department of Homeland Security contracting. I am Scott Amey, General Counsel and 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 27-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. Since that time, particularly in the 1990's, many acquisition reforms have been implemented. The reforms, however, were not all they were cracked up to be. The problems created by the reforms became starkly apparent after the beginning of the Afghanistan and Iraq Wars, and after Hurricane Katrina devastated the Gulf Coast. These events showed that contracting decisions were placing taxpayer dollars—and sometimes lives—at risk.

The war on terror and the post-hurricane recovery and reconstruction effort also highlighted how drastically different the Federal Government's contracting landscape is now from what it was in past decades. Contracting dollars have increased, oversight has decreased, the acquisition work force is stretched thin, and spending on services now outpaces spending on goods. (Because the return on services is more difficult to quantify than on goods, contracting is even more vulnerable to waste, fraud, and abuse.) If the problems with the contracting process are not corrected now, POGO believes the next consulting, management, or information technology contract will mirror the misspending characterized by the hammers and coffee makers in the mid-1980's. We provide the following procurement history and recommendations as a roadmap to assist Congress in better overseeing the use of taxpayer dollars.

CONTRACTING PAST

The 1980's witnessed some of the strongest pro-taxpayer contracting reforms implemented to date. During the decade, the Competition in Contracting Act (CICA) was passed,² the Cost Accounting Standards (CAS) Board was reestablished,³ the False Claims Act was strengthened,⁴ and there was a greater emphasis placed on the Truth in Negotiations Act (TINA).⁵ Those actions increased competition in contracting, provided uniformity in contractor accounting practices, prevented fraud, and allowed the Government to review contractor cost or pricing data to ensure taxpayer dollars were being spent wisely.

In the 1990's, the Clinton Administration's effort to reinvent Government so that it operated more like the private sector and decrease contracting red-tape succeeded to a point. But acquisition reform—which was part of reinventing Government—resulted in several laws that made Government contracts more susceptible to misconduct, cost more, and get results contractors care about rather than making the Government “work better, cost less, and get results Americans care about.”⁶ Those laws reduced contract oversight, making it difficult for Government investigators and auditors to find waste, fraud, and abuse,⁷ and created risky contracting vehicles that often place public funds at risk.

Finally, “best value contracting”⁸ further swung the pendulum away from protecting taxpayers and allowed contracts to be steered to well-connected, influential, and sometimes undeserving contractors.

¹For more information on POGO, please visit www.pogo.org.

²10 U.S.C. § 2304(a)(1) (applicable to DOD); 41 U.S.C. § 253(a)(1) (applicable to other executive agencies); 41 U.S.C. § 403(6) (definition of “full and open competition”).

³The Board's regulations are codified at 48 CFR, Chapter 99. See FAR Part 30 (Cost Accounting Standards Administration).

⁴The False Claims Act (31 U.S.C. §§ 3729–3733) was originally passed in 1863 at the urging of President Abraham Lincoln, who was attempting to halt the Civil War profiteering that was crippling the Union Army. Amendments to the Act in 1986, championed by Senator Charles Grassley (R-IA), increased the penalties for fraud and encouraged private citizens to come forward if they were aware of corporations defrauding the Government.

⁵10 U.S.C. § 2306a, 41 U.S.C. § 254b.

⁶The Clinton-Gore initiative was known as the “National Performance Review” and the “National Partnership For Reinventing Government.” Available at <http://govinfo.library.unt.edu/npr/index.htm>.

⁷The Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103–355), the Federal Acquisition Reform Act of 1996 (FARA) (Public Law 104–106), and the Services Acquisition Reform Act of 2003 (SARA) (Public Law 108–136).

⁸“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”

CONTRACTING PRESENT

Simply stated, the contracting landscape has drastically changed in recent years and the Government must do a better job to ensure that taxpayer dollars are spent wisely. Federal contract spending has dramatically increased while Government control, competition, and oversight has been reduced. This recipe bodes ill for taxpayers, which is demonstrated by the problems below.

The Big Picture

- Contract spending for goods and services has doubled in recent years, increasing from \$219 billion in fiscal year 2000 to over \$465 billion in fiscal year 2007.⁹
- The Federal Government is spending more on services than goods.¹⁰
- No-bid contracts, a rarity in the private sector,¹¹ have become commonplace in the Government. Nearly 40 percent of all contract spending is awarded without competition.¹²
- In addition, one-bid offers account for 20 percent of “competed” contract spending.¹³
- The Government is relying on contractors to execute jobs once performed by civil servants, including policymaking and budgetary decisions.¹⁴ The Federal contracting work force, depending on the definition that you use, has leveled off since the mid-1990’s.¹⁵
- The vastly expanded definition of “commercial item” has resulted in decreased oversight of and accountability for contractors because they no longer have to provide certified cost or pricing data for the “commercial” goods or services.¹⁶
- Interagency contracting continues to increase—GSA schedule sales totaled \$35.1 billion in fiscal year 2006.¹⁷ Although interagency contracts provide agencies flexibility to purchase commonly required goods and services, which can save taxpayers money, they are also risky and prone to abuse. Monitoring and oversight have been very poor and competition has been lacking.¹⁸
- The Government recovered \$2 billion in settlements and judgments in cases involving allegations of fraud against the Government in fiscal year 2007 and has recovered more than \$20 billion since 1986.¹⁹
- Bid protest sustain rates (when GAO agrees that a contract was awarded improperly) are 27 percent,²⁰ which illustrates that flawed contract award decisions both honest and egregious are being made at a troubling rate.

against “best value” 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 a more objective criteria that would prevent the unjustified steering of contracts to non-responsible, questionable, or politically connected companies.

⁹Federal Procurement Data Service—Next Generation, “Trending Analysis Report for the Last 5 Years” and “List of Agencies Submitting Data to FPDS-NG,” as of September 4, 2008. Available at http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls and http://www.fpdsng.com/downloads/agency_data_submit_list.htm.

¹⁰Acquisition Advisory Panel, “Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the U.S. Congress,” December 2006, “Introduction,” pp. 2–3. Available at <http://www.acqnet.gov/comp/aap/documents/DraftFinalReport.pdf>. Hereinafter “1423 Panel Report.”

¹¹1423 Panel Report, “Executive Summary,” p. 2.

¹²1423 Panel, “Findings and Recommendations on Data,” August 10, 2006, pp. 3–4. Hereinafter “1423 Panel Data.” Available at <http://www.acqnet.gov/comp/aap/documents/Data%20Findings%20and%20Recommendations%20Charts%2008%2010%2006.pdf>. See percentages in USAspending.gov, at <http://www.usaspending.gov/fpds/tables.php?tabtype=t1&rowtype=a&subtype=p&sorttype=2007>.

¹³1423 Panel Data, at p. 7.

¹⁴See FAR Subpart 7.503. Available at http://www.arnet.gov/far/current/html/Subpart%207_5.htm#wp1078196.

¹⁵1423 Panel Report, p. 3.

¹⁶Commercial item contracts have increased from \$23 billion in 2005 to nearly \$31 billion in 2006. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf (p. 6 of 205) and http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf (p. 6 of 201).

¹⁷GAO Report (GAO-07-310), High-Risk Series: An Update, January 2007, p. 77. Available at <http://www.gao.gov/new.items/d07310.pdf>.

¹⁸Id.

¹⁹DOJ Press Release (07-873), “Justice Department Recovers \$2 Billion for Fraud Against the Government in fiscal year 2007; More Than \$20 Billion Since 1986,” November, 1, 2007. Available at http://www.usdoj.gov/opa/pr/2007/November/07_civ_873.htm.

²⁰GAO Report (GAO-08-247R), Letter to The Honorable Nancy Pelosi Speaker of the House of Representatives, December 10, 2007, p. 2. Available at <http://www.gao.gov/special.pubs/bidproof7.pdf>.

Homeland Security

- DHS contract spending has increased from \$3.4 billion in fiscal year 2003 to \$12.2 billion in fiscal year 2007.²¹ DHS spent \$11 billion on contracts in fiscal year 2008 thus far.²²
- The use of sole source contracts decreased from approximately 40 percent in fiscal year 2006 to 20 percent in fiscal year 2007.²³ Sole source contracts might decrease again in 2008 currently only 14 percent.²⁴
- Approximately 42 percent (\$6.6 billion) of DHS contract dollars were awarded in fixed-price contracts in fiscal year 2006²⁵—a sharp decrease from the approximately 65 percent (\$6.8 billion) awarded in fixed-price contracts in fiscal year 2005.²⁶
- Commercial item acquisitions accounted for \$354 million in fiscal year 2006²⁷ a decrease from the \$467 million in commercial item acquisitions in 2005.²⁸
- Performance-based service acquisitions, contracts that focus on outcomes rather than prescriptive requirements, accounted for nearly \$1.8 billion in fiscal year 2006²⁹ an increase from \$1.46 billion in 2005.³⁰
- DHS awarded 31.6 percent of its contract dollars to small businesses exceeding the general 23 percent small business goal.³¹

As the above information shows, DHS is doing some things well. For instance, DHS's use of risky contract vehicles (sole source and commercial item acquisitions) decreased in fiscal year 2006 and the agency meet its small business contracting goal. DHS, however, decreased its use of fixed-price contracts and is doing more performance-based contracting, which have been problematic and expose taxpayers to risk.³² That stated, POGO has a number of additional concerns about the state of DHS contracting and some hidden costs to the agency and taxpayers.

DHS RESPONSIBILITY

DHS's mission is to prevent terrorist attacks in the United States, reduce America's vulnerability to terrorism, and minimize damage from terrorism and natural disasters. To fulfill this mission, DHS has a vast organizational mandate that ranges from protecting the President (U.S. Secret Service), to protecting our oceans (U.S. Coast Guard), to protecting our borders (Customs & Border Protection and Immigration & Customs Enforcement), to protecting our airports (Transportation Security Administration), and to helping every town, city, county, and State in relief, recovery, and reconstruction efforts (Federal Emergency Management Agency). As a result, DHS has to be on the cutting edge of innovation, technology, and services to stay at least one step ahead of threats to our Nation. Yet, it still must protect the U.S. taxpayers.

It is difficult to tell if DHS is meeting its contracting goals—especially considering the emergency contracting environment in which the agency often works. Last year,

²¹ FPDS-ND, "List of Agencies Submitting Data to FPDS-NG," as of September 4, 2008. Available at http://www.fpdsng.com/downloads/agency_data_submit_list.htm.

²² Id.

²³ USAspending.gov, DHS Summary Data for fiscal year 2006 and 2007. Available at http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=1&datatype=T&reptype=r&database=fpds&fiscal_year=2006&submit=GO and http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=1&datatype=T&reptype=r&database=fpds&fiscal_year=2007&submit=GO.

²⁴ Available at http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&detail=091&datatype=T&reptype=r&database=fpds&fiscal_year=2008&submit=GO.

²⁵ FPDS-NG, "Federal Procurement Report fiscal year 2006," p. 89 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

²⁶ FPDS-NG, "Federal Procurement Report fiscal year 2005," p. 89 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

²⁷ FPDS-NG, "Federal Procurement Report fiscal year 2006," p. 90 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

²⁸ FPDS-NG, "Federal Procurement Report fiscal year 2005," p. 90 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

²⁹ FPDS-NG, "Federal Procurement Report fiscal year 2006," p. 90 of 201. Available at http://www.fpdsng.com/downloads/FPR_Reports/2006_fpr_section_III_agency_views.pdf.

³⁰ FPDS-NG, "Federal Procurement Report fiscal year 2005," p. 90 of 205. Available at http://www.fpdsng.com/downloads/FPR_Reports/2005_fpr_section_III_agency_views.pdf.

³¹ FPDS-NG, "Small Business Goaling Report fiscal year 2006." As of July 1, 2007. Available at http://www.fpdsng.com/downloads/top_requests/FPDSNG_SB_Goaling_FY_2006.pdf. According to the FPDS-NG web site, the "Small Business Goaling Report Fiscal Year 2007" will be available soon.

³² GAO Report (GAO-08-263), "Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions," April 2008. Available at <http://www.gao.gov/new.items/d08263.pdf>.

however, the House Homeland Security Committee released a report on “The State of Homeland Security,” which rated DHS in light of how it performed on seventeen homeland security issue areas.³³ POGO was disappointed to learn that no DHS component received a grade higher than a “B,” and that four components received a “C–” or lower. The two functions at the heart of today’s hearing—“Emergency Preparedness/FEMA” and “Procurement”—each received a “C–.” The fact that DHS received a C– is indicative of the broader problems that DHS is experiencing in contracting and that it must become more responsible when spending taxpayer dollars.

While the committee’s report card stated that DHS succeeded in awarding some contracts, it also found for the most part that the agency failed in three key procurement measures—“cost, performance/meeting requirements, and schedule. Unfortunately, the Department’s [DHS’s] track record in all three is poor.”³⁴ The committee further stated that “oversight and management of basic procurement processes [have] been weak.”³⁵ The report highlighted procurement missteps in the Deepwater program,³⁶ the Integrated Surveillance Intelligence System (ISIS), and eMerge2. Those contracting missteps compound the many mistakes made prior to and after Hurricane Katrina—some of the same contracting problems that occurred in the “aftermath of Hurricane Andrew in 1992, which leveled much of South Florida.”³⁷

The committee’s findings are confirmed by more recent examples of waste, fraud, abuse, and mismanagement in DHS contracting.

- Last week, a news report surfaced about a DHS IG finding millions of dollars wasted on sole-source Hurricane Katrina contracts.³⁸ The IG report states that the total of wasted dollars could be at least \$1 billion.
- After the Government Accountability Office (GAO) detailed problems with advanced spectroscopic portal monitors (ASPs),³⁹ devices thought to detect radiation and identify radiological materials, the Washington Post last week reported that the program will be scaled back with cost much higher than originally estimated.⁴⁰
- GAO recently found that SBInet, a “multiyear, multibillion-dollar program to secure the nation’s borders through, among other things, new technology, increased staffing, and new fencing and barriers,” is in an uncertain state.⁴¹ The GAO stated that “important aspects of SBInet remain ambiguous and in a continued state of flux, making it unclear and uncertain what technology capabilities will be delivered and when, where, and how they will be delivered.” Addi-

³³ U.S. House of Representatives Committee on Homeland Security, “The State of Homeland Security: The 2007 Annual Report Card on the Department of Homeland Security,” April 13, 2007, p. 5. Hereinafter “DHS Report Card.” Available at <http://homeland.house.gov/SiteDocuments/20070413143439-12273.pdf>.

³⁴ DHS Report Card, at p. 66.

³⁵ Id.

³⁶ POGO applauds the Coast Guard’s decision to take over the role of lead systems integrator for the \$24 billion Deepwater acquisition program. That shift in management and control of the program should enhance oversight of and accountability in the Deepwater program.

³⁷ GAO Report (GAO–06–442T), “Hurricane Katrina: GAO’s Preliminary Observations Regarding Preparedness, Response, and Recovery,” March 8, 2006, p. 2. Available at <http://www.gao.gov/new.items/d06442t.pdf>.

³⁸ Hope Yen, Associated Press, “Audit: FEMA wasted millions on no-bid contracts,” September 10, 2008. Available at http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0908/091008ap2.htm.

³⁹ GAO Report (GAO–07–581T), “Combating Nuclear Smuggling: DHS’s Decision to Procure and Deploy the Next Generation of Radiation Detection Equipment Is Not Supported by Its Cost-Benefit Analysis,” Statement of Gene Aloise, Director Natural Resources and Environment, March 14, 2007. Available at <http://www.gao.gov/new.items/d07581t.pdf>. GAO Report (GAO–07–133R), “Combating Nuclear Smuggling: DHS’s Cost-Benefit Analysis to Support the Purchase of New Radiation Detection Portal Monitors Was Not Based on Available Performance Data and Did Not Fully Evaluate All the Monitors’ Costs and Benefits,” October 17, 2006. Available at <http://www.gao.gov/new.items/d07133r.pdf>.

⁴⁰ Robert O’Harrow Jr., Washington Post, “Radiation Detector Plan Falls Short, Audit Shows Concerns About Cost and Effectiveness Could Curtail Program,” September 4, 2008, D01. Available at http://www.washingtonpost.com/wp-dyn/content/article/2008/09/03/AR2008090303326_pf.htm.

⁴¹ GAO Testimony (GAO–08–1148T) Before the Committee on Homeland Security, House of Representatives, “Secure Border Initiative DHS Needs to Address Significant Risks in Delivering Key Technology Investment,” Statement of Randolph C. Hite, Director Information Technology Architecture and System Issues Wednesday, September 10, 2008. Available at <http://homeland.house.gov/SiteDocuments/20080910100952-17753.pdf>.

tionally, “requirements have not been effectively defined and managed” and management has not been effective.⁴²

These three examples highlight the cost of mismanagement. The risks and vulnerabilities associated with poor contract planning, inadequate management, and deficient oversight cost taxpayers money. Although many Government officials placed a lot of the blame on acquisition work force shortages, more investigations and audits of DHS’s overall contracting system should be forthcoming in an effort to better protect the best interests of both DHS and taxpayers.

While DHS is struggling with its contracting procedures, its contractors are lining up to learn the tricks to receiving more contract dollars. Fedmarket.com held a seminar on May 26, 2006, with topics including: “The advantages and disadvantages of selling to DHS,” “Ways to keep your investment in the DHS market reasonable and your sales costs down,” “Locating DHS sales opportunities,” “Identifying DHS procurement decisions makers,” and “Simplified Acquisition Procedures.”⁴³ Although this is common in and around the Beltway, it emphasizes the fact that contractors are jumping at the opportunity to learn how to maximize some, if not all, of the agency’s contracting vulnerabilities.

Although many Members of Congress, media outlets, and public interest groups point fingers at the contractors, the problem is much deeper. DHS is in a vulnerable position: the agency has poor contract management policies and procedures, it is buying infant technologies, and buying under emergency circumstances when competition is, by necessity, limited or non-existent. As a result, DHS is frequently placed in a position mirroring the Department of Defense in the 1980’s. In order to avoid the pitfalls that we have seen through history, Congress and DHS must place a greater emphasis on full and open competition, market research, contractor data, pre-award decisions, and on post-award monitoring and administration. These criteria will help establish integrity in DHS’s buying system.

AWARDS TO RESPONSIBLE CONTRACTORS

DHS must improve its ability to weed out risky contractors. Government contracts are predicated on a basic principle taxpayer dollars should be awarded to responsible companies. FAR Subpart 9.103 states that “[p]urchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only” and that “[i]n the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of non-responsibility.”⁴⁴

As POGO has been urging Congress for years,⁴⁵ the Government needs a contractor responsibility database to ensure that taxpayer dollars are not at risk.⁴⁶ Questions should be raised within DHS, and the Government in general, when contracts are awarded to risky contractors. These include contractors that have defrauded the Government or violated laws or regulations, contractors that had poor work performance during a contract, or contractors that 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 DHS and taxpayers.

In an effort to prevent contracting with the “usual suspects” that have long rap sheets of misconduct, DHS should look for responsible vendors during its planning and contingency contracting phase. Some of the largest contractors hired to respond to the hurricanes in 2005 have checkered histories of misconduct dating back 13 years: CH2M Hill (5 instances); Bechtel (12 instances); Halliburton/KBR (20 instances); and Fluor (22 instances). 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.⁴⁷ DHS is shirking its responsibility to vet contractors and determine whether they are truly responsible. POGO is concerned that pre-award contractor responsibility determinations have fallen to the wayside. DHS and other Federal agencies

⁴² Id., at p. 2.

⁴³ Fedmarket.com, “Selling to the Department of Homeland Security Seminar,” May 26, 2006. Available at <http://www.fedmarket.com/seminars/DHS.shtm>.

⁴⁴ Available at http://www.arnet.gov/far/current/htm/Subpart%209_1.htm#wp1084058.

⁴⁵ POGO published a Federal Contractor Misconduct Database (FCMD) in 2002 and updated it in 2007. Available at <http://www.contractormisconduct.org/>. A new and improved version of that database, including misconduct involving the Top 100 Federal contractors will be released in fall 2008.

⁴⁶ FAR Subpart 9.104-1 (“General standards”) outlines insignificant responsibility regulations. Available at http://www.arnet.gov/far/current/htm/Subpart%209_1.htm#wp1084075.

⁴⁷ POGO’s FCMD at <http://www.contractormisconduct.org/>.

seem more concerned with awarding contracts quickly rather than ensuring the Government gets the best goods or services at the best practical price.

Another problem that faces DHS is the under-utilization of the suspension and debarment system as a tool to weed out risky contractors. To be fair, the problem is not limited to DHS all Federal agencies under-use suspension and debarment against large contractors that supply the majority of the \$465 billion worth of goods and services to the Federal Government each year. Overall, the Government needs to reemphasize the importance of preventing risky contractors from receiving future taxpayer dollars.

THE REVOLVING DOOR

Another issue of concern is the aging work force and the potential for conflicts of interest in the small homeland security contracting world. According to the GAO, 15 percent of DHS's work force is greater than 55 years old and 20 percent of the work force is eligible for retirement by fiscal year 2012.⁴⁸ There is a high likelihood that we will see many public servants leave the Government in the coming months, and accept jobs with DHS contractors.

POGO has coined the term the "politics of contracting,"⁴⁹ and we have learned about many instances of questionable employee movement from DHS to the private sector and vice-versa. Examples include Government employees going to work for a sole-source contract awardee and another Government employee who is allegedly overseeing his former company. POGO urges Congress to regulate the transition through the revolving door and many of the ethical hurdles that it presents. DHS should also increase transparency regarding movement between the public and private sectors, and increase oversight and enforcement of regulated behavior.

OUTSOURCING GOVERNMENT

Evidenced by the Coast Guard's Deepwater program failures, DHS should be looking at the jobs, functions, and positions that are outsourced to service contractors. POGO is not sold on the sales pitch that contractor employees are more effective and cost less as many proponents of outsourcing claim. DHS should be conducting personnel audits to determine if outsourcing went too far. Deepwater set a high-water mark in showing what happens when a Government agency turns over virtually all management functions to the private sector a program behind schedule, over budget, and not meeting performance expectations.

Outsourcing also raises personal and organizational conflicts of interest issues. The GAO studied the problem and found:

"Decisions to contract for professional and management support services were driven by the need for staff and expertise to get programs and operations up and running. However, for the nine cases we reviewed, program officials did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments."⁵⁰

Many other Federal agencies are looking at this important issue and are not outsourcing work that should be performed by public servants. DHS must ensure that it isn't losing control over its mission and accountability of its management.

RECOMMENDATIONS

Acquisition reform and the changed contracting landscape have placed taxpayer dollars at risk. POGO has witnessed the weakening or bypassing of taxpayer protections, and the unraveling of free market forces that protect Government agencies. For years, IG and GAO reports have exposed specific contracting missteps in individual cases of waste, fraud, and abuse. But the findings and recommendations from the individual cases are applicable to the larger systemic problems with DHS's, and

⁴⁸ GAO Report (GAO-08-630T), Testimony Before the Senate Special Committee on Aging, "Older Workers, Federal Agencies Face Challenges, but Have Opportunities to Hire and Retain Experienced Employees," Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues and Robert N. Goldenkoff, Director, Strategic Issues, April 30, 2008, pp. 7-8. Available at <http://www.gao.gov/new.items/d08630t.pdf>.

⁴⁹ POGO Investigative Report—"The Politics of Contracting." The report details the revolving door between the Government and large private contractors where conflict of interest is the rule, not the exception. It also highlights specific revolving door cases and sheds light on the flawed system that allows them. June 29, 2004. Available at <http://www.pogo.org/p/contracts/c/co-040101-contractor.htm>.

⁵⁰ GAO Report (GAO-07-990), "Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services," September 2007, p. 3. Available at <http://www.gao.gov/new.items/d07990.pdf>.

the rest of the Federal Government's, contracting laws and regulations. I am not certain that anyone can provide the actual cost of DHS contracting missteps, and therefore more needs to be done to identify contracting waste, fraud, and abuse, as well as prevent those errors from reoccurring in the future.

POGO has highlighted the following Government-wide contracting problems, which we hope will be considered by the committee:

1. *Cozy Negotiations.*—To make every effort to get the best value for the taxpayer, the Government must promote aggressive arm's-length negotiations with contractors.

2. *Inadequate Competition.*—To better evaluate goods and services and get the best value, the Government must encourage genuine competition so that it can correct the trend of entering into non-competitive contracts in 40 percent of Federal purchases.

3. *Lack of Accountability.*—To ensure that taxpayer dollars are being spent responsibly, the Government must regularly monitor and audit contracts after they are awarded.

4. *Lack of Transparency.*—To regain public faith in the contracting system, the Government must ensure that the contracting process is open to the public, including contractor data and contracting officers' decisions and justifications.

5. *Risky Contracting Vehicles.*—To prevent abuse, the Government must ensure that risky contract types that have been abused in the past (including performance-based contracts, interagency contracts, "task and delivery orders," also known as Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, under multiple award and Government-wide acquisition contracts (GWACs), time & material contracts, purchase card transactions, commercial item purchases, and other transaction authority) are only used in limited circumstances and are accompanied by audit and oversight controls.

Specifically, POGO respectfully requests that this committee consider the following recommendations to improve DHS contracting:

1. Ensure that full and open competition is the rule and restore the definition of "competitive bidding" to require at least two bidders.

2. Require that risky contract vehicles are used in limited circumstances and only when supported by proper justifications and oversight protections.

3. Review DHS commercial item and service acquisitions to ensure that a commercial marketplace exists.

4. Examine the use of ID/IQ and GWAC contracts to ensure that contractors are not receiving improper fees.

5. Investigate how prime contractors bill the Government at their own labor rate(s) rather than the rate that they pay their subcontractors on Time and Material or Labor Hour (T&M/LH) contracts.

6. Confirm that contractors are not performing inherently governmental functions, which must be performed by civil servants.

7. Reestablish the taxpayer-protection checks and balances that have been removed from the contracting system.

8. Review DHS's use of the suspension and debarment system, especially as it has been applied to large contractors with repeated histories of misconduct.

9. Provide a fair playing field for all DHS contractors by requiring public posting of all task and delivery order opportunities on FedBizOpps web site, and require copies of contracts and task and delivery orders awards be made public on USAspending.gov.

10. Examine and improve the conflict of interest and ethics system to ensure that DHS employees comply with all Federal conflict of interest laws and regulations.

Thank you for inviting me to testify today. I look forward to working with Chairman Carney and Ranking Member Rogers, and the entire subcommittee to further explore how the Department of Homeland Security can reduce contracting missteps that cost taxpayers.

Mr. CARNEY. Thank you, Mr. Amey.
Mr. Pearl.

STATEMENT OF MARC A. PEARL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HOMELAND SECURITY AND DEFENSE BUSINESS COUNCIL

Mr. PEARL. Chairman Carney, Ranking Member Rogers, I thank you for the opportunity to appear before you this afternoon and in

my capacity—sorry—in my capacity as the President and CEO of the Homeland Security and Defense Business Council, which is, as I think you know, a nonpartisan, nonprofit organization of the leading small, medium and large companies that provide the product, services and technologies for every program that encompasses our Nation's Homeland Security mission it is our job to in essence work this Congress and with the Department to try to achieve its mission.

Our members employ hundreds of thousands of Americans in all 50 States. We are honored and proud to work alongside leaders from civilian and defense agencies in support of their strategic initiatives. The initial process of quickly creating the Department of Homeland Security and protecting our Nation required real-time immediate solutions and to hire reliance on outsourcing. It resulted in a contracting and procurement environment that is in many ways uniquely complex and challenging. A key issue for this committee and the Department is whether the lessons that have been learned from prior mistakes, burdensome procedures and unintended consequences will be incorporated into future projects. We must learn from our past mistakes and not be defined by them. The private sector plays a critical role in the special coordinated and collaborative Homeland Security security mission. Our members will not win future contracts if they do not deliver the products and services and provide world class experts and practitioners to the projects as needed. It is imperative that the foundation upon which a successful Federal procurement system is built be underpinned by credibility, by trust and confidence.

In the post-9/11 world, Government has no choice but to be as agile and flexible as those who seek to cause us harm, the challenge is to find a balance between the need to strengthen oversight, including applying aggressive controls and transparency and the need to maintain flexibility to adjust to rapidly changing conditions on the ground to ensure a successful mission. Contracts that contain overly burdensome procedural requirements, a prolonged budget process, multiple decision-making layers, long reporting chain, overlapping management and operations, narrow work restrictions and insufficiently trained managers present challenges and impede success at a time when today's Homeland Security needs demand flexibility and adaptability.

The emphasis should be on the desired result, not merely the process. The plan is a means. The mission is the end. The Council supports the May 2008 statement of the bipartisan group of House and Senate Homeland Security leaders that included Chairman Thompson that called for more explicit requirements and performance standards in major contracts to ensure successful outcomes. We support a process that mirrors the new environment and was reiterated by Mr. Gunderson discussed on the first panel. Quality contracting, quality acquisition management and quality people.

The new administration whoever leads it, working with a new Congress, will have the opportunity to further build on procurement reforms with sound program management, client side support and improvement of the acquisition work force by focusing on the recruiting, training and retention of more talented contracting officials. The Council cannot emphasize enough the need to increase

the number of procurement officers with expertise in technology, engineering and management to accomplish the complex aspirational aspects of oversight and review. The efforts of the Department's chief procurement officer should be commended and supported. But I think as even was said during the first panel, more needs to get done.

A new generation of public sector managers must be recruited who are both disciplined and agile enough to work expertly in Government and more closely with their industry partners. Before an initial blueprint is drawn up, experts on the ground and practitioners in the field need to be brought into the process. The entire team must be equipped with an understanding of the challenges and the risks in place during the entire life cycle of the program to ensure success. It is also crucial to go beyond the Beltway, to assemble teams, to solicit input from those who are operational expert, those who best understand the needs and issues and in the end must implement the program to a successful conclusion are essential to the process. The contracting process requires establishing clear lines of accountability. We support that in the private sector. Large scale programs maybe complex, but the lines of responsibility must be clear. Once the mission and the goals of the program are known, the challenge is to keep the program on track and most importantly keep the best people on the program as you yourself, Mr. Chairman, mentioned earlier. Our goals should be to find the most appropriate, effective and efficient routes to overcome these challenges quickly and with the least disruption to the mission.

In conclusion, the GAO report cited by the House and Senate leadership from earlier this spring found that "contracts with well-defined requirements linked to measurable performance standards delivered results within budget and provided quality service." This approach will ensure the success that this committee, the next administration, the Department, the private sector and most importantly the American people demand and deserve in order to keep our Nation safer and more secure. Thank you, I will be happy to answer any questions you may have.

Mr. CARNEY. Thank you, Mr. Pearl.

[The statement of Mr. Pearl follows:]

PREPARED STATEMENT OF MARC A. PEARL

SEPTEMBER 17, 2008

INTRODUCTION

Chairman Carney, Ranking Member Rogers and Members of the committee, I thank you for giving the Homeland Security & Defense Business Council an opportunity to appear before you today. We want to express our appreciation to this subcommittee and to the full Homeland Security Committee for its continued leadership on the full range of critical issues associated with Government management and procurement, and, in particular, its leadership on initiatives to enhance the partnership between the Government and the private sector when it comes to fulfilling our collective mission to keep our Nation safer and more secure. That partnership is essential to our Government's ability to deliver high quality services to citizens quickly and efficiently.

I am Marc Pearl, President and CEO of the Homeland Security & Defense Business Council, a non-partisan, non-profit association of the leading small, medium and large companies focused on the homeland security market. Our members are responsible for the operational component of a contract—providing the products, services and technologies for every program that encompasses the homeland secu-

riety mission for our Nation. The Council's members employ hundreds of thousands of Americans in all 50 States. We are honored and proud to be working alongside leaders from civilian and defense agencies supporting their strategic initiatives through our individual and collective expertise in technology, facility and networks design and construction, human capital, financial management, technology integration, and program management. I will be discussing lessons learned, best practices and recommendations for moving forward, and how the Council can serve as a resource to this committee and the Department.

At the outset it is important to reiterate what many have said today and in previous hearings—that while the challenges of the contracting and procurement environment are complex, we must work toward finding practical solutions to these challenges. The Congress, the Department, and, indeed, our Nation is facing a transition to a new administration that will lead the Department forward. We hope that this committee will work proactively to provide helpful guidance to shape the relationships, the standards and the overall process of contracting and procurement. We also hope the committee will work with the Department in the evaluation of both perceived, failed, and successful partnerships with contractors; and provide a forum in which useful recommendations can be shared that will benefit all of the stakeholders.

The Council supports the “quality-control” of congressional oversight and values your role in encouraging and prodding, if/when necessary to achieve these goals. It is our responsibility to develop with this Congress, and the Department, a functional, practical, effective process by which—when the decision is made to outsource a project—to know the specifics, adhere to oversight, and develop a management-contractor relationship that is based on realistic goals and expectations in order to achieve the most successful outcome for all the stakeholders. There are linkages between each phase of a large and complex program, and a third party providing advice and counsel is one critical link that ensures success and is often impossible to achieve if it missing.

We believe that the goal of establishing a “culture of preparedness” that serves to prevent, detect, protect, respond and recover in the event of a catastrophic emergency—whether by a terrorist or natural disaster as we have witnessed many times in the past few weeks alone—is best achieved when the stakeholders work together in a vibrant partnership. This partnership then provides our Government with the ability to access the best solutions and capabilities to achieve mission success—a safer and more secure Nation.

LESSONS LEARNED

Building a national security apparatus from scratch is one of the most formidable bureaucratic feats imaginable. The Department was given a very large, complex and important mission, and early on was short of adequate resources. The initial process of creating the Department and attempting to identify and meet the needs of our Nation quickly meant that there would be more outsourcing than usual. Private contractors have been instrumental in supporting and in providing the substantive and procedural expertise to achieve our collective mission.

The Department of Homeland Security has been working feverously since its creation and continues to demonstrate its commitment to keep up with these forces for change. While we have seen many incremental successes even the leadership at DHS admits that much work remains to be done. For example, after 5 years, many of our members remain frustrated in some of their relationships, or even in attempting basic business dealings with DHS. DHS officials have told us that they recognize that there have been missed opportunities, burdensome procedures and complex challenges. We are also cognizant of the fact that a process of focusing on and promoting policies and programs that encourage the private sector to continue to invest in homeland security is taking shape, slowly but surely. It would be extremely detrimental to our Nation for the private sector to walk away. That would only lead to failure for both DHS and our Nation.

The private sector simply wishes that the Government articulate its objectives and requirements in a clear and/or concise fashion. Articulating goals at the outset of any contract, and then having the terms and conditions flow from it, is the bedrock of good project management. It is inherently unfair and discouraging to companies that seek to provide their expertise and technologies in ways that could help the Nation when there is no coherent foundation to begin with. If a procurement contract is vague in its requirements, the chance of failure increases, and everyone loses.

The key issue is whether lessons that have been learned from prior mistakes, burdensome procedures and unintended consequences will be incorporated into future

contracting. After each contract experience our members learn and adapt their business procedures accordingly. Each of us wants the best possible outcome, but achieving it requires a team effort for successful project and program delivery on schedule and at, or below, cost.

This is the time and a perfect opportunity to step forward—recognizing the many positive achievements, evaluating why they were successful, and using the time to provide a blueprint that the next administration and its DHS leaders can use to be even more successful. We must learn from our past mistakes and not be defined by them.

THE FEDERAL PROCUREMENT SYSTEM

Mr. Chairman and Members of this committee, the Federal Government has the largest and most complex procurement system in the world by any measure, and the Department of Homeland Security is one of its largest components. Since public funds are involved, it is imperative that the foundation upon which a successful Federal procurement system is built must be underpinned by credibility, trust, and competence. As such, we share your commitment to ensuring that the Federal Government in general, and the Department of Homeland Security specifically, only do business with responsible, ethical parties. Every one of our members who enters into contracts with the Federal Government is fully aware that this is a privilege—not a right. Our members have just as much desire for positive outcomes as the Government wants them to have.

We in the homeland security Federal contracting space recognize the important role we play in achieving the special mission our country took on 7 years ago last week. In fiscal year 2006, the Department of Homeland Security spent more than \$15 billion on nearly 67,000 individual contract transactions—\$5 billion of which was spent on management and professional support services—awarded to almost 16,000 contractors. It is also important to point out that, to its credit, more than \$4.5 billion of the DHS prime-contracting dollars went to small business.

It is notable that, even with its size and complexity, the Federal acquisition system actually works with and serves the public quite well. Clearly, it is also a system that faces many challenges and has areas where improvements are needed. Real fraud and abuse, while deeply troubling whenever uncovered, is actually relatively rare, and the Government has in place a wide array of generally effective statutes and standards that apply to entities seeking to do business with it.

When there are mistakes, our members have a deep and abiding interest in seeking to correct them as much as, or more than, does the Government. Our members will not win future contracts based on poor performance; they will win contracts because they can deliver the products and services, and provide world-class experts and practitioners to the effort.

The Federal procurement system is a complete life cycle—from requirements development to solicitation, award, performance and contract closeout. Each phase of the process is dependent on the other, and on multiple parallel processes. The Federal procurement rules are complex and provide many opportunities for honest mistakes. Intentional misconduct, however, is rare and should be fully prosecuted, but we realize that even these allegations undermined the trust and confidence in the performance of the acquisition process. There must be urgent attention paid to the Federal acquisition work force and to the relationships between agency mission needs and acquisition outcomes. Problems must be thoroughly and factually analyzed to ensure that root causes are properly identified and their effects on the Federal procurement life cycle understood.

We all understand—as the title of this hearing indicates—that waste and mismanagement is a very serious issue. Taxpayers demand solutions. I am here today to be part of the solution.

- If lenient controls or processes exist—the contracting industry wants to work with Government to tighten them.
- If there is a need for better oversight of the private sector's work—the contracting industry will aggressively work with the Government to ensure that occurs, as we believe we do today.
- If there is a dearth of contracting expertise at DHS—the contracting industry will partner with Government to address the need for greater education and training.

When properly outlined at its beginning, appropriately managed, and adequately overseen during its delivery, Federal contracts can, and most often do, generate desirable and substantial benefits for our Nation. If the contract is specific, has taken into account economic reasonability and technological feasibility, and effectively bal-

ances the substantial risk incurred by the performing contractor with appropriate rewards—everyone wins.

The Council and its members have worked closely and successfully with the senior procurement executives at DHS to ensure that the system and the process work for all parties concerned. We are all passionately dedicated to the successful realization of the agency's mission.

A NEW CENTURY, A DIFFERENT WORLD, A NEW ADMINISTRATION, A DIFFERENT OUTLOOK

In the post-9/11 world, Government simply has no choice but to be agile and have systems in place that are as flexible as those who seek to cause harm. Government must also be instantly responsive to sudden events—be they man-made or natural—that disrupt our communities and the national economy.

The challenges of this new environment are daunting. Whether it is helping to create a new agency that must seamlessly coordinate different cultures, secure over 100,000 miles of land surrounding our borders, ensure that every container entering our ports is safe, search every piece of luggage boarding an aircraft, we are all dependent on the rapid adoption and successful implementation of the most effective technologies and expert human capital to accomplish each new mission without significant interruption.

In rising to this challenge, Government's historic approach to development of programs, implementation of project management, and oversight of the process are realistically being put to the test. Traditional hierarchical approaches are facing the speed, complexity, and diversity in today's economy and we need to have homeland security solutions in place as soon as possible. Long reporting chains, overlapping management and operations, narrow work restrictions, insufficiently trained managers, and compartmentalized operating units are no longer acceptable if we are to achieve the mission.

Procurement time frames are unnecessarily lengthy, often making the best technologies obsolete and wasting human capital and resources between the time a Request For Proposals is issued and a purchasing decision is made. Detailed procedural requirements, prolonged budget processes, multiple decisionmaking layers, and detailed design directives impede success when today's homeland security needs demand flexibility and adaptability.

This is by no means a challenge specific to Government alone. Neither the public nor private sectors are immune to change. Many organizations are revamping the old organizational charts of closed boxes sealed off into distinct columns. In their place, they are shaping a dynamic web in which participants connect and cooperate on an on-going, networked basis.

QUALITY CONTROLS, PROCESSES AND RESOURCES

The Council and its members support a process that mirrors this new environment and urges that the Department embrace these priorities as it moves forward in revitalizing its procurement process:

1. Quality contracting;
2. Quality acquisition management; and
3. Quality people.

The unique mission and newness of the Department requires a constructive dialog and expert input to build the internal agency infrastructure and make the changes essential to having a strong, effective contracting process.

Many of your colleagues on both sides of the aisle and both sides of the Hill, the GAO, academics, and other outside organizations, have identified many of the elements necessary for a strong contracting process: a performance work statement, measurable performance standards, and a quality assurance plan.

The Council supports the May 2008 statement of the bipartisan group of Senate Homeland Security & Government Affairs Committee Members that, together with Chairman Thompson, called for more explicit requirements and performance standards in major contracts to ensure successful outcomes.

Successful missions need due diligence, specificity of terms and outcomes, and thoughtful expert oversight. The Council's members support making certain that the contractor knows specifically what is needed in order to achieve success. Additionally, we want and need processes in place that provide expert oversight officials with the least burdensome and highly dynamic ability to accurately measure performance.

The challenge is to find a balance between the need to strengthen oversight, including applying aggressive controls and the need—particularly as it relates to homeland security—to maintain flexibility to adjust to rapidly changing conditions on the ground and ensure a successful mission/project. Private industry welcomes

expert contracting management and oversight officers. We do our best work when specific feedback is part of the process.

A new administration working with a new Congress now has the opportunity to further improve on procurement with sound program management, client-side support, and the improvement of the acquisition work force by focusing on the recruiting and training of more talented contracting officials. There should be integrated project teams, led by the Government, but with operational involvement of contractors. We urge that the Department continue to develop acquisition work force tools to forecast needs and develop certification requirements.

The largest contracting office within DHS, the Office of Procurement Operations, had three people on board in 2003. Today, there are 200. Without these individuals, DHS can't procure the goods and services they need to secure the homeland. It cannot, however, be just about numbers, but also the securing of contract specialists with the requisite skills—on-the-ground experts who understand the mission and objectives of the project at the beginning—so that there are as few “surprises” as possible and a shared understanding as to timely delivery and specific and realistic expectations. A highly skilled work force that can conceptualize, monitor, and administer the highly complex programs and contracts will minimize failures.

The Council cannot emphasize enough the need to increase the number of procurement officers with expertise in technology, engineering and management to accomplish the complex operational aspects of oversight and review. While we recognize that there is a shortage throughout the Government of expert contracting officers, the efforts of the Chief Procurement Officer at DHS should be commended and supported. For example, in addition to a number of other significant initiatives she has announced the establishment of an important Acquisition Intern Program that should strengthen the acquisition work force by attracting, hiring and training exceptional new talent, and developing a pipeline for future acquisition leaders.

PARTNERSHIP, SKILLS AND A CULTURE OF CHANGE

Nowhere is the need for a close partnership between the public and private sectors more evident than when our Nation needs to prepare, deter, and, if necessary, respond to catastrophic emergencies within our borders. The extraordinary efforts that our public servants and private sector leaders have engaged in since September 11, 2001, are evidence for necessary and mutually beneficial partnerships.

We must, however, move even more rapidly toward responsible and appropriate ways of fostering greater cooperation, collaboration and communication.

Government needs to seek out new approaches to work together with the private sector, with greater predictability and cost-effectiveness. When working with the private sector, it is best to introduce a partnership approach early on—and build on it. New restrictions on Government contracting won't make our borders safer—greater innovation will.

Government must continue to build the internal skills necessary to match the capabilities sought from the private sector—including the capacity to manage complex relationships. It is important to invest in developing program, project, and procurement management capabilities within the civil service. The complex and unique nature of the projects essential to our homeland security require contracting officers who possess an adequate understanding and are given the resources to carry out their responsibilities with integrity and transparency.

When there are large and complex contracts there inevitably will be issues—but they can't weaken long-standing relationships or the realization that we're all in this together. Government must take the lead in shaping a new kind of supplier partnership to ensure greater accountability—by aligning incentives, sharing risks, and measuring performance.

For example, the Homeland Security & Defense Business Council, more than 3 years ago, offered DHS help with the challenge of increasing the number of certified project managers by offering to help fund a new certification program through the Project Management Institute. Our new relationship with Georgetown University's Public Policy Institute, which offers a certificate in Homeland Security Studies, will provide input and aid in developing the curriculum for the first generation of students who will be employed throughout the private and public sectors. These and other programs can help create a new generation of public sector managers that are both disciplined and agile enough to work expertly in Government, and closely with industry, to achieve a new level of performance.

DHS needs not only the expertise but also the full cooperation of the private sector to succeed in homeland security. The private sector often has the capabilities and technologies that DHS needs to operationalize its mission. In other words, DHS establishes the priorities based on risk but they often don't have the inherent capa-

bilities to make those programs successful—they must often rely on the private sector to develop the programs—including the technology—and to make the programs work.

THE PROCUREMENT PROCESS AS PART OF A LIFECYCLE

The Council believes that the acquisition process is part of a lifecycle that must begin earlier than contracting activity itself. Before the “blueprint” is drawn, experts on the ground and practitioners in the field need to be assembled and questioned. A successful process also requires equipping the entire team with an understanding of the challenges and risks in place during the entire lifecycle of the project to ensure success. Quadrennials, which provide a strategic view of priorities/budgets, operational requirements, and programmatic alignments, guarantee cost efficiencies and mission achievement.

This will provide an opportunity for Government to include the private sector in the Department’s long-range priorities and long-term needs to improve understanding and direct R&D efforts. The Quadrennial also provides the private sector with an opportunity to educate the Government about gaps in technology or capabilities, and to set reasonable expectations about timeliness and cost of delivery.

THE CHANGING DYNAMICS OF THE “NEW WORLD”—BEING FLEXIBLE AND PLANNING FOR CONTINGENCIES

The culture of challenging assumptions of the past depends on flexibility and decentralization—not a rigid adherence to checking off boxes. We must recognize that priorities change and plans will sometimes require adjustment to account for changing circumstances. Given the importance of maintaining public support and achieving overall mission success, flexibility is a crucial element of any program—specifically the ability to deploy innovative technologies and human capital—sometimes more nimbly than the Government’s existing work force and capital resources would permit.

Similarly, it’s important to plan for appropriate contingencies. It’s rare that expected developments cause problems. Flexibility, however, must be coupled with a rigorous commitment to execution.

This approach is not at all about cost savings, but rather about an effective response to our Nation’s clarion call to have a system in place that can efficiently and effectively provide mechanisms to secure our homeland and respond to catastrophic incidents.

The private sector and Government will always need to respond quickly to emerging threats, but to the extent that we can think in tandem and more strategically, it helps us in the private sector better serve the Government need by permitting discussions earlier in the process—away from the actual contracting activity—to allow robust exchange of ideas without compromising the integrity of the process.

MOVING AWAY FROM BEING “BELTWAY-CENTRIC”

It is crucial to go “beyond the Beltway” to assemble teams and solicit input from those who are operational experts—those who best understand the needs and issues and in the end must implement the project/program to its successful conclusion. The Federal Government and the American people are entitled to access and consultation with the best professional talent and technology—both in the private and public sectors—that can be utilized to ensure success of mission.

EMPHASIZE THE RESULT—NOT THE PROCESS

Perhaps as a consequence of its unique mandate and nature, the focus within Government too often tends to be on the process rather than the result. Missing the forest for the trees is an occupational hazard in both public and private sectors, but the impact in Government agencies can be especially debilitating. The plan is a means—the mission is the end.

ESTABLISH CLEAR LINES OF ACCOUNTABILITY

When responsibility for a project is parceled out in unconnected pieces, it is difficult to pin down who is accountable when expectations fall short. Large-scale programs may be complex, but the lines of responsibility must be clear. Rather than rely on process standardization, it is vital to introduce the principles that characterize the 21st century organization, including its dependence on partners to achieve its results.

CONCLUSION

Rather than rehashing history, the Council would like to recommend the building of a path toward the future so we can move this process forward. We must learn from the past, not be defined by it.

Once the mission and goals of a project are known, the focus needs to be on keeping the project on track and most importantly, to keep as many of the best people on the project as possible.

The Council is offering to work with the committee as a neutral, but very interested actor, to be a conduit between the public and private sector to achieve these goals of reform—to identify and find real world solutions to contracting challenges and work toward better accountability, diversity in the homeland security community and, most importantly, to ensure a sound, fair, and responsible contracting process.

Government and its partners share the same goal. We want to see projects completed on-time and on-target. We want to see programs that meet their objectives. We understand sometimes there are roadblocks. Our challenge is to find the most appropriate, effective, efficient routes to overcome them quickly and with the least disruption to the mission. We can do this by working together in meeting the goals of our common mission.

The public and private sectors—working from previous recommendations and developing new ones if necessary—must be able to work from the same strategy. In the GAO Report cited by the House and Senate leadership from earlier this spring, it was found that “contracts with well-defined requirements linked to measurable performance standards delivered results within budget and provided quality service.”

To be successful, this will include:

- Greater support for the recruitment, development, and retention of a corps of modern managers skilled in the complex—and essential—task of meeting the mission by building links and reaching out beyond the public sector to whomever can serve the interests of the Nation.
- The ability of public and private sector managers to be equipped and able to speak out if there are newer technologies or better solutions.
- A better and more specific planning throughout the lifecycle of the project with more focused, proactive oversight.

This approach will get our Nation where it needs to go—where this committee, the next administration, the Department, the private sector providers of services and technology want us to go—and will ensure that we get there together.

As another GAO Report from April pointed out the Department has to undertake these critical missions while also working to transform itself into a fully functioning cabinet department—“a difficult undertaking for any organization and one that can take, at a minimum, 5 to 7 years to complete even under less daunting circumstances.”

In the face of a transition, and a strong desire of all the stakeholders to move forward in achieving of our common mission, this is certainly the time to evaluate, question and develop a foundation of support for the agency tasked with securing our homeland.

On behalf of the Homeland Security & Defense Business Council, I appreciate the opportunity to provide our comments on the important issues before the subcommittee. The Council desires to provide this committee and DHS with the support, expertise, and input you need to ensure that sufficient resources are afforded and appropriate processes are in place to achieve success. We look forward to working with the subcommittee as it continues its deliberations.

Mr. CARNEY. We will now begin the second round of questions. Each Member will have 5 minutes. I will begin with myself. Ms. Madsen, you mentioned that data—you didn’t have data, that the data was not available. Was the data not up-to-date while you were making your reports? What was the case?

Ms. MADSEN. Thank you. Are you referring to the competition data?

Mr. CARNEY. Yes.

Ms. MADSEN. Okay. What we found—and I can tell you looking at data from FPDS changed my hair color during the course of the panel. What we found is that the Federal procurement data system, next generation simply, there was data available, the high

level about competition, but not at a granular level. When you look at the amount of the Government's procurement spend and the percentage that went through interagency contracts through the ordering process that did not go off on contract awards but went off on order, there was no data available at all. I think that is probably still true.

I don't think the system has yet picked up those orders that are placed under those multiple award—multiple agency contracts.

Mr. CARNEY. Can you speculate as to why that is the case?

Ms. MADSEN. They didn't collect—I think they have now started to collect it. But the system was focused on capturing data about contract awards, not about data on orders under existing contracts?

Mr. CARNEY. Okay. Now, I want to kind of talk about Deepwater for a moment if we might, Ms. Madsen. Even after we saw what happened with the project and these ships that were basically unfloodable was your point, the contractors were still given a \$4.6 million bonus. Now, why would something like that happen? What is in the nature of a contract like that that would allow that to happen?

Ms. MADSEN. Mr. Chairman, I don't know any more about Deepwater than what I can read in the GAO reports and the IG reports.

Mr. CARNEY. Well, there were certain incentives written into the contract that were not performance-based actually.

Ms. MADSEN. Sir, I don't really feel competent to answer that question specifically. I can, I think, say, based on our work and not with specific reference to Deepwater that we consistently found, that when you don't have a good definition by the buyer of its requirements and very firm performance criteria that it is very hard to measure what performance is. I would guess, and that is what I am doing, that they have got those kinds of issues here.

Mr. CARNEY. Mr. Amey.

Mr. AMEY. Again, I haven't followed the Deepwater awards fees that well either. But one issue that you also have to consider is that we have heard from certain contracting officers in the past that a lot of times it is easier to award those bonuses than it is not to avoid any possible litigation or complaints from the contractor as well as poor performance in the future. So I don't know if that is—you know, in essence, that may even be a bribe in some people's minds. But it is an issue that you have to take into account that a lot of times with performance measures, with evaluations of performance, it is very difficult as Ms. Madsen says, but there is a possible—if it isn't well-defined, then it isn't easy to measure. Then at that point there are possible potential hurdles for the contracting officer and it could slow down the program if they were to award all the money. We have seen instances with that in Department of Defense programs.

Mr. CARNEY. Do we see many conflicts of interest with contract procurers doing contracts for their parent organization?

Mr. AMEY. Not that I am aware of. I do have a few instances outside of Deepwater where there is some interesting conflict.

Mr. CARNEY. I am sorry. Not specific to Deepwater, but outside the—

Mr. AMEY. Well, Deepwater, I think presented a natural conflict of interest too because you handed over so much authority over to

the—you know, over to the lead systems integrators that at that point the Government, you know, was in a position where I don't even know if it could administer—effectively oversee that contract. I think that is what we are seeing even now once it came back in house, that there were some questions raised on how soon the Government and DHS and the Coast Guard will get up to speed in being able to effectively monitor and oversee that contract.

We have seen it in some other instances with DHS contractors where we have seen some people come in from the private sector that are overseeing, or are very involved with their former private sector employers and we have also seen some instances, specifically some with Katrina, where I have some outstanding FOIA requests with DHS in which I am trying to get down to the facts of very large no-bid contract that was awarded, and then within days, the person left and went to work for a contractor that received that award. From what I am hearing, there is a possibility that there is a criminal investigation that is taking place involving that instance. So there may be something more that comes out that you will read about in The Washington Post or that we would come to your committee with.

Mr. CARNEY. I certainly hope that is the exception and not the rule. We will readdress this in the next round. Mr. Rogers for 5 minutes.

Mr. ROGERS. Thank you, Mr. Chairman. Mr. Amey, in your prepared remarks you made a point that nearly 40 percent of all contracts—of contract spending is awarded without competition and I would ask you first, and then the other two witnesses to tell me, why do you think so many of these are not being competed?

Mr. AMEY. It all boils down to your definition of competition. That number could be higher if you include the 20 percent of one-bid contracts that Ms. Madsen referred to. But it boils down to, I think, DHS—their number, I think, was very high because of Hurricane Katrina. They were placed in a position where competition either had to be done away with or at least very limited. That was just poor planning. Again, that goes back to my comments about comparing GAO reports that were tied to Hurricane Andrew. I think the DHS and FEMA were stuck flat-footed. I don't think they were prepared. They should have contracts in line for car, for cell phones for—you know, all the different things that they needed. That was preplanning. They didn't have anything to do with an acquisition workforce issue. That was just bad planning I should say. Bad preplanning.

But when you add in continuations of bid contract when you add in the fair opportunity for a lot of these multiple award contracts where they are considered competed on the front end but not on the back end. Ms. Madsen can go into that because I know that was one of her recommendations if her panel's report, was that we extend currently DOD has to bid multiple award contracts. But we don't have it for the civilian agencies. That may be something that the subcommittee wants to take a look at and to add a second layer of competition into the system.

Mr. ROGERS. Ms. Madsen. The question again was: Why do you not see more competition?

Ms. MADSEN. I actually think the picture is pretty complex based on the work that we did. I can't say that 40 percent is the right number. Government-wide the number that we were able to identify on contracts was about 36 percent in fiscal year 2004. That did not account for the instances where only one offer was received. It did not account for task order awards under IDIQs. So the number is probably higher. I think there were some things in the mid-1990's to 2000 time period that probably—including the huge reductions in the workforce and the pressure to get things awarded that have resulted in this. These numbers based on what we could tell, were pretty consistent over the past 10-year period. I mean, so they are not for the Government they are not up, but I think our comparison, which was to what—what do large private sector buyers who are buying services, what do they get, their competition is a lot more rigorous. That is really what we were trying to compare to, is when you are looking at private sector buyers who are buying large IT heavy services which is mostly what the Government is buying these days, you know, what are they doing? And it just didn't measure up.

Mr. ROGERS. What about—Mr. Pearl, why?

Mr. PEARL. In what context?

Mr. ROGERS. Why didn't it measure up? I mean, we are talking about your member companies. Why isn't there more competition among them to try to get these contracts?

Mr. PEARL. Well, I think as I alluded to both in my written testimony and my oral, there is a sense in—at least in—and I am only speaking about the Department of Homeland Security—is that in the context—is that early on there is a sense of frustration because it was taking a long time to get a response. It was taking a long time to get—have your A team as the Chairman was talking about ready to go and that by the time in essence decisions were made, that A team might have been pulled for another project, another program. So that in essence, what I have heard from a number of our members is that early on there was a sense of frustration.

Therefore, if I have already bid on this and it has taken so long, am I going to spend a huge amount of dollars in research and development to bid on another which might be just as good or better? But, in fact, they couldn't afford that. So frustration was an early stage. The whole nature of the immediate need, I think, in terms of being able to preplace the product, the service, the technology on the ground as quickly as possible in terms of meeting the mission of what was trying that this Congress and what the Department was trying to accomplish early on is also one of the reasons why I would not, with any data in front of me, suspect that there was, in fact, one bid or no bids on certain situations.

What I don't know, and I think it is worthy of at least looking into over the course of in the months to come as we look forward as opposed to looking back, is whether there really is any correlation, however, with the title of this hearing. Whether, as a result of a one-bid or a no-bid contract, does that necessarily correlate to greater waste or abuse or mismanagement? I haven't heard that. I think that is an issue that the committee and the subcommittee is looking at.

But there is not necessarily any correlation to the fact that a contract wasn't fulfilled to its ultimate end successfully or not, because there was one-bid or no-bid or a competitive bid situation.

Mr. ROGERS. I think as you heard from Ms. Madsen earlier, generally when you find there is a one-bid contract there is going to be an inflated cost to that contract. That has been my experience in the private sector, and I think all of us feel that is probably what is happening, although it may be an inaccurate feeling. My time is up. I yield back.

Mr. CARNEY. Thank you, Mr. Rogers. The Chair recognizes the gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. Mr. Chairman, I want to confer and agree with the gentleman, my good friend from Alabama. I want to take it a step further. That is we have had one-bid contracts and no-bid contracts. I would like to know a yes or no answer from each of the participants in panel No. 2. Do you believe that a contractor should be utilized—we are talking about nonemergency situations—should be utilized when there is no-bid or there is one-bid if that person—if that contractor has contributed to the Executive branch of Government, pay-to-play? I am from New Jersey. We are experts on that.

Let me ask you the question, though. Do you think that that contractor should be able to called in to do that work if that contractor in a no-bid or one-bid situation has contributed to the Executive branch of Government? Yes or no.

Ms. MADSEN. What do you mean by "contributed"?

Mr. PASCRELL. Contributed in a political campaign.

Ms. MADSEN. So not contributed a work product?

Mr. PASCRELL. No, no, no. I meant contributed to—you know, legally contributed to—we are talking legally here obviously. Legally to a Presidential candidate. What do you think there, Ms. Madsen?

Ms. MADSEN. I don't think the question is that simple unfortunately because I think almost every major player probably contributes. So—and there are legitimate reasons and there are statutory exceptions that permit—

Mr. PASCRELL. Remember, I said—I am not talking about an emergency.

Ms. MADSEN. I am going to tell you I can't answer that yes or no.

Mr. PASCRELL. Thank you. Mr. Amey.

Mr. AMEY. My answer is no, they shouldn't be able to get that award. It is actually one of the recommendations—we put out a report in 2004 called the politics of contracting and we looked at this issue. Specifically, one of the things that we said was we should roll back to the pre-1976 era when contractors weren't allowed to give money. The offshoot of that was the designation of PACs. So that is one of the things we have said is okay, contractor PAC, shouldn't be allowed to give money.

Mr. PASCRELL. Since your report came out in 2004, has there been an adherence to that report or have things gotten better or worse?

Mr. AMEY. I would say they have remained probably with the status quo. The report actually looked at lobbying expenditures,

campaign contributions, individuals and PACs, as well as the revolving door.

Mr. PASCARELL. Mr. Pearl.

Mr. PEARL. On its face, you are saying that the contribution to any political campaign, be it Congress or at the Executive level, is a legal contribution. My response should be—would be that that that is ostensibly in a transparent world, which we are calling for, where there is, in essence, across the board, total understanding of notice, across the board that that is a consideration in terms of the part of the process, I don't see any reason why, if it is legal to give a contribution, that they shouldn't be able to and compete fairly in the free market.

Mr. PASCARELL. Okay. Mr. Amey, I think we have seen time after time that the DHS contracts are yet another effort by the folks down the street to guarantee more work for private contractors with contracts that contain few specifics and suffer from lax oversight. If you look through all the reports, you know, that is pretty much a common strength role of those.

This is a part of a larger pattern of behavior that believes that every private contractor should be given a free hand and be trusted implicitly not to choose their own profit margin over providing quality and cost-efficient products and services paid for by all of us, the taxpayer. This pattern was demonstrated time and time again, notably in the relative failure of Project 28 to work as advertised on the U.S./Mexican border, as well as numerous military contracts given to Halliburton, KBR in Iraq that were proven to be rife with fraud. I mean, we figured that out. Somebody else—a third party figured that out. I want to ask you this question: To what extent have you found that the Department of Homeland Security shifts its decisionmaking authority to these private contractors?

Mr. AMEY. We have most of our recommendations take a look at the agency just overall, and it is based on specific instances that come in. But it is based on the overall contracting world. So what we see isn't necessarily based on DOD reference to a lot of what is going on in Iraq and with DOD contractors. That is a problem there too. A lot of it goes back to our overall contracting system and what we developed in the mid-1990's, the buying of commercial items and services more like the private sector. The private sector makes the trade-off of profits versus key oversight. I don't think the Government can afford that same balancing test. I think we need to add more oversight to the process and there is certain types of contracts, commercial item contracts where Government officials don't have access to the cost or pricing data that they need.

Mr. PASCARELL. So this not just an executive problem. We can't shift the entire blame to the Executive branch of Government. The Congress cannot fulfill its oversight responsibilities under the Constitution. This is the 221st anniversary of the signing of the Constitution of the United States of America. It either is a working document or it is simply for awards, right, Mr. Amey?

Mr. AMEY. I would agree with that.

Mr. PASCARELL. So your conclusion is what today?

Mr. AMEY. To make sure that Federal agencies and contractors are spending taxpayer dollars wisely.

Mr. PASCRELL. So all of the discussions that we have had, has anyone gone to jail? I just thought I would ask the question.

Mr. AMEY. There are a few Department of Defense officials and I think there may be a few Department of Interior officials that may soon be going to prison.

Mr. PASCRELL. Make an announcement about that.

Mr. AMEY. It is major news around Washington, DC.

Mr. PASCRELL. You are laughing, but I know you are a serious person. This galls me, Mr. Chairman, that we are into a situation 7 years later and we are asking questions that we don't have resolution to. Not only do we have the longest war maybe in the history of mankind, you know. But we have the longest oversight which produced nothing. Now, let me see if I can figure that out.

Mr. CARNEY. Well, figure it out in the next round of questions, Mr. Pascrell.

Mr. Pearl, I was struck by your testimony, your written testimony about the flexibility aspect of what you should be able to offer. I would like you to explain how we are—become more flexible if we have to respond quickly to events. How do we on the one hand provide the kind of oversight and strong contractor we need while remaining flexible enough for the community you represent to react?

Mr. PEARL. I am not just talking about flexibility, Mr. Chairman, within the private sector. I think that the flexibility has to come from the contracting officers and from the understanding of what the needs are toward the end mission. I think that the flexibility that I am talking about is precisely within the context of the contract. Even in the private sector, that, in essence, conditions change, circumstances change and that the recognition that you cannot state that this is the way it is going to be, because we are going to provide this amount at this price in this local, for example, in a hurricane situation when this point of fact, the hurricane may have hit 100 miles west or 200 miles south or whatever that might be.

The flexibility is sometimes there might be transportation costs involved that you have to take into consideration. That is just a very minor example to what we are talking about. So the flexibility we are simply talking about is that when you have strong oversight, which we are calling for, and I agree with Mr. Pascrell, that we in the private sector benefit from greater oversight. I called for that in my written and oral testimony. We agree with that. If there is great oversight, if there is tremendous transparency, then point of fact that the parties working in partnership, and that is something we in the private sector have not seen as closely, that we have been kept at an arm's length, so that therefore, here is the contract, do it the way we want to do it, but we are not going to be partners in this enterprise in terms of the overall mission.

What we are calling for is we have a greater partnership in any relationship that you have, a personal relationship—I have learned for 31 years after being married to a psychotherapist that the whole nature of being flexible is a necessary component toward a healthier relationship. Well, that is the kind of relationship that we in the private sector are looking for with respect to our partners

in the public sector. That is the flexibility that we are talking about so that we can, in fact, meet the ultimate goal and mission.

Mr. CARNEY. We are all married to psychotherapists, Mr. Pearl.

Mr. PEARL. Mine is at home.

Mr. CARNEY. Mr. Amey, you talk about creating a database, a contractor responsibility database. How could the Department benefit from that?

Mr. AMEY. I think it would allow the agency to make better contracting decisions where we have seen instances in the past, even just a few of the names of contractors that Representative Pascrell mentioned were contractors that have a very questionable track record. The FAR has a provision in that says the Government is supposed to contract with responsible contractors only it is very difficult to define who is responsible, who is not.

Is an instance from 5 years ago still relevant now? But if you have violation—contract fraud violations, violations of the Foreign Corrupt Practices Act, different false claims given to the Government, product substitution. Those are instances I think contractors should know and should take into account when they are deciding to award a contract up-front, as well as suspension/debarment officials at the end.

One of our claims is that the Department of Homeland Security hasn't taken—hasn't used the suspension and debarment process as much as it should. One of the questions I get from a different agency was if I would have known that contractor already entered into three administrative agreements, I would have never entered into the fourth. Government officials don't have the data necessary to make certain decisions that they need before and after awarding a contract.

Mr. CARNEY. Ms. Madsen, do you agree?

Ms. MADSEN. Not exactly. I think there is probably a misapprehension there. To put an offer or a bid on a current contract today, the contractor has to disclose if he has settled any false claim, if he has false claims judgments against him, if he has any criminal penalties against him, if he has had any falsification of documents if he has had any environmental violations. So there is a process that already exists for every offer that is submitted for that information to be made available. The debarment suspension list is a public list—it is public. It is accessible on the Internet. So I am not quite sure what an additional database would add to all of that. This isn't something that our panel necessarily looked at. We did, however, say that particularly where we have got this blended workforce issue that there were additional protections of a different kind that needed to be put in place.

Mr. CARNEY. Mr. Pearl.

Mr. PEARL. I agree. I don't represent a single member who meets the essence of the questions that you were asking obviously. But seriously, I think that the context is that in a world where there is transparency and greater oversight and then the kinds of issues that POGO talks about will be dealt with in a much more open and fruitful fashion for everyone. I think that the whole nature of what the Chairman of this advisory board has said in terms of Ms. Madsen's frustration in getting as much data is something that we are in essence looking forward to as well. We want to see openness

because it opens competition and it opens the sense of the kinds of issues and concerns that this subcommittee have.

Mr. CARNEY. Thank you, Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman. I only have one question. I want to go back to something Mr. Amey made reference to a little while ago when he said that there are some folks who were offering seminars on how to get around competitive bidding. Tell me about this. Who is doing that?

Mr. AMEY. I can send you a list, but there are certain Beltway bandits out there that offer seminars and Government officials attend them, contractor employees attend them and one of the ones I have says avoid competition like the plague. We have seen different aspects of using small businesses, a lot of the ANCs—I won't say a lot. But there are been certain ANCs that have been used as a pass-through for larger contractors as a way to avoid competition, although everybody wants competition. It is funny, when I attended—I attended nearly all—

Ms. MADSEN. All.

Mr. AMEY. All the panel discussions. Nearly all. I had a very good attendance record. I will say it was very funny to hear some of the larger corporations when they were buying and they were buyers, they were talking about competition is essential, market research is essential. But when they are selling to the Government and they are on the other side, at that point we are not using the same measures that they were using as buyers. That is a little scary. It was people that we have very large contracts with.

Mr. ROGERS. I would love it if you would forward that list to the committee. I am sure the Chairman would like to see it as well. That is all I have, Mr. Chairman.

Mr. CARNEY. Thank you, Mr. Rogers. Would you like to go, Mr. Pascrell?

Mr. PASCRELL. If you permit me, Mr. Chairman.

Mr. CARNEY. You are permitted, sir.

Mr. PASCRELL. Thank you, sir. I wanted to just briefly tell the panel I think that most private contractors are hard-working, decent human beings, by the way, and I think you feel the same way. Unfortunately, many who aren't fitting in that category do business with the Government and that is the problem. So, Ms. Madsen, I have a question for you. Previously reports have stated that over 50 percent of the dollar value of the Department of Homeland Security contracts was awarded without full and open competition. Fifty percent. How is this able to happen and what is being done to ensure that contract awards are made through a fair and open process?

Ms. MADSEN. We talked about this, I think, a little bit before you came in, but the data that the acquisition advisory panel developed Government-wide probably is not inconsistent with that number. We saw in 2004, 36 percent of contract awards were not competitive. We saw one offer of contracts increasing to about 20 percent—or by 20 percent—or to 20 percent I should say and we couldn't get reliable data on awards under large multiple-award IDIQs, so that number wouldn't surprise me as a Government-wide number. I think what has happened though in the intervening 2 years is that more protections have been put in place.

So FPP has issued a strong competition policy. The 2008 Defense Authorization Act put in place more protections for award of task and delivery orders under IDIQs, including the ability to protest those awards and better data collection.

So there are steps that have been taken and there is pending legislation that would implement other of the acquisition advisory panel recommendations with respect to increasing competition. So those steps are being taken. So I would say that number for DHS, if you are looking at 2004–2005, that is probably not out of line with the rest of the Government would be my guess.

Mr. PASCRELL. Whose responsibility would it be to make sure that there is proper data? Who has ultimate responsibility for accumulating the data which you referred to in your presentation a moment ago?

Ms. MADSEN. GSA collects that data under a contract, what is called the Federal Procurement Data System, FPDS, which is actually the baseline for the new FADA data as well. So they collect data from all the agencies based on their contract awards. It is pretty intensive, but it doesn't pick up every detail.

Mr. PASCRELL. Well, 50 percent is more than every detail.

Ms. MADSEN. Well, it doesn't pick up details, at least it didn't at the time and I don't think it does yet, about these awards under multiple-award IDIQs. That is where the biggest gap is.

Mr. PASCRELL. Is that simply because—my final question—is that simply because they don't have the means to get the data? Is the data being withheld? What are the reasons?

Ms. MADSEN. What we were able to determine—

Mr. PASCRELL. I mean, we are talking about a lot of money here.

Ms. MADSEN. They didn't ask the question about the orders under IDIQs. The system was geared to get contract information, not order information. The orders under those vehicles grew very rapidly between, like, 2000 and 2004.

Mr. PASCRELL. Thank you very much.

Thank you, Mr. Chairman.

Mr. CARNEY. Thank you, Mr. Pascrell.

No more business before the committee, we stand adjourned.

Now, please be reminded that we may have written questions, and we would like a prompt reply.

This committee stands adjourned.

[Whereupon, at 4:08 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR RICHARD K. GUNDERSON, DEPUTY CHIEF PROCUREMENT OFFICER, DEPARTMENT OF HOMELAND SECURITY

DHS ACQUISITIONS TRAINING PROGRAMS

Question 1. In your prepared statement (p. 7) you discuss the Acquisitions Professional Career Program. Can you update us on the current status of the Department's Acquisitions Training programs?

Answer. While the initial focus has been on the certification standards and training development needs for contracting and program management, the Office of Chief Procurement Officer (OCPO) mission expands beyond those initial career fields and will ultimately address multiple acquisition career fields, including systems engineering, logistics and test and evaluation. The Acquisition Workforce Branch, within the OCPO, was funded a centralized acquisition work force training fund beginning in fiscal year 2008. OCPO has established a three-tiered approach for the centralized acquisition training program that includes: purchasing commercial-off-the-shelf courses; developing partnerships with other Government organizations such as the Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU) in order to leverage off already existing acquisition courses; and, developing DHS-specific classes in Acquisition. As with all new starts, the fiscal year 2008 continuing resolution impacted the centralized Acquisition Training Program. However, even with a late start, DHS was able to complete and field two new program management courses in partnership with DAU and fund the continuing development of three others that will be available in fiscal year 2009. Also, DHS was able to leverage its partnership with DAU and send DHS students to program management courses at DAU during fiscal year 2008. DHS started the development of five DHS-specific continuous learning modules and workshops, two of which were piloted in the last quarter of fiscal year 2008 and three additional that will be ready by the end of the first quarter of fiscal year 2009. The Continuing Resolution had the most impact on the DHS's training strategy that was primarily based on commercial-off-the-shelf training which would be provided by vendors. As a result of the CR, DHS was not able to provide as much training as originally planned and relied more heavily on training available for other sources such as FAI and DAU. During fiscal year 2008 and into fiscal year 2009 the career development and training branches are working intently to build the infrastructure necessary to support the acquisition work force training needs including the establishment of a separate Training Office within the Acquisition Workforce Branch including such functions as forecasting needs, quota management/distribution, and registration.

Question 2. How do you think that, over time, this program will improve oversight of the Department's acquisitions?

Answer. Direct oversight of programs and contracts is accomplished by Component acquisition professionals. OCPO is responsible for establishing the certification and training criteria to ensure they possess the requisite knowledge, skills and abilities to perform their functions. Program Managers, Contracting Officers, Contracting Officers Technical Representatives, and other acquisition career fields work together as an integrated team to ensure the successful execution of the program and ensure that the terms of the contract are met. OCPO will include all the disciplines necessary to achieve this end goal in its acquisition work force. This will include the development of certification programs for other such disciplines as Test and Evaluation, Systems Engineering, Logistics, etc. Certification programs include requirements for education, experience and training to ensure that all competencies required to successfully perform the respective acquisition function will be met.

To achieve this goal, the centralized training program is designed to train the totality of the acquisition work force to be adaptive to the Department's needs through

the 21st Century and close any critical skill gaps; these gaps are identified in the competency surveys as administered by the Office of Federal Procurement Policy within the Office of Management and Budget or are found through internal reviews and audits as well as recommendations from the General Accounting Office and DHS Inspector General. A key enabler to the acquisition work force's ability to making good business decisions in support of our Acquisition Programs is to have highly skilled and well-trained individuals in the decisionmaking roles. This strategy also includes the development of DHS certification standards broadening from solely Contracting and Program Managers into other areas of specialized acquisition knowledge, such as test and evaluation, systems engineering, and business cost financial estimating.

In addition to the direct oversight being performed by the components, the CPO, in coordination with other Departmental executives, oversee program execution through the Acquisition Management review process. Programs are required to seek various approvals from the Department prior to execution. For example, Level I programs require an Investment Review Board, chaired by the Deputy Secretary, at key decision points in the acquisition life cycle. The Department has also implemented new Periodic Reporting of key program metrics to monitor cost, schedule and performance measures of select programs.

Question 3. Have you had difficulty filling all the available spots in the DHS Acquisition Fellows Program and the Acquisitions Professional Career Program?

Answer. The Acquisition Workforce branch within the Office of the Chief Procurement Officer has developed and implemented a vigorous recruitment strategy, targeting diversity, veterans, and universities across the continent for the Acquisition Professional Career Program (APCP). Since the APCP was a fiscal year 2008 start-up the continuing resolution caused an initial pause in hiring. As with all new starts several challenges emerged in the actual hiring and security processes. However, we were able to meet a target of 49 hires, and we currently have 48 on-board. We anticipate meeting our fiscal year 2009 goal of 52 additional hires, bringing the grand total of participants to 100.

Question 4. What are the parameters of this program? After training, are "students" required to work at the Department for a number of years or are they free to depart for higher paying private sector jobs?

Answer. The APCP is designed to be a 3-year entry level program targeting GS-7s, using the Federal Career Intern Program Hiring authority. Each participant in the contracting career field will be given an opportunity to complete three, single-year rotations through separate components aiding in the development of a "one DHS" culture. Throughout the 3 years the participants will be provided all the necessary certification training and experience to become Level II certified. The participants will also receive additional training in leadership and other competencies for successful performance, such as business writing, customer service and project management. Participants are also paired with a mentor through a formal centralized mentorship program.

The participants of the APCP program are held to the same standard and regulations as any other Federal employee. They are bound by a time commitment of 3 years which is tied to a recruitment bonus which is given at the beginning of the commitment. If the participant is offered and accepts a recruitment bonus they must remain for 3 years or pay a prorated portion of the bonus back to the Treasury. Similar Federal guidelines for training and educational benefits received apply.

Question 5. One of the challenges noted in the past has been the limited number of contracting professionals on board to support the programs. How has the CPO and the various DHS contracting organizations addressed this problem?

Answer. DHS has addressed this challenge by utilizing the statutory authority to re-employ annuitants and position them to serve as mentors for the APCP participants. Also, each Head of Contracting for procurement signs an agreement to ensure that the participants of the program receive and are provide an adequate amount of supervision and guidance to develop them to become the future leaders within DHS.

Question 6. In your prepared statement you discuss the aging acquisition work force Government-wide (p. 7). Moving forward, it appears this will be a challenge for all Government agencies. In your opinion, what steps can the Federal Government take to ensure a strong acquisition work force in the coming decades?

Answer. Actions that could be taken to ensure a strong acquisition work force for the future include: continuing to support agency-specific programs such as the Acquisition Professional Career Program; allowing agencies to continue to exercise available flexibilities such as re-employed annuitants and direct hire; as well as, permitting flexibilities such as special pay without having to expend significant effort in order to request this. Another significant improvement would be to encourage

the Office of Personnel Management to consider the contracting career field to be professional vice “administrative” since there is a positive education requirement associated with the 1102—Contract Specialist.

Question 7. Can you give an example of successful contracts at the Department?

Answer. The following examples demonstrate capability being delivered in support of the Department’s missions:

Nurse Case Management

The contract supports the Transportation Security Administration (TSA) in the management of an estimated 18,000 workers compensation claims arising from security screening and other work activities. Services include expertise to determine if medical intervention is required and provide nurse and medical case management services to ensure appropriate medical treatment is being provided to security screeners and other TSA employees. Also, the contractor assists in identifying suspicious or fraudulent claims, tracking trends and providing recommended process improvements in operations that may help reduce injuries and associated claims. The impact has been a significant decrease in the amount of long-term injury reports and a significant decrease in the number of days injured employees are out of work. The contractor has significantly reduced the number of longstanding workers compensation claims, which has assisted TSA in reducing its overall number.

National Voluntary and Abandonment and Hazardous Material Disposal

This contract provides environmental management services to TSA to ensure the environmentally compliant management, collection, storage, packaging, transportation and disposal of hazardous materials voluntarily abandoned at airport security checkpoints and other TSA facilities, and other hazardous wastes generated by TSA. The contractor is responsible for providing management and support services, collection containers, container identification and marking, labeling, packaging, shipping, and final treatment/disposal for material collected in support of compliant disposal of hazardous voluntarily abandoned property at all TSA facilities, focusing on Federalized airports.

The impact has been a reduction in the amount of abandoned items stored at the airports resulting in hazardous conditions such as collected fumes from abandoned lights, corroded batteries and leaking aerosols. The contract requires compliance with Federal, State, and local environmental laws and regulations. As a result, the contractor bears full responsibility for removal and destruction of said materials in a safe and environmentally compliant process, and assumed total risk in regards to environmental violations. In regards to non-hazardous material that are abandoned, those items are collected and donated to State Agency Surplus Program Offices that may sell or donate items to local non-profits, etc.

Electronic Detection Systems—CTX 9000/CTX 9400

TSA negotiated the purchase of the CTX 9000/CTX 9400 Electronic Detection Systems, resulting in significant cost savings, product improvements, increased extended warranty, and an incentive fee for improved reliability of selected CTX 9000 units. After extensive negotiations, TSA negotiated a 9 percent reduction in unit price from the proposed amount, and built in an incentive to motivate the contractor to successfully reduce the Mean Time Between Critical Failure (MTBCF) of the equipment. The reduction of MTBCF is expected to enhance operations at the airports Nation-wide and result in lower future maintenance costs. This award also incorporated payment terms where the contractor would only receive payment if the MTBCF for a selected population of CTX 9000 improves after 18 months. Additionally, TSA obtained an extended warranty for an additional 5 months or 150 days from the day of factory acceptance test.

Aircraft Cabin Training Simulators (ACTS)

After a successful solicitation and evaluation, Newton Design and Fabrication, Inc.—a HubZone business located in Catoosa, OK—was awarded a contract for Aircraft Cabin Training Simulators (ACTS). Two delivery orders initiated at award provided for four simulators: a double-decker hybrid unit (747 on top/767 on bottom) and a 737 single unit for the Federal Air Marshal Atlantic City Training Center (FAMTC); and a dual hybrid unit (737 on one side/767 on the other) for the Federal Flight Deck Officer (FFDO) Dallas training office. These simulators will serve many purposes for FAMTC, FFDO and Crew Member Self Defense (CMSD) Training. The contract allows for future simulator purchases as well as accessory components as needed. This award will benefit TSA by providing a realistic aircraft training environment that allows for multiple training scenarios and use by the FAMS, FFDO’s and Flight-Crew Members. These state-of-the-art units were specialized to withstand the ballistic requirements of the training ammunition and dynamic training

environment, be readily maintainable throughout their life cycles, and can be moved, enhanced, and reconfigured to adapt to changes in the training programs.

HC-144A "Ocean Sentry" Maritime Patrol Aircraft

An integral piece of the Coast Guard's Deepwater Major Acquisition Program, the HC-144As will replace the Service's aging fleet of HU-25 Falcon jets. The HC-144A is a derivative of the EADS/CASA CN-235-300 and significantly enhances the mission execution capability of Coast Guard aircrews. This fixed-wing turbo prop aircraft will perform various missions, including maritime patrol, law enforcement, search and rescue, disaster response, and cargo and personnel transport. Additionally, the "Ocean Sentry" provides the added operational capability of a hydraulic-operated rear ramp, with superb fuel efficiency—consuming less fuel than the HU-25 or HC-130. The HC-144A project calls for delivery of 36 aircraft. To date, the Coast Guard has accepted delivery of the first five HC-144A aircraft, with an additional three on contract for delivery.

HH/MH-65C "Dolphin" Multi-Mission Cutter Helicopter

The HH/MH-65C helicopter conversion project adds equipment, including two Turbomeca Ariel 2C2-CG turbo shaft engines, armor, gun mounts, weapons and ammunition for AUF. The new engines provide approximately 40 percent more power than those they replaced, enabling improved reliability, endurance payload and performance. The HH-65Cs will also have improved C4ISR electronic equipment suites; and day-night/all-weather capability with radar and electro-optic/infrared sensors. Improved mission capabilities include the ability to provide surveillance and to apply force against a maritime target up to 150 nautical miles from a host cutter. To date, all 97 HH-65s have been re-engined, upgraded and converted to the HH-65C configuration at the ARSC in Elizabeth City, N.C., and at an American Eurocopter facility in Columbus, Miss.

SBINET: PROJECT 28

Question 8. In hindsight, is it accurate to say that the Department benefited from the fact that Project 28 was a performance-based acquisition?

Answer. A performance-based contract is an appropriate tool to accomplish the SBInet goal of integrating new and existing border technology into a single, comprehensive border security system that will enable Customs and Border Protection (CBP) to more effectively detect, identify, and respond to incursions at the border. Specifically, SBInet is being developed through a series of performance-based task orders that allow the Government to identify the outcomes/results that the contractor must achieve and requiring the contractor to deliver a solution which demonstrates the stated objectives. CBP sets the performance requirements for the project and Boeing develops the approach to meet these requirements, maximizing the use of commercial off-the-shelf technology and innovative solutions.

Project 28 was designed to test the initial suite of SBInet capabilities under a pilot or prototype effort as the system's technology foundation. Project 28's proof of concept was intended to: (1) Demonstrate the feasibility of Boeing's SBInet solution; and, (2) establish baseline performance characteristics against the SBInet performance targets included in the master contract. By using a fixed-price performance based contract with specific measureable outcomes, the Government was able to evaluate the technical approach, achievability, and feasibility of Boeing's overall SBInet solution on a small scale with limited financial exposure. This approach provided a number of lessons learned that will be implemented in future segments, ultimately improving performance, reducing risk, and improving cost performance.

ACQUISITION MANAGEMENT

Question 9. Could you provide some background on what the Department has done to ensure that contractors are not affecting inherently governmental decision-making or influencing long-term DHS policy?

Answer. At the Department of Homeland Security (DHS) and across the Government, there is a need to be increasingly sensitive to organizational conflicts of interest issues that may arise through contracting for services and products. Across the board, contractors bring a wealth of cost-effective and often unique experience, information, management and technical skills to the Department. As a result, DHS relies on contractors to perform mission support requirements and relies on those same skills and capabilities to provide required technical assistance in the preparation, review and administration of many contracts. However, DHS has been very careful not to allow contractors to perform inherently governmental oversight functions or other inherently governmental functions, such as determining contract requirements. For example, at DHS, all warranted Contracting Officers and all Contracting

Officers Technical Representatives (COTRs) are considered inherently governmental. These capabilities are sometimes supplemented by qualified contractors that have been cleared of potential conflicts-of-interest.

The Office of the Chief Procurement Officer (OCPO) has taken steps to issue policy on this topic and integrate it into the training of acquisition personnel. The Office of Federal Procurement Policy (OFPP) Letter 93-1, Management Oversight of Service Contracting, is disseminated and discussed during the DHS training for Contracting Officers and Contracting Officer Technical Representatives. DHS officials have coordinated with the Defense Acquisition University's course director for COTR training to ensure that coverage of OFPP Letter 93-1 is included in training at the university.

On March 6, 2008, then Deputy Under Secretary for Management, Elaine Duke, issued the annual DHS Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105-270) data call to Heads of DHS Headquarters and Component organizations. That data call requested DHS Components to review both their in-house and contract mission and administrative workload to be sure that contracts awarded as a part of our stand-up may not now be more appropriate for recurring performance by Federal employees. We specifically asked the Components to be sure that inherently governmental work and minimum residual core capability requirements (FAIR Act commercial function Reason Code A) had not been outsourced.

We consider this review to be an important part of our work force planning effort and have included it into the DHS Workforce Planning Guide, to assure that short- and long-term work force and skill gaps are being met. In accordance with the Secretary's goal to strengthen and further unify our capabilities, we are continuing to ensure that no inherently governmental work has been awarded to contract. To date, we have found no instances of contracting inherently governmental work nor have we identified any work that would be justified for conversion to in-house performance on a solely economic (cost) basis. We have, however, found several instances where work is being converted from contract to in-house performance to assure that minimum core capabilities are being met and, in some instances, to permit the full (better) utilization of other Federal positions that are engaged in inherently governmental work. At NPPD, for example, approximately 250 Full-Time-Equivalents (FTE), to include budget, financial, program and technical operations management support, have been scheduled for conversion to in-house performance.

Question 10. What controls are currently in place and/or being instituted to monitor the entire life cycle of new and existing programs?

Answer. One of the OCPO's priorities is Quality Acquisition Management, focused on strengthening program management, cost analysis, logistics, systems engineering and test and evaluation. In support of this priority, OCPO initiated an Acquisition Re-Engineering effort which examined component and departmental acquisition program controls and monitoring. Results include of this effort include:

Expanding Departmental Acquisition Staff.—DHS established a Senior Executive-led Acquisition Program Management Division (APMD) within the Office of the Chief Procurement Officer. APMD currently has nine staff positions, and is approved to increase to 18 staff in fiscal year 2009. DHS has also established a senior executive-led Cost Analysis Division (CAD) within the OCPO to provide cost estimating guidance and to provide oversight of program cost estimates. CAD currently has three staff positions, is approved to increase to six members.

Improvement of the Existing Investment Review Board Process.—To focus on up-front identification and staffing of program issues, thus focusing the Investment Review Board (IRB) discussion on program execution and challenges. The Acquisition Decision Memorandum resulting from the IRB is similarly focused on providing program direction and assigning specific actions required to resolve these issues.

More Reviews Conducted.—During the period from September 2007 to the present, APMD has conducted 37 quick-look program reviews, two Independent Review Team level program reviews, and piloted a much improved IRB process. As of the end of September 2008, eight IRBs have been conducted, with eight more scheduled through December 2008.

Revision and Expansion of the DHS Periodic Reporting System.—The revised system is centered on the parameters established in the Acquisition Program Baseline, but includes other commonly accepted best practice metrics, such as standardized Earned Value Metrics, and a Probability of Program Success assessment technique modeled after similar systems at DoD, USCG, and other agencies. It will also record and track ADM actions.

Significant Revision to the Department Acquisition Policy and Process (APB).—APMD has created a new Acquisition Directive (102-01), accompanied by an Instruction (120-01-001), that replaces Directive 1400 and lays out a comprehensive acquisition lifecycle framework and acquisition policy and process. Supporting the

instruction are appendices providing detailed information on critical acquisition-related products and processes. These are scheduled for interim implementation during first quarter fiscal year 2009.

Strengthening of Program Acquisition Program Baselines.—APMD is working with individual Level I program offices to strengthen APB; which document a program's cost, schedule and performance metric's thresholds and objectives. This effort involves a collaborative headquarters/program review which results in consistent definition of the program's cost, schedule and performance parameters, along with development of quantifiable metrics from which progress can be measured and assessed. The program leaves the process with an APB improved in both format and content.

Improved Life Cycle Cost Estimating.—The Cost Analysis Division is focused on instilling best cost estimating practices using the Government Accountability Office Cost Estimating Guide as the benchmark. The goal is to develop credible and supportable program and project cost estimates to support budgetary decisions. Once programs have well-defined and documented cost estimates they serve as the foundation and basis for the periodic reporting system. We are initially incorporating this capability at all development and production decisions for all Level I programs.

HURRICANE IKE DISASTER RELIEF AND TEMPORARY HOUSING CONTRACTS

Question 11. Can you describe what acquisition control structures are in place, particularly at FEMA, that will ensure taxpayer dollars are not wasted during the Hurricane Ike relief efforts?

Answer. The Federal Emergency Management Agency (FEMA) continues to build their acquisition community and acquisition control structure by taking the following measures:

Enhanced Acquisition Capability and Capacity.—FEMA's Office of Acquisition Management has grown from a staff of approximately 35 Contracting positions to approximately 235 Acquisition professionals. The office has also matured through the creation of three separate branches that support the acquisition life-cycle and provide the framework for FEMA's acquisition processes and practices. The Acquisition Operations Branch provides pre- and post-award contracting and acquisition support and includes a staff of approximately 180 Contracting Officers, Contract Specialists, Procurement Analysts, and Support Staff.

Pre-Positioned/Pre-Competed Contracts.—FEMA has implemented several pre-positioned contracts in response to the need for advance planning and preparation. FEMA currently has approximately 75 pre-positioned contracts in its inventory. In response to the recent Hurricanes, FEMA activated its ground and air ambulance evacuation services contract with American Medical Response, Inc. and its rail evacuation services contract with AMTRAK. These are examples of successful, pre-positioned contracts for disaster and emergency response.

Increased Contracting Visibility in the Field.—When the scale of a disaster merits increased on-sight oversight of field operations, FEMA designates and deploys an Acquisition Advisor to the Joint Field Office. This role has been utilized in response to both Hurricanes Gustav and Ike. The purpose and role of the Acquisition Advisor is to counsel the Federal Coordinating Officer (FCO) on the acquisition process and regulations, and provide oversight to ensure internal controls are in place and protocols are followed to avoid fraud, waste, abuse, and unauthorized commitments. The advisor also reaches back to the Headquarters office to ensure greater coordination of effort and use of FEMA acquisition staff both from Washington, DC and in the field. Recently, due to the increased staffing levels, FEMA was able to pre-deploy contracting professionals in advance of declared disasters events. This enabled the acquisition staff to be prepared to respond and provide immediate support to the field operations staff—while the FEMA contracting staff at Headquarters executed against the pre-positioned contracts for other mission needs. Additionally, Contracting Officers were deployed with FEMA's Incident Management Assistance Team and Urban Search & Rescue teams—providing direct support to those teams as part of each team.

Enhanced Contract Oversight.—FEMA has developed a robust COTR program that tracks and monitors the skill levels of personnel trained as COTRs, enables FEMA's programs and COTRs to quickly identify personnel with the appropriate COTR skills, and provides the necessary support to the COTRs as they perform their job duties. Currently, there are 1,008 certified FEMA COTRs. FEMA is also implementing an initiative to tier the COTR certification process, which recognizes that not all COTRs are alike and that certain contracts require COTRs with higher skill levels and experience to ensure proper contract oversight. Finally, to ensure a more controlled requirements development process, the approvals levels for high-

value procurement requisitions now require a higher level signature authority within FEMA than previously required; this has helped to validate the requirements before they come to the acquisition office for contract action.

In addition, within the OCPO, there are three interrelated missions that provide an acquisition control infrastructure. First, the Head of Contracting Activity Desk Officer branch maintains cognizance of key acquisition activities and resolving issues associated with complex, multi-billion dollar program investments by providing support to the Component's Head of Contracting Activity and their staff. Second, the Acquisition Oversight branch has undertaken activities to verify the integrity of DHS procurement practices that will lead to strengthening DHS' ability to ensure an effective and accountable acquisition function. Third, the APMD provides outreach support to the Department's program offices to ensure the application of sound program management principles. Since its creation, the division has worked collaboratively with representatives across the Department to develop a revised Acquisition Management framework that will provide the governance of DHS' investment programs. This effort, combined with a revised requirements process that APMD is formulating will serve as the foundation of DHS' investment decision process. To ensure that taxpayer dollars are not wasted during on-going relief efforts for Hurricane Ike, OCPO has actively been participating in FEMA Contract Review Boards (CRBs), to ensure that the requirement is adequately defined, and documents comply with the FAR and DHS regulations, policies, procedures, and practices.

QUESTION FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR JAMES L. TAYLOR, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF HOMELAND SECURITY

HURRICANE IKE DISASTER RELIEF AND TEMPORARY HOUSING CONTRACTS

Question. Are you confident that DHS and FEMA are better equipped to oversee disaster relief contracts during the current crisis?

Answer. We are confident that FEMA is better equipped now to oversee disaster relief contracts than it was in the wake of Hurricane Katrina. However, we believe there is still considerable room for improvement before we can be assured that FEMA is fully prepared to provide needed disaster relief while providing good stewardship of taxpayer funds.

As of October 9, 2008, FEMA obligated \$196,688,827 through 232 contracts for Hurricane Gustav and obligated \$216,340,900 through 245 contracts for Hurricane Ike. This includes contracts for services, such as catering for first responders, janitorial services at special needs shelters, and installation of temporary housing units, as well as contracts for commodities such as meals, water, and tarps.

In past reviews, we found that FEMA's acquisition function suffered from shortcomings in several areas, including work force, information systems, and post-award oversight. While FEMA has made improvements in these areas and continues to strengthen its acquisition function, there is much work still to be done.

When the 2005 Gulf Coast hurricanes struck, FEMA's acquisition work force consisted of just 42 employees. FEMA now has more than 126 acquisition-related positions filled and is authorized to fill 155 positions. FEMA needs to fill all of its authorized positions and ensure that the acquisition work force is fully trained to carry out its duties.

Another area where FEMA still has work to do is in the systems it uses to support the acquisition function. In April 2007, we reported that FEMA was using outdated and nonintegrated information systems. FEMA officials told us they were putting into place the PRISM contract writing system and that this would improve their ability to award and track disaster contracts. FEMA told us it expected to begin using PRISM in February 2008, but this has not yet happened. FEMA continues to use its outdated systems, limiting its ability to manage disaster contracts and protect against waste, fraud and abuse.

FEMA must also continue to improve the contracting officer's technical representative (COTR) function. COTRs provide important programmatic oversight for disaster contracts. FEMA is currently engaged in developing and implementing stronger COTR requirements and better training, and it is critical that FEMA continues these efforts. Our office plans to work in this area in 2009.

QUESTIONS FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR JOHN P. HUTTON, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

SBINET: PROJECT 28

Question 1. Is Project 28 an example of the benefits of performance-based contracting in the sense that risk is assumed by the contractor and it is ultimately responsible for cost overruns?

Answer. We reviewed the performance-based characteristics of SBInet's Project 28 in GAO-08-263: Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions. A performance-based approach includes: A performance work statement that describes outcome-oriented requirements in terms of results rather than the methods of performing the work; measurable performance standards describing how to measure contractor performance in terms of quality, timeliness, and quantity; and the method of assessing contractor performance against performance standards, commonly accomplished through the use of a quality assurance surveillance plan. These characteristics, if properly implemented, can help ensure that services meet cost, schedule and performance requirements, thereby reducing risk to the Government and improving service acquisition outcomes. To further minimize the Government's risk, Federal procurement law establishes a preference for using firm fixed-price contracts or task orders—where a specific price is paid regardless of a contractor's incurred costs—when using a performance-based approach. While we reported that SBInet's Project 28 did not incorporate all performance-based characteristics, such as well-defined requirements and a complete set of measurable performance standards, it was structured as firm fixed-price, and the Government was not responsible for costs incurred by the contractor over the original contract amount.

LINE AUTHORITY

Question 2. In your reviews of the Department's acquisition and contracting programs, do you see the lack of line authority in the procurement functions of the Department as a problem? If so, what solutions do you recommend?

Answer. DHS's acquisition function relies on a structure of dual accountability, and cooperation and collaboration among DHS components to accomplish the Department's goals. Each component procurement organization has a Head of Contracting Activity who reports directly to the component head and indirectly to the Chief Procurement Officer (CPO). While this structure was intended to make efficient use of resources Department-wide, it leaves unclear the CPO's enforcement authority over the components. For example, DHS's Acquisition Line of Business Integration and Management Directive created unclear working relationships between the CPO and the DHS component heads and does not apply to the Coast Guard and Secret Service. Our prior work has found that in a highly functioning acquisition organization, the CPO is in a position to oversee compliance with acquisition policies and processes by implementing strong oversight mechanisms. In March 2005, we recommended that the Secretary: Provide the CPO with sufficient enforcement authority and resources to provide effective oversight of DHS's acquisition policies and procedures; and revise the Management Directive to eliminate the exemption for the Coast Guard and Secret Service. In September 2006, we reported that the Secretary had not taken action to ensure Department-wide acquisition oversight, and we included a matter for consideration to the Congress to require the Secretary to report on efforts to provide the CPO with such authority. In our June 2007 review of the Department's acquisition oversight program, we reported while the CPO can make recommendations based on oversight reviews, the component head ultimately determines what, if any, action will be taken. DHS stated in June 2007 that they were in the process of modifying the Acquisition Line of Business Integration and Management Directive to ensure that no acquisition organization is exempt; however, this directive has not yet been revised.

QUESTION FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR MARCIA G. MADSEN, CHAIR, ACQUISITION ADVISORY PANEL

GROWTH OF GOVERNMENT CONTRACTING AND THE ACQUISITION ADVISORY PANEL REPORT

Question. What are the implications for the acquisition system as a result of the growth in the Government's purchase of services?

Answer. Response was not received at the time of publication.

QUESTION FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR SCOTT AMEY,
GENERAL COUNSEL, PROJECT ON GOVERNMENT OVERSIGHT

GROWTH OF GOVERNMENT CONTRACTING AND THE ACQUISITION ADVISORY PANEL
REPORT

Question. In your opinion, what can this Congress and the next administration do to limit contract abuse and mismanagement?

Answer. On October 20, 2008, POGO recommended good Government reforms for the Presidential transition teams. These recommendations are applicable to actions that could be taken up in the 111th Congress—actions for improving the Government work force, contract spending, transparency, and accountability. POGO believes that the implementation of the attached recommendations will help put the country on the right track to a more effective, accountable, open, and honest Government—one that is truly responsive to the needs of its citizens.

ATTACHMENT

RECOMMENDATIONS FOR TRANSITION TEAMS

Over the past 27 years, the Project On Government Oversight (POGO) has worked toward achieving a more accountable Federal Government. During that time, POGO has enjoyed a strong working relationship with your Senate office [Senator McCain and Senator Obama] working toward this goal, and thanks you for your efforts on Government reform issues.

If elected, your administration will need to make several reforms. The implementation of the following recommendations will help put the country on the right track to a more effective, accountable, open, and honest Government—one that is truly responsive to the needs of its citizens. Furthermore, while it is always a goal to have the best possible Government at the lowest feasible cost, the financial crisis our country faces makes it even more imperative that the next President more effectively use Government resources. POGO believes our recommendations will make significant strides toward shrinking the cost of Government operations, while at the same time making them work better. The initial costs of these reforms will be more than offset by the long-term savings for the taxpayer.

We welcome the opportunity to provide more in-depth details about our proposals.

Effective

Problem: Some Federal agencies are no longer accomplishing their mandated missions. Other agencies are working toward missions that are no longer relevant to 21st Century challenges. Agencies are already engaged in strategic planning and self-evaluation through the Government Performance and Results Act (GPRA) and Performance Assessment Rating Tool (PART) processes. However, this information is used infrequently. Furthermore, such efforts generally focus more on quantifiable measures of success, and inadequately measure the quality and relevance of the work of the agency—in other words the output of an agency rather than the impact of its work.

POGO Recommends: The Presidential transition team should review each agency by assembling agency-specific teams of long-time civil servants, former political appointees from both parties, and stakeholders of the agency's work to determine how well or how poorly each agency is accomplishing its mission, and whether that mission addresses modern public policy needs. In the first 100 days of the administration, those teams should hold a public comment period and regional town hall meetings to allow the public to voice grievances and suggest improvements for the agency's operations. While it will also be important to review the useful agency performance data collected through GPRA and PART, it is essential to put that information in context.

Problem: Essential public services that are arguably "inherently governmental functions" are frequently privatized. POGO is concerned that the aggressive outsourcing of Government functions may have allowed private contractors to be in the improper position of advancing private interests ahead of the public good.

POGO Recommends: The new President should make it a priority to assess the extent to which outsourcing of previously governmental functions has undermined accountability, effective management, and policymaking in Federal agencies. Transition team members and new appointees should review FAIR Act inventories, protests, and job descriptions over the past decade, as well as interview career employees and agency ethics officers, to identify instances of improperly privatized inherently governmental functions. Regulations need to be strengthened to prevent future

instances of problematic outsourcing, and any identified inherently governmental positions should be promptly filled by public servants.

Problem: Some political appointees are undermining the effectiveness of critical agencies. In fact, some political appointees are inadequately qualified or not qualified at all for their positions. Others might have the requisite administrative experience but do not believe in the mission of their agency. Still others are negatively qualified, having lobbied and worked to undermine or defeat the missions of the agencies they have been appointed to lead.

POGO Recommends: The President should emphasize qualified and un-conflicted experience when appointing individuals to office. The President should also review whether a number of the current 4,000 political slots should be converted to civil service status in order to enhance senior level institutional memory and competence at the agency.

Problem: The Federal Government is struggling to retain skilled employees because those employees can frequently make more money doing comparable work as Federal contractors. In some cases the Federal Government expends resources to train an employee to work for an agency, only to have that employee go through the “revolving door” to work outside the Government for a contractor, private law firm, industry association, or lobbying shop. As a result, the Government ends up with “brain drain” while paying more for contractors to do work that could have been done by Federal employees.

POGO Recommends: The President should change the culture of what it means to be a civil servant in order to make Federal employment more attractive to the most skilled individuals. Policies to consider include changing pay scales to make them competitive with those in equivalent private-sector jobs, instituting agency honors programs, paying student loans in return for a period of civil service, allowing retired civil servants to retain their pensions even if they are rehired by the Government, and limiting the total cost paid by the Government for a contractor employee performing the equivalent work of a Federal employee. Recognizing that the contractor work force is a de facto part of the Government, this effort should actually shrink the total footprint of the Government.

Problem: Many Federal employees look the other way when they recognize waste, fraud, mismanagement, and abuse because they lack sufficient whistleblower protections against retaliation. Absent such protections, the Federal Government cannot expect its employees to disclose mistakes and practices that must be corrected in order for the Government to operate efficiently and effectively.

POGO Recommends: The President should issue an Executive Order to strengthen Federal employee whistleblower protections, including strict administrative, civil, and criminal penalties for officials that retaliate against whistleblowers. The Executive Order should also include rewards such as commendations, public recognition, and monetary awards for Federal employees who disclose waste, fraud, and abuse, or who suggest ways to improve the operations of their agency.

Problem: Inspectors General (IG) have been encouraged through the past two administrations to be part of the agency management team, rather than to be “junkyard dogs” in seeking out waste, fraud, and abuse at their respective agencies. As a result, some IGs have moved more toward program management, rather than functioning as the independent and objective watchdogs envisioned by the IG law.

POGO Recommends: The Executive branch should reinvigorate the independence of Inspectors General by recognizing the need for them to be strong in-house watchdogs, not an arm of agency management.

Accountable

Problem: Oversight functions at agencies across the Federal Government have been decimated. Federal officials also lack the enforcement tools needed to prevent, detect, and remedy waste, fraud, and abuse in Federal spending. From the Department of Defense to the Department of Interior and Food and Drug Administration, the offices and functions that can prevent corruption, waste, and mismanagement have been underfunded, defanged, or co-opted by the entities they were intended to oversee.

POGO Recommends: While assessing each agency’s operations, the President should pay special attention to oversight offices—and particularly the entity to whom those offices report—to ensure that oversight functions are adequately independent, and that the offices are afforded the resources, authority, and incentives to provide rigorous oversight. The President should also implement the recommendations contained in the National Procurement Fraud Task Force Legislation Committee White Paper, in order to allow Federal officials to hold recipients of Federal funds accountable.

Problem: The Federal acquisition work force is currently overwhelmed and staff levels are inadequate to oversee Federal Government contracts. Contracting dollars have doubled since the beginning of the decade, yet the acquisition work force has remained constant, and in some agencies is significantly smaller.

POGO Recommends: The President should expand the Federal acquisition, auditing, and accounting work force in order to improve oversight and promote integrity in Federal spending. Improving oversight will enhance contract management, resulting in savings that would more than pay for this expansion. A strong oversight work force can help the Government get better returns for the taxpayer on goods and services and also help prevent programs from falling behind schedule and running over budget.

Problem: The Federal contracting system is prone to abuse and it prevents Government officials from ensuring that taxpayers are paying fair and reasonable prices for goods and services. Specifically, sole-source contracts and contract bundling undermine competition and lead to waste, fraud, and abuse. To receive quality goods and services at the lowest practicable cost, the Government must encourage competition. Contract bundling, where the delivery of many often-unrelated goods and services are gathered under a single contract, dramatically reduces competition and transparency in Government contracting.

POGO Recommends: The Government must eliminate or, at the very least, limit the use of risky contracting vehicles and provide contracting and program officers and oversight staff with the necessary tools to effectively manage Government spending. The Government must have contractor cost or pricing data so that it can make well-informed spending decisions.

Government agencies should also conduct full and open competitions, to the maximum extent practicable, for all non-urgent purchases. Agencies should require genuinely competitive bids for task and delivery orders before the contract can be considered "competitive." Sole-source contracts should be used sparingly, and the Government should ensure that non-competitive contract pricing is fair and reasonable.

The Federal Government should avoid contract bundling in future contracts in order to increase contracting competition. Agencies should consider un-bundling existing contracts.

Problem: The Constitution assigns the President the responsibility of enforcing laws passed by Congress, but the recent abuse of executive signing statements has allowed the President to improperly infringe upon the Congress's legislative role. These signing statements direct agencies to ignore sections of the bills with which he disagrees, generally asserting that those sections would present impermissible constraints on the President's power as Commander-in-Chief. The statements have very clearly ordered his subordinates at Federal agencies not to obey more than 1,100 sections of different laws. Many of these sections would have provided Congress and the public with additional information and transparency about the activities of executive agencies.

POGO Recommends: The newly elected President should rescind these signing statements and pledge that if he strongly disagrees with sections of a bill, he will veto it.

Open

Problem: Much information about Government operations is not made readily available to the public. Members of the public must frequently file Freedom of Information Act (FOIA) requests in order to learn about the performance and actions of their Government.

POGO Recommends: As a matter of practice, the Federal Government should place on-line all new Government-generated or Government-collected information that is not exempt from FOIA. Furthermore, instead of withholding an entire document that contains information that cannot be released, the Government should release the document with that information redacted. The Federal Government should automatically post all this releasable information at publicly available agency web sites.

All information released through FOIA should promptly be made available on-line. This will decrease the need for duplicate FOIA requests that now contribute to the large FOIA request backlogs. Furthermore, agency budgets must allow for these changes, accounting for increased staff to handle posting new agency information, as well as providing adequate resources to support chronically under-funded FOIA offices.

Problem: The Executive branch frequently overclassifies and uses pseudo-classifications, such as Sensitive But Unclassified (SBU) and Controlled Unclassified Information (CUI), to withhold information from the public. Often the apparent reason

is not the legitimate need for secrecy, but the concealment of embarrassing information, including mistakes.

POGO Recommends: The Executive branch should protect only legitimate national security and privacy concerns, and it should penalize agencies that violate these standards.

Problem: The Federal Government cannot make contractor responsibility determinations. The Federal Government is the world's largest consumer of goods and services. As such, it has tremendous buying power to encourage good corporate behavior. However, the Government lacks a system to ensure that contracts are awarded only to responsible contractors, as is required by law.

POGO Recommends: The President should immediately implement and fund the congressionally mandated database of information regarding the integrity and performance of contractors, entities, and persons awarded Federal contracts and grants. The database should detail the instances in which contractors and grant recipients have defrauded the Government, violated laws and regulations, had poor work performance, or had their contracts or grants terminated for default. This database should be made publicly available.

Problem: The Federal contracting and grant-making system is opaque. The Government lacks rules to ensure that the contracting and grant-making process is open to the public.

POGO Recommends: To restore public faith in Federal spending, agencies should announce and promptly publish on-line all new and existing contracts, grants, and task and delivery orders above \$100,000, as well as requests for proposals and solicitations, contract or grant data, award decisions and justifications, audits, and other related reports.

Honest

Problem: The revolving door between the Government and contractors or regulated industries inevitably creates conflicts of interest and undermines the public's faith in the Government. The revolving door undermines the basic obligations of public service to place loyalty to the Constitution, laws, and ethical principles above personal or private gain.

POGO Recommends: The President should issue an Executive Order that Executive branch employees, including political appointees, must consider their position a matter of public trust and service, not a stepping stone for personal gain. Once they leave Government service, there should be a 3-year prohibition against public employees and officials working for or representing industries or other private interests that they regulated, contracted with, or otherwise oversaw. Similarly, the President should exercise great caution in appointing individuals with ties to the industry they will oversee. The Office of Government Ethics and agency ethics offices should be given administrative enforcement power over violations of ethics, as well as the necessary resources to execute this new mandate.

Problem: Executive branch advisory committees have a large impact on policy but are exempt from most ethics measures and restrictions. This can lead to conflicts between public and private interests. Often, advisory committee members—also known as “special Government employees”—work for the industries that benefit from the policies they are recommending.

POGO Recommends: The next President should reconsider the Executive branch's use of advisory committees. If such committees are to be continued, they should include, but not unduly rely on, private interests. The President should ensure that unclassified portions of advisory committee meetings and minutes are available on the internet. When Federal advisory committee members recuse themselves from any discussion of matters in which they or their private employers or clients have a significant financial interest, this disclosure or recusal—including name, title, employer, and the specific nature of the financial interest—should be filed with the Office of Government Ethics and made publicly available.

QUESTIONS FROM RANKING MEMBER MIKE ROGERS OF ALABAMA FOR MARC A. PEARL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HOMELAND SECURITY AND DEFENSE BUSINESS COUNCIL

DHS CONTRACTING PROBLEMS AND MOVING FORWARD

Question 1. What is the single most important thing DHS needs now and for the next administration so it can work towards programmatic success?

Answer. The Homeland Security & Defense Business Council believes that there are a number of challenges and opportunities that the next administration and the U.S. Department of Homeland Security can do to ensure greater programmatic success, particularly in the area of developing a better and more effective relationship

with the private sector. With regard to the theme of the hearing itself, the Council would believe the underlying foundation of achieving greater programmatic success is building on and further developing a mature acquisition process that allows for and facilitates an open, honest and professionally disciplined relationship to continue to exist between the public and private sectors.

The Council supports the concept that a successful acquisition process must begin earlier than contracting activity itself is undertaken, as well as providing an open post-contract assessment dialog focusing on lessons learned. Before the “blueprint” is drawn up and after contract completion, experts on the ground and operational practitioners in the field need to be assembled and questioned. A successful process also requires equipping the entire team (contractors and program managers) with an understanding of the challenges and risks in place during the entire lifecycle of the project to ensure success.

Question 2. In your prepared statement you state that the Homeland Security and Defense Business Council has offered to help DHS increase the number of certified project managers by offering to fund a new certification program through the Project Management Institute. What is the current status of this program and has the Department “cherry-picked” from it for the Acquisition Intern Program?

Answer. It is my understanding that when the Homeland Security & Defense Business Council made its offer a few years ago to help facilitate a process to assist in developing a stronger corps of certified project managers the Department was going through a cataclysmic personnel shift in its procurement office and was unable to respond to the offer. We are currently unaware of any further progress, but are attempting to work with the Department in order to see if our help can be utilized in the future. It is our understanding that the Acquisition Intern Program has been internally developed to increase the number of quality project managers.

Question 3. Can you give an example of successful contracts at the Department?

Answer. Each of our many members and many other companies have numerous success stories throughout the Department, but to cite only a few examples would be a disservice to our other members’ successes.

Question 4. Can you describe the top two or three areas where your members would want to see improved processes at the Department?

Answer. The Homeland Security & Defense Business Council and its members support a process that mirrors this new environment and urges that the Department embrace these priorities as it moves forward in revitalizing its procurement process:

Quality Contracting.—The Council supports the May 2008 statement of the bipartisan group of Senate Homeland Security & Government Affairs Committee members that, together with Chairman Thompson, called for more explicit requirements and performance standards in major contracts to ensure successful outcomes.

Quality Acquisition Management.—The Council urges that the Department continue to develop acquisition work force tools to forecast needs and develop certification requirements. A new administration working with a new Congress now has the opportunity to further improve on procurement with sound program management, client-side support, and the improvement of the acquisition work force by focusing on the recruiting and training of more talented contracting officials. There should be integrated project teams, led by the Government, but with operational involvement of contractors.

Quality People.—The Council cannot emphasize enough the need to increase the number of procurement officers with expertise in technology, engineering and management to accomplish the complex operational aspects of oversight and review.

Question 5. Have any of your members attempted to engage the Department on their shortcomings and attempted to assist with best practices?

Answer. Member companies are always informally engaging various executives and program managers at the Department individually and as members of the Council in order to find ways to be more successful together. It is in everyone’s best interest and all the parties agree that projects are tailored to achieve success and that the goals and mission of the Department are achieved in partnership with those in the private sector who offer subject matter and project expertise. This process and the overarching dialog that this question encourages may—in the long run—require better and more formal communication, coordination, and collaboration among the parties involved—Council members, together with congressional leaders, operational experts in the private sector on the ground, and DHS program/project managers—working together to build off lessons learned in developing a more transparent best practices approach to the contracting process.