

WRITTEN STATEMENT OF

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BEFORE

THE COMMISSION ON WARTIME CONTRACTING
IN IRAQ AND AFGHANISTAN

ON

ENSURING CONTRACTOR ACCOUNTABILITY:
PAST PERFORMANCE AND SUSPENSION & DEBARMENT

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INTRODUCTION

Chairmen Shays and Thibault and distinguished members of the Commission.

Good morning. I am Richard Ginman and I am the Deputy Director of Defense Procurement and Acquisition Policy (DPAP) in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, where I am responsible for Department-wide contingency contracting policy and functional leadership. I am a Career Civil Servant, with more than 38 years experience in government and commercial business in the fields of contracting, acquisition and financial management. Before assuming my current position in October 2006, I held several private sector positions including Vice President of General Dynamics Maritime Information Systems and Director of Contracts for Digital System Resources. I served in the United States Navy for 30 years retiring as a Rear Admiral, Supply Corps. In addition to three tours afloat, I served in a variety of contracting and acquisition positions that included Commander, Navy Exchange Service Command; Deputy for Acquisition and Business Management in the Office of the Assistant Secretary of the Navy, Research Development and Acquisition; and Deputy Commander for Contracts, Naval Sea Systems Command.

Before I get too far, I would like to take a moment to thank the Commission for your support of our troops and all you have done to help with their mission. I would also like to thank the men and women who serve our great country, including our military, civil servants, coalition, and industry partners. None of us could get the job done without the other, and I'm continuously impressed with the cooperation between them. I am committed

to providing the leadership, policies, and innovative tools needed for contracting in support of our Iraq and Afghanistan mission.

CONTRACTOR ACCOUNTABILITY

You asked me to address the status, currency, and usage of past performance information by contracting officers in reporting and decision-making; future policy direction and system plans for past performance databases and applications; and the effectiveness of current suspension and debarment rules, with examples of usage and potential areas of improvement. I will address the areas where I have purview.

POLICY

The policy in the Department of Defense is to award contracts to companies that have been determined to be responsible, have the financial resources to perform the contract or the ability to obtain them, are able to comply with the required or proposed delivery or performance schedule, have a satisfactory performance record, have a satisfactory record of integrity and business ethics, and are otherwise qualified and eligible to receive an award under applicable laws and regulations.

SYSTEMS

To assist our contracting personnel in fulfilling their responsibility to manage contractor past performance information, the Department uses three federal systems:

- The Contractor Performance Assessment Reporting System (CPARS) is the centralized suite of tools managed by the Naval Sea Logistics Center on behalf of the federal government under GSA's Integrated Acquisition Environment (IAE) program CPARS supports the collection of evaluations of contract

performance in accordance with the Federal Acquisition Regulation (FAR) subpart 42.15. CPARS was first implemented in 2000, and all DoD components have been required to report to evaluations to CPARS since 2005. It is now the government-wide system used to collect past performance evaluation information.

- The Past Performance Information Retrieval System (PPIRS) was implemented in 2000, and is managed by the same Navy organization as CPARS. PPIRS was developed to gather performance evaluations from the past performance evaluation submission systems that existed across the federal government, including CPARS, the National Aeronautics and Space Administration's (NASA's) Past Performance Database (PPDB), and the Contractor Performance System (CPS) of the Department of Health and Human Services' National Institutes of Health, and consolidate them in one location for government contracting officers to use in source selection decisions in accordance with FAR subpart 15.304. Access to CPARS and PPIRS is restricted to those government users submitting required information to any of the modules, or to the contractors adjudicating their own performance assessment reports.
- Finally, an important addition to the government-wide past performance suite of tools was deployed in March 2010 when the CPARS and PPIRS programs released the Federal Awardee Performance and Integrity Information System (FAPIIS), which leverages modules from both systems. FAPIIS is used to

collect the information required by the National Defense Authorization Act (NDAA) for Fiscal Year 2009, Section 872, Database for Federal agency contract and grant officers and suspension and debarment officials.

Contracting officers use FAPIIS in order to make contractor responsibility determinations before award. The CPARS-FAPIIS input module collects data regarding terminations for default and cause, non-responsibility determinations, defective pricing determinations, and suspension and debarment actions (including administrative agreements with vendors in lieu of suspensions and debarments). The PPIRS-FAPIIS module brings together the information collected in the CPARS-FAPIIS module with suspension and debarment information from the Excluded Parties List System (EPLS), and criminal, civil, and administrative proceedings information provided by the vendors in the Central Contractor Registration (CCR) database.

In Theater System

The operational environment in theater makes interfacing with any business system challenging. Thus, DPAP has created a contingency business environment concept of operations (CBE CONOPS) that includes a suite of electronic capabilities appropriate for austere environments. A key system in this suite is the Joint Contingency Contracting System (JCCS). Currently, theater contracting personnel use the existing JCCS tool, which has a limited past performance record capability. Originally designed to capture and manage contingency contract data, JCCS has been expanded to include other features.

The newest update will be an adjustment to the JCCS contractor database to capture past performance on a scale similar to CPARS. The JCCS application provides greater flexibility and ease of use within the theater environment constraints (especially with Iraqi contractor information) than CPARS. Entries are mandatory on every contract over \$100,000. This feature of the tool is scheduled to be operational by March 2011.

Department-Wide System Use

Department-wide, compliance with reporting requirements for past performance information is not what it should be. The Director of DPAP has issued several policy memoranda to the contracting community communicating that the management of past performance information is a priority. Most recently, the Department has issued a letter to the field echoing the Office of Federal Procurement Policy (OFPP) memorandum on improving contractor past performance assessments. These memoranda have stressed the importance of completing past performance assessments in a timely manner and updating the information in the CPARS database; however, there's more to be done, and we are continuing to work this issue.

As the OFPP's analysis of government-wide past performance compliance indicates, DoD is at the 50 percent mark for most measures, in terms of quantity and quality of supporting narratives. Those figures just aren't good enough. Considering OFPP's recent assessment about the quality of supporting narratives for a particular subset of information—cost control, where DoD scored about 22 percent—clearly, we have even more work to do.

PERFORMANCE MONITORING AND DOCUMENTING
IN CENTCOM CONTRACTING COMMAND OPERATIONS

Contractor performance monitoring and documenting has been an area of focus for the CENTCOM Contracting Command this past year. Training for contingency contracting officers (CCOs) is conducted on a regular basis to ensure their focus is on documenting vendor performance for future use. The Command has also stressed the need to include past performance as an evaluation factor in all solicitations and has worked closely with the Business Transformation Agency to adjust their JCCS contractor database tool, as discussed above. The Command has also standardized procedures for consistency of evaluations in new awards and in the interest of promoting best value source selections. The command has also lowered the threshold when it is mandatory to collect past performance information to contracts above \$100,000. This will certainly go a long way in ensuring contract awards are given to contractors with proven reliability and quality performance records. Teaming with the Defense Contract Management Agency in Iraq, contract administration and oversight has yielded a 50 percent reduction in delinquent past performance assessment reports in the past 6 months. The Command also implemented other initiatives to improve and standardize past performance collection, including:

- A dedicated focal point to register, monitor and track past performance evaluation reports in CPARS and JCCS
- A special interest item for Procurement Management Review inspections
- Mandatory training for Contracting Officer Representatives (COR) and CCOs
- An item of interest in weekly Regional Contracting Center (RCC) meetings
- Requirement for CCOs to track COR accountability to complete past performance assessments when due
- Requirement that contract options not be exercised without a past performance assessment

- The contract closeout checklist was amended to require CCOs report past performance information
- Requirement that the RCC Chief monitor past performance assessments for timeliness
- Contractor responsiveness to de-mobilize was added in the past performance assessment

People are the key to our success. We need the right numbers with the right skills.

In the area of contingency contracting, there are two key communities: contracting officers and contracting officer's representatives. We need contracting officers creating appropriate agreements, their representatives monitoring performance, and these two individuals working together to reward good performance and take appropriate remedies for poor performance. In theater, in order better execute post award contract management, the Command has shifted resources into Afghanistan to reflect the buildup there. As with any location, contracting professionals must balance a significant workload with the need to address some key post award areas, such as documenting vendor performance. To help in the overall contract monitoring effort, the Command is working with DCMA to expand the DCMA role in contract management of the Command's contracts.

OVERSIGHT AND CAPACITY DEVELOPMENT

The environment in Afghanistan is unique when dealing with performance issues. Contracting Officers work with Host Nation firms to develop their capacity both on administrative and performance issues. The commitment to Counterinsurgency (COIN) Contracting leads to a more moderate approach when dealing with underperforming contractors but supports the long term goal of economic development.

Combined Joint Interagency Task Force-Shafafiyat

In August 2010, International Security Assistance Force (ISAF) formed Combined Joint Interagency Task Force-Shafafiyat (Shafafiyat means “transparency” in Dari and Pashto) in coordination with the international community and in support of the Afghan government. Shafafiyat’s mission is to foster a common understanding of the corruption problem, plan and implement ISAF anti-corruption efforts, and integrate ISAF anti-corruption activities with key partners. CJIAATF-Shafafiyat’s goal is to reduce corruption in Afghanistan to the extent that it no longer presents a fatal threat to ISAF’s mission or to the viability of the Afghan state. CJIAATF-Shafafiyat includes two subordinate commands: Task Force 2010, responsible for overseeing ISAF contracting processes in order to prevent U.S. and international resources from strengthening criminal actors; and Task Force Spotlight, responsible for coordinating ISAF’s management of private security companies. Both of these task forces will go a long way in ensuring contracts are not awarded to poor performing or malign contractors.

Recent Successes

ISAF recently issued COMISAF’s COIN Contracting and COIN Contractor guidance and developed and implemented Contract Action Plans to establish new procurement and contract execution standards that do not strengthen the enemy or CPNs. ISAF contributed to Afghan investigative capacity by targeting illicit financial activity through the Major Crimes Task Force, the Special Investigative Unit and the Technical Investigative Unit. In addition, the Command established a vendor vetting process that prevents contract awards to contractors involved in criminal activity. These processes directly contributed to the

debarment or suspension of 10 prime contractors with ties to criminal patronage networks or the insurgency. Other results of these initiatives include a joint Afghan-Shafafiyat contract settlement of \$22M, disarmament of 54 of 57 illegal personal security corporations, and 81 ongoing investigations of \$6.1B in contracts. Other sanctions imposed include 35 criminal convictions, \$5M in fines, \$3M in restitution, and \$3M in seized or forfeited property.

ISAF/USFOR-A also leads a civilian-military working group to expand a vendor vetting process that extends the reach, access, and capacity of the vendor-vetting process to further ensure ISAF, other nations, and international organizations do not do business with high risk companies.

Afghan First Program

The Afghan First program is another prominent initiative designed to ensure greater control of our spending by doing business with promising Afghan companies in targeted economic sectors, including textiles and construction materials. It has so far produced some very encouraging results. For example, the Afghan National Security Forces (ANSF) in FY2010 benefitted from \$220M in high quality clothing and individual equipment manufactured by 11 local Afghan vendors, which employ roughly 5,000 Afghans. Additionally, ANSF orders for manufactured commodities (e.g., furniture, tents, CONEXes) under the Afghan First program totaled \$140M in FY2010, which will create new Afghan businesses with 16 local vendors, employing approximately 1,800 Afghans. As the Afghan First initiative continues to expand, it will help generate the necessary momentum towards building a self-sustainable market demand in Afghanistan.

POLICY: SUSPENSION AND DEBARMENT

The Department follows the suspension and debarment regulatory process set forth in Subpart 9.4 of the Federal Acquisition Regulation. A government contractor can be debarred when there is a criminal conviction or civil judgment for fraud or a similar offense, or when there is a preponderance of evidence that a contractor willfully failed to perform, has a history of unsatisfactory performance, or had engaged in conduct that affects the contractor's present responsibility.

Suspension and debarment are discretionary actions taken to ensure agencies contract with responsible contractors, and the FAR specifies these actions are "not for the purposes of punishment." For Fiscal Year 2010, the Department, including the Defense Logistics Agency, Army, Navy, and Air Force, there were 388 suspensions, 620 proposed debarments, and 362 debarments, for a total of 1370 suspension and debarment actions. This was a 34% increase over the previous fiscal year. Since 2005, in Iraq and Afghanistan, there have been 145 suspensions, 125 debarments, 184 proposals for debarment, 42 show cause letters issued, and 272 cases which are currently open. Although the number of suspension and debarment actions, in and of itself, is not an indicator of any real statistic, it is indicative that we are working to ensure we award contracts to those that are reliable, dependable, and capable of performing required work.

SUMMARY

You asked for me to discuss ways to improve our efforts. Clearly, past performance system inputs are lagging behind. To address this, DoD will engage its acquisition community to determine ways to ensure higher compliance. We are going to feature a workshop entitled "Past Performance and Integrity Data" at the 2011 Defense Procurement

eBusiness Conference scheduled for March 1 to 3, 2011. For the contingency contracting community, we will discuss past performance, suspension, and debarment at the 2011 Defense Procurement training conference scheduled for May 9 to 12, 2011.

We know that our contracting community is stretched thin, so we are focused on ensuring we have proper resources so these professionals can execute their multifaceted duties.

In summary, I would like to express my thanks for your continued support to our warfighters. I will be glad to answers any questions you have.