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THE RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES

(110–53)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 21, 2007

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June 20, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management

FROM: Committee on Transportation and Infrastructure, Oversight and Investigations Staff

SUBJECT: Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces"

PURPOSE OF THE HEARING

The purpose of this hearing is to identify what appear to be weaknesses in FPS' oversight of its contract guard program. While it has made improvements in the timeliness of contractor invoice processing and payments in the past year, FPS has not established protocols or processes to ensure that contractors are initially "capable, responsible, and ethical," as required in the Federal Acquisition Regulations, and that they remain so throughout the life of the contract.

To illustrate the need for these protocols, the hearing will showcase one recent contract with STARTECH Security International (STARTECH) where the Firm's Chief Operating Officer (COO) alleges that the company owner, Weldon Waites, ran the company into the ground – either through financial mismanagement, criminal intent, or some combination of the two.

On or about May 27, 2007, Committee staff became aware that STARTECH, a large private security guard firm under contract to the Federal Protective Service, had not paid their guards since May 10 – a delay of nearly 3 weeks. The guards had continued to show up for work during that period. Over the Memorial Day weekend, with strong Congressional "encouragement," DHS was able to terminate the contracts, re-award them, and reassign the existing guards to a new, performing, contract with Frontier Systems Integrators, LLC; an Alaskan Native Corporation.

The former COO of the firm, Ann Messner, will testify that there was misconduct and mismanagement of funds. Her testimony is accompanied by voluminous documentation (33 exhibits, 400 pages) which purportedly supports her allegations of the owners' lies and bad faith

actions during the past 2 years. She will also testify that while the employee paychecks were bouncing and health plans were being terminated for non-payment, STARTECH funds were used to buy Mr. Waites and his wife a new $530,000 beachfront condo and pay the mortgage on a boat slip for their yacht.

Mr. Waites has indicated his intent to defend himself at the June 21 hearing. As he explained to Committee staff, he wishes to, "tell Congress how the DHS drove his company into financial ruin." We expect that he will testify that FPS' slow processing of invoices forced him to borrow to cover expenses until there was too much debt for the company to remain viable. Ms. Messner indicates that she has evidence that proves otherwise.

We will also hear from the men and women who were directly affected by STARTECH's demise – the impact to the guards' families, bank accounts, health benefits, and pensions. The two unions that represent the majority of contract guards protecting federal buildings will also testify that STARTECH is not an isolated incident.

Finally, the DHS IG will testify on prior work evaluating FPS' oversight of the contract guard program. In October 2006, the IG found that there were serious deficiencies in staffing and processes that were causing financial loss to the government and placing financial hardships on contractors. FPS and ICE Acquisitions will testify that much improvement has been made in the past year in addressing these deficiencies and will outline any current plans to improve the oversight of its guard program, including proposals for improving the post-award financial monitoring and due diligence of company financial performance.

BACKGROUND

FPS was established in 1971 as the uniformed protection force of the General Services Administration for government-occupied facilities. These include office buildings, courthouses, border stations and warehouses owned, occupied or secured by the federal government under GSA's jurisdiction. The Homeland Security Act of 2002 transferred FPS from its former placement within GSA to the Immigration, Customs, and Enforcement (ICE) agency which is within the Department of Homeland Security (DHS). Pursuant to this transfer, FPS was granted the authority to protect properties held by DHS components that were not under GSA jurisdiction.

On an annual basis, the FPS handles: 10 million law enforcement calls for service, including 3.8 million radio calls, 2.4 million telephone calls, and 3.8 million alarm responses; more than 1,000 criminal investigations for crimes against government facilities and employees; arresting more than 4,000 people for committing crimes on federal property. In total, FPS is responsible for protecting approximately 9,000 federally owned or leased properties.

As part of its overall strategy to ensure the physical safety of government employees and visitors, FPS uses contract guards to deter the commission of crime in and around federal buildings. These guards support and augment the activities of the 1150 federal law enforcement officers employed directly by FPS. These guards control access to installations and facilities; screen employees and visitors through magnetometers; screen packages and other items through a X-Ray machine; monitor CCTV, monitor visitor conduct; check deliveries; patrol the interior and exterior

of facilities; respond to reports of injured or ill employees and visitors and initial response to security alarms.

As a result of the Oklahoma City bombing in 1995, the federal contract guard workforce more than doubled and now totals about 15,000 nationwide.

THE STARTECH STORY

Background

STARTECH was incorporated in the District of Columbia on April 25, 1989 as a small business venture (8a) by a team of 2 decorated military veterans. Over the next 25 years, the company grew to more than 500 employees with annual revenue of approximately $27 million.

In 2006, roughly one-half of the company's annual income resulted from five security contracts with the Department of Homeland Security ($13.2 million). Buildings covered under these contracts included Administrative Office of the Courts, Social Security Administration (multiple locations),Food and Drug Administration (multiple locations), Housing and Urban Development, Department of Education (multiple locations), the International Trade Commission, and the National Building Museum. In the Washington, DC Metropolitan area, STARTECH deployed approximately 600 guards to protect federal buildings, including those under contract to DHS.[1]

Ownership Changes Precede Financial Decline

In 2005, the company changed hands after its two founders suddenly became ill and retired. The company quickly went downhill under the stewardship of its new owners, Weldon and Sharon Waites. Weldon Waites had been the insurance advisor for STARTECH. Somehow in the transition, it escaped FPS' attention that Weldon Waites had served nearly 5 years in prison on 29 felony counts of conspiracy, bank fraud, and money laundering.

The Chief Operating Officer of STARTECH, Ann Messner, is cooperating with the Committee and the other criminal investigations that we know to be ongoing. She has agreed to testify on Thursday as to her opinion that, "STARTECH is currently not only financially bankrupt, but morally and ethically as well." Her testimony, which includes and is backed up with 33 exhibits (nearly 400 pages) with names, dates, accounting records, correspondence (Messner's testimony will be distributed without exhibits, but exhibits will be available electronically to members and staff upon request).

Although the most obvious problems emerged in May 2007 when STARTECH failed to fully cover its payroll on 3 consecutive weeks, the financial problems began to manifest themselves earlier. As early as January 2007, STARTECH had ceased forwarding withholdings for health benefits and pension contributions to PrevWage, its pension and benefits Administrator. In a May 24, 2007 letter, PrevWage informed STARTECH employees, "Unfortunately, since the beginning of the year, STARTECH has not made contributions to your pension plan on a regular basis and your account balance [...] is not what it should be..." Further, PrevWage advised employees, "For those

[1] STARTECH also had approximately $12 million in contracts with the USDA and the Navy. USDA has a delegation from DHS so that it contracts for its own security rather than through FPS.

of you covered under medical benefit plans with STARTECH (...) contributions to pay the current premiums have not been made, and most likely your coverage will be cancelled in the very near future, if it hasn't been cancelled already."

But STARTECH's owners were impervious to the company's financial woes—just when things were getting tight for employees, STARTECH bought its' owners a new $530,000 condo in North Myrtle Beach. STARTECH couldn't pay health benefits, but it could afford the mortgage on the Waites' boat slip in Myrtle Beach. The same situation applies to the DC Condo and the tailgating parking spots at the University of South Carolina.

In 2005, The Defense Contract Audit Agency (DCAA) found that STARTECH's accounting system had nine significant deficiencies, and concluded that "the accounting system is non-existent for Government contract accounting purposes..."

STARTECH is Not an Isolated Incident

According to Union officials and members, Contractors that provide private security services to the federal Government have a long-standing record of violating the terms of their contracts in terms of how they treat employees. There have been several high-profile cases similar to STARTECH in recent years, including Superior Contracting in Tampa, where, almost exactly a year ago, guards threatened to strike after pay checks bounced for more than 2 months. Superior employed armed guards in the Tampa Bay area to guard buildings including Social Security offices, the federal building in Lakeland, FL, as well as FBI headquarters and the US Attorney's Office in Tampa. At that time, Dennis O'Connor, a spokesman for the FPS was quoted as saying, "Anything that may affect the overall security of federal facilitates – including not paying their employees – is a concern of ours."

In addition to pay issues, other non-compliance issues include failure to pay for training and uniforms that were built into the competitive bid proposal. In October 2006, the Department of Labor forced AKAL Security – a company that does about $121 million in FPS business every year – to pay over $269,000 in back wages to 469 workers because it had not calculated overtime hours correctly. DOL's investigation revealed that AKAL failed to compensate guards for the time required to pick up their weapons and report to assigned duty posts.

DHS IG Finds Serious Flaws in FPS' Oversight of the Contract Guard Program

Since transitioning from GSA to DHS, FPS has experienced persistent problems with contract oversight. In October 2006, the DHS Inspector General audited the FPS contract guard program in the National Capitol Region. The IG found that contractors were not complying with the terms and conditions of their contracts, because "FPS personnel were not effectively monitoring the contract guard program". One of the IG's findings was that FPS' Quality Assurance Specialists – the employees who monitor security service contracts—were not providing adequate onsite monitoring of guard contracts. Each week the QAS' are required to collect GSA Form 139s[2] from each guard post to validate that guards were posted as stipulated in the contract. One contract guard told the IG that no one had collected the Form 139's in the 5 months he had been posted at the

[2] When contract guards report to work, they are required to sign in and to sign out on GSA Form 139, Record of Time of Arrival and Departure Contract Guarding Duty Register.

building. The IG also attributed lapses in contract oversight to understaffing. In the National Capital Region, 8 of 12 contract specialist positions were vacant. As a result, the IG found that, "contractors were not getting paid, invoices were not getting reviewed, and new contracts were not getting awarded."

Since the IG last updated its report, FPS states – and the DHS IG informally concurs – that it has made significant improvements in its oversight of the contract guard program. ICE's response to the DHS IG report stated that, "FPS contracting activity has been merged into the ICE contracting component under the supervision of the director of the ICE Office of Acquisitions Management." ICE further states that it will, "continue to work with FPS to achieve improvements in business processes that will address these concerns."

FPS has consolidated operations into four regional Consolidated Contracting Groups and centralized all invoicing into one location in Vermont. The agency acknowledges that it has a shortage of trained personnel involved in monitoring the contract guard program. FPS is attempting to hire contracting personnel but is competing with other federal agencies for a shared (and limited) pool of qualified applicants.

FPS Has No Protocols to Identify or Intervene When a Company is in Financial Distress

The OIG's report, and FPS's focus to date, has been on improving its services to clients and its protection of federal monies. FPS has not established any procedures to ensure that the employees of its contractors are treated equitably and professionally. In STARTECH's case, where the guards continued to show up for work despite not being paid, FPS's position was that the client was "still performing" and therefore FPS had no grounds to intervene.

FPS had numerous opportunities to identify financial difficulties early on at STARTECH. FPS Inspectors are required to have almost daily interaction with STARTECH guards, yet they were either a) unaware that the guards were not getting paid, b) failed to communicate this fact to someone who could take action, or c) relayed this information but FPS managers either didn't listen or failed to act. As early as 2 years ago, FPS had indications that STARTECH's financial performance was a concern. In 2005, the DCAA's audit of STARTECH found a "non-existent" accounting system. That should have sent up an immediate red flag that, at a minimum, should have put STARTECH under the oversight microscope.

CONGRESSIONAL OVERSIGHT

On **April 18, 2007,** the House Committee on Transportation and Infrastructure held a hearing to examine whether current Administration proposals to reduce the number of Federal Protective Service officers and presence nationally will adversely affect the federal government's efforts to protect the thousands of federal workers and visitors to federal buildings every day across the country. The Committee was also concerned about the placement of the Federal Protective Service in the Department of Homeland Security and how that was affecting the agency's funding, whether the diminished funding has played a role in the reduction in force, and whether a reduction in force poses a significant risk to the federal workforce and federal assets.

The hearing also addressed more broadly the issue of whether the Federal Protective Service, like the Federal Emergency Management Agency has suffered in its focus on its core

mission since being placed within the Department of Homeland Security. The Federal Protective Service is a part of the frontline defense for thousands of federal buildings which include federal courthouses, Social Security Administrations buildings, agency headquarters, and other buildings. As the federal inventory of buildings has had a steady increase in assets over the last 30 years, the amount of Federal Protective Service officers has steadily declined. [The committee is concerned with these trends and will examine whether the Federal Protective Services has the resources and personnel to continue to provide top flight protection for federal workers and federal buildings.]

On **May 1, 2007**, the House Committee on Homeland Security held a hearing on FPS that covered essentially the same scope as the T&I Committee's hearing on April 18, 2007. In addition, the DHS Inspector General's Office testified concerning the results of their audit issued in October 2006. The IG did not update its work.

LEGISLATIVE HISTORY

In the 105th Congress, then Ranking Member James Traficant introduced H.R. 4034, the Federal Protective Service Reform Act of 1998. On October 4, 1998 the subcommittee held a hearing on bill. No further action was taken

In the 106th Congress, Rep. Bob Franks introduced H.R. 4519. H.R. 4519 contained Federal Protective Service Reform - Federal Protective Service Reform Act of 2000 which amended the Act of June 1, 1948, to re-designate special policemen of the General Services Administration (GSA) as police officers. H.R. 4519 was passed on suspension on September 26, 2000. No further action was taken.

In the 106th Congress, Rep. James Traficant introduced H.R. 809. H.R. 809, the Federal Protective Service Reform Act of 2000, was passed by the House on June 27, 2000 as amended. H.R. 809 was refereed to the Senate Environment and Public Works subcommittee on Transportation and Infrastructure. Hearings were held in the subcommittee on Transportation and Infrastructure on September 28, 2000. No further action was taken.

In the 107th Congress, Rep. James Traficant introduced H.R. 307 to amend the Act of June 1, 1948 to provide for reform of the Federal Protective Service, to enhance the safety and security of federal employees, members of the public and for children enrolled in childcare facilities located in public buildings under the control of the General Services Administration, and for other purposes. A subcommittee hearing was held September 6, 2001. No further action was taken.

In the 107th Congress, then Chairman of the full committee Rep. Don Young introduced H.R. 4770, to provide an Office of the Federal Protective Service (FPS) which shall be headed by a Commissioner making FPS independent of the Public Building Service. H.R. 4770 incorporates findings from the hearing on H.R. 307 on September 6, 2001. The bill was later marked up at full committee on May 23, 2002. No further action was taken.

In the 107th Congress, Rep. Richard Armey, introduced H.R. 5005, the Homeland Security Act of 2002, which created the Department of Homeland Security. H.R. 5005 was passed by the Senate and became Public Law 107-296. H.R. 5005 directed the Federal Protective Service to be placed under the control of the Secretary of the Homeland Service.

WITNESSES

Panel 1

Mr. Weldon Waites
Vice President, Business Development
STARTECH International Security
Columbia, SC

Ms. Ann Marie Messner
Former Chief Operating Officer and General Manager
STARTECH International Security
Waynesboro, PA

Panel II

Ms. Latanya Montgomery
Former STARTECH International Security Guard
Laurel, MD

Mr. Brian Smith
Former STARTECH International Security Guard
Landover, MD

Mr. James D. Carney
Acting President
United Government Security Officers of America (UGSOA)
Westminster, CO

Mr. Assane B. Faye
Washington, D.C. District Director
Security, Police and Fire Professionals of America (SPFPA) International Union
Washington, D.C.

Panel III

The Honorable Richard L. Skinner
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US Department of Homeland Security
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Mr. Gary W. Schenkel
Director
Federal Protective Service
U.S. Department of Homeland Security
Washington, DC

Ms. Ashley J. Lewis
Director, Office of Acquisition Policy and Oversight
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Washington, DC

HEARING ON THE RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES

Thursday, June 21, 2007

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:17 a.m., in Room 2167, Rayburn House Office Building, the Honorable Eleanor Holmes Norton [Chairwoman of the Subcommittee] presiding.

Ms. NORTON. We are pleased to welcome today's witnesses and our visitors to this hearing entitled The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Federal Facilities.

This hearing was made necessary because of evidence and serious allegations of wrongdoing, chaos, and irregularities in the contracting and employment of private security guards who protect Federal employees and facilities.

Contract security guards are a critical component of the Federal strategy to protect the safety and security of Federal employees where they work, and many Federal facilities as well. In the Federal sector, security guards, many of whom carry guns, are as essential to protecting Federal employees as members of the Federal Protective Service. Security guards are a necessary supplement to, although not a replacement, for public law enforcement officers, whether local police officers or FPS law enforcement officers and others engaged in counter-terrorism activities.

In the post-9/11 Federal environment, the Committee and this Subcommittee are mindful that security guards have neither police powers nor the extensive training of sworn peace officers, and that they cannot make arrests. Because of 9/11, the FPS was transferred to the Department of Homeland Security, yet we have seen the Federal growth of contract security guards, who do not have police powers or arrest powers, go to 15,000, while FPS has been slashed by hundreds of officers, down from an authorized number

of 1,450 to between 1,100 and 1,150, with a goal of getting down to 950.

The risk to security posed by this downsizing of the FPS and the conversion of police officers to security inspectors has led to action by both our Committee and the Homeland Security Committee, on which I also serve.

Today we will learn about the work of security guards nationwide. Recently, STARTECH failed to pay 600 D.C.-area Federal security guards or to make other important benefit payments to pensions, health benefits and the like. This Committee intervened when inaction by the FPS and the Immigration and Customs Enforcement, the division of DHS where FPS is placed, was reported to us. Ultimately, I was unable to get direct intervention by FPS Chief Gary Schenkel and had to call Deputy Secretary Michael Jackson to get any action.

Today we will hear firsthand about the effect on the employees and the Federal agencies involved. We are indebted to the contract security officers, most of whom continue to come to work to protect Federal workers, the visiting public, and their work sites. However, as the shooting incident between Department of Defense contract guards at Walter Reed yesterday highlights, concerns about the management, oversight, and professionalism of some Federal contract guards is widespread.

Apparently, STARTECH experienced serious financial problems during the past six months. However, we have been unable to find that FPS or DHS took action or interceded until security guard payroll checks bounced three times. Yet, a year-end audit by the Defense Contract Audit Agency in 2005 concluded that, and I am quoting: "STARTECH's accounting system is nonexistent for Government contract accounting purposes." Why was the red flag not raised then? If FPS forwarded funds to STARTECH to pay its personnel, the Subcommittee would be concerned about possible misuse of Federal funds.

In preparing for this hearing, the Subcommittee discovered that although STARTECH changed ownership two years ago, one of the new owners had served a five-year jail sentence for money laundering and fraud. Weldon Waites, the Vice President for Business Development at STARTECH, who, with his wife Sharon, is a majority owner of STARTECH, has agreed to give his own accounting of STARTECH, and we thank him for coming.

The Federal Acquisition Regulations require that contracts be awarded only to contractors who are "capable, responsible, and ethical." It is the responsibility of the FPS and DHS to make sure that these contractors are capable, responsible, and ethical both at the start and throughout the life of the contract, and that they treat their personnel, including guards, with the professionalism and respect they have earned.

FPS inspectors were required to visit STARTECH guards at least weekly, yet our Committee learned nothing of the unpaid guards who were protecting Federal buildings until a contract guard union, the United Government Security Officers of America, alerted us. We continue to find the Administration's plan to reduce the number of FPS officers from 1250 to 950 entirely unacceptable. If anything, failures like those uncovered by our investigation call for

the strengthening of the Federal law enforcement and security guards.

If the STARTECH officers had decided that they could no longer protect the Federal workforce and buildings without pay, the FPS contingency plan was to staff the security posts with FPS officers, many of whom DHS hopes to eliminate as part of FPS restructuring.

Contract security guards are charged with protecting some of our most secure facilities, including military installations, nuclear power plants, and classified sites. They are tasked with preserving the lives and safety of our judges and other Federal employees. Had it not been for the loyalty and dedication of the contract security officers to their posts and their profession, the security and safety of Federal workers, their workplaces, and the visiting public would have been at risk after STARTECH defaulted on its payroll.

On behalf of the Federal Government and Federal employees, I want to express our gratitude to the guards who remained on duty, despite assuredly personal hardship. We commend them and our other witnesses for coming forward and allowing our Subcommittee to get to the bottom of what appears to be an FPS contract guard program that needs top-to-bottom reform.

I would like to ask our Ranking Member, Mr. Graves, if he has any opening remarks.

Mr. GRAVES. Thank you, Madam Chair. I want to also thank all of our witnesses for being here today.

I do appreciate your coming out. I am looking forward to hearing about the Federal Protective Service and its role in ensuring that our Federal buildings remain protected.

This is the second hearing I think we have had on FPS this Congress, and I hope today's hearing is going to clarify some of the process FPS uses to monitor security guard contracts and help assure this Committee that our Federal buildings and employees who occupy them are kept safe.

I would also like to thank Inspector General Skinner for being here today. Mr. Skinner will testify on the IG's role in evaluating FPS's oversight on the contract guard program.

We will also hear from representatives of STARTECH who will address the allegations against the company, its recent loss of several security guard contracts, and its affect on employees of the company who are on the front line when it comes to protecting our Government buildings. I look forward to hearing the testimony from officers and employees at the company this morning.

The main responsibility of FPS is to protect Federal office buildings and its employees. It is this Committee's job to see that this happens. We have shown our strong support for the inclusion of physical security measures in the construction of Federal buildings and courthouses across the Country. Additionally, over the past several Congresses, we have held hearings and marked up legislation to upgrade FPS and address the funding shortfall in its operating budget.

We are here today to see that the appropriate oversight tools are in place so that FPS can accurately monitor all of its security guard contracts. As the Ranking Member of this Subcommittee that oversees Federal buildings, I am greatly interested in their se-

curity and the security of the Government workforce. We must be certain that those who are charged with protecting Federal buildings are carrying out their responsibilities as spelled out in their contract. Anything else would be a disservice to those who work in our over 9,000 Federal buildings across the Country.

Again, I want to thank all of our witnesses for being here and look forward to the testimony.

Thank you, Madam Chair.

Ms. NORTON. Mr. Carney, do you have any opening statement?

Mr. CARNEY OF PENNSYLVANIA. Yes, I do. Thank you, Madam Chairwoman. I want to thank you for holding this hearing today.

We all know that the protection of the Federal workforce is extremely important, especially in light of yesterday's events at Walter Reed. News reports out of Walter Reed regarding the shooting there are extremely disturbing.

Madam Chairwoman, I know you share my sentiments about that.

Yesterday's incident begs the question of whether we should be augmenting our security forces at all Federal and military installations, as opposed to cutting them. Employing private security forces from private entities must be scrutinized. I don't think anybody would disagree with that. The brave men and women that work in the service of our Nation deserve the peace of mind that we are doing everything possible to ensure their safety while at work.

Frankly, I believe that the wounded men and women at Walter Reed and other places would rest easier knowing that they have military police as well as private security guards guarding them. As somebody who still wears a uniform, I would feel better myself about that. Not to suggest anything about the private security folks, but yesterday's incident was troubling. It brings to the front questions about the screening process, especially about the mental health screening process, that security folks undergo.

I do recognize that the vast, vast majority of security officers are dedicated, trained professionals. We should never cease in our vigilance to train and recruit the very best for the job. An incident like yesterday is one too many when it comes to guarding our Federal workforce and the brave men and women who fought and are wounded on behalf of this Nation.

Again, Madam Chairwoman, I thank you for holding the hearing today. I look forward to the testimony. Thank you very much.

Ms. NORTON. I understand Mr. Kuhl does not have an opening statement, so we have no more opening statements.

I would like to invite our first panel to begin. I am pleased to welcome Weldon Waites, who is the Vice President for Business Development at STARTECH International Security, which is based in Columbia, South Carolina; and Ann Marie Messner, who is the Former Chief Operating Officer and General Manager of STARTECH International Security. She is now in Waynesboro, Pennsylvania.

We thank you both for coming. Let us begin with Mr. Waites.

TESTIMONY OF WELDON WAITES, VICE PRESIDENT FOR BUSINESS DEVELOPMENT, STARTECH INTERNATIONAL SECURITY; ANN MARIE MESSNER, FORMER CHIEF OPERATING OFFICER AND GENERAL MANAGER, STARTECH INTERNATIONAL SECURITY

Mr. WAITES. Good morning, Madam Chair. I am Weldon Waites. I appreciate the opportunity to come here and visit with you and tell you my version of what happened that could help prevent this from happening in the future. Thank you again for inviting me again. My experience and thoughts regarding this topic I hope to share. I can give you only limited perspective, but perhaps it can be helpful, and offer insight into the limitations and challenges of a small contract company.

Several years ago,—a few years back, matter of fact—two retired Army officers, Marion Pinckney and Randall Ford, formed STARTECH Security, known as Systems Training and Resource Technologies. That was approximately 18 years ago. In the early years, STARTECH experienced steady moderate growth, until they entered into the 8(a) setaside business program and really escalated their growth after the events of 9/11.

In the fall of 2004, I was asked by Mr. Pinckney and Mr. Ford if I would assist them as they attempted to reorganize and modernize the company's administrative policies and procedures. I did that for several months for no pay, just in an effort to help them.

Shortly after our initial discussion, Mr. Pinckney and Mr. Ford both were diagnosed with cancer. It was during that time that both owners suggested to me that it would be interesting if I could purchase the shares of outstanding stock with STARTECH. I was interested but very reluctant, as I had no knowledge of the security business or Government contracting, plus the fact that I simply didn't have the money.

Anticipating my dilemma, they provided me with a contact at Bank of America who agreed to entertain the idea of my family purchasing STARTECH, and the underwriting process began. During the underwriting process, Mr. Pinckney died and left his stock to his wife.

After Mr. Pinckney's death and Mr. Ford's health issues slowed the process and it took over eight months to finalize the sale of STARTECH, which closed in late May of 2005. Mr. Ford insisted on keeping 25 percent of the stock, as well as an employment agreement that provided him office headquarters and an annual salary of $125,000 a year.

I might add, Madam Chairman, that STARTECH went through an extensive audit at that time and audited our accounts receivable. As we plowed through the due diligence prospects, it became obvious that administrative and operating changes were necessary if STARTECH were to remain competitive in the Federal Government showplace.

In particular, we discovered dozens of invoices that company records showed unpaid. We also discovered invoices that had not even been prepared. At that time, we also did our post-due diligence work and acquired the services of a contract law firm called Whitwire and Garvin to do a report for us to let us know exactly

how we were to operate a business that we knew not too much about.

We received the report, and it was at that point in time when my wife, Sharon Waites, was appointed President and CEO, and I remained in the background as a business development member of the STARTECH family.

I will also admit to you that the initial reason for this report was if we ever incurred any secured contracts, what would my role, based on my past record, be, and would it be possible for me to obtain a security clearance. The reports, which I will be glad to offer, all suggested that it was perfectly permissible for me to work, and I could even hold an office, although I elected not to.

In regard to the Bank of America loan, they granted us a $12 million facility comprised of a 5-year term loan with a borrowing base that offered us about two months of operating capital after the purchase price was considered. It was during that time that the Government payment process began to slow down, thereby causing our borrowing base to shrink. Our eligible receivables aged more than 90 days, thereby reducing our operating capital.

As a result, Bank of America called our loan and we had to seek a new lending partner. It was at that time, through our personal funds, we had to make the first company payroll, which was over $400,000, that we put into the company to cover a payroll during that ugly period of exiting Bank of America and moving on to our next lender.

Please note also, Madam Chair, that during the same period of time, Region 11 experienced several administrative changes. This meant that we worked with three contracting officers, two interim contracting officers, several contracting specialists, and the facility was moved from the Navy Yard to downtown. In other words, we went from a very good contracting officer to one mediocre to two that I didn't even know and one that was doing a good job but he was going to retire in eight months.

After Bank of America called our loan, we interviewed several banks, all of which complete internal audits as part of their due diligence. We passed every audit. We were approved for a $10 million facility this time that included the unpaid balance for the purchase price and 45 days of working capital. The experience with First Horizon, the second bank, became quite similar to that of Bank of America. This time it took only six months for our borrowing base to shrink so that there was no availability for cash to cover our 90-day accounts receivable, which were increasingly difficult to collect and once again reduced our borrowing availability.

First Horizon did the same thing, they called our loan two weeks before Christmas of 2006. Having been through this horrible experience one time before, we knew that the process to secure new funding would be long and tedious and expensive due to attorneys' fees, accounting fees, and fees associated with bank workout specialists. We kept all options open on funding, this time selecting Marquette Commercial Financing, a factoring company who would purchase outstanding invoices.

I might also add that at that time STARTECH became so desperate that we sought the services of two of your fellow congressmen to initiate a congressional investigation to find out what it

would take to get us paid, because if we got paid, we wouldn't be having this problem today.

As we looked for new financing, as I said, we got new financing from Marquette, and two of your colleagues helped us. After a complete review of our accounts receivable, they initiated a congressional inquiry on the outstanding receivables.

In mid-March of 2006, during Marquette's post-audit process, it was discovered that a few invoices that had been certified by a contracting officer from Department of Homeland Security Region 11 had actually been paid. I have the e-mail track that shows the last day that this loan was closed that the invoices were not only alive, but they had not been paid. Some people contend that, but I will be glad to furnish this and any other information that you want, including a full accounting review that we have undertook on our own.

About the same time, I went to the hospital for some heart surgery and I was out of work for about a three-week period of time, and during that period of time I got some repercussions from that and my brother died, so I was out of the office for about three weeks during that period of time. After Marquette called the loan, they came to meet with us, my wife and I, and we discussed the situation that caused the alarm of the invoices that they had factored that had been paid, that the Government certified that had been paid. We left the meeting with an understanding that they were not in the business of closing down small businesses and they would work with us.

Shortly after that meeting—matter of fact, it was on a Wednesday—on a Thursday, they called us and said that Marquette had made a decision to call our loan, and at that moment they stopped every dime that was flowing from the Government to STARTECH. They took $5 million of accounts receivable that we could have used to operate on and applied it to the loan and basically froze us out. At that time, through additional loans from my family and my wife, we put in another $2 million and made two more or three more payrolls, with the anticipation that we would have a new funding arrangement within days.

As you might well imagine, May 2007 was painful, stressful, intense to me and my family. We borrowed every cent that we could borrow. We mortgaged our home. We did everything we could to keep STARTECH alive.

I deeply regret the failure of STARTECH on June 1st and the resulting distress to so many of our employees that I too learned to love and respect. There is no doubt in my mind that I did everything absolutely possible to save it. Perhaps it is merely ironic, but right now, today, I am negotiating to sell what remains of STARTECH, and preliminary figures provided by an independent CPA firm suggest that if this sale were to go through, or if the Government paid its invoices, there would be enough to pay all of the employees first, all of the loan with Marquette, and any other expenses that we have.

STARTECH was never bankrupt. I had a meeting with our CPAs yesterday. It never was bankrupt. We had money that we were expecting from the Government that just has not come. That is going

to be debatable, and I would be glad to furnish you accounting records and anything you want to clear this matter.

I appreciate, Madam Chairman, the opportunity to let me make this statement, and I look forward to entertaining any questions that I can give you.

Ms. NORTON. Thank you very much, Mr. Waites.

Ms. Messner?

Ms. MESSNER. Good morning, Chairwoman Norton, Ranking Member Graves, and distinguished Members of the Committee. Thank you for the opportunity to provide testimony on the protection of Federal employees and their workplaces.

My comments this morning will be brief. However, I have provided a written statement for the record which cites specific examples and includes supporting documentation.

In February of 1990, I began my career as a contract guard as part of a team that protected a Level IV Federal facility. Sixteen years later, STARTECH was replaced by another company through the procurement process.

I elected to remain with STARTECH and was moved to the corporate headquarters as an administrative assistant. At the time of my resignation less than two years later, I was Chief Operating Officer and General Manager.

Although my dealing with the Federal Protective Service was limited to the last few months of my tenure with STARTECH, my experience in the contract security industry is extensive. Please take that into consideration when determining the value of my testimony.

The mission of contract guards and the Federal Protective Service is one and the same, that is, the protection of Federal facilities and occupants. The means by which that mission is accomplished differs. Contract guards protect through prevention by detection, providing services such as access control, package inspection, and identification of potential hazards. The Federal Protective Service protects through regulation, inspection, investigation, and enforcement. They are the primary emergency responder called for by contract guards. Contract guards and the Federal Protective Service are not mutually exclusive; they are separate entities on a single mission, and the mission is clear: protect the assets of the United States Government.

The true value of security is illusive and is predicated upon what didn't happen. In order to prove the value of security, you must prove a negative. I don't have to do that in this case.

STARTECH was incorporated in the District of Columbia in April 1989. Weldon Waites purchased 75 percent of the company in May 2005. In tax year 2006, five contracts with the Department of Homeland Security generated over $13 million, roughly half the company's annual revenue. Yet, there was not enough money to fund payroll on more than one occasion.

It is highly likely, and you have already heard some form of testimony in which the demise of STARTECH is at least in part due to the failure of DHS to pay valid invoices in a timely manner. I do not believe that is the case now and hasn't been since the 1st of the fiscal year. There have been some occasional delays in pay-

ments recently, but certainly nothing that would jeopardize an otherwise viable company.

My theory of the demise of STARTECH is in stark contrast to any attempt to blame late payments from DHS or anyone else. It is my considered opinion that STARTECH died at the hands of its controlling owner, Mr. Weldon Waites.

In September 2005, the DCAA prepared an audit report citing the identification of "nine significant deficiencies in the contractor's accounting system." Two years later, I could find no evidence of any progress on the correction of any deficiency noted in that report.

In June 2006, financier number one, the Bank of America, issued a default notice to STARTECH. In addition to several areas of noncompliance with the terms and conditions of that loan, the default notice was caused by Weldon Waites' failure to report a prior criminal history, including an indictment for 29 counts of conspiracy, bank fraud, false statements, and money laundering.

In December, financier number two, First Horizon, issued a notice of default for, among other things, the failure of the financial statements to be complete and correct in all material aspects. Within two weeks of signing an agreement to provide funding, financier three, Marquette Commercial Finance, identified several DHS invoices that had been sold to them but had already been paid directly to STARTECH. Marquette was a factoring company. Payment for invoices was an outright sale to Marquette, it was not a loan. In essence, STARTECH was paid for the same invoices twice. Those invoices totaled over $1.8 million.

The fruitless search for finance began again. Multiple financiers were contacted; multiple financial consultants were retained or continued; and multiple accounts receivable reports were identified. Needless to say, any financier who conducted a due diligent audit of STARTECH quickly realized the true financial state of the company and withdrew any offers made.

The company's accounts payable presented another challenge. STARTECH has not paid most of its considerable expenses since prior to January of 2007. Weldon Waites' personal expenses were paid regularly. These expenses include mortgages for condominiums in Washington, D.C. and Myrtle Beach, South Carolina. Other South Carolina expenses, like parking spaces at the Gamecock Pavilion and storage facilities, which reportedly include a slip for his 46-foot boat, were paid for by STARTECH.

The May 4th payroll was late. Weldon Waites continuously asserted the funds were available, but they were not. Most of the paychecks issued May 18th and all of them issued May 24th were returned due to insufficient funds. On May 31st, DHS sent a notice of post-vacancies caused by the payroll issues in the morning and a show cause notice in the afternoon. On June the 1st I responded to the show cause notice. Part of my June 1st response to that notice included the lines: "It is my opinion that STARTECH is not only financial bankrupt, but morally and ethically as well. It is in the best interest of the Federal Government to revoke all STARTECH contracts and to immediately issue them to another reliable contractor." All five DHS contracts were contacted for cause on June the 3rd.

Five hundred and thirty-three STARTECH employees still have not been paid, most since May the 4th. Since January of 2007, payroll deductions made for employee benefits, including health insurance, 401(k), pension, and union dues, have not been forwarded to the providers of those benefits.

The stated purpose of this hearing is the responsibility of the Department of Homeland Security and the Federal Protective Service to ensure contract guards protect Federal employees and their workplaces. I respectfully submit to you that the Federal Protective Service cannot possibly protect 8900 Federal buildings with 1200 officers. The people that are protecting you, that are standing post, are contract guards, 15,000 strong. The contract guard program absolutely needs tighter regulation, advanced training, more inspections, and follow-through on any sanctions levied.

Anyone who is in the position of controlling the work of contract guards or handling any of the money associated with the guard contract must be subjected to at least the same level of background check as the guards who work for them. Annual financial audits will keep the money where it is needed and where it was intended to go.

Weldon Waites sacrificed his company, his employees, and your security on the alter of his greed. I beg you to ensure that this never happens again. I have been honored by the opportunity you have given me to speak before you today, and I thank you from the bottom of my heart. I would be happy to answer any questions.

Ms. NORTON. Thank you, Ms. Messner.

Actually, I want to thank you both and say it took some courage for both of you to come forward, Mr. Waites to not simply be accused, but to come forward and to give his own accounting, and certainly Ms. Messner, who has played a valuable role, in her terms, at least, as a whistleblower. I think she has certainly uncovered important issues for Federal contracting, and not alone for this particular contractor

First let us establish, Mr. Waites, whether you are still in business. Do you have any contracts? Are you technically insolvent?

Mr. WAITES. Madam Chair, the CPAs that were working with us had a debate with our attorneys yesterday, and I understand that there are three definitions of insolvent. If it is the one that means that you have no money in the bank, then absolutely we are. But based on our accounts receivable, we are not.

Ms. NORTON. Are those accounts receivable entirely from the Federal Government?

Mr. WAITES. No, ma'am.

Ms. NORTON. To whom else do you provide services?

Mr. WAITES. We had some commercial accounts also.

Ms. NORTON. Were those employees paid over the past several weeks?

Mr. WAITES. To my knowledge, none of the employees have been paid since the first payroll that was missed after we personally made the three payrolls prior to that.

Ms. NORTON. None of the employees of the Federal Government or your private contracting services have been paid?

Mr. WAITES. No, ma'am, not since the first payroll that we missed a portion of.

Ms. NORTON. Well, you have been paid, have you not?

Mr. WAITES. I have not.

Ms. NORTON. You have continued to pay on your condominiums here and in South Carolina and your other obligations?

Mr. WAITES. I would like to address the Committee on that. I mentioned in my opening statement that I worked for Mr. Pinckney and Mr. Ford for about a year before we had the opportunity to purchase STARTECH, and it was in my employment agreement, since I lived elsewhere, that they would provide me a place to stay. So we have had this for my entire stay here, which has been over three years. It hasn't been something that just recently happened. Last year, I made 48 trips, most of which lasted three to five days, so I am here a lot, and the condo payment was part of my compensation package. As far as the Myrtle Beach condo, we have a presence with an original thought to move the corporate office one day, and we are going after the business in South Carolina that requires a South Carolina presence, and in that regard we paid the entire down payment out of our own personal funds back in November—I mean, October, excuse me, late October, and since we were going to maintain an office on the coast of South Carolina, it was our decision, ,along with counsel and CPAs, that we should invest, rather than pay rent.

Ms. NORTON. So you believe that, in 2006, when you and your wife registered a deed in North Myrtle Beach for a $530,000 beachfront condominium, that was that was necessary for your business? That was 2006.

Mr. WAITES. Yes. I think it was in November of 2006. As I said, we made the down payment of $125,000 for this and talked to our accountants about it to find out if this is the best way for us to develop business in South Carolina. So that was the decision. By the way, I might add that——

Ms. NORTON. Well, excuse me—oh, go ahead.

Mr. WAITES. I might add that I don't think but one or two payments have been made by STARTECH on that condo, because it is now in foreclosure.

Ms. NORTON. Oh, that too is in foreclosure now.

Mr. WAITES. Yes, ma'am.

Ms. NORTON. That same month, the same month that you were buying the North Myrtle Beach property, you say in your own testimony that First Horizon called its loan because of STARTECH's financial position. Even though they were calling its loan, you thought you could invest in beachfront property at the time?

Mr. WAITES. That is a two-way street for STARTECH. In order for us to maintain stability, we had to grow, and we had the right people in place in South Carolina to develop business to——

Ms. NORTON. In beachfront property?

Mr. WAITES. Beg your pardon?

Ms. NORTON. You had the right people in South Carolina in beachfront property?

Mr. WAITES. Well——

Ms. NORTON. I mean, you had no office there at the time.

Mr. WAITES. We did not have an office——

Ms. NORTON. So why does the beachfront property amount to having people in place to set up a headquarters in South Carolina?

Mr. WAITES. The prospects that we were going after in South Carolina required, just like with D.C., through the procurement process, that you have a presence or have office space in South Carolina or near the properties that we were trying to get contracts for. So it served as an office and a condo. Matter of fact, I have been to it three times.

Ms. NORTON. Your account of not getting paid by the Federal Government is something this Committee takes very seriously. This is not the first time we have heard it. In my opening statement I indicated that I believed that Federal contracting needs top-to-bottom reform, and it is clear to me that that is the case. However, Ms. Messner has testified that much of your blues and problems predated this six-month period that we are particularly focused on; that many of the problems that you speak of date back to early this year.

Are you saying that your company has been in continued difficulty and unable to perform its services without taking extraordinary financial steps, some of which appear to have been marginal? Is that the way you stayed in business?

Mr. WAITES. As I said in my opening remarks, looking back, I feel like STARTECH was underfunded from the day that we decided to make the purchase.

Ms. NORTON. Are you saying undercapitalized?

Mr. WAITES. Undercapitalized, because the agreement was to furnish the acquisition cost in the loan. Now, we made that loan every month and was current with it for 12 months, and the reason that Ms. Messner stated that Bank of America called that loan is not correct, about my record. They put that in their complaint, but it was decided that it was a covenant violation and our ratios were not what they were supposed to be; and we dispelled that argument in the negotiations with them right up front.

Ms. NORTON. Mr. Waites, let me move on to what immediately brings us here. During the past six months, tens of thousands of dollars in employee contributions to 401(k)s, health care benefit plans, union dues, pensions were withheld from paychecks, but apparently never passed along to the appropriate benefit administrators. What happened to these funds?

Mr. WAITES. I would like to expand on that a little bit, if I could, because I had a meeting on Tuesday in Baltimore with the Department of Labor to discuss these very issues. You have to keep in mind that since Marquette called our loan, we were not afforded one cent to operate on. They took all of the Government payments, which have now started to come forward, and applied them to our loan.

Ms. NORTON. Well, did you inform the Federal Protective Service or anyone in the Department of Homeland Security that all of these funds were being taken for a loan and that you had no funds to pay for these benefits which are required by Federal law? And what did you do with the funds? Who took the funds out of the checks?

Mr. WAITES. We never got the funds.

Ms. NORTON. For six months you never got the funds from the Department of Homeland Security? You didn't pay for the month of June or much of the month of May or June, but what about be-

fore that time, when apparently you were paying, at least some of the time, for Federal contract employees? What happened to the funds for the benefit payments that have not yet been received for union dues, 401(k)s and the like?

Mr. WAITES. From the time that First Horizon called our loan, they did a similar thing that Marquette did, in that they kept the funds and they worked with us——

Ms. NORTON. So you are saying that though these funds were withheld from employees, they went to Horizon?

Mr. WAITES. I would like for you to hear me out on this. The funds during the period of time that First Horizon called our loan, naturally, they had an assignment of claims on it, so they held the funds. At that time, I sent a variety of e-mails and was in constant contact with the workout person that we were dealing with employee benefits. So sometimes they would send the net amount to the payroll and other times they would send the entire amount, and when they were sent, they were wired directly to the third-party administrator who paid the benefits, and that is why there it is sort of a gap in the way they were paid, because we were at the mercy of the bank and they paid basically what they wanted to.

Ms. NORTON. So it's the bank's fault that these employees have not received their benefit plans—union dues, 401(k)s—because you turned all of the funds over to the bank to meet a loan. And you did not use any of these funds for any other purpose?

Mr. WAITES. No, ma'am, we did not. In fact, the entire——

Ms. NORTON. Ms. Messner, you were sitting right there. Is that your view of how these funds were handled?

Ms. MESSNER. No, ma'am, it is not. In the transference between Bank of America and First Horizon, in about July or August of 2006, Bank of America had an escrow account set up for employee benefits. When it switched over to First Horizon, that escrow account was not set up. When the lady who did the payroll would finish her payroll, she would do a status sheet that would say this much for payroll, this much for taxes, this much for garnishments, and this much for employee benefits.

Every week, before payroll went, either I or Ms. Case, the payroll lady, would speak to Mr. Waites about it. From about October to December it wasn't paid and every week we were faced with the same argument that I don't know why ADP, the payroll company, doesn't just do it. We explained to him that we had contacted ADP on numerous occasions, that ADP would do garnishment taxes and payroll only; they wouldn't do what they determined employee voluntary contributions.

In about December of 2006, we were $185,000 in arrears on employee benefits. There was a $185,000 check written to the third-party administrator, who had basically been floating us a loan for that period of time. After that check bounced twice, I believe it was a wire, but the money was made good by January. From January to present, I have heard we don't have the money to do it; when we get the financing, it will be done; and Ed Riley, the third-party administrator, owes me money. This is Mr. Waites telling me, Ed Riley owes me money, he can pay it.

Ms. NORTON. That is a pretty factual rendition, as opposed to an opinion, Mr. Waites. Do you doubt the accuracy of what you just heard?

Mr. WAITES. Certain things I certainly do disagree with entirely. First of all, I took over a company that I really didn't know at the time how they handled their benefits, you know, the benefit payments. So when we found out the way—you can't find out everything the first day—it was my suggestion that we handle the employee benefits differently. Now, when it comes to Bank of America and——

Ms. NORTON. Handle it differently how?

Mr. WAITES. Well, by setting up a trust account, like she said, because the money was never ours. But the point I am trying to make is that this was Ms. Messner's administrative duties to work this out. As far as arguing with me, I am going to provide the Committee with records that if I ever got a cent out of any of it or had any benefit from it, it will be right there for you. The point is that from the Bank of America loan calling up until this date STARTECH never had control over like one or two pay periods or a month of its accounts receivable; the banks controlled them all. I had to beg the banks each week on a payroll——

Ms. NORTON. Mr. Waites, we just heard testimony that the banks would not control these benefit payments. And I don't want to go into a who-struck-John here, but it does look like you are saying, look, I got a business; I didn't know how to do the business; I was learning on the job how to do business. That is one alibi. The next alibi is that it was Ms. Messner's fault that somehow these benefit payments, these 401(k) payments, these health care payments were not made. Do you take any responsibility for running this company, sir?

Mr. WAITES. I was always in an advisory capacity. I did the best that I could.

Ms. NORTON. You are the owner of the company.

Mr. WAITES. No, ma'am, I am not.

Ms. NORTON. Who owns the company?

Mr. WAITES. Sharon Waites and Randy Ford.

Ms. NORTON. So your name is not on any ownership document of the company?

Mr. WAITES. No.

Ms. NORTON. I am going to have one or two questions before going on.

Is the reason for that your felony conviction? The reason that you are not an owner of the company your felony conviction?

Mr. WAITES. No, it was not.

Ms. NORTON. What was his conviction in relation to, was it in connection to a business that you owned?

Mr. WAITES. No.

Ms. NORTON. What was it in connection to, please?

Mr. WAITES. It was in connection with a land deal that I was in with several other people.

Ms. NORTON. Was your wife on the premises as the sole owner of the company and are you not listed as joint owners of the company?

Mr. WAITES. I am not.

Ms. NORTON. You are not listed as joint owners of the company?

Mr. WAITES. No.

Ms. NORTON. Your wife is the sole owner of the company?

Mr. WAITES. No. She owns 75 percent of the stock and Mr. Ford, Randall Ford, owns 25 percent of the stock.

Ms. NORTON. Who ran the company, your wife?

Mr. WAITES. Yes.

Ms. NORTON. She was on the premises, and not you?

Mr. WAITES. Well, we were both on the premises.

Ms. NORTON. We ought to have your wife here, then, shouldn't we? Because you are not the owner and you don't take responsibility here because it is your wife who is the 75 percent owner of this company, is that right?

Mr. WAITES. That is correct. But I do accept full and complete responsibility for any errors that we made——

Ms. NORTON. Well, how can you? It is your wife's responsibility if she ran the company and owns the company.

Mr. WAITES. Well, because she is my wife.

Ms. NORTON. And why didn't you ask her to come and testify? Is she here?

Mr. WAITES. No, she is not.

Ms. NORTON. Well, I don't understand why you didn't ask the owner of the company. It seems to me, forthright in coming forward in the sense that you wanted to take responsibility, but you just testified that you are not the one who owns the company and that the 75 percent ownership is by someone else.

Mr. WAITES. Well, the invitation came from you and it asked for me.

Ms. NORTON. Now, is it not true that you were once the owner and that the ownership was transferred because of bank involvement?

Mr. WAITES. I said in my opening statement that the day we closed I was the owner. We then sought counsel to find out——

Ms. NORTON. The day you closed what? Excuse me.

Mr. WAITES. Closed the loan to buy it. We closed the loan in my name and Mr. Ford's name.

Ms. NORTON. That is when you purchased the company.

Mr. WAITES. That was the day of the closing.

Ms. NORTON. And then somebody told you that, with a felony conviction, you probably couldn't get Federal contracts?

Mr. WAITES. Well, we sought counsel to find out exactly——

Ms. NORTON. And did counsel advise you that, with a felony conviction, you probably couldn't get Federal contracts?

Mr. WAITES. That is not exactly what they said. I would be glad to provide the Committee with what they said, but that is not exactly what they said.

Ms. NORTON. Would you both stand? We did not swear witnesses in. It doesn't have anything to do with you. I was not in regular order. Would you raise your right hand?

Do you swear to tell the truth, the whole truth, and nothing but the truth?

[Witnesses answer in the affirmative.]

Ms. NORTON. Would you sit down?

You have testified that you are not the owner of this company, your wife is the owner of this company; that your wife was on the premises as often as you; and that you did not run this company. Now that you have been sworn, would you like to maintain that testimony?

Mr. WAITES. With the exception of as much as I was.

Ms. NORTON. How much was she on the premises and how much were you on the premises in approximate percentage terms?

Mr. WAITES. I would say 75/25.

Ms. NORTON. Was your wife ever in the District of Columbia, where this company is registered?

Mr. WAITES. Yes.

Ms. NORTON. Seventy-five/twenty-five, I am sorry, who?

Mr. WAITES. I was on this premises about 75 percent and she was on the South Carolina office premise about 75 percent of the time.

Ms. NORTON. Was she in the District of Columbia 75 percent of the time?

Mr. WAITES. No, I would say she was probably in the District of Columbia 40 percent of the time.

Ms. NORTON. How about you, how much of the time were you in the District of Columbia?

Mr. WAITES. Probably 75 percent of the time.

Ms. NORTON. Let me ask you this, finally, about the employees. That is what brought us here, frankly. Did you or anybody on behalf of your company contact the employees who were not paid for three weeks and indicate to them anything about why they were not being paid or what was going to be done about it? Did you have any communication whatsoever with them?

Mr. WAITES. I probably talked to a couple of hundred that called me individually.

Ms. NORTON. So when they called you individually you talked, but you never initiated any conversations with them?

Mr. WAITES. My conversations have been through the Department of Labor to find the funds——

Ms. NORTON. No, no, no, no. My question has to do with three weeks, or about three weeks, when people weren't being paid. Was there any communication from STARTECH—I guess I should say from your wife, since she was the owner of the company—to employees concerning the failure to pay people their wages?

Mr. WAITES. If you are asking did we send out a communication? We did not.

Ms. NORTON. Of any kind?

Mr. WAITES. I spoke with union leaders and I spoke with key people that——

Ms. NORTON. What did you tell the union leaders?

Mr. WAITES. I told them that we were doing our best to get funds to pay the employees.

Ms. NORTON. Ms. Messner, do you have any comment, before I move to Mr. Graves, on the failure to pay employees for—first of all, what was the period of time, the exact period of time during which employees were not paid?

Ms. MESSNER. May the 4th paychecks were late, they weren't actually issued until May the 18th. Excuse me, May the 8th. On May

the 18th, payroll went out, but probably about 75 percent of it was returned due to non-sufficient funds. May the 24th was another payroll that went out; 100 percent returned due to insufficient funds.

Ms. NORTON. So you are saying checks went out.

Ms. MESSNER. Yes, ma'am.

Ms. NORTON.—to employees.

Ms. MESSNER. Yes, ma'am.

Ms. NORTON. And that these employees would then go to cash them——

Ms. MESSNER. Yes, ma'am

Ms. NORTON.—and the bank would not cash the check because there was not enough money to pay the wage that was recorded on the check.

Ms. MESSNER. Generally what happened, ma'am, if an employee deposited at the bank, it would show in their account as available, but because the payroll checks at that time were being drawn off a South Carolina bank account, the employee's personal bank would pull that money back, after about five or seven days, when they figured out that there was no money in the South Carolina account.

Ms. NORTON. Is this the first time this has happened, Mr. Waites and Ms. Messner?

Mr. WAITES. Yes.

Ms. NORTON. Ms. Messner, do you know of any other period during which employees were not paid?

Ms. MESSNER. Payroll has been late a couple of time, especially over the last year, but this is the first time it was insufficient funds, with the exception of a few—I want to say maybe back in March there were a few checks that were written off the South Carolina account that bounced, so we had to replace those checks. But it wasn't the entire payroll, it was maybe 10 checks.

Ms. NORTON. Were employees paid late?

Ms. MESSNER. Employees were paid late several times. I believe the officers can answer that better than I can.

Ms. NORTON. Thank you.

Mr. Graves?

Mr. GRAVES. Thank you, Madam Chairman.

You still have contracts out there. Are you still providing any security services anywhere?

Mr. WAITES. No.

Mr. GRAVES. I am curious as to when your financial problems started and through this whole process, at least. Was there ever any security gaps that resulted or any performance issues that resulted? That is what concerns me as much as anything else, is, you know, obviously, the job is to protect those Federal employees, protect those facilities, and I am worried about security gaps and gaps in the performance based on what was supposed to be provided.

Mr. WAITES. To my knowledge, there were no gaps.

Mr. GRAVES. Was there ever a time that STARTECH ever failed to provide any required security guards? Was there ever a time that there was ever any—I am sure when folks aren't getting paid, you know, it gets a little hard for you to show up or even want to

get motivated. Was there any time that you didn't have guards there at any facility?

Mr. WAITES. I don't know of any other than in the end, when the payroll issues arose.

Mr. GRAVES. Well, then was there a gap in security levels at that time?

Mr. WAITES. I am not quite sure. I feel certain that there were, but I don't know who they were and how it was covered. But for the most part I was told that about 80 percent of the posts were covered.

Mr. GRAVES. I am a little concerned by the comment "I feel certain." That concerns me a lot, again, because the job is to protect those Federal employees in those buildings, and "I feel certain," that concerns me.

Thanks, Madam Chair.

Ms. NORTON. Thank you, Mr. Graves.

Just to follow up one question before I go to the next person, and I need to know who the next person is.

You say 80 percent of the posts were covered?

Mr. WAITES. I said approximately, and I don't know that for a fact; that was one figure that I——

Ms. NORTON. So you didn't have any supervisors on site assuring that these posts in Federal buildings, which you were hired to keep secure, were being covered?

Mr. WAITES. Well——

Ms. NORTON. I mean, where does your 80 percent figure come from?

Mr. WAITES. I really don't know where the 80 percent; I saw it somewhere as I was talking to the contracting officers or somewhere as we were winding down the——

Ms. NORTON. But you took no responsibility to make sure that people were on the job and that they were—you already have said you didn't communicate with them about being paid. You also took no responsibility to make sure that they were on the job.

Mr. WAITES. That is not so. On Thursday, before the contracts were pulled on Friday, we had a conference call with FPS. We had a company, Wackenhut, and their chief executive officer on the phone willing to take over the contracts at that time.

Ms. NORTON. Just a moment. I am asking now not about willingness to take over the contract. I am asking about what Mr. Graves raised, that his greatest concern would be whether or not these posts were covered. And you say approximately 80 percent, though you have no personal knowledge of that and apparently assigned no supervisor of any kind to report to you whether the posts were being covered.

Mr. WAITES. I did not say that. I did talk with all of the site supervisors and went through regular checks with them to find out how many guards he had and how many posts that he had covered, and we were also prepared to——

Ms. NORTON. Mr. Waites, did anyone do a roll call in your behalf during the weeks when these employees went unpaid? A straightforward question. Did anyone take a roll call, come back to you and say, Mr. Waites, tell your wife, who is the owner, that this many

people are on the job and this many people are not on the job? That is my question.

Mr. WAITES. The answer to that is I think Ms. Messner had meetings with them. She just said she was the Chief Operating Officer at the time that you are suggesting. Not only was I calling the guards and the supervisors, but I was also——

Ms. NORTON. No, you said the guards called you. You did not say you were calling the guards. You said the guards called you and you answered questions from the guards.

Mr. WAITES. Well, I misstated, then. I did call guards and I talked——

Ms. NORTON. You called each of these 600 guards who weren't being paid?

Mr. WAITES. No, I called guards.

Ms. NORTON. Called who?

Mr. WAITES. I called guards.

Ms. NORTON. You called who?

Mr. WAITES. I called several guards myself.

Ms. NORTON. How did you choose which guards to call among those who weren't being paid?

Mr. WAITES. Some that I knew and some that I didn't. You know, I don't know personally every one of them.

Ms. NORTON. Ms. Messner, would you clear some of this up?

In other words, you, in some kind of ad hoc fashion, said to some of the guards something.

Ms. Messner, he said you were the Chief Operating Officer.

Ms. MESSNER. Yes, ma'am.

Ms. NORTON. Did you communicate with the guards? Did you take roll?

Ms. MESSNER. Yes, ma'am, I did. On May 24th, for that payroll, Mr. Waites had assured—the ending result was he had assured that there would be money in the bank by the following Tuesday, which I believe was the 29th. It was over Memorial Day weekend. He assured that the money would be in the bank by 1500 hours, or 3:00 p.m. I sent a notice out to all project managers and all corporate staff that this is the information that I have, that the money will be there for both payrolls by 1500 on the 29th; that, contrary to popular belief, Mr. Waites is not hiding, he does return phone calls; and various things like that.

After I sent that, I sent another e-mail out. That e-mail I requested the project managers to disseminate to all personnel by any means necessary. After that, I sent an e-mail to the project managers asking for a status report every morning and every afternoon of how many officers that were not showing up because they hadn't been paid. The word that I had gotten was that officers wanted to come to work; however, couldn't afford the gas money to get there.

On May the 31st, I had a meeting with—I invited project managers, site supervisors, and shop stewards to a meeting on May 31st at the Department of Education building, which was one of the ones that we protected. At that meeting, I said we are not going to get paid. The next pay date was the next day.

Ms. NORTON. You were on the premises then?

Ms. MESSNER. Yes, ma'am. And I explained to the officers that were there that there is no money; we are not going to get paid tomorrow because corporate staff has not been paid either. I stepped out of the room to allow them a few minutes to talk amongst themselves, and when I came back I saw people who had nothing giving to people who had less than nothing. They reached into their own pockets for gas money for fellow officers so that they could show up. And Mr. Waites, at a union meeting via conference call on May 23rd, explained to the shop stewards present that it was not his fault if they mismanaged their money, and it was not his fault if they got evicted or didn't pay their car payment. That is what he told the guards.

So I explained to the people, I figured they deserved to know. If you are not going to get paid, you deserve to know so you can make alternative arrangements. I told them May 31st. They pledged to stand post as long as they could without pay. On June 1st I sent the notice to the FPS take our contracts, because it was unfair to the 500 people to keep working without being paid, which they would have done.

Ms. NORTON. Well, in this post-9/11 climate, we can only thank you for having encouraged people to stay on the job.

Mr. Waites, did you contribute to the funds for employees who needed gas money to get to work? What is the average wage of these employees?

Mr. WAITES. Well, we put $2,500,000 of borrowed money and made the payrolls that led up this; didn't get paid ourselves——

Ms. NORTON. Mr. Waites, you know, you might try answering my question. You just heard testimony that some of the employees, who have little themselves, were essentially passing the hat to help others who had even less. I am asking you did you contribute anything to these employees who had not been paid and perhaps had even less than you?

Mr. WAITES. Not directly.

Ms. NORTON. All right.

Let me move on. I guess Mr. Carney was first, actually.

Mr. CARNEY OF PENNSYLVANIA. Thank you, Madam Chair. I have several questions. This is quite startling testimony, actually. I am amazed.

Mr. Waites, who replaced your wife's company in fulfilling these contracts, which agency was that, do you know? Who filled in?

Mr. WAITES. Oh, I think Frontier Security did part of them and Coastal Security did the other part.

Mr. CARNEY OF PENNSYLVANIA. Did their employees get paid, do you know?

Mr. WAITES. Yes.

Mr. CARNEY OF PENNSYLVANIA. Yes, they did get paid?

Mr. WAITES. I am not sure I understand.

Mr. CARNEY OF PENNSYLVANIA. Do you know if their employees got paid?

Mr. WAITES. The Coastal employees?

Mr. CARNEY OF PENNSYLVANIA. Yes.

Mr. WAITES. Yes.

Mr. CARNEY OF PENNSYLVANIA. Okay. Okay.

Ms. Messner, have you heard of similar problems at other security firms, private security firms?

Ms. MESSNER. In the 16 years that I was a guard, I had worked for one other company that went bankrupt and bounced payroll, and that would have been in the late 1980s, and that was due to fiscal malfeasance.

Mr. CARNEY OF PENNSYLVANIA. Ms. Messner, what was morale at STARTECH? How precipitously did it slide? I am sure that it had to.

Ms. MESSNER. Individual morale was low because when you—it is hard to protect others when you think that your stuff might be on the street before you get off shift. But, honestly, believe it or not, morale kind of improved because we had a common enemy.

Mr. CARNEY OF PENNSYLVANIA. Interesting phrase.

I am going to ask just a basic question, Mr. Waites. Who is responsible here?

Mr. WAITES. The ultimate responsibility would have to fall on our shoulders.

Mr. CARNEY OF PENNSYLVANIA. What does that mean? What are you going to do to make this right?

Mr. WAITES. We have done several things. I met with the Department of Labor on Tuesday and signed all the documents.

Mr. CARNEY OF PENNSYLVANIA. What kind of documents?

Mr. WAITES. To assure that the remaining invoices that we have outstanding, that the guards are paid first, and their benefits. That was a meeting all day long in Baltimore on Tuesday. I have negotiations with a company that is interested in helping us, and that would be the first priority, is to pay the employees.

Mr. CARNEY OF PENNSYLVANIA. All right.

I have no further questions at this time, Madam Chair.

Ms. NORTON. Thank you, Mr. Carney.

Mr. Dent, pleased to welcome you for any questions.

Mr. DENT. Thank you, Madam Chairman.

My question is for Ms. Messner. When did you originally have your concerns about STARTECH's ability to perform as a legitimate security guard contractor for the Federal Government? And I think you might have answered it, but when did you report those suspicions?

Ms. MESSNER. My first concerns actually started when I was in the field, because we were never inspected by the company; basically, we were in no man's land. With this particular situation, I became very concerned in March of 2007, and the reason why I became concerned in March of 2007 was prior to the closing of the Marquette deal in which the invoices were sold, both the Chief Financial officer and me personally explained to Mr. Waites that the Federal Government had already paid for those invoices. There were two people authorized to sign to sell those invoices to Marquette; I was one and Sharon Waites, Mr. Waites' wife, was the other. She was in South Carolina. I refused to sign the document because it was theft. He signed her name.

Mr. DENT. So it was in March of 2007 is when you first had your suspicions and concerns. And when did you report those concerns or suspicions that you just outlined?

Ms. MESSNER. Sir, I reported it immediately upon suspicion. I asked for clarification, I said, this can't be right. I explained it to Mr. Waites. I talked to everybody who would listen. And if I had had the money, I would have hired a sky writer. I didn't know who else to go to. I talked to Marquette. After it was done, I talked to Marquette, I spoke to attorneys. I told everybody immediately.

Mr. DENT. I guess my next question, then, to Ms. Messner is when did you learn first about Mr. Waites' criminal background, and do you think that that should automatically disqualify a company from being considered for Federal Government contracts, particularly security guard contracts?

Ms. MESSNER. I first learned part of his history in or about June of 2006, when Bank of America closed the loan. Mr. and Mrs. Waites called me into their officer, they advised me that he had a blip in his past, and they asked me to be "the face of STARTECH." They signed legal documents saying that they had no power or control; they made it very clear to me that it was paper only. After that, I didn't have any reason to question him.

As far as exclusionary practices from Federal contracts, especially security, absolutely. Without a doubt. Contract guards must pass a background check. If you have too many traffic tickets, you can't be a guard. Yet, you give control of 530 guards to a convicted felon. It does not make sense to me.

Mr. DENT. And, finally, it is pretty clear from your rather extensive background in Government contracting work that you have got a pretty good understanding about what works and what doesn't. What recommendations, with respect to contract oversight, do you have for this Committee? It is our job, of course, to see that our Federal buildings and employees are protected, so what would you recommend to us?

Ms. MESSNER. I would recommend that this be the last study or the last investigation, that STARTECH be held up as the example of exactly what not to do. I believe that if you want to know the true picture of security in Federal buildings, that you need to go to the Federal Protective Service officers and the contract security guards, and find out from them what they need to do the job. They are professionals and they will tell you. And, primarily, any funding that is done, you need to make sure that it is the right amount at the right time to the right people for the right reason. Inspect, investigate, and train.

Mr. DENT. Thank you very much. I guess the Federal Protective Service will be in the next panel, so thank you for your comments.

I yield back to the Chair.

Ms. NORTON. Thank you, Mr. Dent.

Mr. Arcuri.

Mr. ARCURI. Thank you, Madam Chair, and thank you for having this hearing.

Mr. Waites, what was the peak employment of STARTECH?

Mr. WAITES. About 750, I think.

Mr. ARCURI. And when did the peak employment take place?

Mr. WAITES. In late 2006.

Mr. ARCURI. Late 2006. November, December of 2006?

Mr. WAITES. Sort of like that.

Mr. ARCURI. After your financial problems started to develop?

Mr. WAITES. Well, no. The peak might have been a little bit before that. As I said earlier——

Mr. ARCURI. Well, I just want to know when was your peak employment. About what time?

Mr. WAITES. 2006. Early 2006 or late May, I would guess. The reason I say that is we had a couple of contracts that we lost——

Mr. ARCURI. Okay, first part of 2006.

Mr. WAITES. Yes.

Mr. ARCURI. Okay. And when did your financial problems start, in your opinion?

Mr. WAITES. May 31st, 2005.

Mr. ARCURI. Okay, so your peak employment came after your financial problems began to develop? Just yes or no.

Mr. WAITES. Yes.

Mr. ARCURI. Okay. Now, at the time of your peak employment, what was your percentage of Federal employment as opposed to private sector employment or other employment that you had

Mr. WAITES. Ninety-five percent Federal and 5 percent.

Mr. ARCURI. Okay. Now, the pay that you would receive for Federal contracts relative to the private contracts, was it the same, higher, lower? What was the percentage?

Mr. WAITES. It is higher because of collective bargaining agreements in the Federal arena.

Mr. ARCURI. So you would receive more money as a result of your Federal contracts.

Mr. WAITES. The employees got paid more, yes.

Mr. ARCURI. Okay. And you would receive more, I take it.

Mr. WAITES. Yes.

Mr. ARCURI. Okay. Now, what was your profit margin in your business? Generally, what is your profit margin?

Mr. WAITES. Less than 3 percent.

Mr. ARCURI. Ms. Messner, would you agree with that?

Ms. MESSNER. The peak for STARTECH business was the last quarter of 2001, post-attack. The profit margin for STARTECH is between 3 and 5 percent. It can go as high as 7 and a half.

Mr. ARCURI. And would you say that is about the general percentage for the industry?

Ms. MESSNER. Probably, yes.

Mr. ARCURI. Okay.

Now, Mr. Waites, during the period of your peak performance or your peak employment, I should say, in early 2006, did you take any loans? Was that a period that you applied for any of your loans?

Mr. WAITES. We applied for a loan in 2005, was the first loan.

Mr. ARCURI. Was that to purchase the company?

Mr. WAITES. Yes.

Mr. ARCURI. Okay. And how much was that loan for?

Mr. WAITES. Eight million dollars.

Mr. ARCURI. Okay. And what was the purchase price of the company?

Mr. WAITES. I think it was $7.5 million.

Mr. ARCURI. Okay. What was the additional half million dollars for?

Mr. WAITES. Operating capital.

Mr. ARCURI. Okay. What is the purpose of operating capital? I mean, I understand the guard business is pretty labor intensive and low in terms of capital investment. What was the purpose of that additional half million dollars for capital investment?

Mr. WAITES. Well, our expenses that we call G&A is usually about 5 percent.

Mr. ARCURI. What is G&A?

Mr. WAITES. Your operating income is about 5 percent of the contract.

Mr. ARCURI. Okay.

Mr. WAITES. And if you maintain overtime, keep it low—because you can't budget for overtime—you can pay all of your administrative expenses plus overtime out of G&A.

Mr. ARCURI. Did you take any of that $8 million out for the owners?

Mr. WAITES. No.

Mr. ARCURI. Was any of that taken out?

Mr. WAITES. The only amount that was ever taken out as far as the two owners was at the end of 2005——

Mr. ARCURI. We will get to that. My question was with respect to the first loan, did you take anything out?

Mr. WAITES. No.

Mr. ARCURI. Okay.

Is that right, Ms. Messner?

Ms. MESSNER. I am sorry, sir, I wasn't in the office at that time.

Mr. ARCURI. Okay.

Now, when did you take the second loan out?

Mr. WAITES. The second loan, we were with Bank of America from May 31st, 2005 to——

Mr. ARCURI. My question was when did you take the second loan out. I don't get a lot of time to ask questions——

Mr. WAITES. I think it was June or July or 2006.

Mr. ARCURI. Okay. So it would be about six to eight months later, a year later?

Mr. WAITES. A year later.

Mr. ARCURI. Okay. And what was the purpose of the second loan?

Mr. WAITES. Our first loan was called.

Mr. ARCURI. Okay. And how much was the second loan for?

Mr. WAITES. Almost the same amount. We had paid it down, but our borrowing base had gone back up, so it was about the same amount, about $8 million.

Mr. ARCURI. Okay, so you paid it down. How much did you pay down from the first loan?

Mr. WAITES. We had a revolving loan and a term loan, and, with interest, it was paid down a couple million dollars, I think, during that period of time.

Mr. ARCURI. But you borrowed $8 million again?

Mr. WAITES. We had to——

Mr. ARCURI. What did you do with the excess at this point?

Mr. WAITES. Any excess that we ever had was put in the operating account and we used it for payroll.

Mr. ARCURI. Was any of that used to purchase the condo in South Carolina?

Mr. WAITES. No.

Mr. ARCURI. Okay, where did the money come from to purchase the condo in South Carolina?

Mr. WAITES. Out of our personal savings.

Mr. ARCURI. Okay. In whose name was the condo in South Carolina?

Mr. WAITES. Mine and my wife's

Mr. ARCURI. Okay. So you bought it in your name and used your money, but it was being paid for, the mortgage was being paid for, I take it, by STARTECH?

Mr. WAITES. STARTECH paid two payments, I think.

Mr. ARCURI. Okay. And your purpose in doing that was to set a business up in South Carolina?

Mr. WAITES. Correct.

Mr. ARCURI. All right, now, why did you purchase a beachfront condo as an office or as a place to set up? Couldn't you have found someplace cheaper in order to set up a business or in order to set up an office in South Carolina?

Mr. WAITES. Most likely, I could.

Mr. ARCURI. But you didn't.

Mr. WAITES. I did not. We selected this place.

Mr. ARCURI. And STARTECH paid the two payments for it.

Mr. WAITES. I am not sure, but I think it was two.

Mr. ARCURI. Two. And it probably would have continued if STARTECH didn't get into problems with their financing, correct?

Mr. WAITES. Yes.

Mr. ARCURI. Now, you indicated that your wife was in South Carolina 75 percent of the time?

Mr. WAITES. Yes.

Mr. ARCURI. But you also said she was in D.C. 40 percent of the time. Is that your position?

Mr. WAITES. I think I either misstated or somebody misunderstood.

Mr. ARCURI. I wrote it down, so I know that is what you said, but——

Mr. WAITES. Well, if I did, I stand corrected.

Mr. ARCURI. Okay.

Mr. WAITES. She is here about 25 percent of the time, period.

Mr. ARCURI. Okay. And she is in South Carolina 75 percent of the time.

Mr. WAITES. Yes.

Mr. ARCURI. Okay. Now, what did you do with the extra money from the second loan, that $2.5 million that wasn't needed to pay off the first loan?

Mr. WAITES. It went back into operating capital, and there was never enough excess in our borrowing base to last over two payrolls, which is about $2 million.

Mr. ARCURI. Did you ever pay yourself or your wife back any money that you lent to the company during that period of time?

Mr. WAITES. No.

Mr. ARCURI. Okay. Did any of that money get paid out to you and your wife in salaries or bonuses or in any way?

Mr. WAITES. We had a salary.

Mr. ARCURI. Okay.

Mr. WAITES. We did not take a bonus in 2006. We called it a distribution. Mr. Ford and I took out a distribution in 2005 because it is a sub-S and we had to pay taxes.

Mr. ARCURI. Okay. And how much did you take out in 2005?

Mr. WAITES. I think it was about—we used to prepay everything, but we found out that there was a certificate of deposit somewhere——

Mr. ARCURI. My question was how much did you pay for yourself.

Mr. WAITES. I think it was 75 percent of $500,000.

Mr. ARCURI. Okay. That was your cut on it?

Mr. WAITES. Yes.

Mr. ARCURI. Okay. So it was over 400,000.

Mr. WAITES. Yes.

Mr. ARCURI. Okay. And how much did you pay yourself in salary in 2006?

Mr. WAITES. The combined salary for both of us is about $185,000 a year.

Mr. ARCURI. When you say both of us, you and your wife?

Mr. WAITES. Yes.

Mr. ARCURI. Ms. Messner, is that the case?

Ms. MESSNER. No, sir, it is not. Mrs. Waites bills STARTECH by invoice for any work she does for the newsletter or the website. She gets paid $50 an hour by invoice only. Mr. Waites' salary is $360,000 a year.

Mr. ARCURI. Okay.

Mr. WAITES. My response to that, if I may reply, is that for accounting purposes we were advised for me to take the income because of our tax situation, so——

Mr. ARCURI. Did you receive that money or did you not receive it?

Mr. WAITES. I did.

Mr. ARCURI. Okay. My next question is with respect to the loan that the banks placed through the assignment on your collateral, on your accounts receivable, did they also place an assignment on your private sector accounts receivable?

Mr. WAITES. Yes.

Mr. ARCURI. Okay. All accounts receivable?

Mr. WAITES. Yes.

Mr. ARCURI. Okay.

Ms. Messner, is that correct?

Ms. MESSNER. Yes, it is.

Mr. ARCURI. Okay. And you took a third loan as well, Mr. Waites?

Mr. WAITES. The third loan was with the factoring company.

Mr. ARCURI. Okay. And how much was that for?

Mr. WAITES. I think it was about $8 million.

Mr. ARCURI. And what was the purpose of that loan?

Mr. WAITES. To pay off the First Horizon loan and give us half a month of operating capital.

Mr. ARCURI. Okay, the First Horizon loan was actually the second loan that you took, though, right?

Mr. WAITES. Yes.

Mr. ARCURI. Okay. And how much had you paid that down to?

Mr. WAITES. As you know, it would go up and down on the borrowing base, but it was about $8 million. I mean at one time it was probably $7 million and at the end it was near 8.

Mr. ARCURI. Okay. And what would you do with this extra money? If you were taking money out of the revolving loan fund, what would you do with this extra money?

Mr. WAITES. There was never any extra money. Every check that was written is accounted for; it was for business expenses that were deductible and certified by our accountants.

Mr. ARCURI. You just said it went up and down and it was a revolving loan fund, that you would pay it down to about 7 and then it would go up again.

Mr. WAITES. Well, a lot of the time, since that was a monthly revolver, if we would get paid on certain invoices, the loan would go down. If we wouldn't get paid, it would go up and it would eventually reach your maximum borrowing base, and you couldn't exceed that.

Mr. ARCURI. All right, my last question is this. What other personal expenses did STARTECH pay for you and your wife?

Mr. WAITES. They paid personal expenses——

Mr. ARCURI. Did they pay for your house, for your rents, for your cars?

Mr. WAITES. No.

Mr. ARCURI. None of those?

Mr. WAITES. They paid for no cars.

Mr. ARCURI. Did they pay for your home here in D.C., your apartment?

Mr. WAITES. They paid the rent on that, yes.

Mr. ARCURI. Okay. And your mortgage in South Carolina.

Mr. WAITES. No, they did not pay for the mortgage in South Carolina.

Mr. ARCURI. You just said that on your beachfront condo in Myrtle Beach.

Mr. WAITES. Oh, I thought you meant where we lived. I am sorry.

Mr. ARCURI. Okay.

I have nothing further. Thank you, ma'am.

Ms. NORTON. Thank you very much, Mr. Arcuri.

Just to wind up for the record, in retrospect, Mr. Waites, don't think we are unsympathetic to the plight of small business people. On both sides of the aisle, people look first to the problems of small business, people we know. Most of them go out of business, the problems are so great. Much of it is miscalculation. A lot of it comes from what you encountered. You took over a business that you have testified you had no experience in. Yet, you felt you could operate the business. And some of the problems you encountered may have come from that fact.

Were any funds from the Federal Government, Mr. Waites, ever used to meet other accounts or expenses other than Federal accounts or expenses?

Mr. WAITES. I am not sure I understand that.

Ms. NORTON. Monies paid from the Federal Government, were those monies ever used to pay for other expenses other than Federal expenses incurred in connection with STARTECH and its Fed-

eral responsibilities or other accounts other than your Federal account, Federal STARTECH account.

Mr. WAITES. Well, we had, as I stated earlier, commercial accounts.

Ms. NORTON. Yes. And my question is were any of the Federal funds ever used, even temporarily, to cover some of those commercial accounts.

Mr. WAITES. I really couldn't answer that because it all went into one operating account.

Ms. NORTON. So there was not an attempt to keep those funds separate——

Mr. WAITES. No.

Ms. NORTON.—so that the Federal accounts could be paid?

Mr. WAITES. No.

Ms. NORTON. Ms. Messner?

Ms. MESSNER. That is correct. And there were several accounts.

Ms. NORTON. I noted in your testimony, Mr. Waites, that you said that there were preliminary figures from your CPA, the independent CPA, that what remains of the company would be adequate—and here I am quoting from you—"to pay previously unpaid salaries, outstanding employee benefits, and accounts payable." Would you forward those figures to this Committee, please?

Mr. WAITES. Yes, I will.

Ms. NORTON. Ms. Messner, did you testify that on only one occasion, did I hear you correctly, was there enough for payroll?

Ms. MESSNER. Since May? Since May the 4th, May the 4th payroll was okay; May the 11th was okay. After that it was——

Ms. NORTON. How about before that? How about in your previous employment with the company?

Ms. MESSNER. There was one occasion in which they had to bring the checks to us from D.C. I can't remember what that was about, but that would have been in probably 2000, 2001.

Ms. NORTON. Mr. Waites, sorry, did you want to answer?

Mr. WAITES. Yes, ma'am. Those payrolls that you were—the two previous payrolls that she was speaking of are the ones that we made and wired the proceeds from our funds directly to ADP.

Ms. NORTON. Mr. Waites, I am curious when you say a loan was called you got $2 million from your wife. Would you explain that, please? The company got $2 million from your wife?

Mr. WAITES. I don't recall—I recall——

Ms. NORTON. Do you recall $2 million from your wife in the testimony?

Mr. WAITES. I thought that I said that we put over $2 million of our personal funds to fund the two payrolls that I just described.

Ms. NORTON. I see. Those funds would have come from where?

Mr. WAITES. Our personal funds, and then we borrowed from——

Ms. NORTON. How much in Federal funds do you have and personal funds do you have, then, sir?

Mr. WAITES. I have none.

Ms. NORTON. Well, then where did you get $2 million in personal funds from?

Mr. WAITES. Well, I thought the question was how much do I have today. The payrolls that we made came from my retirement, personal retirement that I have had all my life, and our personal

assets that we saved. And my wife was a Federal Government employee, so we put all that together and made the next to the last payroll. And then the last payroll we went to a personal investment group and borrowed it, and they made that payroll.

Ms. NORTON. Mr. Waites, Ms. Messner has testified and tried to make us understand the link to Marquette, that essentially you were paid for invoices twice, and she explains in her testimony that, unlike the two banks mentioned in your testimony, Bank of America and First Horizon, Marquette was not a bank, but a factoring company. Without getting too technical, these are not people who make loans. The invoices, however, less than a certain age, in this case 90 days old, would be sold outright, with 90 percent of the proceeds immediately available, in this case to STARTECH in the form of cash; and that such a deal was finalized March 6th, 2007, which meant that you were selling the invoices and getting paid by the Federal Government, then getting paid by Marquette as well.

Do you believe that was an appropriate arrangement and an appropriate way to handle Federal funds that you received? And what happened to the funds?

Mr. WAITES. Prior to the Marquette closing, we were with First Horizon. When they called our loan, they had a full 100 percent assignment of claims of all funds, so they all went directly to First Horizon. We didn't have access to any except what they would release to us to make these payrolls.

Ms. NORTON. Who was the Marquette deal between?

Mr. WAITES. I was coming to that. After we sought additional financing and went with Marquette, they agreed to factor the accounts receivable, which in essence means that they purchase the invoices once you have owned them and they have the assignment of claims. They actually own the invoices and they also take a personal guarantee from any other funds. So STARTECH, from the problem that we had with First Horizon through the Marquette deal, never got the opportunity, but like on one or two occasions, to enjoy the benefit of the factoring and operate out of our own funds.

The other thing that you mentioned was I have been accused of signing off on the Marquette loan, and it is important for you, the Committee, to understand that we used a loan broker to help us find this financing, and he handled the transactions. In my hand I am holding a copy of the invoices that Marquette sent to the Federal Government and the dialogue that the Federal Government exchanged that led up to the funding of the loan, and the last word of the last sentence says "I just spoke with Jackie Jones and she confirmed that the invoices have been approved and none are paid yet." That was the basis that I made the decision to sign off on the loan that she alluded to. I didn't make it on the——

Ms. NORTON. You mean the Marquette deal.

Mr. WAITES. Yes, ma'am.

Ms. NORTON. So you are testifying that the Federal Government was complicit in this arrangement?

Mr. WAITES. I have the document here from the Federal Government.

Ms. NORTON. Well, that is perfectly fair, sir, if they knew about it, and, of course, we will ask them about it.

Mr. WAITES. Yes. I relied 100 percent on——

Ms. NORTON. Wasn't that some indication, though, that the company was in some financial difficulty, that perhaps DHS or the Federal Government should have taken note of?

Mr. WAITES. Absolutely.

Ms. NORTON. Yes, sir. In retrospect, Mr. Waites, if you had to do it over again, would you forego expenses charged to STARTECH like the BSI properties, two BSI properties, $1600 per month for a boat slip and the parking spots charged through Kawliga, $550, for a tailgate spot at the University of South Carolina charged to STARTECH?

Mr. WAITES. I would like to address both of those, if I could. First of all, the boat slip is 10 years old and was paid for two years ago. That $1600 had nothing to do with the boat slip.

Ms. NORTON. Excuse me. So the $1600 which is on the STARTECH account was not being paid for by STARTECH?

Mr. WAITES. No, ma'am. You made a statement that the $1600 was to pay for a boat slip. That is incorrect.

Ms. NORTON. Monthly.

Mr. WAITES. No, ma'am. There is no boat slip. The boat slip that we own has been paid for for a year and a half.

Ms. NORTON. What is it doing on a STARTECH account?

Mr. WAITES. The $1,600 was not for the boat slip, it was for the office for Columbia, South Carolina rental.

Ms. NORTON. Ms. Messner, are you aware of this office rental?

Ms. MESSNER. There are actually, I guess, now three offices in South Carolina: it is the home office at 4637 Limestone in Columbia; there is a second office at, I think, 4844 Forest Drive in Columbia; and then the beach house.

Ms. NORTON. Well, I thought the beach house was there in order to be the office.

Ms. MESSNER. Ma'am, we have no business in South Carolina. We do not have one guard; we do not have one contract in South Carolina.

Mr. WAITES. That is not true. We have a contract with the University of South Carolina, and we provide guard service for a parking facility that you mentioned earlier. So we do have contracts in South Carolina.

Ms. NORTON. You paid $550 for that tailgate parking spot at the University of South Carolina and charged it to STARTECH, just like the $1600 shows. You say it is for rental, but you say the boat slip didn't have anything to do with it, it was for rental, but not the beachfront property?

Mr. WAITES. May I elaborate on that so I can clear it? Our mortgage payment in South Carolina where we live is about 4,000-something dollars a month. For that we have two offices built in a separate location that STARTECH rents. It was set up to do that way because that percentage of the mortgage payment that we make is attributable to STARTECH work. I spend 25 percent of my time there and my wife spends 75 percent of her time there. The $1600 is the mortgage payment for—I mean is the rental for the mortgage payment for the Columbia, South Carolina office.

The other office that this lady referred to is a P.O. Box where we get corporate mail. So there are two offices in South Carolina.

I would like to get the record straight on these. If we are going to make sworn statements, they should be accurate because there is no boat slip in the picture. The boat slip has been owned for 10 years.

Ms. NORTON. Well, I am glad you corrected the record on that, if that be the case.

Ms. Messner, were you paid all of your salaries before you left the company?

Ms. MESSNER. No, ma'am. The last time I was paid was on May the 4th.

Ms. NORTON. How much are you owed by the company?

Ms. MESSNER. If you included unpaid vacation time that was accrued but not taken, I am owed somewhere between $12,000 and $15,000.

Ms. NORTON. Mr. Waites, you say you bought this company from owners who had gotten it as a part of the 8(a) process?

Mr. WAITES. No, ma'am. I think they were in the 8(a) process, but over the course of the period of time that my wife and I had an interest in the company, they graduated from the 8(a) program and went into big business.

Ms. NORTON. Were these members of minority groups or women?

Mr. WAITES. Yes. You asked earlier the reason. The main reason, back when we decided to reorganize the structure of the company was to make us competitive, because my wife is a minority and minority ownership gave certain credits as far as the procurement process was concerned.

Ms. NORTON. So your wife, because she was a woman, could inherit the 8(a) designation?

Mr. WAITES. You couldn't inherit the 8(a), but in the procurement process, if you are a woman-owned business, you get certain credits that you would not get had you not been woman-owned.

Ms. NORTON. So she did in fact get those.

Mr. WAITES. Yes, we did.

Ms. NORTON. Is that the reason why she was the owner of the property?

Mr. WAITES. That was the primary reason. Back when we decided to step back and look what we had "gotten into," the main priority was how can we be competitive in the procurement field, and our counsel advised us that it would be better if we were minority/female-owned.

Ms. NORTON. Ms. Messner, you testified that, in point of fact, there were some noticeable improvements in the timely payments of invoices by the Federal Government since 2006. Would you elaborate on that, please, since Mr. Waites seems to ascribe much of the concern and problems of his company to late payments?

Ms. MESSNER. Yes, ma'am. In the summer of 2006 there was a reorganization with our contracting officers in which all of STARTECH's contracts were placed under one contracting officer. Once she was in place, she started doing a scrub of each contract through her contract specialist. She identified for the contract for the National Building Museum, she identified several payments that had not been made, that were owed, that were related to tem-

porary additional services. She also identified several that were owed for a secondary contract.

She told me that the way to get the money was to file a claim. I had no idea how to do it. She walked me through it; she helped me; she gave me advice; and those payments were paid.

In addition, there were——

Ms. NORTON. Were payments being received on time during the last six months?

Ms. MESSNER. Yes, ma'am. Yes, ma'am. As a matter of fact, we were beginning to get some older payments, and our accounts receivable report was down to about $4 million when I left there.

Mr. WAITES. May I comment?

Ms. NORTON. Yes, indeed.

Mr. WAITES. During this same period of time, matter of fact, one of the last documents that this lady provided for me, on May 31st, was an aging. She gave me the document. We refer to it as what it is, is what it is. Naturally, I wanted it to be higher, but she did the document. And the May 31st document, that I would be more than happy to furnish the Committee, said that we have an accounts receivable of $5.2 million. That was the basis that we were to close our last loan on on the Friday that STARTECH was closed down. They had verified those receivables. That was platinum funding.

The other point I wanted to make is that two of your esteemed colleagues, Jim Clyburn and John Spratt, Congressman Spratt, agreed and looked at our accounts receivable and sent a letter to Congress, signed off on them after we had them audited, and agreed that that was eventually going to put STARTECH out of business.

Ms. NORTON. What were the dates on——

Mr. WAITES. I can furnish you the letters, but I don't have them in front of me.

Ms. NORTON. You know, because I indicated earlier in my questioning that we have no excuses here. The Federal Government, Department of Homeland Security and others, are accused habitually of late payments. That is one of the reasons why were are looking at the way in which the Federal Government, not just one department, does business.

Mr. WAITES. Well, you all have asked Ms. Messner all the questions about that, but I have a comment about the new FPS office. Once it was transferred from Region 11, was transferred from D.C. to Philadelphia, positive things began to happen; invoices started getting paid; we knew exactly the status of the contract——

Ms. NORTON. What is the difference between D.C. and Philadelphia? I am sorry, I don't understand.

Mr. WAITES. During this whole process——

Ms. NORTON. Is there a different regional——

Mr. WAITES. No, ma'am. They moved the procurement office from Downtown D.C. to Philadelphia during this process, and so now these contracts are administered out of Philadelphia, and that is a professional group that is doing a good job, and a lot of the invoices that she is speaking of have been paid in the last few weeks because of the good job that they are doing.

Ms. NORTON. Yes, of course, it was in the last few weeks that people were unpaid.

Mr. WAITES. But that is the point I am trying to make, Congresswoman, is that all of the money that was being paid was going to Marquette, and they were applying it toward the loan rather than releasing any funds for us to operate on. In the meanwhile——

Ms. NORTON. Ms. Messner, would you care to comment on that, funds were all going to Marquette and, therefore, they didn't have the funds to pay their employees? I mean, that is what I am getting from this. I am talking about in the last few weeks.

Ms. MESSNER. Yes, ma'am. But it was Marquette's money. Marquette had given STARTECH the money up front.

Ms. NORTON. I thought you had sold, in fact,——

Ms. MESSNER. Yes, ma'am.

Ms. NORTON.—the invoices to——

Ms. MESSNER. Yes, ma'am, we had sold the invoices to them and there was a loan component of it when they identified——

Ms. NORTON. So they got 90 percent of the money up front.

Ms. MESSNER. Yes, ma'am.

Ms. NORTON.—from Marquette.

Ms. MESSNER. Yes, ma'am. And when Marquette identified $1.8 million worth of invoices that were sold to them that had already been paid and they had no way to collect, they made that a loan.

Mr. WAITES. May I comment on that?

Ms. NORTON. Certainly.

Mr. WAITES. The $1.8 million is the same ones that the Government signed off on that told me that they were legitimate invoices. They are listed on this piece of paper that I will provide for you.

Ms. NORTON. We are not questioning the legitimacy of the invoices; we are questioning the people not being paid, even though you were given money. Apparently, they got 10 percent but you got 90 percent of the funds up front. That is what we are questioning.

Mr. WAITES. Well, I don't know how much clearer I can make it except that STARTECH got none of that, it was all applied—they did buy the invoices; they advanced 90 percent on them, but the deal in the agreement was that we would factor new invoices each month, and those new invoices that were to be factored would be operating income. So it was a revolving thing; whatever comes in pays down the old invoices; we send in new invoices for payment. And that is the way we operated.

Ms. NORTON. Ms. Messner, would you kindly——

Mr. WAITES. And they stopped that.

Ms. NORTON. Let's clear this circle up, then. Do you agree with Mr. Waites' notion of why the invoices which were paid up front, nevertheless, didn't go to salaries?

Ms. MESSNER. No, ma'am, I don't. I believe that Mr. Waites was playing fast and loose with the finance. I received an e-mail that was forwarded to me by the CFO in which First Horizon was trying to identify the true owner of an invoice in the amount of just over $323,000. First Horizon wanted to make sure it belonged to STARTECH and, if so, to wire it to Marquette. Mr. Waites responded to the CFO, via e-mail by his personal account in South Carolina, do not respond to this e-mail. The CFO sent it to me. I sent I back to Mr. Waites and said this invoice belongs to Mar-

quette; it was factored. He sent an answer back to me saying, okay, I surrender, I wanted to use it as leverage. That is how he did finance.

Mr. WAITES. May I comment?

Ms. NORTON. You certainly may.

Mr. WAITES. This was the $350,000, or whatever the number was, that I was trying to get Marquette to release from us to payroll, to cover payroll. So when an invoice hit First Horizon Bank, which is a lockbox for Marquette, my strategy was to tell Marquette, rather than send it up to them to apply to a loan that was already almost paid off, send it to cover the payroll. If that is called juggling of finances, I call it trying to figure out a way to survive and keep the company alive. Perhaps it was an invoice that they had purchased. We didn't know because they couldn't tell us immediately which invoices were paid.

Ms. NORTON. Well, Mr. Waites, it didn't keep the wages alive after all. I guess the bottom line is, as you say in business, the people weren't paid.

Let me just ask you one final question. Are you under investigation——

Mr. WAITES. No.

Ms. NORTON. You are not aware that you are under investigation by any Federal agency?

Mr. WAITES. No.

Ms. NORTON. Do you think you should be to clear this matter up?

Mr. WAITES. I don't mind it.

Ms. NORTON. All right.

Mr. Graves, do you have any further questions?

[No response.]

Ms. NORTON. This has been an unusual hearing. Normally, a witness like Ms. Messner comes forward and the witness in the shoes of Mr. Waites is afraid to show his face.

Mr. Waites, first thing I have to say is that I respect you for coming forward, testifying alongside Ms. Messner, rather than hiding in the bushes. I do believe that much of what has happened has been of your own doing. There is no such thing as being a victim of being a small business. When you are a small business, you take on the responsibility of being a small business. We have seen some expenses that we think were not prudent, but we don't think you were trying simply to drive the company into the ground.

You have testified that you essentially weren't qualified to run the business, that you had never run such a business; you were a felon and could not have, in fact, applied to run this business for the Federal Government. By taking steps to conceal that, even though they appear to have been legal, you kept from the Federal Government a material fact. Out of this hearing, one of the bills that will come out of this hearing is one that, in fact, keeps a company from essentially hiding a felon on the payroll and indicating that the ownership is by someone who does not have a record.

I am not one of those who believe that if you have a record you should never be able to own a company or never be able to do business, even with the Federal Government, but I do believe that transparency is required. I do think, if you will forgive me, that a company being partially run by a felon has no business in charge

of security guards for the Federal Government, if I can say so on the record. Therefore, there is huge Federal culpability here. There is Federal culpability particularly in late payments; there is Federal culpability in failing to monitor your business closely; and I think it behooves the Committee, which is doing an investigative hearing and not simply an oversight hearing, to come forward with remedies.

Let me say to both of you we would be pleased to receive in writing any remedies you think are appropriate for the kind of situation a small businessman in your case, Mr. Waites, finds himself, and the kind of situation you, Ms. Messner, believes that someone charged with your responsibility has. I am very impressed with how candid you have been about what the Federal Government should have done as well.

So we are not here throwing stones at anybody. We are having an investigative hearing because we believe that the contract system for the Federal Government is broken. I don't know how many newspaper articles from how many agencies one needs to have before one comes to the conclusion that this needs fixing top to bottom.

Please regard your testimony here as valuable in helping us fix a system not of your own making. Thank you for coming forward.

I am pleased to call the next witnesses. These witnesses are Latanya Montgomery, a former STARTECH security guard; Brian Smith, also a former security guard from STARTECH; James Carney, the Acting President of the United Government Security Officers of America; and Assane Faye, Washington, D.C. District Director of Security, Police and Fire Professionals of America International Union.

Let us hear first from the two former STARTECH guards, Ms. Montgomery and Mr. Smith.

Would you please stand? I should swear all four of you in.

Do you swear that the testimony you are about to give is truthful, so help you God?

[Witnesses answer in the affirmative.]

Ms. NORTON. Let the record indicate that the witnesses answered in the affirmative.

Ms. Montgomery.

TESTIMONY OF LATANYA MONTGOMERY, FORMER STARTECH INTERNATIONAL SECURITY GUARD; BRIAN SMITH, FORMER STARTECH INTERNATIONAL SECURITY GUARD; JAMES D. CARNEY, ACTING PRESIDENT, UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA; ASSANE B. FAYE, WASHINGTON, D.C. DISTRICT DIRECTOR, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA INTERNATIONAL UNION

Ms. MONTGOMERY. Good morning, ladies and gentlemen. My name is Latanya Montgomery. I am a former employee of the now defunct STARTECH International Security and shop steward for the SPFPA International Union, serving the membership at the Food and Drug Administration, College Park, Maryland.

I do not wish to pontificate, but to speak to you this morning from the point of view of a single mother of four. Even though I reported for work everyday that I was scheduled over the past

eight weeks or more, I have been compensated for a mere total of 40 hours of those hours of service, and I must say that that was from another company altogether.

As I mentioned before, I am the single mother of four children, one of whom recently graduated from high school on June 1st, 2007. My daughter was deprived of the graduation celebration for the biggest day of her young life due to my current financial situation. My savings have been depleted and my checking account stands overdrawn.

I want each of you to imagine the disappointment in the faces of my children when I have to explain to them that mommy doesn't have the money to do normal everyday things such as a trip to the grocery store to buy milk when we have run out. The feeling for me is inexplicable. I want each of you to imagine the embarrassment I have felt on a continuous basis having to burden family members and friends for favors and loans that I am unsure of when or if I could pay back.

I struggled every morning with impetuous thoughts of why should I go to work, when I didn't know if or when I would be compensated for the service I provided for and under STARTECH International Security. My children, family, and friends asked the same question of me. I had to make a conscious decision everyday to be an exemplar example for my children, that it was my duty and to have faith that I would make it through this detrimental hardship, struggle, stress, and strife.

I am not a Government official, military personnel, or even a police officer, but I am essential. I am the first defense, the eyes and ears for the Federal Protective Service and Homeland Security; a deterrent, if you will. So even as the morale of myself and that of many other contract guards is at an all-time low, I, we continue to report for duty.

I feel further victimized, indirectly, if you will, by the red tape, investigation, and the time it takes to devise and implement a plan of action to right the wrongs that have been done. How long does it take to reconcile this situation? This is the United States of America, where I, as a citizen, depend on you, the powers that be, to protect me from unhealthy and unfair labor practices.

I have waited and wondered where is the Government. Surely, they must know my present predicament. There must be someone who monitors the contracting companies after awarding multi-million dollar contracts. We, as contract guards, have quality assurance personnel from the Department of Homeland Security come into our respective workplaces and Government facilities to ensure that the offices are in compliance on a constant, everyday basis, without warning. The quality assurance personnel check everything, especially the credentials you must obtain and keep valid in order to continue to work on that Government contract. Where is the quality assurance for the actual companies? Who goes to the offices and checks the financial status of the heads of the companies to make certain that they are in compliance? Who makes sure that the heads of these companies have obtained and maintained all of the requirements to continue to do business with the United States Government?

With respect to the matter at hand and the reason for this hearing today, I propose that the morale of the contract guard is the solution for safe and secure Federal employees and Federal office space. I also implore you to form a direct means to expediently deal with those companies who would continually violate the Service Contract Act and collective bargaining agreements in place, respectively, and to bring forth and resolve these situations as they arise to expedite and facilitate these results in such a manner so that we, as essential contract guards, do not have to suffer lengthy periods of time without results and compensation.

I believe that I can speak for my fellow officers when I say the feeling of the impact of the current state of affairs is one of annihilation. I feel that examples need to be made and exemplary damages should apply and are in order.

I pray that I will never experience such hardship again. My family and I have suffered long enough. Thank you.

Ms. NORTON. Thank you, Ms. Montgomery.

Mr. Smith.

Mr. SMITH. Good morning. My name is Brian Smith. I am a former employee of STARTECH Security, as well as Union steward for the SPFPA International Union, and I served my tour of duty at the Food and Drug Administration in College Park, Maryland.

I would like to take a few moments of your time to respectfully and directly address the current issues regarding security, namely, to ensure that security professionals are able to effectively protect Federal employees and their workplaces.

Although addressed in first person, I not only represent myself and my personal experiences, but the sum total of the voice and petition of all former STARTECH employees and security personnel.

For the past 12 to 24 months, STARTECH International Security has repeatedly failed to pay salaries to its employees in a timely manner and in accordance with their collective bargaining agreements. The most notable occurrences trail back to February 24th of 2006, with concurrent dates to include June 16th of 2006, March 23rd, 2007, May 4th, 2007, May 18th, 2007, and June 1st of 2007. On each occasion payroll has either been shortened, delayed, or simply not available.

As a result, I have endured massive and elongated hardships. I have been penalized by my respective banking and financial institutions for the numerous overdraft and insufficient funds fees that are on my accounts. I have had to resort to pay-day loans and high interest cash advances in order to get through from one pay period to the next. I have even had to borrow money from friends and relatives in order to help pay bills and provide food for my wife and three boys.

On June 9th I became an alumnus of Nyack College, with a bachelor's in organizational management. However, due to the negative status of my bank account and a dishonored payment to the college, I was almost unable to participate in my own graduation. All of the hard work, dedication, time off from family, amongst other great sacrifices made, seemed somewhat to no avail. The anticipation of celebrating one of the most monumental educational achievements in my life is sadly overtaken by disappointment.

Today, I am still unable to receive my degree or transcript as a result.

To say the least, I, as well as my fellow colleagues, have been humiliated, embarrassed, defamed of character, and are experiencing credit damage resulting from negative and derogatory reporting. Hence, this entire experience has left STARTECH employees ultimately devastated. This is in fact enough to hinder effective job performance and damper morale, but with a sense of duty, I myself and many of my colleagues have continued to go to work, as prescribed by the Federal Protective Service, in order to protect the Government's assets, which include the employees of the United States Government within various Government facilities on United States Federal properties.

Amongst other monetary issues, union dues have been deducted from employee paychecks each pay period, but not submitted to the union since September of 2006. Health insurance and 401(k) contributions have also been deducted, but not properly administered on behalf of the employees. For many contract sites, to include Oxon Hill Data Center, Landover Warehouse, AOL in Reston, Virginia, and the FDA in College Park, Maryland, as well as others, a total of $528 monthly per employee has been allotted by the Federal Government for health and welfare, but no adequate plan was ever put in place. Many covered employees were even denied medical coverage or mailed a bill with demands for payments from doctor's offices. To that extent, I am gravely concerned about the sick and personal leave and vacation time that was accrued, unused, and never paid. Also, the employer pension contributions, where are they? Is all yet lost? In regards to protecting people and property, the biggest questions of the day are: Who is going to protect us, the security professional, or our property when we have not been compensated for the work that we do? How long do we have to wait or our families have to suffer before we are properly recompensed for our circumstances? How much more are we to endure?

Undoubtedly, there is a very serious problem, as STARTECH International Security is not the first or only company to steal monies from the employees, as well as the Federal Government, put its employees in such dire straights, and hide under the veil of bankruptcy. Thus, it is imperative that a solution is found to prevent these occurrences from ever happening again.

In conclusion, this literary correspondence represents the disgruntled and discontented, but diligent, dedicated, and loyal security professionals who have endured these tumultuous circumstances, working without pay or compensation throughout the duration of the past four to six weeks. Thank you.

Ms. NORTON. Thank you, Mr. Smith.

Before I move on to Mr. Carney and Mr. Faye, could I just once again thank you for your service, thank you for remaining on the job when you would have been within your rights, obviously, when you were not paid, not to continue to serve.

Congratulations to you, Mr. Smith, for obtaining your degree. We are aware that many security guards are just like you, young people trying to improve themselves, often working part-time, sometimes full-time and going to school at the same time. That you per-

severed and got your degree only adds to the admiration we have for you. I do want not say that both of you have indicated the highest level of professionalism, for which the Federal Government is indeed grateful.

I will move on to Mr. Carney. Mr Carney represents the United Government Security Officers of America.

Mr. CARNEY. Madam Chairwoman, Ranking Member Graves, my name is James Carney. I am the Acting President for UGSOA.

Ms. NORTON. Please pull your microphone close. See, you can hear me because I hold my microphone close. Sometimes I have trouble hearing witnesses, we up here, because the room is so large. Please hold the microphone close and speak into it.

Mr. CARNEY. I thank you for your invitation to be present and testify before the Committee. I also thank you for your scrutiny into this matter; it is indeed serious and requires your immediate attention. I want to especially thank you, Madam Chairwoman, for your decisive and immediate action to intervene in the STARTECH matter.

In the days following the failed payroll of STARTECH, I wrote you and the Department of Labor and the Department of Agriculture. I have not seen this kind of concern come from a congresswoman before, or any Member of Congress; and this has happened all too many times before. So, again, I thank you. Without your involvement, these guys wouldn't be this far along in recovery of what is owed to them.

I would like to remind everyone that the alternative was to strike STARTECH and take up picket signs right out there on the streets. How unfortunate that would have been.

UGSOA represents 12,000 security officers nationwide. When properly trained and certified, we are the professional security force that augments the FPS mission. We work effectively with the Federal Protective Service police officers, many of which are our friends and colleagues. In many cases, we have had to operate with arrest authority, as opposed to what you were hearing on this Committee, as there are no FPOs in many of the localities to effectuate an arrest. The contractors we work for come and go and we, the contract security officers, always remain.

The security forces that you have out there right now on Federal contracts are loyal to the mission, they are loyal to the contract, and they are loyal to a fault; and that fault has never become more apparent than now. We have worked to protect Federal buildings in many cases without being paid and for extraordinary amounts of time. We have heard about the testimony of the STARTECH matter, but I can provide other examples where this has happened in other localities throughout the United States. Here, it happens all too often on Federal contracts, let alone the pure private sector.

What could be more fundamental to labor than being paid for time worked? This is the kind of stuff we were talking about in the early 20th century; even back in the 19th century. You do not hear about this abuse among security guards protecting malls that you shop in or the apartment complexes that we live in. Yet, right here, on Federal contracts, it is happening. The most recent example just happened a few weeks ago, as we have heard, right here in Washington, D.C. We look closely and, lo and behold, Mr. Waites has a

criminal record for fraud. How did he get ownership of this contract? Even if his ownership is in question, how did he get this much control? It has to be asked and it cannot be ignored.

Recently, I have never felt more inclined to be adversarial in our representation to these security contractors than I do right now. How could anyone fault us for taking action in the face of such events? We have shown great restraint.

I read the testimony of Chuck Canterbury, President of Fraternal Order of Police, which was submitted to this Committee on April 18th. His pursuit to advocate for the position of the Federal Police officers in opposition to the reduction in forces that they were facing, he pointed to a system of contract guards that are unqualified. Without solid examples, the easiest thing to do is point to a "unqualified guard," which is nothing more than a stereotype. I have worked these jobs as a security officer. I was proud to put on that uniform and that gun belt every day. I knew the responsibility and the goals of our mission.

As a union representative, I have argued the complexity of our duties in wage cases before judges at wage variance hearings before the Department of Labor. The result of those wage hearings, after showing the work that we really do, has reclassified us. Our jobs are something more than just a guard. We are security officers, security police officers, and special police officers. Those classifications exist on a Government contract.

The STARTECH security officers were classified as security police officers over a year ago by a decision and order of the administrative law judge of the Department of Labor. Prior to that, they were classified as Guard 2s. Much of the training for a contract security officer mirrors the level of an FPS officer. For example, the use of deadly force, the same pistol course as the FPOs, and we must fill out, many times, a Form 3155, which is a criminal report, the same as the FPOs. Please take me very literal here. We are not saying we are Federal police officers, we augment the FPS police force, but our duties are more important and complex now than ever.

Admittedly, we are finding huge deficiencies between the training and the qualification that we are supposed to be provided by the contractor and what we are actually getting. This is none of the security officers' fault. I have been to every major city in the United States, and the contract security officers take their jobs seriously. They are wanting and wishing to receive the very best training and meet the higher standards that the Government expects, but in many cases the doors to this training are not open to us.

You do not need to look any further than the Inspector General's report in October of last year, where he discusses the problems with the agency as it relates exactly to the oversight of these contracts and the failure of these contractors to train and qualify the security officers. That IG report shows what the security officers have known for years. From our own evaluation at UGSOA, we have learned something very interesting, however: where we have a solid and longstanding labor relationship with our employers, the Federal contractors, the incidents of failed training and other security contract failures are decisively less. That speaks volumes to

the labor stability and the direct correlation to improve security and performance on these contracts.

If you look at the correlation, you will see that it works the other way as well. There is a contractor right now in Colorado before the 10th Circuit Court of Appeals habitually on labor violations. In concert with that report, you will find a contractor who had to pull all their security officers out of the Federal buildings in April after the contractor, Amguard, let their credentials and certifications expire.

Last year alone, certain security contractors have stopped paying their security officers. In Tampa and Miami, Florida, Superior Protection, Inc., head up by CEO Jack Heard, failed to meet payroll for two months. Now, we have heard about a failed payroll here. Imagine going for two months. I reported this to GSA and DHS because Superior had a history going back clear to 2000. These abuses are chronicled in various forms: arbitration cases; districts of the Department of Labor; the national office of the Department of Labor, where I flew out and met with their teams back in 2004; the U.S. District Court in Miami; the U.S. District Court in Tampa; the 5th Circuit Court of Appeals; the U.S. Supreme Court. The list goes on. And there is pending litigation against Superior, even though they have defaulted.

It was no surprise to me last year that Superior's paychecks began reporting insufficient funds. These insufficient funds were to my members in Tampa, Florida in May and June of 2006. Here is what did surprise me: the character and integrity and the heart and souls of the DHS contract security officers in Tampa and Miami, who remained working for eight weeks without a paycheck, protecting Federal buildings. Eight weeks.

Six weeks into this fiasco, after I had tried the system by calling DHS and DOL and everything we could do to think of to stop this thing, we decided with our local members that enough was enough, and we were prepared to strike. I notified DHS at all levels. When I landed in Tampa on July 6, I had a voice message from Department of Homeland Security in D.C., Ms. Nina Ferraro, which was just short of a guarantee of a new contractor. She stated, "That we shouldn't strike because security guards would be happy with the outcome the next day."

I waited that extra day. In the meantime, I went to all the security officers I could find and assure them. One more day, I kept telling them, one more day, based on this call from Ms. Ferraro. Can you imagine six weeks without a paycheck and your international union official has to go around to the sites—not the Government officials, not the company—having to tell everyone let's just wait one more day?

The Tampa security officers should be commended and decorated for staying there, working without pay that long. I mentioned this to the FPS commander in Tampa while I was there. They have not been formally commended, but a year later they finally got their pay.

UGSOA should have your attention. If not, it gets worse, and we have already heard the story about what happened here in Washington, D.C. with STARTECH. You have heard from the witnesses who are here that have lived it. What we are talking about from Mr. Waites in his criminal history was not petty cash fraud, it was

bank fraud. In the criminal record, it is $2.7 million buying a Corvette for his daughter, a condominium, and a Rolex watch with fraudulent money, and that list goes on. It is in the court record.

According to Ms. Messner, who you heard a moment ago, the bank default notice was caused by the failure of Mr. Waites to report his criminal record to the bank.

We have more examples about how these contractors are failing. The list could go on.

I am going to skip ahead because of time——

Ms. NORTON. Yes, if you could just summarize, Mr. Carney, because we kept the first panel very long for the record.

Mr. CARNEY. I understand.

Ms. NORTON. But your testimony is very important to us as well.

Mr. CARNEY. Just, for the record, understand I can provide other examples to the Committee upon your request.

Ms. NORTON. Examples of other companies are you saying?

Mr. CARNEY. Yes.

Ms. NORTON. Yes, I wish you would provide just that kind of information as extensively as you can for the record.

Mr. CARNEY. A preview of it is in my written testimony, Congresswoman.

Ms. NORTON. Yes.

Mr. CARNEY. What I have reported would be a tragedy in the private sector, but on Government contracts it should never happen. Government security contracts ought to be not run this way. It is wrong in the private sector and it is doubly wrong here. It is like we were having our own mini Enrons and Tycos right here on Federal contracting.

Collective bargaining works and it has a positive and meaningful impact not only for the employees, but for the greater security network in the United States, and I can provide examples of that to the Committee as well. We can work together, but it has to come through a reciprocal process of communication and an inclusive process where labor has a voice.

I have been tracking various issues before this Committee. Some of the recent highlights are the recommendations of the Department to cut back the Federal Protective Service staff. In the face of these many problems, FPS already has more than enough to handle. Actually, they don't have enough security or police officers to cover the work that they do have. Those are the guys that we count on to inspect these contracts and ensure that no more STARTECHs happen, no more Superiors happen, no more Amguards happen, ELAs, MVMs, Sooner Process and Investigation; and the list goes on.

The question before this hearing and before this Committee is what was DHS's responsibility to ensure, DHS must ensure, absolutely. The responsibility is shared with the contractor, but the authority in the process, the authority in the process is the Department. And it is painfully obvious to me that we are lacking oversight in the resources, the funding in the budget at all layers in this procurement system.

I read Inspector General Mr. Skinner's report, his most recent annual performance plan of April 2007. On page 14 he describes the objectives he has identified for the acquisitions, Training and

Qualifications of the Acquisitions Workforce—he is talking about us—and the objective being to what determine to what extent the acquisitions workforce must meet education, experience, training, certification requirements, adequacy of measures used to oversee compliance with acquisition workforce, training and qualification requirements. I would like to see that certain criteria applied to the contractors who own and operate these contracts, including their executive officers.

In conclusion, finally, what doesn't translate to me in the broader security perspective is that we are doing a surge of troops overseas right now and we are cutting back the homeland security troops right here in our homeland. Shouldn't we be talking about a build-up of our troops on the homeland who are protecting the United States and its critical Government infrastructure? In light of that, my opinion is that if we can afford to do it overseas, we can afford to do it right here. To do a cutback now would appear to be a huge mistake.

Madam Chairwoman, I would not make these recommendations in seemingly critical observations without an extension of UGSOA's promised assistance in this process to the Committee, to Mr. Skinner, and to Ashley Lewis, Director of Acquisition Policy. Whatever we can do to assist in these evaluations, either by providing your agents access to our local leaders or our members who have seen the violations, please take advantage of that. But, also, please protect them. Improve those whistleblower protection laws that you guys have been pushing. It would be a huge resource to utilize what we are seeing in your audits.

I know there are some questions about small versus large contractors and things like that. I thank you for your time, and I would be glad to answer any questions you might have.

Ms. NORTON. Thank you very much, Mr. Carney.

Mr. Faye.

Mr. FAYE. Good morning. My name is Assane Faye, International Security, Police and Fire Professionals of America, SPFPA, Washington, D.C. District Director. I have been in that position for two and one half years, and been employed by the International Union for three years. In the Washington, D.C./Maryland area, the International Union represents nearly 2,000 security officers and, on their behalf, I would like to thank Madam Congresswoman Norton and Ranking Member Mr. Sam Graves for allowing our case to be heard without much delay on this prestigious law today.

I also would like to thank the Mayor of Washington, D.C., Adrian Fenty; Corlis Sellers, Regional Administrator of Department of Labor, Wage and Hour Division; and particularly Enrique Lopez for working so diligently to bring our issue to the forefront of their agenda in the past six weeks; and Ms. Nina Ferraro, Contracting Officer for the U.S. Department of Homeland Security for the show cause notice she issued so promptly to STARTECH, the day after her office received the Union's complaint.

Between April 26, 2006 and March 28, 2007, I negotiated the collective bargaining agreement between SPFPA and STARTECH, covering the security officers at the Food and Drug Administration building in College Park; the Washington, D.C. Navy Yard; the National Data Center in Oxon Hill, Maryland; the USDA Center in

Riverdale; the Potomac Center in Washington, D.C. and Wheaton; the Department of Education FOB6 in Washington, D.C.; and International Trade Commission in Washington, D.C., as well.

Shortly after the negotiations in 2006, the employer began to show patterns of lateness on the payroll schedule. On a few occasions, employees were unable to get their paychecks until four days later and the employer namely, Mr. Weldon Waites, continually put the blame on the Government for failing to make these funds available to the appropriate bank. He said his company was now doing business with the National Bank of South Carolina, but the U.S. Government sent the funds to the wrong bank. As a good faith gesture, Mr. Waites offered the employees an additional paid vacation day.

In May 2007, the problem reoccurred, except this time there were no funds available for the entire month. For two consecutive pay periods, the employer failed to meet its obligations under the collective bargaining agreement as set forth in Article 26. A grievance was then filed by Chief Shop Steward Brian Smith, sitting here today, underlining, furthermore, the employer's failure to remit the health and welfare, and pension fund contributions to the respective accounts. In most cases, these accounts were never contributed to in accordance with Article 25 of the collective bargaining agreement. Additionally, the employer stopped remitting the dues contributions to the International Union since August of 2006, which again violated Article 2, Section 1 of the collective bargaining agreement.

On or about May 20th, 2007, I spoke with Mr. Waites and requested a meeting. He agreed to meet with the union leadership on May 23rd, 2007, to explain the problems associated with the company's failure to pay wages on the first pay period of the month. On the day in question, Mr. Waites decided to join us via speaker phone, and there he spoke for 45 minutes, responding confidently to all the questions that were asked and said with assurance that he had an overdraft protection account of $1 million set aside solely for the purpose of covering unanticipated payroll deficiencies. He also said that he had to use $2 million from Sharon and Weldon Waites' personal bank to fund payroll. He further noted that this incident was merely ADP's negligence to send unsigned checks on a Friday. He said ADP also failed to print the bank's routing number on the checks, and that naturally made it impossible for the company to pay the employees. Interestingly enough, the employees did not receive their wages even two weeks after, and Mr. Waites' bank account with the National Bank of South Carolina showed a negative balance of minus $1,334.31 on June 7, 2007.

Later on, during the meeting, I asked Mr. Waites to tell us about the pension fund, the health and welfare, and the union dues contributions. He asked to be given some time to reconcile the figures in order to be able to make the payments. He once again put the blame on STARTECH's former Operations Manager, namely, Mr. Melvin Mobley, who he characterized as a poor performer, and consequently promoted Ann Marie Messner, the General Manager, who was here earlier today, Ms. Messner. As a result, the previous

Operations Manager resigned and everything would now be back on track.

Two days later I found out that Mr. Waites himself wrote the resignation letter for Mr. Mobley and demanded that he sign it, which, of course, Mr. Mobley refused to do. Mr. Waites tactfully put his own staff out of work, starved the security personnel, and managed to avoid answering my question, which originally related to health and welfare, pension, and dues contributions, for which he was liable.

For clarity, I took the liberty of calculating an approximate dollar amount owed to the bargaining unit employees using the hourly wage rate as a unit of measure, assuming that all monies, earmarked alike, were already paid out to STARTECH. If we use roughly a population of 1,000 employees, which is about the capacity of STARTECH, give or take, union and non-union employees included, times 160 hours of the month times $20.10 an hour, the answer would be $3,216,000 for the month of May alone. If we add to that $3.60 per hour for health and welfare times 160 hours of the month times 12 months—although the employer has misappropriated this money for longer than 12 months—times the 1,000 employees, the answer would be $6,912,000 for 2006. Let's add again 75 cents per hour for the 401(k) pension plan times 160 hours of the month times 12 months times 1,000 employees, the answer would be $1,440,000 for the year 2006 alone. The sum of all three totals is equal to $11,568,000 in a 12-month period, without including 10 sick days, 10 vacation days, assuming every employee has worked for the company for only one year. The approximate total would then be $11,568,000 plus $3,216,000, which add up to $14,748,000.

It is my hope that the Government will not let STARTECH get away with this sum of money, since the sole access to remedy for the union in this instance seems to be the Service Contract Act and the Fair Labor Standards Act, or to respectively appeal to the resources of the Wage and Hour Division of the Department of Labor and the National Labor Relations Board.

Unfortunately, under the bankruptcy shield, where Mr. Waites will presumably seek refuge, there is little assurance his corporate assets will meet the debt requirements, unless the negative balance of June 1st, 2007 finds its way up above par in a very dramatic way.

While the qualification prerequisites of security professionals are getting tougher to acquire, post orders are getting more stringent, and the post-9/11 era is yet to live past the first decade, we cannot allow foreclosures and bill collectors' threats and harassment to ruin the lives of our security professionals and their families.

We are at the dawn of a new generation of security and law enforcement, not only in the United States, but globally, and we must demonstrate quality leadership by example; but to do so we need our pride, dignity, and respect restored.

Madam Congresswoman, Mr. Ranking Member, the guard force needs your help to collect these unpaid wages from STARTECH, and it needs it urgently. Thank you.

Ms. NORTON. Thank you, Mr. Faye. I thank both you and Mr. Carney. Clearly, these employees benefitted from having represen-

tation, somebody to speak for them, to represent them in a moment of crisis, and your own representation appears to have contributed to their professionalism, as well.

I am going to move to the Ranking Member. Before I do so, I recognize that there are some security officers in the room who remained on duty in the Federal agencies involved who were unpaid. May I just ask all of you who meet that description, would you stand up so we could see you and give you our personal thanks?

[Applause.]

Ms. NORTON. Mr. Graves.

Mr. GRAVES. Thank you, Madam Chairman.

I too want to add my thanks to all of the officers that are here today and your colleagues. Thank you for the commitment to Federal employees and to the visitors that visit the facilities that you all protect. Your willingness and just the simple fact that you showed up for work even though you weren't getting paid says a lot about your integrity and speaks volumes about your personal commitment to what you do, and it doesn't go unnoticed, I have to tell you.

I just have a couple questions real quick, and they are directed at Ms. Montgomery and Mr. Smith. Has the FPS helped to place you and your colleagues with other companies or in other roles as a result of this?

Ms. MONTGOMERY. Well, starting June 4th, I believe it was, we have a company called Frontier that has taken over the contract temporarily, until October, the beginning of October, when STARTECH would have had to give up the contracts.

Mr. GRAVES. So they basically just picked right up. Did they pretty well hire everybody? Did they just pick everything right up as far as the employees, the guards, the folks that are doing the work?

Ms. MONTGOMERY. Yes, sir.

Mr. GRAVES. How about the union? Mr. Carney, you might be able to answer this, about back benefits, back pay, that sort of thing. Are you guys helping them with that or is there an opportunity to?

Mr. CARNEY. Here is where that process is at. The Department of Labor has seized the final payroll. Not payroll, invoices to STARTECH. So there is money there to be had to get these guys paid. At UGSOA we have been through this many times with these contractors; that is part of the stuff I want to give to the Committee. I have already given it in part to the Chairwoman. So the money is there to be had. If he were to file for bankruptcy, my experience in the Sooner Process and Investigation case that happened, I would say 2001, 2002, payroll moves right to the top of the list in a bankruptcy proceeding, so we are going to get paid first. The problem is it just takes so long. The guys down in Tampa that I gave testimony about, those guys didn't get paid until just this last payroll, I think, almost a year later. What the Department of Labor has to do is they have to go in, find out who is owed what. If they get the cooperation of STARTECH to work those payroll records, they can process it a lot faster. But the money has been seized, as I understand it; it is there to be had; it just needs to be delineated and disseminated.

Mr. GRAVES. Thank you.

Madam Chair?

Ms. NORTON. Thank you very much.

Mr. Smith, I think you said you had to take a high interest loan when you weren't paid. Are you speaking of those pay-day loans?

Mr. SMITH. Yes, ma'am.

Ms. NORTON. Oh, my goodness. I hoped everyone who is a Federal employee belonged to a credit union. You know, we now have citywide and county-wide credit unions because of the terrible interest for the pay-day loans, and there ought to be other ways to deal with this.

Did either of the unions contribute in any way to the hardship these employees encountered?

Mr. FAYE. In the case of our union, the system is somewhat difficult to utilize in terms of time, because it has to be put through the executive board, and then after they meet they will then pass it through membership at large before it gets approved.

Ms. NORTON. Say that again, I am sorry. They have to do what?

Mr. FAYE. This is coming to helping the membership financially, but the turnaround is too long, because you have got to go through the executive board members first.

Ms. NORTON. So there is no fund. There is no fund out of which——

Mr. FAYE. Exactly.

Mr. CARNEY. I believe what he is trying to say is the IRS prohibits cash disbursements from union treasuries, it is an IRS regulation, you can't do that. So now you might ask yourself why do strikers get a strike fee or something.

Ms. NORTON. Strike fund.

Mr. CARNEY. That is because that is already written into our constitution. What he is describing is we would have to go back, amend our constitutions, amend our bylaws to do a cash disbursement, which, in a union, being a bureaucratic structure, it is a process you have to go through. So the immediate payment to these guys is not there. The second thing, most importantly, is he has our money. You know, what money do you hand out to the employees when they have been——

Ms. NORTON. It would have to be a preexisting fund, you are certainly right about that.

Mr. CARNEY. That is the money we operate on as a union, and if we are not getting the dues deducted from the employees' paychecks routed to us, which has not been the case, and it is the same with UGSOA, as Mr. Faye testified for SPFPA, back to September. I mean, they owe us money, so that is the same money you are talking about where we would be able to help the employees.

Mr. FAYE. Right.

Ms. NORTON. You heard Mr. Faye rather extensively how much in liability and what the basis for that liability would be and how you calculate it. I wonder if you, Ms. Montgomery or you, Mr. Smith, can say how much, at least in compensation, you are still due from STARTECH. I am not referring to what Mr. Faye did, health benefits, union dues, and the rest, just in straight out pay, base pay. How much would you calculate you are still due for time worked but not paid?

Mr. SMITH. I am owed roughly about $4,000.

Ms. NORTON. And you have not received any of that?

Mr. SMITH. No, I have not.

Ms. NORTON. Ms. Montgomery?

Ms. MONTGOMERY. I want to include June 15th as well, because we worked through the 30th for STARTECH, so we should have been expecting a check on the 15th of June. So I think I would take that about $2,000 more than what Mr. Smith is saying.

Ms. NORTON. So Mr. Smith would have to add $2,000.

Ms. MONTGOMERY. He would need to add $2,000, so that is roughly, maybe, before tax, about $6,000.

Ms. NORTON. I just asked staff about the Labor Department involvement. I understand that takes a whole year. They have to figure out who is involved. Meanwhile, there is no cash that flows to people who are unpaid.

Mr. CARNEY. If I might add, when they settle those things, that is just for payroll; they don't cover the interest loans. You are not going to get a payback on that as a security officer.

Ms. NORTON. Do they cover the past compensation?

Mr. CARNEY. Payroll.

Ms. NORTON. Yes, payroll.

Mr. CARNEY. The benefits——

Ms. NORTON. Including benefits, do they cover?

Mr. CARNEY. Health benefits and those things, we have never been able to recover those in our experiences, even in the bankruptcy courts.

Ms. NORTON. So you are saying that these employees who have lost how many weeks of pay, approximately?

Mr. CARNEY. Six.

Ms. NORTON. About six weeks of pay. That would mean six weeks worth of health benefits, pension benefits——

Mr. CARNEY. Pensions you might as well forget about; they are gone. If they had money going in——

Ms. NORTON. That is gone from their pensions.

Mr. CARNEY. In the Sooner Process and Investigation case where he went to default, Larry Ferguson, we went to the bankruptcy court. We got our payroll, but we didn't get anything else; and we had money that was supposedly going into 401(k)s and things like that.

Ms. NORTON. So are you on the Federal, the same one I am on, the FEBPC? Are these employees covered by the FEBPC, the Federal employees, or are they privately covered?

Mr. CARNEY. No, since they are private contracts, the contractor set up the benefit plan.

Ms. NORTON. So they can't even buy into our Federal health insurance.

Mr. CARNEY. No, no. That is the benefit the Government gets from contracting out, is we don't get the same benefits you do.

Ms. NORTON. I am not talking about the benefit now. I am just saying they can't even buy into the Federal Employee Benefit Plan. They have to have a private plan outside of that.

Mr. CARNEY. That is correct.

Ms. NORTON. Ms. Montgomery, you had a comment on that?

Ms. MONTGOMERY. Madam Chairman, I was going to say we would love that, though.

[Laughter.]

Ms. NORTON. Yes, we do need universal health care, don't we? We certainly now see what happens.

Let me just ask what health care plan are you part of? Are you part of a health care plan? Is it a union provided health care plan?

Mr. FAYE. No. Mr. Waites wanted to provide his own plan, and——

Ms. NORTON. Oh, heaven help us.

Mr. FAYE. Right. And in this case he offered a substantial increase on the wages, and that was quite attractive and the membership, you know, liked it; they said, okay, well, in this case at least our wages are good, they are high enough. In some cases the wages were bumped from 15 and change to $20 so that he could just run the health and welfare. In doing so, he went and got a mini plan and people were rejected at the doctor's office. All kinds of problems occurred and eventually he just gave it up. In the following collective bargaining agreement that we negotiated, he gave it up and the money now was to be disbursed back as cash to the employees' paychecks and there would be no plan. Then they would go and shop for their own coverage.

Ms. NORTON. Oh, goodness.

Mr. FAYE. But even that he didn't make good.

Ms. NORTON. But even that he didn't make good, because he would have had to put that money back in to their pay.

Mr. FAYE. Exactly.

Ms. NORTON. In other words, these employees are not covered by a plan, a health care plan, but must seek in the private market?

Mr. FAYE. Yes, with cash.

Mr. CARNEY. Madam Chairwoman?

Ms. NORTON. As individuals?

Mr. FAYE. Yes.

Mr. CARNEY. Madam Chairwoman, that is one of the bigger problems we are seeing. At the tail-end of my testimony I talked about the differences between the small contractors versus the large contractors. The larger contractors, they still have problems with their benefit programs, but, by and large, they can operate, understand, and manage those plans in the administration of getting employees into them.

Ms. NORTON. Do you have health insurance coverage? Do either of you have health insurance coverage now?

Ms. MONTGOMERY. No, ma'am.

Mr. SMITH. We thought we had a plan, but it was ineffective since the commencement of it, and the money that was allotted by the Federal Government to cover the plan is in question now.

Ms. NORTON. Well, if all that happened was you were remitted a sum to try to fish for yourself in the private market, you can get individual plans, and that is exactly why nobody does it, because almost nobody can afford to do it that way. This is a very serious issue. Frankly, this is a serious security issue.

What is the turnover, Mr. Carney or Mr. Faye, among——

Mr. FAYE. Well, our ratio slowed down greatly because of the wages, but prior to that the turnover was quite high. But when the

hourly rate became $20 and up, then it stabilized a little; there was less turnover than the year before.

Mr. CARNEY. I concur. In my experience in other contracts around the United States, when you finally get a livable wage on the contract negotiated over a period of time, the turnover rate goes down.

Ms. NORTON. Well, the wages here, is it like the average wage, about $20 an hour?

Mr. FAYE. No, about 16, 17.

Ms. NORTON. Now, that is undoubtedly because these employees are unionized or represented by a union. How typical is this wage level in the industry?

Mr. CARNEY. Oh, it is all over the board. I have argued these wage variance cases. In Houston, Texas, where they have a low cost of living, they are making $18.50 an hour. By comparison, I am arguing a case right now that is going before the Department of Labor where NASA security officers, who do predominantly the same thing, are getting 18 bucks an hour, but at an extraordinarily higher cost of living in San Francisco area of California. So you have to kind of weigh it against the cost of living for the locality. But, by and large, they are all over the board. I have met with the Department of Labor's Bill Gross, who proscribes these wage determinations and they are high and low all over the place. You can have a high cost of living locality with a low wage and a low cost of living locality with a high wage. There is seemingly no rhyme or reason.

But the thing about unions who negotiate on these contracts is we bring that into parity, and in my testimony that is what I was talking about; we have a positive effect which brings the overtime down, brings the turnover rates down, improves morale, and I could go into a dissertation about how morale affects security.

Ms. NORTON. Well, we could see the effect of good morale, given what has happened to these employees and their remaining on the job.

Mr. Carney.

Mr. CARNEY OF PENNSYLVANIA. Thank you, Madam Chairman. I just have a couple questions.

Mr. Carney, I want to congratulate you on your name. It is a fine name.

Mr. CARNEY. My namesake.

Mr. CARNEY OF PENNSYLVANIA. How many private security contractors are there in the U.S. approximately, do you know?

Mr. CARNEY. I would say we deal with—on Federal contracts?

Mr. CARNEY OF PENNSYLVANIA. Just industry-wide. How many, roughly, do we have?

Mr. CARNEY. Between private and Federal security contractors, I would guesstimate 150.

Mr. CARNEY OF PENNSYLVANIA. A hundred and fifty. Okay. How many STARTECHs do we have out there?

Mr. CARNEY. Right now, you have got about five STARTECHs operating on Federal contracts, and potential STARTECHs.

Mr. CARNEY OF PENNSYLVANIA. Okay. Right now. Were there more, have there been more in the past?

Mr. CARNEY. Yes. In my testimony, if you look at it, I worked as a security officer in 19——

Mr. CARNEY OF PENNSYLVANIA. I will read your support. We submit it for the record.

Mr. CARNEY. In the past there was ELA, who I worked for in Denver, Colorado, when I was a security officer on a Federal contract. Then you had Sooner Process and Investigation. We had STARTECH, Superior. There are a few that probably slip my mind, the actual name of the companies, but there are plenty out there that have defaulted.

Mr. CARNEY OF PENNSYLVANIA. So out of the roughly 150 or so, 20, you would estimate, are of STARTECH caliber? Or have STARTECH problems, put it that way.

Mr. CARNEY. It is hard to estimate because your question was, in the broader security industry, how many contractors are out there.

Mr. CARNEY OF PENNSYLVANIA. Right.

Mr. CARNEY. The Federal Government has given preference——

Mr. CARNEY OF PENNSYLVANIA. Let me ask it this way.

Mr. CARNEY. Okay.

Mr. CARNEY OF PENNSYLVANIA. If you know, if you can estimate, even roughly, what percentage in the industry have problems like STARTECH has had?

Mr. CARNEY. Twenty percent. But I would say one percent would even be too high if they are bidding Federal contracts and operating them.

Mr. CARNEY OF PENNSYLVANIA. Yes, I agree. I agree. The average wage, what is the average wage, starting wage of a security guard?

Mr. CARNEY. The averages are impossible to tell you because it is all weighted by locality and how the Federal Government is proscribing their wage determinations. It is kind of like spinning the roulette wheel; it is all over the board. And that is one of the things UGSOA is trying to do, we are trying to bring parity to the industry. The average wage, I would say, if I was going to throw out a guess, on a Federal contract for security officer classification, between $13 and $16 an hour.

Mr. CARNEY OF PENNSYLVANIA. That would be about a nationwide average, you would say?

Mr. CARNEY. Yes.

Mr. CARNEY OF PENNSYLVANIA. Okay.

Mr. CARNEY. It is really wide open.

Mr. CARNEY OF PENNSYLVANIA. And how long does it take to have raises go into effect? I mean, you are with a job three years. What can you expect in terms of pay?

Mr. CARNEY. Our raises are negotiated usually on an annual basis. Some of our collective bargaining agreements are structured based on your tenure. If you are a three-year security officer, you could get X amount of dollars more than a new hire. But, by and large, once you walk onto these contracts, you go through the certifications and qualifications, you are going to make the same as the guy who has been there a long time. We are trying to work a lot of that out in our negotiations, but it is something you can't do in one collective bargaining session.

Mr. CARNEY OF PENNSYLVANIA. No, I understand about salary compression and things of that nature.

I do want to get back to something you just mentioned. Can you please describe the training process that the security guards go through, that your members go through?

Mr. CARNEY. It usually starts with being hired. There is an extensive background check.

Mr. CARNEY OF PENNSYLVANIA. The background check is part of the pre-hiring?

Mr. CARNEY. Usually. At some phase in the two or three weeks that you go through training there is the background check. For the guys here in D.C., they have to get certain clearance paperwork, so then they have to wait on the clearance paperwork, and there is a backlog of those, we are hearing from one contractor right now. So it ranges from two weeks in regions where they are really on the ball. Regions of FPS, where they can get the guy's background, get him what is called an interim suitability clearance, you are looking at anywhere from two weeks to, on the high end, maybe six to eight months, I have heard.

Mr. CARNEY OF PENNSYLVANIA. How many—I guess for lack of a better phrase—uncleared personnel are on the job?

Mr. CARNEY. You mean with interim suitabilities? I don't know that number.

Mr. CARNEY OF PENNSYLVANIA. Okay. So the training, then, involves what?

Mr. CARNEY. You go through these Federal contracts line out about an 80-hour course that you have to go through. On average it is about 80 hours. Some of that time is spent with a contract trainer; some of that time is spent with a Government employee who is a specialist for that contract who trains you. But there is a grand total, on the average, about 80 hours of training, which includes your firearms qualification, what your authorities are, what our jurisdictions are, because we operate on partial, exclusive, and concurrent jurisdictions. So if you walk off the corner of the street to grab somebody who is trying to escape, you have got to know what jurisdiction you are in. So you have got to really understand all those dynamics. So they spend a lot of time on that; they spend a lot of time on report writing.

Then you have to go through breakout training that is even more specific. You have to learn to run an x-ray machine and magnetometer, which are on the high end of industry right now. These things are highly technical; they can differentiate between organic and inorganic materials, and you have got to be able to go through that. You have to go through a simulated training course that brings bombs and stuff through so that you understand what you are looking for before you ever are on the line.

I could go on.

Mr. CARNEY OF PENNSYLVANIA. Sure.

Mr. CARNEY. That gives you kind of a snapshot of the intensity of the training.

Mr. CARNEY OF PENNSYLVANIA. Typically, who provides this training, is it the employer?

Mr. CARNEY. Like I said, the employer in concert with usually a Government official at various stages. Some of it is layered so that you get it twice.

Mr. CARNEY OF PENNSYLVANIA. All right. And what is the cost per person for the training, do you know?

Mr. CARNEY. I have actually done some cost overruns when we were addressing turnover rates in collective bargaining, and we have seen costs to hire an employee, again, depending on region, somewhere between $3500 to $6,000 per employee to put them through this training.

Mr. CARNEY OF PENNSYLVANIA. To go through the 80 hour course.

Mr. CARNEY. Yes. When you factor in—there are a lot of things that factor into that.

Mr. CARNEY OF PENNSYLVANIA. Sure. I appreciate that.

Okay, I seem my time has already expired. I apologize. I do want to personally thank each one of you who stayed on the job even though the check wasn't coming. It speaks of your character and your dedication to this Nation, and my personal thanks to all of you.

Mr. Smith, Ms. Montgomery, thank you very much. Congratulations on your degree. I look forward to you getting the diploma and moving on. I appreciate that.

No further questions, ma'am. I yield back.

Ms. NORTON. Thank you for your questions, Mr. Carney.

I am going to finish this hearing before 2:00. We have gone on for some time. But I do want to say this hearing is laying the groundwork for legislation that we regard as important. This is not an oversight hearing, this is an investigative hearing, trying to get to the bottom of a situation so we can do something about it.

I only have a couple more questions, then I have an important announcement.

One of you testified—it may have been Ms. Montgomery or it may have been Mr. Smith—that the FPS—I think it was Ms. Montgomery—came without warning to check into this situation. How often did they come? I mean, this led you to say so where is the Federal Government in all of this. How often did they come. Did FPS know? Did anyone from FPS communicate with you concerning the failure to pay you? Either of you. Did either of you hear from the Federal Protective Service or from anybody in the Federal Government?

Ms. MONTGOMERY. No. We actually didn't. When I was saying——

Ms. NORTON. Yet Federal Protective Service officers came to monitor you how often?

Ms. MONTGOMERY. Everyday. It could be an everyday thing——

Ms. NORTON. Well, what did they do in monitoring you? What did they do?

Ms. MONTGOMERY. They may come and just monitor your actions as far as dealing with the clients, the employees and such, and they would check your credentials to make sure that they are valid and that you have everything that you need.

Ms. NORTON. Did they know that you are not being paid? Did the people who were monitoring you on a daily basis know that you were receiving no pay?

Ms. MONTGOMERY. Well, towards the end, when most people were getting kind of fed up, you don't directly approach them. It is almost like a secret society.

Ms. NORTON. Like a what?

Ms. MONTGOMERY. A secret society, because you can't really approach FPS officers. As far as the contracting officer who handles the accounts, it is like that person is a secret, you can't know, as contract guards. It is like you are at a certain level and you can't go above that. Anything that you have to deal with or that you need to know or want to know, you would have to go through your project manager or the front office, and sometimes we——

Ms. NORTON. If they are checking your badge up close and personal, is that what it is, they come and check your badge?

Ms. MONTGOMERY. Yes.

Mr. CARNEY. They are there to check their credentials. They are there to check and make sure that the security mission is being accomplished, which is important. But when you address labor issues—I think they ought to take back to the contracting officer. When you address labor issues with them, though, a lot of times you are labeled as a crybaby and those types of things.

Ms. NORTON. Even if you were to mention to an FPS monitor that you had received no pay for weeks, that would not be considered appropriate?

Mr. CARNEY. This one would be the exception. Somebody would have to stand up and take notice.

Ms. NORTON. What would be the exception, please?

Mr. CARNEY. Where you don't get paid, something so egregious as not getting paid. But I am talking about on the other matters, like I didn't get my training or things like that. You will get disciplined by the contractor for going outside your chain of command.

Ms. NORTON. Well, I understand that and I understand how the system works, and I wouldn't want to suggest that the monitors are there to hear the grievances of the officers.

Mr. CARNEY. Right.

Ms. NORTON. I am trying now to find out whether or not, in the normal course of monitoring, it ever came to the attention of these FPS monitors that people weren't being paid; and should it have. I mean, I can understand how an officer——

Mr. CARNEY. I can testify about——

Ms. NORTON.—like Ms. Montgomery would be reluctant.

Mr. CARNEY. I can testify about the Superior officers in Tampa last year. FPS knew through the whole process, I mean, they told the two or three main guys down there this is what is going on every week. I don't know what their responses were, but——

Ms. NORTON. So FPS officers did communicate, at least in Tampa, that there was no payment going to the officers on the job, but FPS did not respond for two months.

Mr. CARNEY. They communicated with us that they were aware of it, yes, to the security officers.

Ms. NORTON. Basically, because these officers happen to be unionized, the normal course would be to inform your union, and

perhaps the union could do what you did, which is to try to get somebody to listen. Did you ever speak to anybody at the FPS?

Mr. CARNEY. Yes, I did. In Tampa, I was on the phone with FPS regional contacts out of Atlanta at every step of the way. Like I said, I went six weeks into the fiasco of trying to work the system before I gave up on the system. The only time anybody stood up to take notice is when I gave my intention I am flying to Tampa and I am going to go to the Federal building and we are going to walk out and take picket signs up. That is the only time we ever get any attention to this thing.

Ms. NORTON. Well, what would FPS tell you? Were you in touch with FPS here during this three or four or six week, or whatever, period it was concerning the failure of the contractor to pay the guards?

Mr. CARNEY. I am sure they were. I know I was. I mean, we sent our letters to the Department of Agriculture, unanswered. I think you were cc'd on those letters. I reached out to——

Ms. NORTON. Mr. Faye?

Mr. FAYE. Well, the only time I came in contact with FPS is when they called me and asked me how far this issue has gotten.

Ms. NORTON. When was that?

Mr. FAYE. In the past week or so I received about three FPS calls.

Ms. NORTON. In the past week or so?

Mr. FAYE. Yes.

Ms. NORTON. After this thing blew up.

Mr. FAYE. Exactly. However——

Ms. NORTON. Well, during the time when people were not receiving their pay, although FPS was on the job monitoring people, they had no particular knowledge of what was happening; their job was to see if people were on the job, and there was no indication that FPS had any concern about the failure to pay these men and women?

Mr. FAYE. They reacted to the complaints that our union filed, because they had my name and they called me and said FPS has filed complaints against Weldon Waites and somebody else will call you; we are going to pursue this investigation. But during the week in question when they were afraid of the guards walking off posts, FPS showed up at various locations to make sure that the guards were on post. So they came early to replace them if they didn't come to work.

There was also another instance where I believe this company——

Ms. NORTON. So they were prepared to replace them if they walked off the job,——

Mr. FAYE. Exactly.

Ms. NORTON.—knowing that people could only go so long——

Mr. FAYE. So long.

Ms. NORTON.—without being paid.

Mr. FAYE. Right.

Ms. NORTON. But you know of no intervention by the FPS to make sure people were paid——

Mr. FAYE. To get them paid.

Ms. NORTON.—to remain on the job.

Mr. FAYE. No. No. They even brought this other company name——

Ms. NORTON. Now, we are going to be told that is because they were contract employees, and you know what we are going to tell them here? That somebody, we thought it was the FPS, has to act like a police force——

Mr. FAYE. Right.

Ms. NORTON.—who is in charge of your men and women no matter who—has to act like a cop.

Mr. FAYE. Exactly. And they brought the Decor Company—and most of Decor employees watch parking lots; they are not as graduates as our——

Ms. NORTON. I have got to move on, that is why I am not able to hear the most complete answer.

Did the FPS ever call you in as union representatives since, in fact, they had the advantage of having somebody who represented all the employees, and say, look, tell me what you know; this is what we know; this is what we are doing? Was there any discussion of that kind from the FPS, who could easily have had Federal police, FPS officers there instead of security guards, since you were doing the same kinds of things that the FPS does? Any kind of conversations of that kind going on? Were any of those conversations initiated by the FPS? Did conversations have to be initiated by you? Could you answer those questions directly?

Mr. FAYE. Well, the director of security at the FOB6, her name is Wynona—now, I don't know how affiliated she is with FPS, but to her credit, she called me and we had about a half an hour conversation on the phone with two other—well, they were part of——

Ms. NORTON. This was during the six week period?

Mr. FAYE. Right, during. And I think this happened about maybe three weeks ago. And when she came across all my letters and all the actions that our union was taking, she says, well, I have somebody here from your membership who is not aware of what was going on, and I think Mr. MacMillan, if he is still in the audience, was also part of the conversations. He said, well, I don't know what the union is doing. So I showed him that we had a petition going on with over 100 signatures and that we initiated this whole thing right after it happened, and told him how far we had gone.

So Ms. Wynona, to her credit, then wrote a letter out to people and thanked them for not walking off the posts, for continuing to go to work, and that this matter is going to continue to be investigated.

Ms. NORTON. Who sent the letter? I am sorry.

Mr. FAYE. Ms. Wynona. I only remember Wynona. MacMillan. Actually, he was part of the conversation.

Unidentified SPEAKER. Department of Education.

Mr. FAYE. Probably, yes.

Ms. NORTON. Oh, this was some agency, someone in the agency, not the FPS. So the agency was grateful that it was being covered during the time——

Mr. FAYE. Exactly.

Ms. NORTON.—even though the agency had no responsibility for providing the guards.

Mr. CARNEY. Madam Chairwoman?

Ms. NORTON. Yes.

Mr. CARNEY. We are saying a lot what is FPS doing. There are layers to the whole thing.

Ms. NORTON. We are aware of that.

Mr. CARNEY. And I am just saying I believe it is the responsibility, in these types of incidents, of the contracting officials, the CO and the COR, to reach out to the union. But to answer your question——

Ms. NORTON. The contracting official works for the FPS, for ICE, and for DHS.

Mr. CARNEY. Correct.

Ms. NORTON. We are not in here getting into the innards of the bureaucracy.

Mr. CARNEY. No.

Ms. NORTON. We are treating this as a police matter.

Mr. CARNEY. Yes, ma'am.

Ms. NORTON. We are treating this as a security matter. We don't care who it is supposed to be.

Mr. CARNEY. No.

Ms. NORTON. All we know is—I understand what you are saying, Mr. Carney.

Mr. CARNEY. Okay, thank you.

Ms. NORTON. This is what the concern that the Ranking Member indicated. This is the concern of this Chairman, that if these people are there for a purpose, to protect us from terrorism and from criminals, if they are not there, we are unprotected.

Mr. FAYE. That is right.

Ms. NORTON. It is as clear as that. If we don't know if they will be there because they are not paid, we have no assurance we will be protected.

Mr. FAYE. Right.

Ms. NORTON. My concern is that when somebody has a police force, he doesn't say, let me see, who do you report to, whether you are contract or not; he acts like he has got a police force, and treats everyone as if they are doing the same police duties, because guess what; your guards, your security guards were doing the exact same duties as FPS officers were doing.

So we are very concerned because these people were transferred, transferred to the Department of Homeland Security post-9/11 to provide better protection. So when we find that there may not be good protection, 9/11 seems to have done us no favors in terms of making sure that we are protecting Federal employees. It is a matter of great concern to me because I am not only a Member of this Committee, I am a Member of the Homeland Security Committee, and I represent the nation's capital.

I thank you all for coming. We are going to have to call the final witnesses. They are very important to hear from and they are Inspector General Richard Skinner, Department of Homeland Security; the Director of the Federal Protective Service, Gary Schenkel; and the Director of the Acquisition Policy and Oversight for ICE. If you would come forward quickly.

Much has been said about Mr. Waites, who is directly responsible, but there has been testimony here, obviously, concerning the

Government, who is primarily responsible whenever we are talking about the security of Federal employees.

I am going to ask for you to summarize your testimony, each of you, in five minutes. That is what we usually do. Because this is an investigative hearing, we have let it go on for much longer than that, because we wanted to hear as many facts as understood by all sides. We want to make sure that we give you a fair opportunity as well, so your testimony will be in the record and you can submit any other remarks afterwards. I will leave the record open for 30 days.

I am going to ask Mr. Skinner to summarize his remarks first.

TESTIMONY OF THE HONORABLE RICHARD L. SKINNER, INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY; GARY W. SCHENKEL, DIRECTOR, FEDERAL PROTECTIVE SERVICE, U.S. DEPARTMENT OF HOMELAND SECURITY; ASHLEY J. LEWIS, DIRECTOR, OFFICE OF ACQUISITION POLICY AND OVERSIGHT, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. SKINNER. Thank you, Madam Chair.

Ms. NORTON. Oh, excuse me. I have to swear all three of you in.

Would you please stand and raise your right hand? Do you swear that the testimony you are about to give is the whole truth and nothing but the truth, so help you God?

[Witnesses answer in the affirmative.]

Ms. NORTON. Let the record show that all three answered in the affirmative.

And we will begin with Mr. Skinner.

Mr. SKINNER. Thank you, Madam Chair. It is a pleasure to be here today. My testimony today will focus on the Federal Protective Service's oversight of its contract guard program, payments to contract guard programs, and budget shortfalls and progress to date to improve contract and financial management.

Before I begin, however, I would like to preface my statement by saying I believe this is very important to understand. When DHS was stood up in March 2003, it was shortchanged. That is, on one side of the ledger it acquired entire operational assets and programs of 22 disparate agencies. Yet, on the other side of the ledger it did not acquire proportionate share of the management support assets, such as procurement and financial specialists, to support these programs and operations. This is most evident with the transfer of the Federal Protective Service from GSA to DHS.

Contract guard services represent the single largest item in the FPS operating budget, estimated to be $577 million for fiscal year 2007. FPS has become increasingly reliant on its contract guard force, having less than 1,000 uniformed FPS officers nationwide. The contract guard workforce now numbers around 15,000, as you heard earlier today.

FPS's financial and procurement problems are longstanding. Prior to its transfer to DHS in 2003, GSA Inspector General and GAO reports repeatedly noted deficiencies with the guard contracts. In 2006, we too reported contract management problems. We audit FPS oversight of guard contracts in the National Capital

Region, which, at the time of our audit, consisted of 54 contracts that provided about 5,700 guards to protect 125 buildings.

We determined that FPS was not consistently deploying qualified and certified contract guards. Guards were not on post, were on post without current suitability determinations or with expired certifications. Thirty percent of the guards in our sample had at least one expired, but required, certification. For example, FPS employed guards with expired background investigations, medical certifications, and expired domestic violence certifications. In one instance, a guard was still on post seven months after being found unsuitable due to a felony assault conviction.

Security guards were not armed at posts where they should have been. Conversely, they were armed at posts where they should not have been. Guards did not have security clearances, and non-citizen guards did not always carry the required work permits.

We concluded that these deficiencies occurred because FPS was not equipped to effectively monitor contract performance. While contractors have the primary responsibility for assuring that all contract provisions are met, FPS too has the responsibility for validating whether or not contractors are complying with the explicit terms and conditions of the contract. Providing inadequate contract oversight can result in the Government paying for services it did not receive and placing FPS-protected facilities, employees, and visitors at risk.

We also reported that FPS was not paying invoices for its contract guard services in a timely manner. Of the more than 25,000 invoices paid nationwide from October 1st, 2004 to November 21st, 2005, 88 percent were not paid within 30 days, as required by the Prompt Payment Act. As a result, FPS paid more than $1.2 million in interest penalties to guard companies.

We attributed this problem to the ill-planned transition of the guard contract program from GSA to DHS. ICE's financial management system simply was not capable of processing the thousands of invoices submitted by contractors each month. To compound the problem, FPS staff were not adequately trained prior to the transition—this is in 2003—to navigate ICE's financial management system.

With regard to recent budget shortfalls, we learned that funding issues had been a problem that has plagued FPS for years, again, prior to its transfer to the Department of Homeland Security. GAO reported that the security fees collected by GSA were not sufficient to cover the cost of FPS operations, and that the deficits were covered by GSA using monies from its Federal Building Fund. This problem was compounded when FPS moved to DHS. Not only was DHS not financially prepared to subsidize FPS operations, but, also, GSA was now charging DHS for the space that FPS occupies throughout the Country.

I will conclude by saying ICE's senior officers are well aware of these issues and are in fact taking some bold steps to resolve them. For example, FPS is creating a centralized procurement organization, increasing the number of procurement staff, and creating standard operating procedures in an effort to improve its management and oversight of its guard contracts; it has made improvements to its invoice payment procedures and systems, ensuring

that contractor payments are made in a timely manner; and it proposes to reallocate its manpower according to a risk-based approach to securing Government buildings, which will result in an overall reduction in manpower and therefore resolving its financial difficulties.

We are encouraged that ICE recognizes these problems and is beginning to take aggressive action to address them. When fully implemented, it appears that they could mitigate many of the problems that FPS is now experiencing. Nevertheless, we must keep in mind that these changes are in their infant stages. A lot can go wrong before they are fully implemented. Accordingly, my office remains committed to overseeing these and other financial and contract management challenges confronting ICE. We plan to work closely with ICE management in the months and years ahead to promote the economy, efficiency, and effectiveness of FPS's programs and operations.

Madam Chair, that concludes my remarks. I would be happy to answer any questions.

Ms. NORTON. Thank you, Mr. Skinner.

Mr. Schenkel.

Mr. SCHENKEL. Chairwoman Norton, thank you for this opportunity to appear before you today to discuss the Federal Protective Service responsibility to ensure that contract guards protect Federal employees and their workplace, along with FPS's response to a recent situation within the National Capital Region regarding the contract security guard company STARTECH.

The contract guard program is a critical mission requirement of the Federal Protective Service. Approximately 15,000 contract security guards stand post protecting Federal facilities under the direction of——

Ms. NORTON. Mr. Schenkel, could you please, in light of the time, summarize the meat of your testimony, particularly as it pertains to the situation at STARTECH and to any ongoing difficulties you still perceive in the contracting operation, because we are going to have to leave here before 2:00.

Mr. SCHENKEL. Well, let me just offer my personal apologies for not contacting you in the appropriate time manner. I did not know of that requirement. I will endeavor to ensure that you are made aware of any kind of situations like STARTECH again, and I am prepared to answer any questions that you have.

Ms. NORTON. Thank you, Mr. Schenkel.

Ms. Lewis, could I ask you to please summarize what you have to say so we can ask questions because of the time problem and the prior witnesses?

Ms. LEWIS. Certainly. Thank you for the opportunity to appear today.

As the head of the contracting activity for ICE, I have the overall responsibility for managing the contracting activities within ICE, including FPS. I have been with ICE about 14 months, and since my arrival, improving the quality and effectiveness of FPS contracting operations has been a top priority for me.

The assistant secretary and other ICE senior leaders——

Ms. NORTON. Ms. Lewis, would you summarize the part of your testimony, because of the time frame and because we would like to

ask some questions, having to do with this situation and with contracting, in particular, of FPS officers?

Ms. LEWIS. Okay. With respect to the work done by our contract guards, we will work diligently to ensure that they are paid in a timely manner and in accordance with the Service Contract Act and the terms of the contract. I know recent events have raised concerns about the financial stability of our contract guard companies and their ability to perform and to pay their employees. In conjunction with your staff, we are researching methods to strengthen our ability to determine if a company may be in jeopardy. We are considering additional safeguards, including requiring our contractors to notify us when corporate officers change and having the company re-certify regarding past criminal activities of any new corporate officer; requiring notifications if payrolls are missed or if there is a material change in the company's financial situation; and including, in our newly issued FPS Contracting Officers Technical Representatives Guide, the requirement for inspectors to closely monitor and communicate with company representatives any allegations of missed payrolls or similar allegations, and to promptly report these allegations to the responsible contracting officer.

Finally, I do want to inform you that over the last year we have been establishing contingency guard contracts to provide emergency services in the event of a natural disaster or in the event one of our contractors cannot satisfy the terms of the contract. We hope to have these contingency contracts in place within the next few months.

I would be happy to answer any questions you may have.

Ms. NORTON. Thank you very much. And, again, I apologize that we took so long with the prior witnesses, but, after all, that is what brought us here in the first place.

Mr. Schenkel, on May 30th you told my staff that the STARTECH payroll from May 25th had bounced because—and here staff has taken this down—payroll funds were sent to the wrong bank. But the Committee found from STARTECH officers that this was not the case, that the payroll bounced because no funds were sent to any bank.

Now, you are a party to the contract. Yet, my staff appeared to have more timely information than you did about this contract. Why is that? We understand that you monitor the people by going around and seeing if they have the proper credentials. How do you monitor the contract——

Mr. SCHENKEL. Ma'am——

Ms. NORTON.—so that this kind of elementary information is made immediately known at the highest level?

Mr. SCHENKEL. Yes, ma'am. We monitor on performance-base, and on the 26th of May, when we first heard rumors that there may be a problem with STARTECH, because that was the holiday weekend, it is difficult to monitor and determine whether or not the contract is truly being enacted to its full level of performance because of the diminished number of guard posts. So, consequently, on Tuesday, after the holiday, we started monitoring more effectively. We were able to start noticing numbers of guards on posts and started hearing complaints, or at least concerns would prob-

ably be the better term, concerns from the guards themselves, and we continued our investigation based on that.

Ms. NORTON. Did you take any action to intervene with STARTECH in particular?

Mr. SCHENKEL. As far back as the Sunday, the 27th of May, that is where I got that information that we got from Mr. Gandy, who I believe was their Operations Officer, STARTECH's Operations Officer, who gave us the information that he knew that he had sent the money to the wrong account and, consequently, there was a mixup in the payroll and the guards weren't paid.

Ms. NORTON. Well, now, didn't you suspect that somebody giving you that kind of reason should give you pause, when somebody tells you, sorry, it went to the wrong account, that is why people aren't being paid?

Ms. Lewis, you were the contracting officer. May 10th is when these employees, I understand, began not being paid. Did you inform anybody at FPS, at ICE, or at DHS about this situation? Because Mr. Schenkel says he learned weeks later, May 26th.

Ms. LEWIS. I did not become personally aware that there were any problems with STARTECH until approximately May 26th. I am not——

Ms. NORTON. Well, who in the world—here, we are giving out money, sending money, when you do it. Apparently, there are some issues with how rapidly people get paid, but that is the end of it?

Ms. LEWIS. I can only react to information that I have. If that information is not given to me, I can't——

Ms. NORTON. So there is no proactive monitoring of the kind that would alert you immediately if officers were not being paid.

Ms. LEWIS. Typically, what employees will do that are subject to the Service Contract Act, if they are not being paid, they will report it to two places: they will report it both to the Department of Labor, who has oversight for compliance with that particular law; and they will also report it to the——

Ms. NORTON. Mr. Schenkel, I understand what Ms. Lewis is saying, and she is speaking like a contract employee. You know, if somebody isn't getting paid, they say, hey, I am not getting paid. These are the functional equivalent of security officers charged with the highest level of police responsibility. Don't you think there should be some proactive monitoring to make sure that these employees are paid so that the posts are always covered?

Mr. SCHENKEL. Absolutely. And I have the greatest respect for the contract security.

Ms. NORTON. But you told me, when I called you up personally, which is what led me to call, first, the Administrator, who happened to be out of the Country; then I called his Deputy. You told me that it was the contractor's responsibility, or words to that effect, sir. You told me that, leaving me in a state of high frustration that I was talking to somebody who didn't know what to do.

Mr. SCHENKEL. Yes, ma'am. The contract states that the guards must be paid. The contract as to when they get paid is between the individual security guard and the contracting company. If they fail to pay the guards and we are notified, then we can act.

Ms. NORTON. I notified you, but others had notified you ahead of time, and you told me, I repeat, that you had done what you were

supposed to do in having paid the company. And you left me with no remedy, Mr. Schenkel, which is one of the first reasons I knew I had to have a hearing. I then had to call Deputy Administrator Michael Jackson, who then called in ICE. You suggested to me no remedy. And, by the way, it is not a requirement that I be informed. I was the last resort. I was informed because nobody else in the agency had responded on this issue.

You are not required to come to the oversight committee and say we have a problem, although it is good form that the oversight committee learn of it from the agency rather than from employees. But that is not a requirement. The requirement is to pay people and the requirement is to act like a police chief whose posts may be left uncovered and who will be held responsible. That may be somebody else's contract, but if those people walk off the job, nobody is going to hold the contractor directly responsible; they will hold the police chief responsible. Do you understand your job to be that of a police chief or do you think of yourself as some other kind of person?

Mr. SCHENKEL. No, ma'am, I——

Ms. NORTON. Because you have not been a police chief before; you have not walked a beat before. You have not been an officer like the officers who you supervise.

Mr. SCHENKEL. You are correct, ma'am, I am not a sworn officer, but I have law enforcement experience, yes, I do; and I have leadership experience, about 37 years of it.

Ms. NORTON. Mr. Schenkel, I just have to say to you that my disappointment was personally in you, because it seems to me the first thing a police chief does is to act very much like a police chief, and he knows that he has got to have everything covered; and if somebody tells him that part of his beat isn't being covered, he doesn't look to see who the contract is with. This was a serious security failing at the top, and you need to hear it from this Subcommittee.

It was exasperating to call the police chief and have the police chief tell me he had done all he was supposed to do in paying the contract. It was a bureaucratic response; it was not the response of a security officer. It was a source of huge frustration to me and it caused me to lose real confidence in the FPS, because you are the people who supervise the guards. You are supposed to be the officers; you are supposed to be the people who know how cops are supposed to behave. And, yet, you did not behave as a police chief; you believed like a government bureaucrat who had let a contract and that was the end of it. You need to know just how serious a failing that was.

I have to ask you, Mr. Skinner, you know that ICE is announcing plans to downsize very dramatically FPS, eliminating many police functions. Do you have any concern about FPS reducing its workforce and therefore impacting the kind of oversight that seems to be necessary of contracting in the Federal Government?

Mr. SKINNER. As part of their initiative, they are reorganizing their acquisition function, centralizing it, and at the same time actually adding additional resources. In my latest understanding, they are going to be adding anywhere from 30 to 35 additional people into their acquisition——

Ms. NORTON. To do what?

Mr. SKINNER. To provide oversight monitoring of its——

Ms. NORTON. Contractors.

Mr. SKINNER.—its contractors, yes, ma'am.

Ms. NORTON. At the same time, of course, it is eliminating police officers, but I hear you. And I know some of this comes from appropriations.

Mr. SKINNER. That is correct.

Ms. NORTON. I am not blaming FPS for this at all. Nor am I blaming FPS for the shortfalls that you very rightly, very justifiably talked about, when FPS was subsidized through General Services Account. I would think that the Federal Protective Service or ICE or DHS would come forward with a recommended remedy for that, because that is a serious problem that Mr. Schenkel is left holding the bag for, Ms. Lewis is left holding the bag for, but can only be dealt with through some arrangement, some other kind of arrangement within the Federal Government or more funds. So we can continue to complain about that, but the failure of DHS to come forward with a remedy, to simply recite that that happened, is a failing, a security failing.

I have to ask you, Mr. Skinner. You heard the small businessman complain here. Of course, he offloaded much of the responsibility onto the Federal Government, much more of the responsibility than he should have, but do you think that the way in which contracts are paid,—and you know the Federal Government, you know this part of the Federal Government—often late, in this case contributed to the downfall of STARTECH?

Mr. SKINNER. It is inexcusable. Any time something like this happens, both the contracting officer and the contracting technical rep should be right on top of it, and if they suspect any foul play, they should be bringing our office into it immediately so that we can review it.

Ms. NORTON. So you think this has got to be proactive, especially when it comes to security officers.

Mr. SKINNER. Especially when it comes to security officers. But, in any case, under any contractual arrangement, if the contractor is not fulfilling their legal obligations, and particularly not paying their staff.

Ms. NORTON. I am very concerned about expired certifications. We know that the Federal Government has its own certification program or requirement, quite apart from the State requirements. I must ask you both how can we have confidence that certified contract officers are in fact performing police duties in Federal buildings?

Mr. SKINNER. You cannot have confidence unless you have a very good enforcement program, a very good monitoring program. You must rely on the contractor to fulfill his fiduciary responsibilities and performance responsibilities within the terms and conditions of the grant on one hand. But, on the other hand, I think the Federal Government has an explicit responsibility to provide oversight and monitoring in a very proactive way; not reactive, but in a proactive, routine, disciplined way to ensure that people that we are employing, whether they are contractors or full-time employees, are fulfilling their duties and responsibilities.

Ms. NORTON. In this case, even the contract officer didn't know about the people not being paid. And, as you say, you would expect anybody not being paid could undermine the mission of the agency, but here, to undermine this mission is to do very serious damage, perhaps to us all.

Let me ask you a question, Mr. Skinner, about the National Capital Region. Here is where al Qaeda central here, in this region and in this city. In this National Capital Region, where most of the Federal workforce is located, concentrated, the number of so-called mission support personnel appears to be targeted for reduction by more than 60 percent, from 33 positions to 13. Overall, that would mean that the number of mission support personnel would be projected to decline by 15 percent, from 244 to 205 positions. Do these reductions concern you in terms of security, for the National Capital Region in particular?

Mr. SKINNER. Madam Chair, we haven't had an opportunity to actually analyze those reductions in their totality because they may be reducing—everything is based on a risk-based approach——

Ms. NORTON. That is why I said mission support personnel.

Mr. SKINNER. In order for me to respond to that, I would have to take a look at the big picture to see——

Ms. NORTON. Would you take a look at these reductions and report to us in 30 days? In this region, we would just like to hear your unvarnished view of whether or not those reductions in this region, given what is located in this region, everything from the Supreme Court to very classified facilities, whether or not that is a prudent way to downsize.

Do you believe the downsizing of the Federal Protective Service throughout the United States—I am not asking you for a budgetary opinion; I am asking you as the Inspector General—and the growth of security guards relative to FPS is prudent in the post-9/11 period?

Mr. SKINNER. Well, the growth of security guards, contract guards, if that is what you are referring to, is I think probably a prudent way to go. The reduction of FPS, again, you would have to look at it in its totality. Is it a reduction or is it a transfer of responsibility? And that is a transfer——

Ms. NORTON. Let's take the transfer of responsibility.

Mr. SKINNER. From FPS to the locals.

Ms. NORTON. I understand exactly what you mean. These officers at the Department of Education, at the Department of Agriculture, they were doing exactly what FPS officers were. I have never taken the position you have to have full-time FPS officers there. However, the Department takes the position that there are whole parts of the Country, 50 cities——

Let me ask Mr. Schenkel is that still part of the plan, to leave 50 cities uncovered by FPS officers?

Mr. SCHENKEL. Ma'am, the plan hasn't been finalized, but what we did is distribute the available officers based on threat risk and then quantifiable numbers, and regardless of the numbers that we will have, that would be the proportionate distribution based on that risk.

Ms. NORTON. Well, that is the way to do it. And, again, Mr. Schenkel, you will never see me hop on you for not having the officers. I understand that.

My second question, though, goes to the conversion of officers. It is bad enough that you are downsizing officers. But now we have got officers used essentially as building inspectors, people who are peace officers, trained exactly as you train the D.C. Police Department, the Capitol Police, the Park Police, and essentially they are going around with flashlights.

Do you think, Mr. Skinner, that given the downsizing of the FPS, that that is a prudent use of fully trained peace officers who carry guns and who alone can make arrests in buildings?

Mr. SKINNER. Again, I am sorry, I am just not prepared to offer an opinion on that at this point in time. It is something that I would like——

Ms. NORTON. I am not asking you for numbers. I am asking you whether you think the use of peace officers as building inspectors is the highest and best use of people who have full police training.

Mr. SKINNER. On the surface, it certainly would not appear that that would be the best use.

Ms. NORTON. That is right. Thank you.

We would like to submit questions, further questions to each of you. Yes, I am very concerned. I appreciate the issues that Mr. Schenkel confronts, in particular, having inherited the FPS, having it thrown at him without the resources, and then being confronted with the notion that now I am going to downsize what you do have. Neither of those do you have control over.

But you did have control over whether these people got paid in the sense of intervening earlier. You do have control over how these officers are used; and you do have the obligation to tell your own OMB, or whoever will listen, before there are 50 cities left uncovered by FPS; and you do have the obligation to be transparent and, if you intend to do this, to let that be known early enough so that appropriate coverage can somehow be obtained.

Let me end this hearing on a more pleasant note than it began. The Department of Homeland Security, now—we are not talking about Mr. Waites, who we can never expect to get much from, given the prior testimony—the Department of Homeland Security still owes $1.8 million to STARTECH for past invoices. Department of Homeland Security is obligated under law to give those funds now to the Department of Labor, which will cover back pay first, and, with anything that is left over, the benefits and pensions. I only hope that that will be enough.

You have the apologies of the Federal Government, you who stayed on the job. But go from this hearing knowing that DHS has $1.8 million, and that is going to come to you first and foremost.

Thank you all for coming to this hearing.

[Applause.]

[Whereupon, at 2:00 p.m., the Subcommittee was adjourned.]

STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON

"RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES"

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

JUNE 21, 2007

We welcome today's witnesses and our visitors to this hearing entitled "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Federal Facilities." This hearing was made necessary because of evidence and serious allegations of wrongdoing, chaos, and irregularities in the contracting and employment of private security guards who protect federal employees and facilities.

Contract security officers are a critical component in the Federal strategy to protect the safety and security of Federal employees where they work and many Federal facilities as well. In the Federal sector, security guards, many of whom carry guns, are essential to protecting Federal employees as members of the Federal Protective Service (FPS). Security guards are a necessary supplement to, although not a replacement for public law enforcement officers, whether local police officers, or FPS law enforcement officers and others engaged in counter terrorism activities.

In the post 9/11 Federal environment, the Committee and this Subcommittee are mindful that security guards have neither police powers or the extensive training of sworn peace officers, and that they cannot make arrests. Because of 9/11, the FPS was transferred to the Department of Homeland Security. Yet, we have seen the Federal growth of contract security guards, who do not have police powers or the authority to make arrests, grow to 15,000, while FPS has been slashed by hundreds of officers, down from an authorized number of 1,450 to between 1,100-1,150, with a goal of getting down to 950. The risk to security posed by the downsizing of the FPS and the conversion of police officer to security inspectors has led to action both by our Committee and the Homeland Security Committee, on which I also serve.

Today we will learn about the work of security guards nationwide. Recently, STARTECH failed to pay 600 D.C.-area Federal security officers or to make other important benefit payments to pensions, health benefits, and the like. This Committee intervened when inaction by the FPS and Immigration and Customs Enforcement, the division of DHS where FPS is placed, was reported to us. Ultimately, I was unable to get direct intervention by FPS Chief Gary Schenkel and had to call Deputy Secretary Michael Jackson to get any action. Today we will hear first hand about the effect on the employees and the Federal agencies involved. We

are indebted to the contract security officers, most of who continued to come to for work to protect Federal workers, the visiting public, and the work sites. However, as the shooting incident between Department of Defense contract guards at Walter Reed highlights, concerns about the management, oversight, and professionalism of some Federal contract guards is widespread.

Apparently STARTECH experienced serious financial problems during the past six months. However, we have been unable to find that FPS or DHS took action or interceded until security guard payroll checks bounced three times. Yet, a year-end audit by the Defense Contract Audit Agency in 2005 concluded that, "[STARTECH's] accounting system is non-existent for Government contract accounting purposes." Why was the red flag not raised then? If FPS forwarded funds to STARTECH to pay its personnel, the Subcommittee would be concerned about possible misuse of funds. In preparing for this hearing, the Committee discovered that although STARTECH changed ownership two years ago, one of the new owners had served a five year jail sentence for money laundering and fraud. Weldon Waites, the Vice President for Business Development of STARTECH, who with his wife Sharon is a majority owner of STARTECH, has agreed to give his own accounting of STARTECH.

The Federal Acquisition Regulations require that contracts be awarded only to contractors who are, "capable, responsible, and ethical." It is the responsibility of FPS and DHS to make sure that these contractors are capable, responsible, and ethical both at the start and throughout the life of the contract and that they treat their guards with the professionalism and respect they have earned. FPS inspectors were required to visit STARTECH guards at least weekly. Yet, our Committee learned nothing of the unpaid guards who were protecting Federal buildings until a contract guard union, the United Government Security Officers of America, alerted us. We continue to find the Administration's plan to reduce the number of FPS officers from 1250 to 950 infinitely unacceptable. If anything, failures like those uncovered by our investigation call for the strengthening of the Federal law enforcement and security guards. If the STARTECH officers had decided that they could no longer protect the Federal workforce and buildings without pay, the FPS contingency plan was to staff the security posts with FPS officers, many of whom DHS hopes to eliminate as part of the FPS restructuring.

Contract security guards are charged with protecting some of our most secure facilities, including military installations, nuclear power plants and classified sites. They are tasked with preserving the lives and safety of our judges, teachers and scientists. Had it not been for the loyalty and dedication of the contract security officers to their posts and their profession, the security and safety of Federal workers, their workplaces, and the visiting public would have been at risk after STARTECH defaulted on its payroll. On behalf of the Federal government and Federal workers, I want to express our gratitude to the guards who remained on duty despite assuredly personal hardship. We commend them and our other witnesses for coming forward and allowing our Subcommittee to get to the bottom of what appears to be an FPS contract guard program that needs top to bottom reform.

STATEMENT OF THE HONORABLE JAMES L. OBERSTAR

"RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES"

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

JUNE 21, 2007

Good morning. I want to thank all of the witnesses who have agreed to appear before the Subcommittee this morning. Out Committee has a long-standing interest in the Federal Protective Service and its role in protecting our nation's infrastructure. We have held several hearings, including one on April 18 of this year, to explore our concerns with the proposed downsizing of FPS.

While I know that is not the issue that brings us here today, I want to use this opportunity to reiterate this Committee's commitment to preserving the force of federal law enforcement officers employed directly by FPS. The FPS officer is the first line of defense against terrorist and other new criminal risks and incidents in federal buildings. These officers, aside from their daily patrol and response functions, participate in comprehensive intelligence gathering through its unparalleled network of state and local police, providing building vulnerability assessments, recommending appropriate security threat countermeasures, and responding to bomb threats, vandalism, and mass demonstrations. Clearly there is a place and a need for a

robust FPS police officer force. We will continue to oppose DHS' plan to downsize FPS.

That brings us to today. I commend the ladies and gentlemen who have agreed to address our members today in their role as private security officers. We see you at our federal buildings and worksites every day and sometimes we take for granted the services you provide.

That's why it makes me angry to hear that a contractor to whom we have entrusted with an extremely critical responsibility – keeping our workforce safe – has failed its employees.

And it makes me especially angry because I believe this could have been prevented. Or at least brought to a halt well before guarding federal buildings turned into a volunteer occupation. The Federal Acquisition Regulations which govern the procurement process sets standards in Subpart 9.1 for what constitutes a "Responsible" Contractor. One of the *explicitly* spelled out qualifications is, quote, "Have a satisfactory record of integrity and business ethics." By no stretch of the imagination are the terms "integrity," and "business ethics," consistent with "bank fraud," and "money laundering" yet somehow FPS managed to overlook this when it awarded contracts valued at $13 million annually to STARTECH. The STARTECH officer with allegedly almost exclusive access to the bank accounts served time in prison for just these crimes fewer than 10 years ago.

I would like to know how it is even possible that an individual with this type of criminal background could become an officer on a federal contract that exists specifically to protect the safety, security, and integrity of our federal infrastructure. The officers employed on federal security guard contracts are subjected to rigorous hiring and screening programs consisting of background, criminal record, and fingerprint checks. Security officers can be removed from contracts for having an expired First Aid card…Is it unreasonable to require that the owners and officers of these companies meet these same rigorous standards?

I would also like answers from FPS today on how this contract was awarded against the advice of the Defense Contract Audit Agency. In 2005, prior to contract award, the DCAA audited STARTECH's accounting system and concluded, quote, "In our opinion, the design of the accounting system is not considered acceptable for the award of a prospective contract. The Accounting system is nonexistent for Government contract accounting purposes." Yet the contract was awarded, and extended, and renewed….and none of STARTECH's promises to fix the deficiencies were ever fulfilled.

These audits requirements and acquisition regulations exist for a reason—to prevent the government from getting into situations like STARTECH. They are in place to *identify* companies that are not responsible, prepared, or committed to

conducting the government's business in an ethical, legal, and cost-effective way and *prevent* these companies from getting the contracts in the first place.

I am most anxious to hear our witnesses' opinions on these matters and their responses to other questions put forth by Committee members.

STATEMENT FOR THE RECORD
June 21, 2007

From: Congressman Tim Walz
Re: T & I Subcommittee on Economic Development, Public Buildings, and Emergency Management: "Hearing on the Responsibility of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces"

Ms. Chairwoman, Ranking Member Graves, I want to thank you for holding this hearing today on such an important topic. The security of federal employees and their workplace is vitally important as has been demonstrated in the security features of the new Capitol Visitors Center. While security is important in the infrastructure of federal facilities, it is even more important in the guards that we hire.

Federal oversight requires that government contracts are managed in accordance with Federal Acquisition Regulations. These regulations mandate that protocols and processes are established to ensure that contractors are "capable, responsible, and ethical" throughout the life of the contract.

To ensure the physical safety of federal employees and visitors, the Federal Protective Service (FPS) uses contract employees. These contractors, that provide private security to the federal government, must be held accountable for complying with the Federal Acquisition Regulations.

Ms. Chairwoman, thank you for holding this hearing and I look forward to the testimony from the panel members.

STATEMENT OF JAMES D. CARNEY
ACTING PRESIDENT

UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA
INTERNATIONAL UNION

BEFORE

THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE'S SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

Washington, DC
June 21, 2007, Rayburn HOB

RE: **Hearing on, the Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards (Security Officers) Protect Federal Employees and their Workplaces.**

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DEFINITIONS

Acquisition/ Contract/ Procurement	a Government Contract, Federal Security Contract through DHS (usually)
ALJ	Administrative Law Judge
Agreement	usually Collective Bargaining Agreement
CBA	Collective Bargaining Agreement
CCG	Consolidated Contracting Group (3 nation-wide)
CEO	Chief Executive Officer
CGIM	Contract Guard Information Manual
Committee	this Committee and its sub-Committee (U.S. House of Representatives)
CO	Contracting Officer
COR	Contracting Officer's Representative
COTR	Contracting Officer's Technical Representative
CSO	Court Security Officer
DOE	Department of Energy
DoEd	Department of Education
DHS	the Department of Homeland Security
DoL	Department of Labor (usually Wage and Hour Division)
FPO	Federal Police Officer, under FPS / ICE / DHS
FPS	The Federal Protective Service
GSA	The General Services Administration
ICE	Immigrations and Customs Enforcement, component of DHS
Inspectors	FPOs, LESOs, or Security Specialists who inspect a security contract
LESO	Law Enforcement Security Officer (a Govt. employee uniformed and not)
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
RIFs	Reduction in Forces
UGSOA/ Employee's Representative/ Union	United Government Security Officers of America
S/O, SPO	Security Officer, Special Police Officer, or Security Police Officer

INTRODUCTION

Madam Chairwoman, Ranking Member Graves, My name is James Carney. I am the Senior Vice President of UGSOA and presently I am the Acting President for the Union. Our International President has cancer. I would like to tell you a little bit about our Union and about myself. This is the first time I have addressed Congress on any matter in person.

UGSOA was formed from in 1992 at the Rocky Flats Nuclear Weapon's plant, a Department of Energy site in Colorado, during the Cold War. We now represent over 12,000 security officers and security police officers throughout the United States, and its Territories, most of which are federal government contracts. I have been a Security Officer on a FPS federal security contract in Denver, Colorado, for 9 years, from 1994 to 2003. At many stages during my career I have been decorated for my professionalism and performance in the line of duty to the Federal Government and the security mission through its multiple contractors. I've worked for 5 different Contractors in that same period of time doing the same job. I was on duty in Denver, Colorado, coming off of a graveyard shift the morning of the Oklahoma City Bombing. I returned to my post and pulling extra work that day at our daycare in the Federal Building. For the many months and years that followed as the trial to convict McVeigh moved forward we worked additional and substantial overtime hours in our Federal Buildings. We were on the highest level of security while domestic terror groups cased our buildings daily. I know what it means to protect our Federal Government's infrastructure. On behalf of my members, they know the gravity of our mission too.

In addition to my security career, I have also found my calling to work in the Union and the rights of security professionals throughout the United States, both locally, and nationally, witnessing first hand, many of the things that I can testify about to you here today. All together, my union career and experience covers the past 10 years with UGSOA and a couple of years with the Teamsters at UPS, as a shop Steward.

I thank you for the invitation to be present and testify before this Committee. I also thank you for your scrutiny of this matter. It is indeed serious, and requires your immediate attention.

The Contractors we work for come and go and we always remain working on the contracts. It's an unusual environment for us in that respect, changing employers and uniforms every year, or every other year, in most cases. The security forces that you have out there right now on federal contracts are loyal to the mission. They are loyal to the contract. They are loyal to a fault. And the fault has never become more apparent than now. We have worked to protect federal buildings, in many cases, without being paid, and for extraordinary amounts of time. And here it happens too often on federal security contracts, let alone in the purely private sector. What could be more fundamental to an employee than being paid for time worked? You do not hear of this abuse among security guards protecting the malls you shop in, or the apartment complexes that you live in. Yet, right here on our federal contracts it is happening. The most recent example just happened a few weeks ago here in Washington, DC, at the

Department of Agriculture Headquarters, when StarTech, the federal security contractor, failed to meet its employees' payroll. They went belly up, without forewarning or notice to anyone. Special Police Officers, employed by StarTech were told, "the CEO, Weldon Waites, is no where to be found and the bank accounts are all empty." Then we looked closely, low and behold, he has a serious criminal history for fraud. How did he get ownership of the contract?! It has to be asked, and we cannot ignore it.

I want to especially thank you, Madam Chairwoman (Congresswoman Norton), for your decisive and immediate action to intervene on the StarTech matter. I have not seen the kind of concern and prompt inquiry from any other member of Congress in the past ... and this *has* happened before, too many times[1]. I would like to remind everyone that the alternative was to strike StarTech, and take up picket signs right out there in the street. How unfortunate that would have been.

BACKGROUND

DHS, ICE, and its sub-component, FPS, are all responsible for the contract security program that augments the traditional Police Protective Service of FPS. The degrees of responsibility are layered.

- You have the procurement officials and teams that create, design, award, and administer the contracts. They deal with the owners and senior Managers for these Companies, the federal Contractors.
    - Then, you have the specialists that provide to the procurement teams for the Government the specific mission sensitive advice and direction

[1] UGSOA can provide a list of contractor defaults going back to 1996 to the Committee, upon request.

on how that contract needs to perform so that the needs of the Government in that particular contract are met.

- Also, DHS must have the Government personnel that are necessary to inspect these contracts and ensure the details of the contract, after it has been written, designed, and awarded, are followed. Many times these are the Federal Police.
    - Finally, you have the Contractor and the contract security workforce who carries those objectives. They too must work in concert with the other layers of the procurement to make the mission successful.

All layers must work together to make that contract mission happen. A breakdown at any layer will lead to a contract failure, large or small.

Many times I've asked our members rhetorically, who protects those who protect the US Government Infrastructure? Certainly, we do at UGSOA. Recently, I have never felt more inclined to be adversarial in our representation to these security Contractors as I do right now. UGSOA proudly represents those security officers who would be the first line of defense on a domestic Homeland attack, day in, and day out, We are a Patriotic Union, but unafraid to stand up for our rights, and that means a lot to the Employees who are our members. How can anyone fault us for taking action in the face of such events? Yet we've shown great restraint.

QUALIFICATIONS AND ROLE CONTRACT SECURITY ON DHS CONTRACTS

A lot of criticism is always ready to be applied to a, quote-unquote, "security guard." I have followed closely what is being said to this committee. I read the testimony of Chuck Canterbury, President of the Fraternal Order of Police, which was submitted to the committee on April 18, 2007 (with respect to the downsizing of FPS). His pursuit to advocate a position for Federal police officers in opposition to the RIFs they are facing, pointed to a system of "contract guards" that are "unqualified." Without solid examples the easiest thing to do is point to a, quote-unquote, "unqualified guard"; which is nothing more than a stereotype. I have worked these jobs, as a security officer, proud of what I did every day I put the gun belt and the uniform on. As a Union Representative, I have argued the complexity of our duties of the job in wage cases before Judges at substantial wage variance hearings[2] (under the Department of Labor's regulations[3]). The result of those hearings, after showing the work that we really do and the qualifications we must maintain has re-classified our job as something more than a "guard." We are not just guards, but Security Officers[4], Security Police Officers, or Special Police Officers. The StarTech "guards" at the Department of Agriculture, were correctly classified to SPO's, over a year ago by a Decision and Order of an Administrative Law Judge (ALJ).[5] Moreover, much of the training of a contract security

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[2] *In the matter of: Applicability of Wage Collectively Bargained by US Protect, Incorporated, and the United Government Security Officers of America, Local 52, Under a Contract for Security Services in San Diego, California,* Case No. 2006-CBV-0002, (Judge Paul A. Mapes, March 7, 2006). Based on the need for, and history of the contract security officers being required to arrest and detain they are more closely aligned to the police wage rate, and not a Guard II classification.

[3] Title 29 CFR, Part 4.10, and Part 6

[4] *In the matter of: The Applicability of Wage Rates Collectively Bargained by American Guard Services, Inc., and the United Government Security Officers of America, Local No. 46, District of Alaska,* 2001-CBV-01, Chief Administrative Law Judge, John M. Vittone, found the Security Officers most comparable class to be Court Security Officers, and granted them a Decision affirming the substantial wage increases.

[5] *In the matter of: Applicability of Wage Collectively Bargained by Systems Training and Resource*

officer mirrors the levels of an FPS Police Officer. For example, the use of deadly force is within the training and prerogatives of the Contract Security Officer provided by the Government to work on these contracts.[6] Also, we must pass the same police pistol course as a Federal Police Officer (FPO),[7] and we must fill out the same reports for criminal incidents as an FPO.[8]

Please take me very literal here; we are not saying we are FPOs. However, **when properly trained and certified, we are the professional security force that augments the FPS mission and we work effectively with the Federal Police Officers, many of which are our friends and colleagues.**

Admittedly, we are finding huge deficiencies between the training and qualifications that we are supposed to be provided by the Contractor, and what we are actually getting. But you have to dig a little deeper than the surface. You have to ask the questions about why they are not as well qualified. None of that is the Security Officer's fault. I have been to every major city in the United States in my union representation of these security officers. I have been to the smaller cities as well. The contract security officers take their jobs seriously. They are wanting, and wishing to receive the best training and meeting the higher standards the Government expects. I refer the Committee back to the Inspector General's report for last October (2006), wherein he discusses the

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Technologies,, Incorporated (StarTech), and the United Government Security Officers of America, Local 34, For Security Services in Washington, D.C., Case No. 2005-CBV-02, (Judge Stephen L. Purcell, July 18, 2005). Based on the need for special police officers at this contract, and the designation required in the procurement, the security staff was re-classified, from Guard II to SPOs and Ordered to a Police wage rate.

[6] See: GSA (now DHS) Contract Guard Information Manual (CGIM), Appendix 4

[7] This is not uniform in all Regions of FPS. Some Regions are employing a new pistol course for Security Officers that is more stringent than other Regions. These changes are coming without explanation.

[8] This too is not uniform in all Regions. Some require the contract security officers' completion of a Form 3155, Offense Incident Report, and a case control number from a Regional Government dispatch center. Other Regions do not, and a third subset of Regions curtails the use of 3155 reporting by the contract S/Os.

problems within the agency as it relates exactly to the oversight of these contracts. But in many cases the doors to this training are not open to us.

Even worse… the training required by the Government's DHS contracts is still not provided or followed in many locations. In most of these cases we report it regionally, but security officers are usually at a loss of finding the system and contacts for reporting, and that knowledge is not readily available to the security workforces on these contracts. We run the risk of usurping our chain of command by going to the contracting officials locally and getting disciplined or terminated for doing so. Maybe an awareness plan on how-to report these deficiencies would be in order. Audits in various Regions of the ICE/FPS system show the contractors failing to provide this training, or failing to keep the training current. From our evaluation we have learned something very interesting however; where we have solid and longstanding labor relationships with our employers, the federal contractors, the incidents of failed training and other security contract failures are decisively less. That speaks volumes to the labor stability and its direct correlation to improved security and performance on these contracts.

OVERVIEW OF LABOR ABUSES AND ITS EFFECT ON SECURITY

If you look at the correlation, you will see that it works the other way as well. There is a contractor in Colorado brought before the 10th Circuit Court of Appeals on habitual Labor Relations violations of the National Labor Relations Act. Likewise also find a contractor who had to pull all of its security officers out of Federal Buildings in April after the Contractor, AmGard, let their credentials and certifications expire. This just happened in the DHS security procurement for Southern Colorado. Based on an FPS

review, it was discovered that AmGard (sic), Incorporated's security officers did not have their weapon's qualifications and certification up-to-date. They had to pull every one of the Security Officers in Southern Colorado off the contract. This is the same contractor with a case law record of violation at the NLRB. It's no secret that AmGard has a longstanding history of labor abuses chronicled in case law at the National Labor Relations Board in Denver. Two times they have been brought before the 10th Circuit Court of Appeals on Enforcement. AmGard still owns and operates that contract. I am reminded of the initiatives that Vice President Al Gore had worked on throughout his term concerning rules and regulations that would have prevented a Federal Contractor from having contracts with a history of labor law violations. But those regulations were never implemented under the current administration.

Recent and Major Labor Abuses / Events. That brings us to the last two years, where it has happened twice that Federal Security Contractors just stop paying their Security Officers in Tampa and Miami, Florida on DHS federal contracts. Superior Protection, Inc., a Houston Texas Corporation, head up by CEO Jack Heard.

I have reported to GSA (who previously managed these contracts) and DHS, for years about Superior Protection, Incorporated, having an extensive history of labor abuses. These abuses were chronicled in various forums:

- Arbitration cases of union contract violations; at two Regions of the NLRB,
- two Districts of the DOL, including the National Office of DOL,

- the US District Court in Tampa, Miami,
- the 5th Circuit Court of Appeals, and
- Even the US Supreme Court in one case.
- This does not include pending litigation and
- An indictment of a Federal Protective Service COR for accepting bribes from the contractor (Superior) in return for favorable performance ratings.

Madam Chairwoman, I know the Committee knows about Superior and the bribed COR. I just want to reiterate this violating and abusive history from Superior Protection, which took place from 2001 thru 2005, and we had reported it all along. Even during all of this, Superior Protection, Inc., owned and operated several federal security contracts.

The part of these stories that has not been told to the Committee is what happened to the contract security officers in Tampa and Miami. It was no surprise to me that Superior's paychecks began reporting insufficient funds from my membership in May and June 2006, this time last year.

Here is what did surprise me. The character, integrity, and the heart and soul of the DHS contract security officers in Tampa, **who remained working for 8 weeks without a paycheck from Superior**. They showed up every day to protect federal buildings in Tampa, and they trusted that DHS procurement officials would utilize the DOL and deal a heavy hand to Superior and Jack

Heard. UGSOA had reported that Superior had failed to meet payroll 4 times previously in the prior 3 years, either on-time, or not at all (separate incidents). It was reported to GSA, DHS, and the DOL.

Six (6) weeks into this fiasco last year, after I had tried the system, calling DHS, the DOL, and everyone we could think of who might care. We decided with our Local members that enough was enough and prepared to strike. I notified DHS procurement in Atlanta because we understood that the procurement officials were the people who had the power to end this. We also notified Washington DC that we had worked for FREE long enough. I flew to Tampa on July 7th of 2006 with the intent to stand with my fellow Security Officers and take them out on strike versus Superior Protection, Inc. I warned everyone involved of what we were prepared to do well in advance.

I was passed to Ms. Nina Ferrero, a DHS procurement official here in DC. In the days before we were to strike in Tampa I developed a dialogue with her. It was better than anyone at DHS, but it was still shallow enough that after 6 weeks of NO PAY, when I first began my dialogue with her, she couldn't even guarantee a new contractor. That's the kind of culture of distrust we have here with unionized labor in the Department of Homeland Security. When I landed in Tampa I had a voice message from Ms. Ferraro, which was just short of that guarantee of a new contractor, but she did state, "*That we shouldn't strike because the security guards would be happy with the outcome by the next day.*" I waited that extra

day. We didn't have to and many of my fellow security officers were upset with me at the time for waiting an additional day. In the meantime I went to all of the officers I could find and assured them of ... "one more day" based on that call from Ms. Ferraro. Can you imagine, 6 weeks without a paycheck and your International Union official, not the Company, or the Government official, having to tell you to wait "one more day?"

The Tampa Security Officers should have been commended and decorated for staying in there, working without pay. I mentioned this to the FPS commander in Tampa while I was there. They have not been commended formally. They did get paid their paychecks, however, **a full year later**.

UGSOA should have your attention, if not, it gets worse:

Weldon Waites, the CEO of StarTech, who bought out the Company in the last year and a half, recently did the same thing as Superior. This time, here in DC, for the Department of Agriculture Headquarters building, the Department of Education building, and 14 major public buildings in the District of Columbia for security contracts to the Federal Government.

They all received NO PAY, (witnesses are here who lived it). Weldon Waites, has a criminal record for fraud. We're not talking petty cash fraud either. We're talking about bank fraud and money laundering in the amounts of $2 .7 million, buying a Corvette for his daughter, a condominium, and Rolex watches, all with

fraudulent money and that list goes on. It's in the Court Record.[9]

The StarTech Security Police Officers are now working for a new Contractor, and Superior Protection Security Officers are now working for a new Contractor as well. They should all be commended for working without pay to protect our Government. The StarTech SPOs still have not been paid.

Can I convince DHS and Congress to formally commend these guys?

We have more examples of how excessive overtime fails security. Right now in Washington DC, at the ICE Headquarters, you have a DHS Federal Security Contractor, MVM, sitting at the bargaining table telling me that they cannot hire more staff to adequately staff the contract. The Contractor blames the inability of DHS to clear the new hires' for contract suitability. While they blame, I've obtained information trough the Labor Board[10] showing that the Company has attempted to hire and train even fewer Security Officer Candidates in 2006 than they did in 2005. They tried to hide that information from me. While they play the blame game, the current security officers are double-shifting each day at the rate of 10 officers per day, and they have been doing so for years. A double-shift means they work 16 hours in a 24 hour period. Moreover, the Company admitted that they only pay the security officer 15 and ½ hours for the same tour, and invoice DHS for 16 hours.

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[9] US Court of Appeals for the 4th Circuit, *US v. Weldon D. Waites*, No. 91-5403, July 31, 1992

[10] See NLRB Case No. 5-CA-33390, Formal settlement requiring MVM to provide information to UGSOA.

I have read many Government security contracts. Most recognize and require a person carrying a firearm for more than 12 hours with 8 hours off-duty before returning to work. Shifts are limited to a maximum of 12 hours in many other contracts. For some reason this one does not. We have discovered that the Company, MVM, through an elaborate and fancy scheme of payroll calculations, is only paying the security officers 15 and ½ hours for each double shift, pocketing the ½ hour for each double-shifter. Again, this is right at the DHS Headquarters building at 425 I Street. How much improved would our security procurement be if we could report and get attention this matter? I did just that, I called DHS's procurement team for this MVM contract. They don't call back. How many federal dollars are being pocketed through an abusive system of double shifting? We could kill two birds here and keep the Governments money from being riffled and the double-shifter from falling over from fatigue? Seems pretty straight forward, if we were to communicate and work together.

Government Security contracts OUGHT NOT TO BE RUN THIS WAY! Its wrong in the private sector, and its doubly wrong in the most important infrastructure to our National Government; Federal Buildings.

I wrote to the House of Representatives' Government Reform Committee in August last year about the Superior Protection matter that transpired in Tampa. We heard nothing. My Union President wrote a follow-up letter, without reply. Unbeknownst to me, at that time, it appears that the Inspector General was doing his own Audit of the pay systems. It was ordered from the Reform Committee, but I suppose I'll never know if

that was driven by our reporting, the incident in Tampa, or only in part. I would like to think our reporting did not fall on deaf ears from the Republican controlled Reform Committee last year.

What I've reported would be a tragedy in the privates sector, but on Government contracts IT SHOULD NOT HAPPEN, EVER. Government Security contracts OUGHT NOT TO BE RUN THIS WAY! It's wrong in the private sector, and it's doubly wrong in the most important infrastructure to our National Government, Federal Buildings.

It's like we are having our own set of Enron's and Tyco's right here in Federal Contracting. And the question bears repeating, how did Waites get control of a Government Security Contract with that record? Security Officers are removed from these contracts for minor problems with their credentials (i.e., CPR First Aid cards expiring), much more, a problem with their 10-year background checks and suitability. Yet, we aren't even afforded an opportunity for an appeal. Under the GSA administration and control of these security contracts we had an appeal process. Weldon Waites will be afforded due process on his egregious acts, and he'll get an appeal. DHS will not write an appeal into the contracts. Security Officers are unjustly terminated from the contract without any due process. The result is that you lose good workers, and you open the Government to a due process claim in the Courts. UGSOA is advancing one right now. That one hasn't come cheap and it's wasting federal dollars. We don't have to waste the Department's time and money in the Courts and we don't have to waste ours. Every major procurement structure that requires clearances and suitability have due process for removal actions by the Government, with appeals. GSA had it, DOE has one,

NRC has one, NASA has one, and DOD has one. Its time for DHS to get on board with it.

LABOR RELATIONS and its IMPACT ON SECURITY, and COMMUNICATION

Collective Bargaining works, and to the betterment of not only employees, but the overall security network in the United States. In Region 6 of Dept of Homeland Security, the Heartland Region, UGSOA has developed a long-standing collective bargaining relationship with a contractor there. That history pre-dates DHS, when the procurement was managed by GSA. Annually, and as a direct result of the labor relationship, that Region of DHS consistently, year in, year out, scores the some of the highest and best returns in Audits of its security program. It is important to note that the contractor reports zero (0) overtime of the workforce and has managed to reduce their labor costs. Since labor costs can be a cost plus pass through to the Agency that translates to a cost savings to DHS as well. So, now it's not just a win-win for the contractor and their employees, it's a trifecta win for the Agency, the Employer, and the workforce.

Why is this important? Because, quite simply, **fatigue in a security workforce translates to security breaches and security mistakes.** We cannot afford that kind of mistake in a post-9/11 environment. We have proofs that enhanced security is not limited to DHS in collective bargaining. In the Nuclear Regulatory Commission's (NRC) arena UGSOA International Union negotiated a recent Agreement for the Security Officers who protect Three Mile Island nuclear plant. Overtime was rampant by The Wackenhut Corporation, and it had exceeded the newly imposed Regulatory levels. The NRC's new regulations were designed to stop excessive overtime worked at Nuclear sites by the

security staff. The new regulation changes still didn't stop the excessive overtime.

The new Agreement between UGSOA Local #18 and Wackenhut did something the Regulations could not do. It imposed mandatory staffing adjustments in the CBA. People of Harrisburg, PA can rest easier on that knowing that fatigue is less likely to be an issue while our Collective Bargaining Agreement is in place. UGSOA fully enforces its CBAs at Arbitration and in Federal Court. Finally the overtime is coming down and fatigue is not an issue.

This is the kind of positive impact that Labor can have on these contracts. We have to move away from this mind-set that Labor is another knot to untie in acquisitions, because we are not going to go away. Labor's findings truly expose contracting errors in concert with other oversight mechanisms. We can work together.

There is a common denominator between the labor issues and labor violations in all of the federal security contractors to DHS who I can report about (and there are a lot more than this): Each reportable contractor has the background of labor violations at the National Labor Relations Board, and at the Dept of Labor Wage and Hour Division, along with their record for security contract deficiencies. MVM, the contractor I just mentioned, has a rather large settlement with the NLRB regarding is Unfair Labor Practices to our Local #80 in the Nation's Capitol.

When FPS and ICE completed its "Tiger Team" review of critical payment problems to Contractors, UGSOA knew nothing about it. The resulting realignment of the Regional based procurement system to a consolidated 3 contract groups was never

communicated to UGSOA. I discovered this information, first, from a contactor that we negotiate and deal with, and then later when reviewing the testimony of Mr. Michael Jackson, Deputy Secretary for DHS, in his statement to the Committee in April. UGSOA should not have to hunt to discover this information or wonder if anything is being done or has been done. The reasons for communications extend beyond the contractor, to the Employee's Representatives as prescribed in the Service Contract Act Regulations[11], and the Federal Acquisition Regulations. Those regulations clearly and unequivocally require the procurement officials to keep the Unions of contract employees informed of the procurement process. Currently, we are not informed.

How does that translate to better security, and why should communication with a union representing employees on a government contract be an important part of the mission? Because we also have systems and laws for blowing the whistle that is recognized in the United States to inform Congress of the wrong activity that leads to poor performance. The contract employee's representatives are usually the first to filter and see a StarTech or Superior Protection unfolding before they happen; And isn't that what we are trying to end in this great effort to ensure that we protect our Homeland's critical Government infrastructure, both in a labor perspective, and a security perspective? Are we not trying to rid ourselves of the poorest performers? That comes through good communications and through an inclusive process not an exclusive process.

I talked previously about MVM's questionable labor record and current invoicing practices for double shifters. This is just one active example of the kind of whistle-blowing UGSOA can provide in the greater federal procurement security systems, but we

[11] Title 29 CFR 4.1b(b)(3), and FARs Part 33 (Title 48)

cannot do it without a open, and reciprocal, line of communication, and **an inclusive process**.

In late 2004 I wrote and fought to get a meeting with DHS about these matters. When I came to DC to meet with DHS about an inclusive role for UGSOA in the design and set-up of its procurement systems, I was told, and I quote, "we'll take your issues to the Secretary, but the message will likely be, 'go pound sand'." That's not the way to do business under the long-standing labor relations policy of the United States. Laws, case Law, and practice under those laws points us all to a good faith in dealing practice, and for labor inclusion. Now that was in 2004, three (3) years ago, and we can turn that around now that we've seen what a system that bucks the labor perspective achieves.

Do we blame FPS directly for the issues I've described? No. Do I blame DHS policy and its Acquisitions branch on how FPS is managing its physical security system overall? Yes. But playing the blame game is not enough and I don't like to tarry to long pointing fingers in the blame cycle. UGSOA does, however, get excited about fixing the problems, and that is where we are motivated today, to assist the DHS Acquisition system and the Inspector General, to identify what is wrong and why. The FPS inspects our contracts and reports back to the procurement teams of Contracting Officers and Contracting Representatives. Those reports are supposed to contain various mistakes, deficiencies, and issues that weaken security protocols on these contracts. They are critical component to the success of the federal security contract notwithstanding their

primary mission and functions of police response and patrol. When they cannot even complete their own mission because of the present staffing, how can we expect the contractors to have the necessary accountability from their inspections and reports? Moreover, we need to be increasing their staff oversight of contracts, and not talking about cutbacks. I suggest strongly to the Committee, that we should be talking about strengthening the budget for FPS and its contracting, or the system that creates the budget. Increases should be in order. I fail to see how accountability can be accomplished through cut-backs of staff who oversee the Contractor. I have worked these contracts when FPS was understaffed in Denver. When FPOs couldn't complete their patrols, we didn't get inspected. In many cases our credentials would expire and the contractor would slide. Then you would have security officers working with credentials out of date and qualifications expired and we are in scramble and clean-up mode after it digresses that far.

PRIOR REVIEW and CURRENT GOVERNMENT REVIEW AND OVERSIGHT

I've been tracking the various issues before this Committee. Some of the recent highlights are:

- the funding for FPS and how it is generated (tenant agency price per square foot),
- providing a prospective and autonomous budget of its own,
- the Department's problems of payments to contractors for security contracts, and
- The recent recommendations of the Department to cut back the Federal

conducting the government's business in an ethical, legal, and cost-effective way and *prevent* these companies from getting the contracts in the first place.

I am most anxious to hear our witnesses' opinions on these matters and their responses to other questions put forth by Committee members.

criteria used and held to the Contractors who own and operate these contracts, including their Executive Officers. One thing is for certain, we cannot afford to have another event like Superior Protection, with Jack Heard, or StarTech, with Weldon Waites. The performance plan has priorities marking each element throughout. This particular marker did not have any priority. I would offer that it is critical. Can the Inspector General ensure that the same criteria are applied to the Contractor as it happens in conjunction with your next audit of the review systems?

CONCLUSION

Finally, what doesn't translate to me, in the broader security perspective, is that we are doing a surge of troops overseas and cutting back our Homeland Troops in the United States. Shouldn't we talk about a build-up of our troops here on the Homeland; who are protecting the United States and its Government's critical government infrastructure. In light of that, my opinion is that if we can afford to do it overseas, then we can afford to keep from cutting back FPS and its oversight here. To do a cut-back now would appear to be a huge mistake.

CLOSING and RECOMMENDATIONS FROM UGSOA

Madam Chairwoman, I would not make these seemingly critical observations without an extension of UGSOA's promised assistance in this process to the Committee's investigations and also to Mr. Skinner and Ashley Lewis Director of the DHS Acquisitions policy. Whatever we can do to assist in these evaluations of the acquisition audits, either by providing your agents access to our Local leaders or members who have

seen the violations, please take advantage of that. It would be a huge resource to your audit teams. Unions on these contracts can act as a tool for management and oversight, but we included, invited, and asked about what we are observing.

In closing, this statement does not come without recommendations. I have a bullet sheet attached with those listed.

I know there are questions about Small vs. large Contractors performance on these security contracts, I'd be glad to answer any of your questions about our experience on questions related to that issue. (Generally, failure rates are higher for the smaller contractor… but there are exceptions and successes with many smaller contractors that are out there. We see them, and we know who there are. Large contractors better understand the continuity that must be maintained in the security workforce of these contracts. They have, many times, a true Labor Relations and Human resource Division that is dedicated to the transitions.)

Thank you for your time and I would be glad to answer any questions you might have.

Appendix A

1. Provide an Acquisition Labor Relations liaison to Employee Representatives of Security Contracts where support to DHS's procurement is required to advise on the various aspects of labor issues on these procurements in conjunction with the National Labor Relations Act, the Service Contract Act, and various other Whistleblower Protections.
2. A procurement layer that regularly calls for input from contractors and contractor employee representatives; coordinating conferences and committee meetings to keep the lines of communication open and receptive to the very real labor issues that have potential to translate into security issues.
3. We should be talking about better guidelines and increased visibility of the mechanisms that point security officers to the avenues where they can blow the whistle safely. Improvements to the system that protects the whistleblowers, strengthens whistleblower laws, and better informs current acquisition workforces how to / and who to, report waste fraud and abuse at the worksites.
4. An appeal structure for DHS procurements that provide pre, and post due-process, when carrying out an unsuitability / removal of contract security employees.
5. Holding regular annual forums, and invitations to meetings for DHS security Acquisitions Groups, Contractors, and Contractor Employee Representatives for guidance on Department Acquisition directional changes, and Q&A.[12] In concert with item 2 above.
6. Re-Orientation and Training for DHS Contracting Officers about their obligations under the Service Contract Act, Notice to Employees' Representatives/Unions and Labor Cost Modifications[13].

   (Many Contracting Officers do not understand these rules or how they work)

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[12] For Example: There are pilot programs throughout the United States that DHS is implementing: 1) moving from revolvers to semi-auto .40 calibers, 2) New targets and range testing requirements, 3) Federal Contract Court Security Officers covering FPS / FPO duties (Chicago), 4) soft look vs. hard look uniforms. All of these have effects on the terms and conditions of our employment and CBAs. Better information flow to the Unions and the Contractors eliminates assumptions and allows the contractor and the union to work on the issues in effects bargaining. Notwithstanding, better communication improves morale.

[13] Title 29 CFR 4.1b (b) (3), parallel cite in the FARs, under Part 33, and 29 CFR 4.53 and 4.163 (operation of 4(c) of the Service Contract Act for cost adjustments.

Good morning. My name is Assane Faye, International Union Security, Police and Fire Professionals of America (SPFPA), Washington DC District Director. I have held the position of Director for two and one-half years and have been employed by the International Union for three years. In the Washington DC/Maryland area, the International Union (SPFPA) represents nearly 2000 security officers, and on their behalf I would like to thank Madam Congresswoman, Eleanor Holmes Norton and Ranking Member, Mr. Sam Graves for allowing our case to be heard without much delay on this prestigious floor today. I also would like to thank the Mayor of Washington DC, Adrian Fenty, Corlis L. Sellers, Regional Administrator for the Department of Labor, Wage and Hour Division and particularly Enrique Lopez for working so diligently to bring our issue to the forefront of their agenda in the past six weeks, and Ms. Nina Ferraro, Contracting Officer for the U.S. Department of Homeland Security for the "Show Cause" Notice she issued so promptly to Startech, the day after her office received the Union's complaint.

Between April 26, 2006 and March 28, 2007, I negotiated the Collective Bargaining Agreements between SPFPA and Startech, covering the security

officers at the Food and Drug Administration building in College Park, the Washington DC Navy Yard, the National Data Center in Oxon Hill, MD, the USDA Center in Riverdale, MD, the Potomac Centers in Washington DC and Wheaton MD, the Department of Education FOB6 in Washington, DC, and the International Trade Commission in Washington, DC as well.

Shortly after the negotiations in 2006, the Employer began to show patterns of lateness on the payroll schedule. On a few occasions, employees were unable to get their paycheck until four days later, and the Employer, namely Mr. Weldon Waites, continually put the blame on the government for failing to make these funds available to the appropriate bank. He said his company was now doing business with the National Bank of South Carolina, but the U.S. government sent the funds to the wrong bank. As a good faith gesture, Mr. Waites offered the employees an additional paid vacation day. In May 2007 the problem reoccurred, except this time there were no funds available for the entire month. For two consecutive pay periods the Employer failed to meet its obligations under the Collective Bargaining Agreement as set forth in Article 26. A grievance was then filed by the Chief Shop Steward Bryan Smith underlining furthermore the Employer's failure to remit the Health and Welfare, and Pension Fund contributions to the respective

accounts. In most cases, these accounts were never contributed to in accordance with Article 25 of the Collective Bargaining Agreement. Additionally, the Employer stopped remitting the dues contributions to the International Union since August of 2006, which again violated Article 2, Section 1 of the Collective Bargaining Agreement.

On or about May 20, 2007, I spoke with Mr. Waites and requested a meeting. He agreed to meet with the union leadership on May 23, 2007 to explain the problems associated with the company's failure to pay wages on the first pay period of the month. On the day in question, Mr. Waites decided to join us via speaker phone; and there he spoke for about 45 minutes responding confidently to all the questions that were asked, and said with assurance that he had an overdraft protection account of one million dollars set aside solely for the purpose of covering unanticipated payroll deficiencies. He also said in the past he had to use two million dollars from Sharon and Weldon Waites' personal bank account to fund payroll. He further noted that this incident was merely ADP's negligence for sending unsigned checks on Friday. He said ADP also failed to print the bank's routing number on the checks, and that naturally made it impossible for the company to pay the employees. Interestingly enough, the employees did not

receive their wages even two weeks after and Mr. Waites' bank account with the National Bank of South Carolina showed a negative of $-1434.31 on June 1, 2007 (supporting documents available upon request). Later on during the meeting, I asked Mr. Waites to tell us about the Pension Fund, the Health and Welfare and the union dues contributions. He asked to be given be given some time to reconcile the figures, in order to be able to make payments. He once again blamed the Startech former Operations Manager, who he characterized as a poor performer, and consequently promoted Ann Marie Messner to General Manager. As a result, the previous Operations Manager resigned, and everything would now be back on track. Two days later, I found out that Mr. Waites himself wrote the resignation letter for his former Manager and demanded that he sign it, which of course this former manager refused to do. Mr. Waites tactfully put his own staff out of work, starved the security personnel and managed to avoid answering my question, which originally related to the Health and Welfare, Pension and dues contributions for which he is liable.

For clarity, I took the liberty of calculating an approximate dollar amount owed to the bargaining unit employees using the hourly wage rate as a unit of measure, assuming that all moneys, earmarked alike were already paid out

to Startech. If we use roughly a population of 1000 employees, which is about the capacity of Startech union and non-union employees included, times 160 hours of the month times $20.10 per hour, the answer would be $3,216,000 for the month of May alone. If we add to that $3.60 per hour for Health and Welfare times 160 hours per month times 12 months (although the Employer misappropriated this money for longer than 12 months) times 1000 employees, the answer would be $6,912,000 for 2006. Let's add again $0.75 per hour for the 401K plan times 160 hours per month times 12 months times 1000 employees, the answer is $1,440,000 for the 2006 alone. The sum of all three totals is equal to $11,568,000 in a twelve-month period, without including 10 sick days and 10 vacation days, assuming every employee has worked for the company for only one year. The approximate total would then be $11,568,000 + $3,216,000 which add up to $14,748,000. It is my hope that the government will not let Startech get away with that sum of money, since the sole access to remedy for the Union in this instance seems to be the Service Contract Act, and the Fair Labor Standards Act, or to respectively appeal to the resources of the Wage and Hour Division of the Department of labor and the National Labor Relations Board.

Unfortunately, under the bankruptcy shield, where Mr. Waites will presumably seek refuge, there is little assurance his corporate assets will meet the debt requirements, unless the negative account balance of June 1, 2007 finds its way up above par in a very dramatic way.

While the qualification prerequisites of security professionals are getting tougher to acquire, post orders are getting more stringent, and the post-911 era is yet to live past the first decade, we cannot allow bank foreclosures and bill collectors' threats and harassment to ruin the lives of our security professionals and their families.

We are at the dawn of a new generation of security and law enforcement, not only in the United States, but globally, and we must demonstrate quality leadership by example; but to do so we need our pride, dignity and respect restored.

Madam Congresswoman, Mr. Ranking member, the guard-force needs your help to collect these unpaid wages from Startech, and it needs it urgently. Thank you.

STATEMENT

OF

ASHLEY J. LEWIS

DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

"THE RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES"

JUNE 21, 2007

WASHINGTON, D.C.

INTRODUCTION

Chairwoman Norton, Ranking Member Graves and distinguished Members.

I want to thank you for this opportunity to appear before you today to discuss the Federal Protective Service's responsibilities to ensure contract guards protect federal employees and their workplaces.

As the Head of Contracting Activity for ICE, I have overall responsibility for managing the contracting activities within the agency including FPS. I have been with ICE for fourteen months, and since my arrival, improving the quality and effectiveness of FPS' contracting operations has been a top priority for me. The Assistant Secretary and other ICE senior leaders have made it clear to me that it is also a top priority for them so I have had the full support of leadership improving FPS contracting and more specifically within the FPS contract guard program. I am very pleased with the successes we have achieved in this short timeframe and I would like to take a moment to highlight just a few of these improvements for you.

First, with the full support of the Assistant Secretary, we realigned the contracting function within FPS to be more effective and efficient. Specifically, we reorganized the contracting function from a regionally-based structure to a consolidated operation that allows contracting professionals to leverage their experience and expertise to award and administer better contracts. The Assistant Secretary realigned the chain of command and

reporting structure for FPS contracting professionals to ensure they reported directly to me. Both the establishment of the consolidated contracting groups and the realignment ensures we have a cohesive and centrally managed acquisition function.

In addition to these organizational changes, we have made systemic improvements to our acquisition processes. We have given our employees the tools they need to ensure the contract guard program is managed properly including planning for new contracts, awarding those contracts and managing them afterward. We have promulgated many new policies and procedures that help not only our contracting personnel but also our contract guard program managers, inspectors, and contracting officer's technical representatives. We defined roles and responsibilities to ensure people are doing the right things at the right time. We developed surveys to determine how we can better support our requirements personnel; guidebooks for our COTRs; templates for our contracting personnel; and, among other things, we created a standardized and automated invoice process. We have many more improvements planned and we know that we will continue to see significant progress over the coming months.

I am most proud of our accomplishments with respect to the contracting workforce. As I am sure you are aware, contracting personnel are considered to be a critical shortage category within the Federal government. We are constantly competing with other Federal agencies to find the best and the brightest. With the support of ICE senior leadership, we have increased the number of contracting personnel within FPS and hired

qualified and talented employees. We consolidated most of the FPS contracting functions in Philadelphia, PA, where we have been able to attract extremely qualified and capable contracting professionals due to other agency closures and their attraction to the mission of FPS. While we are not yet fully staffed, I fully expect to have the vast majority of FPS contracting vacancy filled or selections in process by the end of the fiscal year.

We respect the work done by our contract guards and will work diligently to ensure they are paid in a timely manner and in accordance with the Service Contract Act and the terms of the contract. I know that recent events have raised concerns about the financial stability of our contract guard companies and their ability to perform and to pay their employees. In conjunction with your staff, we are researching methods to strengthen our ability to determine if a company may be in jeopardy. We are considering additional safeguards including requiring our contractors to notify us when corporate officers change and having the company recertify regarding past criminal activities of any new corporate officer; requiring notifications if payroll is missed or if there is a material change in the company's financial situation; and including in our newly issued FPS Contracting Officer's Technical Representative's Guide the requirement for our inspectors to closely monitor and communicate with company representatives any allegations of missed payrolls or similar allegations and to promptly report these allegations to the responsible contracting officer.

Finally, I want to inform you that over the last year, we have been establishing contingency guard contracts to provide emergency services in the event of a natural disaster or in the event one of our contractors cannot satisfy the terms of the contract. We hope to have these contingency contracts in-place within the next few months.

Thank you again, Chairwoman Norton and Ranking Member Graves, for holding this very important oversight hearing. I would be pleased to answer any questions.

Written Statement of

Ann Marie Messner
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Waynesboro, PA 17268

Former Chief Operating Officer and General Manager
Systems Training and Resource Technologies, Inc. ("STARTECH")

Before the
U.S. House of Representatives

Committee on Transportation and Infrastructure

Subcommittee on Economic Development, Public Buildings,
and Emergency Management

Regarding

"The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces"

Thursday, June 21, 2007
10:00 a.m.

Rayburn House Office Building, Room 2253
Washington, D.C.

INTRODUCTION

Chairwoman Norton, Ranking Member Graves, and Distinguished Members of the Committee. Thank you for the opportunity to provide testimony on the protection of Federal employees and their workplaces.

I began my career as a contract guard on the first of February, 1990. For the next sixteen years, I was part of a team that protected the National Emergency Training Center, a Level IV federal facility that was brought under the umbrella of the Department of Homeland Security when that agency was formed. Eventually, I was promoted to Project Manager, attaining the rank of Major.

Over the course of those sixteen years, I worked for a total of five contract companies. Our site was inspected by corporate quality insurance personnel once. We were never inspected by, nor had any other contact with, the Federal Protective Services.

In October 2005, STARTECH was replaced by another company through the procurement process. I elected to remain with the company, and was moved to corporate headquarters as an administrative assistant. At the time of my resignation twenty months later, I was Chief Operating Officer and General Manager. Although my dealings with the FPS were limited to the last few months of my tenure with STARTECH, my experience in the contract security industry is extensive. Please take that into consideration when determining the value of my testimony.

BACKGROUND

STARTECH was incorporated in the District of Columbia on April 25, 1989. Over the next twenty-five years, the company grew to more than five hundred employees, with annual revenue of approximately twenty-seven million dollars. Under the leadership of Mr. Marion Pinckney (then President) and Mr. Randall Ford (Founder and then Vice President) the company enjoyed prosperity without compromising integrity. Both Mr. Pinckney and Mr. Ford insisted on professionalism at all times from all employees; there

was an atmosphere of mutual respect and consideration expected from, and given to, all. STARTECH had a stellar reputation initiated and maintained by them.

Mr. Pinckney and Mr. Ford both became near incapacitated by illness. Mr. Pinckney died in 2004, and Mr. Ford began a semi-retirement; a portion of the company was put up for sale. Weldon Waites was then the company insurance man, and had been assisting with the management of the company in some capacity. Mr. Waites appreciated the opportunity presented, and purchased seventy-five percent of the STARTECH stock in May of 2005.

The prosperity of the company continued, for a while. A key element in that continued prosperity was the unblemished relationship with the Department of Homeland Security. According to Form 1099-MISC, STARTECH's five security contracts with the DHS generated $13,182,357.70 in tax year 2006, a figure that equates to roughly half of the company's annual revenue. (Exhibit 1)

And yet there was not enough money to fund payroll, on more than one occasion.

A LIKELY STORY

It is highly likely that that there will be some form of testimony in which the demise of STARTECH resulting from the failure to make payroll is, at least in part, due to the failure of DHS to pay valid invoices in a timely manner. That is a theory I have heard ad nauseum over the past several months, and although there may have been some truth to it a year ago, I do not believe it is the case now, and hasn't been since the first of this fiscal year.

This theory has recently been used to initiate a Congressional Inquiry of its own, resulting in strained relations between company and clients due to what I believe are unfounded allegations. The letters referenced as "Exhibit 2" generated multiple phone

calls from several clients who were understandably confused, as was I when my research failed to reveal any supporting documentation. In fact, the evidence I had supported just the opposite. There are some occasional, relatively minor, delays in payment that result in the government paying interest for a few days, but certainly nothing that would jeopardize an otherwise viable company.

DHS INVOICING AND PAYMENT HISTORY (recent)

Generally speaking, there has been a noticeable improvement in the timely payment of accurate, valid invoices since approximately September 2006. I specifically noted "accurate and valid" because contractor errors in invoice submission (format, information, calculations, etc.) cause many of the delays STARTECH has historically attributed to untimely payments from DHS. The invoices and confirmations of receipt of payments provided in "Exhibit 3" verify that most payments are received fairly quickly, certainly within reasonable time periods, and especially when compared with payments prior to approximately May 2006. There are a few payments that were received later than anyone would have liked, however, many of those were for invoices that were aged six months or more, for "Temporary Additional Services", that required additional research on the part of newly assigned Contract Officers.

All provided payment notices reflect days and amounts of any interest paid. Specific examples of unusual invoice and payment situations are detailed immediately below.

Example 1

In July 2006, several invoices for DHS contract HSHQ-CEMP-05-F-000164 were identified by STARTECH as under-billed. The under-billing occurred due to a material change in monthly billing rates associated with a contract modification. Seven invoices were prepared, all of which were paid on October 18. Although thirty-four days of interest were paid, these particular invoices would have required additional research by the government to verify validity, as invoices for those services had already been submitted and paid. A delay of thirty-four days is, in my opinion, certainly reasonable

considering the circumstances. The delay generated an additional $1,082.52 in interest income; this unanticipated additional revenue did not generate any complaint from STARTECH. (Exhibit 4)

Example 2

In August 2006, the DHS Contract Officer identified several STARTECH invoices that had not been paid and were seriously overdue. The Contract Officer requested STARTECH file a claim under the Contract Disputes Act. When I advised the Contract Officer I was not familiar with the process, she provided all the guidance and assistance needed to file the claims. The probability of these claims being filed correctly, or paid quickly, would have been significantly reduced without the assistance of the Contract Officer. (Exhibit 5)

There were thirteen separate claims filed under DHS Contract GS-11-P-00-MQC-0012. These claim letters were sent to the Contract Officer via e-mail at 9:22 p.m. on September 14. The Contract Officer's response, in favor of STARTECH, was received by close of business on September 15. (Exhibit 6)

There were ten separate claims filed under DHS Contract GS-11-P-00-MQC-0012. These claim letters were sent to the Contract Officer via e-mail at 10:07 p.m. on September 14. The Contract Officer's response, in favor of STARTECH, was received by close of business on September 15. (Exhibit 7)

Example 3

A Contract Specialist under this same Contract Officer identified several "Temporary Additional Services" orders that were performed by STARTECH yet never billed. Six invoices were submitted, and were paid very quickly; three invoices on-time, and three invoices with only one day interest each. The actions of the Contract Specialist, under the guidance of the Contract Officer, resulted in expedited payment for invoices that most likely would have remained unbilled, attributable solely to the inadequate business practices of STARTECH. (Exhibit 8)

FINANCIAL IMPROPRIETY, Part 1

My theory of the demise of STARTECH is in stark contrast to any attempt to blame late payments from DHS or anyone else. It is my considered opinion that STARTECH committed suicide, dying at the hands of its controlling owner, Mr. Weldon Waites.

DCAA Audit, 09/29/05

On September 29, 2005, the Defense Contract Audit Agency (DCAA) prepared Audit Report No. 06331-2005A17740012 (Exhibit 9). In that report, "nine significant deficiencies in the contractor's accounting system" were identified. Those deficiencies resulted in a comment in the Executive Summary that "The contractor's design of the accounting system is not acceptable for the award of a prospective contract." Further, in the section headed "Results of Audit", the report states in part "The accounting system is non-existent for Government contract accounting purposes..."

Each deficiency was described, and a recommendation for correction was provided. STARTECH responded to each deficiency with promises to correct the problems. The auditor offered, in writing, to return upon request "after the policies and procedures have been in practice for a sufficient amount of time" to reevaluate. Nearly two years later, I could find no evidence of any progress on the correction of any deficiency noted in the audit report.

Bank of America Forbearance and Standstill, 06/14/06

When Mr. Waites purchased controlling interest of STARTECH in May 2005, the company's financial institution either was or immediately became the Bank of America. On or about June 14, 2006, the Bank of America issued a default notice to STARTECH (Exhibit 10). In addition to several areas of non-compliance with terms and conditions of the loan agreement, the default notice was caused by Mr. Waites' failure to report a prior criminal history. Mr. Waites reported this directly to me, stating that he had served some time at a "camp", due to a misunderstanding. He stated he hadn't felt it necessary to report that event, as it had occurred well in the past and was a minor issue.

Since that time, I have learned that the "minor" issue he reported to me was actually an indictment for "29 counts of conspiracy, bank fraud, false statements, and money laundering". Mr. Waites pled guilty, and was sentenced to eighty months in federal prison (actual release date April 17, 1997). An appeal for a reduction in sentence was argued June 5, 1992, and decided against Mr. Waites July 31, 1992. (Exhibit 11)

First Horizon Default and Demand, December 2006

The next financial institution used by STARTECH was First Horizon, beginning on or about July 2006. On December 15 of the same year, First Horizon issued STARTECH a notice of default for, among other things, "The failure of the financial statements to be complete and correct in all material respects..." This notice of default was followed by a "Demand for Payment" on December 22, 2006. That letter demanded payment in full of over $4.5 million on or before January 31, 2007 (Exhibit 12).

Mr. Waites began the search for alternative financing, making it clear that the institution who offered the most money would "win" STARTECH's business. As First Horizon tightened the purse strings, a shift in priorities was made to "whoever puts the money on the table first wins". At one point, there were five or six financial institutions in the running, with daily (sometimes hourly) announcements from Mr. Waites as to who was "priority" at that particular time. Eventually, Marquette Commercial Finance was declared the "winner".

Unlike Bank of America and First Horizon, Marquette was not a bank but a "factoring" company. With Marquette, there would be no borrowing base availability, loan or revolving line of credit; invoices less than ninety days old would be sold outright, with ninety percent of the proceeds immediately available to STARTECH in the form of cash. The deal was finalized on or about March 6, 2007.

Marquette Reconciliation, March 2007

On or about March 19, Marquette identified a problem with several (DHS) invoices that had been "factored", with the proceeds paid to STARTECH. (Exhibit 13) The problem was that DHS had already paid STARTECH directly for the invoices in question. (Exhibit 14) In essence, STARTECH was paid for the same invoices twice.

On March 30, 2007, Marquette sent written notice of intent to terminate the relationship thirty days from the date of the letter, citing in part "MCF has now learned that such representations were false and that invoices totaling $1,896,663.71 had already been paid by the account debtor." (Exhibit 15)

Marquette remained with STARTECH at least through my departure on June 6, 2007, as alternative funding had not yet been acquired. The relationship was strained at best, due to the circumstances of the initial financial agreement as well as STARTECH's continuing failure to cooperate fully with Marquette or their delegates. Between the continuous unfilled promises of closing with alternative funding companies and the directives to discontinue work on any and all requests made by Marquette, the strain was increased by Mr. Waites on a regular basis.

As evidence of this, I offer the following: on May 29, Mr. Waites and Mr. Reginald Ebo (STARTECH CFO February-May 2007) were copied on an e-mail notification of a payment received by First Horizon in the amount of $323,201.57. The author was requesting confirmation of ownership of the proceeds of the invoice and instructions to wire to Marquette upon verification of ownership. Mr. Ebo received a directive from Mr. Waites' personal e-mail account advising him "Do not reply to this e-mail until further notice. Sharon and WW". Understandably concerned, Mr. Ebo forwarded that e-mail to me, and I sent it back to Mr. Waites with the message "This payment belongs to Marquette. It was factored." Mr. Waites' response to me was "OK....I surrender. Just thought I would use it as leverage. WW" (Exhibit 16)

FINANCIAL IMPROPRIETY, Part 2

The search for finances to replace Marquette coincided with the default notice of March 30, and continued to my departure from STARTECH on June 6.

Multiple companies were contacted, multiple financial "consultants" were retained or continued, and multiple "Accounts Receivables" reports were identified.

Of particular note, on May 16, I was copied on an e-mail that had an "AR" report attached. That "AR" report, dated May 2, showed a total amount receivable of $12,215,905.83. I also noted that the only account showing invoices in excess of ninety days was account number 15: Frontier/Pentagon. This left in excess of nine million dollars in the "eligible" status for lenders, as they were less than ninety days old. The detailed portion of the "AR" report showed multiple invoices which had had the date changed to May 3 to make them current. (Exhibit 17)

In contrast, a different "AR" report was generated on May 9, one week after the one in question. The May 9 report indicated a total of $5.2 million in receivables, with approximately $3 million "eligible" (less than ninety days aged). The May 9 report definitely presents a more accurate financial picture of STARTECH at the time (Exhibit 18), however, was not being provided to the financial institutions. Instead, the May 2 report was provided, presenting an artificially overstated availability of collectable invoices.

In simplified terms, STARTECH was in desperate need of money, and lots of it. An "AR" report showing $12 million in outstanding invoices due and payable results in $7 million in additional availability of funds versus the $5 million report.

Needless to say, any financier who conducted a due diligence audit of STARTECH finances realized the true financial state of the company, and withdrew offers of finance.

FINANCIAL IMPROPRIETY, Part 3

STARTECH's "Accounts Payable" presented another challenge. The May 15 "AP" report shows nearly $700,000.00 in STARTECH's unpaid bills, including $391,578.36 in bills over ninety days old. (Exhibit 19) Since January 2007, STARTECH paid very little of their considerable expenses. Mr. Waites' personal expenses, however, were paid on a regular basis.

Cases in point, reference entries on the May 15 report:

- Avista CCO, Inc. is related to a condominium in Myrtle Beach, South Carolina
- B.S.I. Properties refers to Benefits Solutions, Inc., a company Mr. Waites owns. Payments here are for storage, reportedly for Mr. Waites' yacht
- Chase Home Finance, LLC is the mortgage for the Myrtle Beach condominium (also, NBSC check number 92 was written on January 13, 2007 to the "Synovus Mortgage Company" for the "coastal office complex", Exhibit 20)
- Countrywide is another Waites mortgage, for a condominium in Washington, D.C. (also, NBSC check number 93 was written on January 13, 2007 to the "First Savings Mortgage Corp" for "D.C. living allowance", Exhibit 20)

Additionally, the following information was found:

- NBSC check number 97 was written on January 15, 2007 (Exhibit 20), payable to "Kawliga". Mr. Waites signed a commercial lease agreement between STARTECH and Kawliga for "Gamecock Pavilion Lot B-3 and Lot B-4", two parking spaces at the University of South Carolina (Mr. Waites alma mater). (Exhibit 21)
- On August 1, 2006, Mr. Waites signed a promissory note in the amount of $50,000.00, to be "repaid in full 1 month from the execution of this Note." The note was repaid on August 9, 2006, with STARTECH check number 16068. This was not a loan to STARTECH. (Exhibit 22)
- In the Bank of America Forbearance and Standstill Agreement of June 14, 2006 (Exhibit 10 previously cited), under the covenants (page 8 section 11), the agreement specifically states the following: "That except for a monthly distribution to Weldon D. Waites in the amount of $10,00.00 on the first day of

each month during the Forbearance Period, the Borrower hereby agrees that neither Weldon D. Waits, Sharon F. Waites nor any Person affiliated or related to either of them by blood, marriage or otherwise shall receive from the Borrower, or any source or Person related to or affiliated with the Borrower, any monies or remuneration of any kind, whether in salary, bonus, distribution or otherwise, through the term of the Forbearance Period..." Mr. Waites received his July "monthly distribution" in the form of check number 15995, written on July 10, 2006 reference "Allotment". Mr. Waites continued to receive his normal salary in addition to the "monthly distribution", in spite of the Covenants of the Forbearance notice. (Exhibit 23)

THE END

Fruitless efforts to procure financing continued. Mr. Waites repeatedly assured all who would listen that bridge and/or permanent finance was imminent. Specific to payroll, Mr. Waites gave numerous accounts of how that financing was being accomplished (wire transfers, cashier's checks, private funding, etc.)

Payroll due to employees on May 4 was late, due to lack of funds. Funds were deposited in STARTECH's account on or about May 8, however, because the account was in South Carolina at a state level bank, employees did not have access to funds until after successful completion of a five to seven day hold (by their personal banks)for verification of funds.

May 18 paychecks were issued without third party verification of available funds. Contrary to Mr. Waites' assertions that funding was "in the bank", over two thirds of that payroll was returned due to insufficient funds. Mr. Waites continued to claim the funding was there and available, stating he had watched the wire go through, was in line at the bank with a million dollar cashier's check to deposit, and that he had secured a home equity line of credit that would cover all checks.

Payroll for a non-DHS contract was due on May 24. Mr. Waites had assured the Project Manager, Contract Officer Technical Representative, union representation, and me in

separate conversations that the money for the May 24 payroll, as well as the May 18 payroll, would be in the bank and available by noon on May 24. The funds never arrived.

I notified all corporate and management staff of the situation via e-mail on May 25, asking the information be disseminated to all field personnel "by any means necessary". At that time, Mr. Waites was assuring everyone that the money would be in the bank by 3 p.m. on Tuesday, May 29 (Memorial Day Weekend interfered with earlier availability). (Exhibit 24) The funds never arrived. (Exhibit 25)

June 1 was the next pay date. I saw no hope of funding. On May 31, I received a notice of post vacancies for contracts HSHQ-CEMP-05-F-000164 and HSHQ-CEMP-05-F-000155 in the morning (Exhibit 26), and a "Show Cause" notice for all DHS contracts in the afternoon (Exhibit 27).

That evening, I held a meeting with all available Project Managers, Supervisors and Union Shop Stewards to provide information and answer any questions I could. Everyone present who was associated with a DHS contract pledged continuing support and loyalty to STARTECH, including remaining on post, unpaid, until the situation was rectified.

On June 1, I responded to the "Show Cause" notice. Part of that response included the line "It is in the best interest of the federal government to revoke all STARTECH contracts, and to immediately issue them to another, reliable contractor." (Exhibit 28)

All DHS contracts were formally terminated "for cause" on June 3. (Exhibit 29)

IMPACT ON STARTECH EMPLOYEES

Exhibit 30 lists all 533 employees who have not been paid.

In addition to not being paid, payroll deductions were made for employee benefits including health insurance, 401k/pension and union dues. STARTECH has not forwarded these payroll deductions on to the providers of the benefits. (Exhibit 31)

Exhibit 32 documents the unpaid pensions.

Exhibit 33 was received on May 23, and documents employee sentiments towards STARTECH with regard to payroll and benefits.

CONCLUSION

When I left the NETC in favor of remaining with STARTECH, it was primarily because I wanted to be a part of a company I could be proud of associating my name with. It was my intent to do everything I could to help STARTECH become the premier Security company and "the benchmark by which all others are measured". Obviously, my plans have changed.

The stated purpose of this hearing is "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces". I respectfully submit to you that:

- The Federal Protective Service does not protect all federal buildings, as evidenced by my sixteen years at the NETC
- The Federal Protective Service cannot possibly protect 8900 federal buildings with a staff of 1200
- The people who are actually protecting you are contract guards, 15,000 strong
- In order to protect to effectively, the guards need
    - Realistic training
    - Equipment that is functional
    - Support, from both employers and clients
    - Paid, on time and in the full amount (including benefits)
    - Establishment of national standards

- Communication
- Trust

A little respect wouldn't hurt either.

Thank you for this wonderful opportunity. It is an experience I will never forget.

GOOD MORNING LADIES AND GENTLEMAN,

MY NAME IS LATANYA MONTGOMERY. I AM A FORMER EMPLOYEE OF THE NOW DEFUNCT STARTECH INTERNATIONAL SECURITY AND A SHOP STEWARD FOR THE SPFPA INTERNATIONL UNION, SERVING THE MEMBERSHIP AT THE FOOD AND DRUG ADMINISTRATION/COLLEGE PARK, MD.

I DO NOT WISH TO PONTIFICATE BUT TO SPEAK TO YOU THIS MORNING FROM THE POINT OF VIEW OF A SINGLE MOTHER OF FOUR.EVEN THOUGH I REPORTED FOR WORK EVERYDAY THAT I WAS SCHEDULED, OVER THE PAST 8 WEEKS I HAVE BEEN COMPENSATED FOR A MERE TOTAL OF 40 HOURS OF THOSE HOURS OF SERVICE.

AS I MENTIONED BEFORE I AM THE SINGLE MOTHER OF 4 CHILDREN, ONE OF WHOM RECENTLY GRADUATED FROM HIGH SCHOOL ON JUNE 1, 2007. MY DAUGHTER WAS DEPRIVED OF THE GRADUATION CELEBRATION THAT I PLANNED FOR THE BIGGEST DAY OF HER YOUNG LIFE, DUE TO MY CURRENT FINANCIAL SITUATION. MY SAVINGS HAVE BEEN DEPLETED AND MY CHECKING ACCOUNT STANDS OVERDRAWN.

I WANT EACH OF YOU TO IMAGINE THE DISAPPOINTMENT IN THE FACES OF MY CHILDREN WHEN I HAD TO EXPLAIN THAT MOMMY DOESNT HAVE THE MONEY TO DO NORMAL EVERYDAY THINGS SUCH AS A TRIP TO THE GROCERY STORE WHEN WE HAVE RUN OUT OF MILK. THE FEELING FOR ME IS INEXPLICABLE. I WANT EACH OF YOU TO IMAGINE THE EMBARASSMENT

I HAVE FELT ON A CONTINUOUS BASIS HAVING TO BURDEN FAMILY MEMBERS AND FRIENDS FOR FAVORS AND LOANS THAT I AM UNSURE OF WHEN OR IF I COULD PAY BACK.

I STRUGGLED EVERY MORNING WITH IMPETUOUS THOUGHTS OF WHY SHOULD I GO TO WORK WHEN I DIDNT KNOW IF OR WHEN I WOULD BE COMPENSATED FOR THE SERVICE I PROVIDED FOR AND UNDER STARTECH INTERNATIONAL SECURITY.MY CHILDREN, FAMILY, AND FRIENDS ASKED THE SAME QUESTION OF ME.I HAD TO MAKE A CONCIOUS DECISION EVERYDAY TO BE AN EXEMPLAR EXAMPLE FOR MY CHILDREN, THAT IT WAS MY DUTY AND TO HAVE FAITH THAT I WOULD MAKE IT THROUGH THIS DETRIMENTAL HARDSHIP, STRUGGLE, STRESS, AND STRIFE.

I AM NOT A GOVERNMENT OFFICIAL, MILITARY PERSONNEL, OR EVEN A POLICE OFFICER, BUT I AM ESSENTIAL. I AM THE FIRST DEFENSE, THE EYES AND EARS FOR THE FEDERAL PROTECTIVE SERVICE AND HOMELAND SECURITY. A DETERRENT IF YOU WILL. SO EVEN AS THE MORALE OF MYSELF AND THAT OF MANY OTHER CONTRACT GUARDS IS AT AN ALL TIME LOW I, WE CONTINUE TO REPORT FOR DUTY.

I FEEL FURTHER VICTIMIZED (INDIRECTLY IF YOU WILL)BY THE RED TAPE, INVESTIGATION, AND THE TIME IT TAKES TO DEVISE AND IMPLEMENT A PLAN OF ACTION TO RIGHT THE WRONGS THAT HAVE BEEN DONE. HOW LONG DOES IT TAKE TO RECONCILE THIS SITUATION? THIS IS THE UNITED STATES OF AMERICA,WHERE I AS A CITIZEN DEPEND ON YOU (THE POWERS THAT BE)TO PROTECT ME FROM UNHEALTHY AND UNFAIR LABOR

PRACTICES.

I HAVE WAITED AND WONDERED WHERE IS THE GOVERNMENT, SURELY THEY MUST KNOW OF MY PRESENT PREDICAMENT. THERE MUST BE SOMEONE WHO MONITORS THE CONTRACTING COMPANIES AFTER AWARDING MULTI-MILLION DOLLAR CONTRACTS. WE AS CONTRACT GUARDS HAVE QUALITY ASSURANCE PERSONNEL FROM THE DEPARMENT OF HOMELAND SECURITY COME INTO OUR RESPECTIVE WORKPLACES AND GOVERNMENT FACILITIES TO ENSURE THAT THE OFFICERS ARE IN COMPLIANCE ON A CONSTANT EVERYDAY BASIS WITHOUT WARNING. THE QUALITY ASSURANCE PERSONNEL CHECK EVERYTHING, ESPECIALLY THE CREDENTIALS YOU MUST OBTAIN AND KEEP VALID IN ORDER TO CONTINUE TO WORK ON THAT GOVERNMENT CONTRACT. WHERE IS THE QUALITY ASSURANCE FOR THE ACTUAL COMPANIES?WHO GOES TO THE OFFICES,AND CHECKS THE FINANCIAL STATUS OF THE HEADS OF THE COMPANIES TO MAKE CERTAIN THAT THEY ARE IN COMPLIANCE?WHO MAKES SURE THAT THE HEADS OF THESE COMPANIES HAVE OBTAINED AND MAINTAINED ALL OF THE REQUIREMENTS TO CONTINUE TO DO BUSINESS WITH THE UNITED STATES GOVERNMENT?

WITH RESPECT TO THE MATTER AT HAND AND THE REASON FOR THIS HEARING TODAY, I PROPOSE THAT THE MORALE OF THE CONTRACT GUARD IS THE SOLUTION FOR SAFE AND SECURE FEDERAL EMPLOYEES AND FEDERAL OFFICE SPACE.I ALSO IMPLORE YOU TO FORM A DIRECT MEANS TO EXPEDIANTLY DEAL WITH THOSE COMPANIES WHO WOULD CONTINUALLY

VIOLATE THE SERVICE CONTRACT ACT, AND THE COLLECTIVE BARGAINING AGREEMENTS IN PLACE RESPECTIVELY, AND TO BRING FORTH AND RESOLVE THESE SITUATIONS AS THEYARISE. TO EXPEDITE AND FACILITATE THIS RESOLVE IN SUCH A MANNER SO THAT WE AS ESSENTIAL CONTRACT GUARDS DO NOT HAVE TO SUFFER LENGTHY PERIODS OF TIME WITHOUT RESULTS AND COMPENSATION.

I BELIEVE THAT I CAN SPEAK FOR MY FELLOW OFFICERS WHEN I SAY, THE FEELING OF THE IMPACT OF THE CURRENT STATE OF AFFAIRS IS ONE OF ANNIHILATION.I FEEL THAT EXAMPLES NEED TO BE MADE AND EXEMPLARY DAMAGES SHOULD APPLY AND ARE IN ORDER.

I PRAY THAT I WILL NEVER EXPERIENCE SUCH HARDSHIP AGAIN.MY FAMILY AND I HAVE SUFFERED LONG ENOUGH.

THANK YOU.

STATEMENT

OF

GARY W. SCHENKEL

DIRECTOR, FEDERAL PROTECTIVE SERVICE

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

"THE RESPONSIBILITY OF THE DEPARTMENT OF HOMELAND SECURITY AND THE FEDERAL PROTECTIVE SERVICE TO ENSURE CONTRACT GUARDS PROTECT FEDERAL EMPLOYEES AND THEIR WORKPLACES"

JUNE 21, 2007

WASHINGTON, D.C.

INTRODUCTION

Chairwoman Norton, Ranking Member Graves and distinguished Members, thank you for this opportunity to appear before you today to discuss the Federal Protective Service's (FPS) responsibilities to ensure that contract guards protect federal employees and their workplaces, along with FPS's response to a recent situation within the National Capital Region (NCR) regarding the contract guard security company, STARTECH.

The contract guard program is a critical mission requirement of the FPS. Approximately 15,000 contract security guards stand post throughout the nation protecting federal facilities under the direction and control of FPS. FPS Inspectors monitor compliance with contract requirements each and every day. Guards are the front line of defense with their federal partners at FPS. We are proud of the progress we have made in the last year and we are thankful to Inspector General Skinner and his staff for their ongoing work with us in the management of this program. I hope that both I and Ms. Lewis will have an opportunity to share our progress and some of the challenges that still remain for FPS.

FPS remains committed to the highest level of security contractor compliance and we fully understand it is a critical component of our mission. Our Inspectors are actively monitoring compliance each and every day and we have made tremendous progress in the NCR and throughout the country within the last year. I wonder what would have happened if the recent events that bring us to this hearing had taken place one year ago,

before we had implemented some of the strong management controls put in place after the review by the Inspector General and our own restructuring. In that event, I am not certain that FPS would have had such a seamless transfer of responsibilities, ensuring that our posts were covered and that the men and women who work and visit those affected facilities were fully protected.

I wish to provide a high level review of some of the improvements that have been instituted over the last year within FPS. We established and strengthened the Centralized Contracting Group within FPS, strengthening those resources by adding 22 additional personnel. We addressed previous problems with delays in payments of invoices and completed the transition to a centralized invoicing process as of May 14, 2007. The average processing time from receipt of invoice to scheduled payment is now 13 calendar days, which has been consistent for the past three months. During this same period 940 of 1,000 invoices have been paid on time, and 57 total invoices had interest charges of approximately $8,800, and we were able to realize $24,000 in discounts during this same period due to early payments of the invoice.
Additionally, we have made Contracting Officer Technical Representative (COTR) training a priority, and trained over 180 Inspectors in the NCR and throughout the nation this last year. We have also just rolled out a new COTR guidebook for FPS Inspectors.

We want to work with the committee on other approaches to address the real systemic issues that we continue to uncover and address. We will review various approaches to

include certain certifications by companies and their principal officers and further reporting requirements related to changes within the company.

However, I would like to now focus on recent events that were of serious concern to FPS, to our partners in the security guard industry, and to this Subcommittee.

On Saturday, May 26th, the Regional Director FPS in the NCR was informed by U.S. Department of Agriculture (USDA) security personnel of a rumor concerning possible default of payment to contract guards within the NCR by STARTECH.

STARTECH is a contract guard company that provided security guards to 14 facilities in the NCR under five contracts administered by FPS. One of the contracts was awarded in July 2001; a second contract was awarded in September 2003. Both of these contracts were later extended by FPS by exercising pre-priced option periods. The other three contracts were issued by FPS between July 1, 2005 and April 6, 2006.
The FPS contracts with STARTECH called for 82 Guard Posts and 14 Supervisory Posts for a total of 96 Posts that were established in 14 locations throughout the NCR in Washington, D.C. and Maryland. STARTECH also had contracts with other federal agencies, including USDA, to protect facilities that operate under delegated authority and/or other real property authority.

FPS immediately reached out to STARTECH. On Sunday, May 27th, FPS heard back from STARTECH's Director of Operations for the NCR, Mr. Kevin Grandy. The Director of Operations stated that the company had internal accounting issues and that payroll funds had been sent to the wrong account. He stated further that the company was not going out of business and that he would contact his personnel to ensure that employees were paid and facilities were covered.

Despite the assurances of the Director of Operations, FPS took additional steps to monitor these facilities. Specifically, to gain situational awareness, we dispatched uniformed FPS personnel to monitor security on-site at each facility and confirm contract guard presence.

FPS also confirmed that all invoices and payments to STARTECH were up to date. The FPS Consolidated Contracting Group (CCG) also began to make numerous unsuccessful attempts to contact the President of STARTECH or other company officials at STARTECH headquarters to discuss the status of the company. At the same time, FPS Contracting staff reached out to the Department of Labor for assistance. FPS's NCR immediately developed contingency plans and contacted all affected agencies to brief them on the potential for contract default. The FPS NCR contingency plan provided for uniformed FPS personnel at all 14 NCR facilities to ensure continuity of all operations if STARTECH defaulted on its contract.

On Wednesday, May 30th, we were contacted by a staff member of the full committee through ICE's Office of Congressional Relations. The staff member wanted to inform FPS that this office received complaints from the union representing the contract guards and that the office believed that other irregularities might exist with STARTECH, which could possibly cause the company to go into default.

FPS continued to actively monitor the situation through May 31st. FPS was very concerned that no one in STARTECH management had been responding to our inquiries. Based on our personnel's conversations with the guards, it appeared that STARTECH management was being exceptionally quiet regarding any adverse situation that may have existed within its parent company even to its own employees.

The STARTECH security guards remained on post but all indications were that there were serious concerns related to actions within the company. After not receiving adequate communication in response to inquiries, the FPS Contracting Officer issued a Show Cause Notice to STARTECH on May 31, 2007, which covered FPS's five existing contracts with the company. This letter set forth the various issues that had been brought to FPS's attention and clearly advised that these matters were considered to be endangering contract performance. STARTECH was required to respond to FPS in writing not later than 4:00 PM EST on June 1, 2007. In a conference call, conducted at STARTECH's request at approximately 2:00 PM EST on June 1, 2007, in response to the Show Cause Letter, the President of STARTECH did not provide a reasonable response to questions presented to her by the FPS Contracting Officers.

On June 1st, at 6:15 p.m., I personally visited the Social Security Administration/Department of Education Building located at 500 E Street, SW, Washington D.C. to evaluate the situation. After this visit, I had sufficient information to make the determination that STARTECH was failing to comply with the terms of its contract.

On Friday evening, June 1st, FPS, after receiving an inadequate response to its Show Cause letter, again contacted the Department of Labor and secured an emergency withholding request, which allowed FPS to withhold payments from STARTECH. DOL immediately initiated an investigation of STARTECH for the alleged wage violations impacting security guards at the 14 facilities covered by FPS contracts.

During the weekend of June 2nd and 3rd, FPS scheduled uniformed FPS Inspectors to be on-site and observe STARTECH operations and to provide any security coverage needed in the event of STARTECH's failure to fulfill its contract. On Sunday, June 3rd, FPS terminated the STARTECH contracts for cause after STARTECH failed to staff five additional contracted guard posts over the weekend that were covered by FPS Inspectors.

At the same time, members of FPS's CCG issued an emergency contingency Request For Quotations (RFQ) seeking quotes for services covered by the STARTECH contracts in

the NCR. CCG staff reviewed the bids, and, working with ICE HQ, ensured that a new contract was in place by Monday morning, June 4.

FPS took action to actively assist the security guards previously employed by STARTECH. A great majority of STARTECH guards remained on post, dedicated to their mission and at personal financial risk. On Monday, June 4th, I personally spoke with the Chief Executive Officer of NASPSO, the major union representing STARTECH employees, to encourage him to have his members contact Frontier Contract Guard Company, the new contractor. Frontier pledged to do everything it could to ensure that the former STARTECH employees were hired onto its payroll as soon as possible with no lapse in service for the guards. The men and women of STARTECH who stood post did nothing wrong and we salute their dedication.

ICE/FPS Consolidated Contracts Group (CCG) officers are working tirelessly and very closely with the DOL to expedite the STARTECH investigation. FPS is engaged in this process to make certain that all affected federal customers receive the highest level of security and that these guards are treated with appropriate respect.

I know that we are on the right path to strengthening our contract guard program. I am proud of the very dedicated men and women of FPS and their proactive approach to addressing our recent concerns within the NCR. We remain committed to further

improving our contract guard program and look forward to working with this committee in that regard.

Thank you again, Chairwoman Norton and Ranking Member Graves, for holding this very important oversight hearing. I would be pleased to answer any questions.

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

July 16, 2007

Mr. Gary Schenkel
Director
Federal Protective Service
U.S. Department of Homeland Security
800 North Capitol Street, N.W., Suite 500
Washington, D.C. 20002

Dear Mr. Schenkel:

On June 21, 2007, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces." Attached you will find additional questions that the Subcommittee would like you to answer for the hearing record.

Please respond to these questions by the close of business on August 17, 2007. Please send your responses to: Leila Kahn, 586 Ford House Office Building, Washington, DC 20515. Due to delays in the receipt of mail in the mail screening process, I also request that you email and/or fax your response to Ms. Kahn at Leila.Kahn@mail.house.gov and (202) 226-6012. Should you have any questions or concerns, you may reach Ms. Kahn at (202) 226-4697.

Sincerely,

Eleanor Holmes Norton, M.C.
Chair
Subcommittee on Economic
Development, Public Buildings,
and Emergency Management

Sam Graves, M.C.
Ranking Member
Subcommittee on Economic
Development, Public Buildings,
and Emergency Management

QUESTIONS FOR THE RECORD
Subcommittee on Economic Development, Public Buildings, and Emergency Management Oversight and Investigations Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces"
June 21, 2007

FROM THE HONORABLE ELEANOR HOLMES NORTON

1. On May 30, 2007, Mr. Schenkel told my staff that the STARTECH payroll from May 25 had bounced because "payroll funds were sent to the wrong bank." Committee staff found out from STARTECH officers that this explanation was untrue. Payroll bounced because no funds were sent to any bank. You – FPS -- are a party to this contract, yet my staff had access to more timely and accurate information. Why is that?

2. FPS inspectors are supposed to be in physical contact with contract guards on a weekly basis? Why didn't they know the STARTECH guards weren't getting paid?

3. Do you have any formal mechanism for reporting -- and addressing – concerns raised by guards about their employers?

4. What was your contingency plan if STARTECH guards did not show up for work? What will you do in the future if a similar situation happens in one of the 50 cities where you plan to eliminate all FPS officers?

5. Are you aware that the owners' Beachfront condo and other personal expenses were being paid by company funds that were comprised almost entirely of taxpayer dollars? Are these reasonable or even allowable costs?

6. On April 17, 1997, barely 10 years ago, Weldon Waites was released from prison after serving an 80 month sentence on 29 counts of conspiracy bank fraud, and money laundering. Was FPS aware of Mr. Waites criminal history? If not, why not?

7. Is someone with Mr. Waites' criminal background precluded from holding a Federal contract? Are they precluded from holding a contract that provides security services?

8. Would there be any additional oversight of a contractor with a criminal background similar to Mr. Waites?

9. The Federal Acquisition Regulation (FAR) requires contracting officers to be responsible for ensuring contracts are awarded only to those contractors who are "capable, responsible, and ethical." How do you determine whether a contractor is capable, responsible, and ethical? Does a criminal background enter into that consideration?

10. Is there a requirement for an agency to conduct criminal background checks for contractors or principals as part of responsibility determinations? Are they prohibited? Does FPS ever require them?

11. Do you require security guard contractors to conduct background checks on their guards? What other checks are required?

12. Why would you not require company owners and officers to meet those same standards?

13. What steps do your contracting officers take to ensure that there are no material changes in the ownership or financial condition of a contractor that may affect a contractor's ability to fulfill the terms of the contract?

14. What verification of contractor responsibility do you do when you extend a contract or exercise an option?

15. On September 29, 2005, the DCAA issued a pre-award survey audit of STARTECH's accounting system that concluded, "It is our opinion that the design of this accounting system is not considered acceptable for the award of a prospective contract. The accounting system is -- *nonexistent* (emphasis added) for Government contract account purposes. Given this finding, why did you go ahead and award the contract to STARTECH?

16. Given the recent STARTECH experience, what processes or procedures do you plan to implement to prevent a similar such occurrence?

FROM THE HONORABLE SAM GRAVES

1. Did the problems at STARTECH result in diminished security at any federal facilities?

2. Was the STARTECH contract replaced quickly once FPS found out about the problem?

3. How has FPS responded to the 2006 IG report recommendations?

4. Do you believe a company which has an officer with a criminal record in their background should be automatically disqualified from receiving security guard contracts?

5. How would you describe the role Assistant Secretary Julie Myers has played in seeing that contract operations improve?

Question#:	1
Topic:	payroll
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699302&tabid=

Question: On May 30, 2007, Mr. Schenkel told my staff that the STARTECH payroll from May 25 had bounced because "payroll funds were sent to the wrong bank." Committee staff found out from STARTECH officers that this explanation was untrue. Payroll bounced because no funds were sent to any bank. You – FPS -- are a party to this contract, yet my staff had access to more timely and accurate information. Why is that?

Answer:

It is indeed unfortunate that FPS received inaccurate information directly from the STARTECH Director of Operations. FPS was proactive in reaching out to STARTECH when notified of an issue as detailed below.
On Saturday, May 26, 2007, the FPS Regional Director in the National Capitol Region (NCR) was informed by U.S. Department of Agriculture security personnel of a rumor concerning possible default of payment to contract guards within NCR by STARTECH.

FPS immediately reached out to STARTECH. On Sunday, May 27, 2007, FPS heard back from STARTECH's Director of Operations for NCR, Mr. Kevin Grandy. Mr. Grandy stated that the company had internal accounting issues and that payroll funds had been sent to the wrong account. He further stated that the company was not going out of business and that he would contact his personnel to ensure that employees were paid and facilities were covered. FPS took additional steps to monitor these facilities. FPS dispatched uniformed FPS personnel to monitor security on-site at each facility and confirm the contract guard presence.

FPS also confirmed that all invoices and payments to STARTECH were up to date. The FPS Consolidated Contracting Group (CCG) also began to make numerous unsuccessful attempts to contact the President of STARTECH or other company officials at STARTECH headquarters to discuss the status of the company. At the same time, FPS Contracting staff reached out to the Department of Labor for assistance. FPS NCR immediately developed contingency plans and contacted all affected agencies to brief them on the potential for contract default.

Question#:	1
Topic:	payroll
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

Question#:	2
Topic:	FPS inspectors
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699303&tabid=

Question: FPS inspectors are supposed to be in physical contact with contract guards on a weekly basis? Why didn't they know the STARTECH guards weren't getting paid?

Answer:

FPS Inspectors regularly perform routine inspections on guard posts. They are in constant contact with contract security guards ensuring compliance with the contract. The StarTech contract security guards never raised any issues regarding pay with FPS Inspectors.

Question#:	3
Topic:	reporting
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699304&tabid=

Question: Do you have any formal mechanism for reporting – and addressing – concerns raised by guards about their employers?

Answer:

FPS did not have formal mechanisms in place prior to the recent STARTECH incident.

Since the STARTECH incident, FPS has enhanced the inspection process to ensure that Inspectors are asking questions that would allow guards to communicate any issues or concerns with their respective companys that would prohibit or limit their ability to perform their job duties.

Question#:	4
Topic:	contingency plan
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699305&tabid=

Question: What was your contingency plan if STARTECH guards did not show up for work? What will you do in the future if a similar situation happens in one of the 50 cities where you plan to eliminate all FPS officers?

Answer:

On Sunday, May 27, 2007, FPS took immediate additional steps to monitor these facilities. FPS dispatched uniformed FPS personnel to monitor security on-site at each facility and confirm the contract guard presence.

FPS has similar contingency plans in all 50 states and United States Territories. In addition, the FPS and its Consolidated Contracting Group are looking into the feasibility of a national contingency contract that would provide immediate replacement of contract guards by a back up contract security company. We anticipate award of this contract in Fiscal Year 2008.

Question#:	5
Topic:	company funds
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699306&tabid=

Question: Are you aware that the owners' Beachfront condo and other personal expenses were being paid by company funds that were comprised almost entirely of taxpayer dollars? Are these reasonable or even allowable costs?

Answer:

ICE/FPS was not aware that the owner's Beachfront condo and other personal expenses were being paid by company funds. The STARTECH contracts were awarded as firm fixed price contracts. When using this contract type, the Government does not have visibility into a company's expenses. Further, the Government is precluded from requesting this level of information if the contract is firm fixed price and price reasonableness can be determined without requesting cost or pricing data from the firm.

When the Government does obtain detailed cost or pricing data, the Federal Acquisition Regulation (FAR) does provide guidance on the allowability of costs. Generally, company owners' homes and personal expenses would not be considered either reasonable or allowable if those costs were disclosed in a proposal for a government contract.

Question#:	6
Topic:	Weldon Waites
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699307&tabid=

Question: On April 17, 1997, barely 10 years ago, Weldon Waites was released from prison after serving an 80 month sentence on 29 counts of conspiracy bank fraud, and money laundering. Was FPS aware of Mr. Waites criminal history? If not, why not?

Is someone with Mr. Waites' criminal background precluded from holding a Federal contract? Are they precluded from holding a contract that provides security services?

Would there be any additional oversight of a contractor with a criminal background similar to Mr. Waites?

Answer:

FPS was not aware of Mr. Waites criminal history. Although contractors are required to provide information relating to criminal activity prior to contract award, there is a time limit associated with this disclosure. Specifically, the contractor certifies, to the best of its knowledge and belief, whether it and/or any of its principals, *within a three-year period preceding the offer*, have been convicted of or had a civil judgment rendered against them for the following: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local Government contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property. Even so according to Federal Regulations, any affirmative certification of one of the above offenses does not, in and of itself, preclude contract award.

Currently there is nothing that would preclude a company owned by someone with Mr. Waites' criminal history from holding a security services contract. Neither the Federal Acquisition Regulations (FAR), nor DHS/ICE/FPS requires criminal background checks for corporate officers of companies doing business with the Government. Individuals

Question#:	6
Topic:	Weldon Waites
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

working under FPS contracts in federally controlled facilities or with federal information systems are, however, required to comply with security requirements of those contracts.

As to providing additional oversight for contracts where criminal history of a company owner was either disclosed during the certifications process or otherwise made known to the contracting officer, it is likely that some form of additional oversight of the contract itself would be considered.

Question#:	7
Topic:	FAR
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699308&tabid=

Question: The Federal Acquisition Regulation (FAR) requires contracting officers to be responsible for ensuring contracts are awarded only to those contractors who are "capable, responsible, and ethical." How do you determine whether a contractor is capable, responsible, and ethical? Does a criminal background enter into that consideration?

Answer:

ICE follows the FAR to determine that a prospective contractor is capable, responsible, and ethical. Depending on the information available and the method of contracting utilized, a variety of methods are used to make determinations of responsibility, including but not limited to the following:

- Checking the Excluded Parties Listing (EPLS), a web-based listing maintained by GSA of those entities that are suspended, debarred, or proposed for debarment;
- Review of a contractor's past performance history with ICE and other agencies using the Past Performance Information and Retrieval System (PPIRS). PPIRS is a web-based shared data warehouse of report cards that detail a vendor's performance on current (or completed) contracts with federal agencies;
- Review of a prospective contractor's representations and certifications whereby the contractor certifies, to the best of its knowledge and belief, whether it and/or any of its principals, within a three-year period preceding the offer, have been convicted of or had a civil judgment rendered against them for the following: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State or local Government contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property. ICE Contracting Officers review the certifications prior to award.

Question#:	7
Topic:	FAR
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

- Review the financial capability of a company by obtaining and reviewing Dun and Bradstreet Reports, and/or by obtaining and reviewing information from contractor financial institutions.

Where the contracting officer determines that any small business is "non-responsible" in reference to the award of a contract, contracting officers do not have final decision authority, but are required to refer those small businesses to the Small Business Administration (SBA) for a Certificate of Competency determination in accordance with the FAR.

For GSA Schedule Orders

Agencies, including ICE, who use the General Service Administration's (GSA) Multiple Award Schedule (MAS) program are not required to make separate responsibility determinations for individual orders since GSA makes a responsibility determination at the time of award. GSA reviews an offeror's financial, performance and business ethics information as the basis of responsibility determinations. The signed schedule contract constitutes a determination that the prospective contractor is responsible with respect to that schedule contract and associated orders. In addition, GSA reviews the responsibility of the schedule contractors at each option period. GSA monitors contractor performance on key aspects of schedule contract compliance throughout the life of the contract. Therefore, agencies using the MAS program are not required to make separate responsibility determinations for individual orders. ICE does, however, check the Excluded Parties Listing, (EPLS) to ensure there have been no suspension or debarment actions on the proposed schedule contractor.

Special Note

Within the last six months, the FAR Secretariat published two FAR cases specifically related to responsibility matters. A proposed FAR rule, entitled *Contractor Code of Ethics and Business Conduct*, was published in the Federal Register in February. The rule establishes a clear and consistent policy regarding contractor code of ethics and business conduct, and responsibility to avoid improper business practices. Additionally, the proposed rule requires contractors to provide their employees with information on contacting the appropriate Inspector General to report potential wrongdoing to include

Question#:	7
Topic:	FAR
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

posting this information on company internal websites and prominently displaying hotline posters.

Question#:	7
Topic:	FAR
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

Question#:	8
Topic:	background checks
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699309&tabid=

Question: Is there a requirement for an agency to conduct criminal background checks for contractors or principals as part of responsibility determinations? Are they prohibited? Does FPS ever require them?

Answer:

While not prohibited, neither the Federal Acquisition Regulations (FAR), nor DHS/ICE/FPS procedures/policies require criminal background checks for companies or their corporate officers doing business with the Government. We are considering the possibility of instituting such requirements in the future.

Question#:	9
Topic:	contractors
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699310&tabid=

Question: Do you require security guard contractors to conduct background checks on their guards? What other checks are required?

Why would you not require company owners and officers to meet those same standards?

Answer:

Yes. Background Investigation checks are conducted by the contractors who will be performing the "Statement of Work" duties to the Federal government. Contractor employment suitability determinations are made in accordance with the adjudication criteria under 5 Code of Federal Regulations 731.202(b), "Specific Factors".

ICE/FPS conducts the background investigation checks for the FPS Contract Guards.

FPS currently conducts the following:

- FBI Fingerprint and Name Checks
- National Crime Information Check
- Interstate Index Identifier
- Central Index System check for foreign-born applicants.
- Wanted Person File Check

Why would you not require company owners and officers to meet those same standards?

FPS is considering the possibility of instituting such requirements in the future.

Question#:	10
Topic:	steps
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699311&tabid=

Question: What steps do your contracting officers take to ensure that there are no material changes in the ownership or financial condition of a contractor that may affect a contractor's ability to fulfill the terms of the contract?

Answer:

The contractor is required to notify the contracting officer of material changes in these areas in accordance with provisions set forth within the contract. For instance, ICE contracts include provisions that address Bankruptcy, Assignment of Claims, and Novation (i.e., change of company ownership) and Change of Name Agreements. In each of these instances, the contractor is required to make a notification to the contracting officer and the contracting officer is required to respond by following the clearly defined steps set forth in the regulations and contract provisions. Contracting officers are not required to perform regular or continuing investigations into the ownership or financial status of a contractor once a contract has been awarded.

Notwithstanding the above, a contractor's failure to report material changes in ownership or financial status does not preclude a contracting officer from taking the appropriate actions once the changes become known to them via other means.

Question#:	10
Topic:	steps
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

Question#:	11
Topic:	verification
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699312&tabid=

Question: What verification of contractor responsibility do you do when you extend a contract or exercise an option?

Answer:

Although no additional determinations regarding contractor responsibility are required when exercising an option, ICE does review and consider the contractor's current record of performance under the contract prior to exercising an option, and reviews the "List of Excluded Parties" which is a record of contractors who are excluded from receiving federal contracts because of formal suspension or debarment action.

Question#:	12
Topic:	DCAA
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699313&tabid=

Question: On September 29, 2005, the DCAA issued a pre-award survey audit of STARTECH's accounting system that concluded, "It is our opinion that the design of this accounting system is not considered acceptable for the award of a prospective contract. The accounting system is -- nonexistent (emphasis added) for Government contract account purposes. Given this finding, why did you go ahead and award the contract to STARTECH?

Answer:

An "adequate cost accounting system" is required for all cost reimbursement (but not fixed-price) contracts. Where cost and pricing data is obtained to support pricing proposals, the cost accounting system is also important; however, an audit of the accounting system would not normally be required by ICE to support award of a fixed-price contract. Further, three of the five STARTECH contracts recently terminated by ICE/FPS (HSCEMP05F000164, 11P03MP0112 and 11P01YED0150) were awarded prior to issuance DCAA Audit Report No. 06331-2055A17740012 dated September 29, 2005. Therefore, the information contained in that report could not have affected the initial contract award decisions in these cases.

With respect to the other contract, FPS did not know the report had been issued. DCAA's Audit Report was issued directly to the requestor – the Transportation Security Administration – in association with its solicitation HSTS01-05-R-SPP047. That said however, ICE will be reaching out to the Department's Chief Procurement Officer to determine if there is a way to establish a central repository of audit information so that the DHS components can leverage information obtained by other entities.

Question#:	13
Topic:	STARTECH
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699314&tabid=

Question: Given the recent STARTECH experience, what processes or procedures do you plan to implement to prevent a similar such occurrence?

Answer:

ICE had already begun implementation of a number of improvement initiatives prior to STARTECH including:

- Reorganized the contracting function from a regionally based structure to a consolidated operation allowing contracting professionals to leverage their experience and expertise.
- Realigned the chain of command and reporting structure for FPS contracting personnel to report directly to the ICE Head of Contracting Activity.
- Developed new guidebooks and procedures to help our contract guard program managers, inspectors and contracting officer's technical representatives.
- Created a standardized and automated invoice process to ensure timely payment of contract invoices.

ICE is currently exploring the possibility of implementing the following additional measures as a result of STARTECH:

- Including a clause in all contracts requiring contractors to notify the contracting officer of any missed payroll to employees or when there is a material change in the company's financial situation after initial contract award.
- Include in our newly issued FPS COTR guide the need to have our inspectors closely monitor and communicate with company representatives on any allegations of missed payrolls or similar allegations. Create a mechanism to promptly report any allegations to the contracting officer for immediate investigation.
- Including a clause in all contracts requiring contractors to notify FPS of corporate officer changes and require the company to recertify to matters pertaining to criminal history as it did at the time of award.

Question#:	13
Topic:	STARTECH
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Eleanor Holmes Norton
Committee:	TRANSPORTATION (HOUSE)

Question#:	14
Topic:	security
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699315&tabid=

Question: Did the problems at STARTECH result in diminished security at any federal facilities?

Was the STARTECH contract replaced quickly once FPS found out about the problem?

Answer:

ICE/FPS became aware of allegations of STARTECH's financial problems on May 26, 2007. Immediately, FPS redoubled its efforts to inspect the facilities manned by the company. Initially all posts remained manned but as the situation developed, and whenever FPS learned of the potential for unmanned posts, Federal Police Officers were immediately deployed to affected locations and security was not diminished at federal facilities.

When ICE learned of the problems with STARTECH, ICE/FPS immediately began the acquisition processes that ultimately led to the termination of existing STARTECH contracts and award of a new contract to Frontier. STARTECH contracts were terminated for cause, and a new contract was awarded on June 3, 2007, only 8 days after the agency was initially apprised of allegations of STARTECH financial difficulties, with no lapse in security guard coverage during the transition period.

Question#:	15
Topic:	IG report
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699316&tabid=

Question: How has FPS responded to the 2006 IG report recommendations?

Answer:

ICE/FPS immediately took steps to implement improvements, working cooperatively with the DHS OIG. As a result, four of the five recommendations have since been resolved and closed. The remaining Recommendation #4, *"Review all inspection reports and proposed deductions for the period of March 1, 2003 through the present and initiate collection actions on all contracts found to be deficient"*, is still open.

Recommendation #4 remains because the OIG has asked that we review all contract actions with regard to deductions going back to March 2003. For a variety of reasons among them, an assessment of the proper amounts to be collected, the cost to the government to implement the recommendation including litigation cost risk, and the expected cost benefit to the government, it would be advisable to first review the forty-five (45) invoices cited in the OIG Report to determine whether the proposed deductions were properly assessed. Further, ICE has proposed to the OIG that a review be conducted of all deductions that were proposed by the NCR Program Office beginning on or after January 1, 2006. Toward that end, ICE has assembled a dedicated team to investigate the 45 invoices cited in the report and the proposed contract deductions from January 1, 2006 to present. For the documents to be reviewed, the team will identify what deductions the Government was entitled to take, whether in fact the deduction was properly taken, what deductions were not realized and why. Based upon the information obtained from the initial focused review, ICE will consult with legal counsel regarding the legal authority for recoupment where deductions were not properly taken, and also submit to the OIG a report of findings and a projection of the resources required to address the problem. ICE has requested that the OIG consider this proposal in lieu of Recommendation #4.

Question#:	15
Topic:	IG report
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

Question#:	16
Topic:	criminal record
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699317&tabid=

Question: Do you believe a company which has an officer with a criminal record in their background should be automatically disqualified from receiving security guard contracts?

Answer:

The implications of taking action to automatically disqualify such a company based on having as an officer any person with a criminal record in their background from receiving security guard contracts is complicated in terms of existing laws and regulations. We believe this is a public policy decision that should be addressed through legislation and/or Federal Acquisition Regulation changes, aligning it with other existing statute and policy, and giving adequate time for public comment.

Question#:	17
Topic:	Julie Myers
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=699318&tabid=

Question: How would you describe the role Assistant Secretary Julie Myers has played in seeing that contract operations improve?

Answer:

Assistant Secretary Myers has played an active and pivotal role in improving contracting operations within ICE. Within months of her appointment, Assistant Secretary Myers elevated the position of Head of Contracting (HCA) to a Senior Executive Service position. Assistant Secretary Myers also elevated the position organizationally so that the HCA reports to the Deputy Assistant Secretary for Management. During her tenure, the number of on-board acquisition professionals has increased from 63 in March 2006 to 121 personnel in July 2007. The total authorized number of personnel in Fiscal Year 2008 will increase to 151 positions for a total increase of 88 full time positions performing the contracting function. Under the direction of Assistant Secretary Myers, the contracting function supporting the Federal Protective Service was realigned from a regionally based structure to a consolidated operation which allows contracting professionals to leverage their experience and expertise to award and administer better contracts.

In addition to organizational changes, Assistant Secretary Myers has directed systemic improvements to ICE acquisition processes. ICE has over 50 acquisition improvement initiatives that are derived from the Government Accountability Office's (GAO) "Framework for Assessing the Acquisition Function at Federal Agencies". This framework provides a comprehensive approach that assesses the overall health and strategic direction of the acquisition organization based on four interrelated cornerstones that GAO found to be essential to an efficient, effective and accountable acquisition operation. Some of the specific ICE initiatives include streamlining and simplifying acquisition policies and procedures; providing guidebooks to program managers, inspectors and contracting officer technical representatives to assist them in planning for and navigating the acquisition process; standardizing and consolidating contract invoicing procedures to ensure prompt payment of contractor invoices; conducting contract reviews to ensure high-quality contracts; and, development of a human capital plan to recruit and retain high performing contracting professionals.

Question#:	17
Topic:	Julie Myers
Hearing:	The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces
Primary:	The Honorable Sam Graves
Committee:	TRANSPORTATION (HOUSE)

STATEMENT OF RICHARD L. SKINNER

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

U.S. HOUSE OF REPRESENTATIVES

"The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces"

June 21, 2007

Introduction

Good morning Madam Chair and Members of the Subcommittee. I am Richard L. Skinner, Inspector General for the Department of Homeland Security. Thank you for the opportunity to discuss our work at the Federal Protective Service.

My testimony today will focus on the Federal Protective Service's oversight of its contract guard program, financial management issues related to invoice payments to contract guard companies, as well as progress that has been made by FPS to date in addressing the recommendations we made in our October 2006[1] report to improve the management of security guard contracts. In addition, I will comment briefly on FPS' new strategy for providing security guard services for government-occupied facilities.

The Federal Protective Service

The Federal Protective Service, established in 1971 as the uniformed protection force of the General Services Administration for government-occupied facilities, is responsible for policing, securing, and ensuring a safe environment in which federal agencies can conduct business by reducing threats posed against approximately 9,000 federal government facilities nationwide.

Under the Homeland Security Act of 2002, FPS was transferred to the Department of Homeland Security and retained its responsibilities for protecting the buildings, grounds, and properties, which are owned, occupied, or secured by the federal government under GSA's jurisdiction. In addition to GSA facilities, the Act also provides FPS with the authority to protect properties held by DHS components that were not under GSA jurisdiction. FPS was moved from GSA, Public Building Services, to DHS, effective March 1, 2003. Within DHS, FPS is part of the Immigration and Customs Enforcement (ICE) Directorate.

FPS Contract Guard Services Oversight

As part of its overall strategy to ensure the physical safety of government employees and visitors, FPS uses contract guards to deter the commission of crime in and around federal buildings. Guards are deployed at roving and fixed posts, where they often operate security-screening devices such as magnetometers and x-ray machines. FPS guards play a crucial and highly visible role in the FPS mission; often the first, and sometimes the only, contact visitors have with FPS at a facility.

Under contract provisions with FPS, guard contractors must ensure that their guards are qualified by undergoing background suitability checks, and possess the necessary licenses, certificates, and permits. The guards also are required to undergo training and pass an FPS-administered written examination. In addition, guards must comply with performance requirements in the contract that address items such as the guard's appearance, work hours, supervision, equipment, and record keeping.

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[1] *Federal Protective Service Needs to Improve its Oversight of the Contract Guard Program* (OIG-07-05, issued October 2006).

Contract guard services represent the single largest item in the FPS operating budget, estimated to be $577 million for FY 2007. As a result of the Oklahoma City bombing in 1995, the contract guard workforce more than doubled and now numbers around 15,000. FPS has become increasingly reliant on its contract guard force, having less than 1,000 uniformed FPS officers nationwide.

Previous GSA Office of Inspector General and Government Accountability Office reports noted numerous deficiencies with contract guard qualifications and FPS oversight of guard contracts. Accordingly, in the fall of 2005, my office audited FPS' oversight of contract guard contracts in the National Capital Region. At the time of our audit, the NCR contract guard program consisted of 54 guard service contracts that provide approximately 5,700 guards to protect 125 facilities. Our objectives were to determine whether NCR had effective controls in place to ensure qualified contract guards are deployed at federal buildings and whether it monitored NCR contractor performance and compliance with contract provisions. We also determined whether FPS was paying contract guard companies nationwide in a timely manner, as required by the Prompt Payment Act.

We concluded that the security of federal employees, facilities, and visitors may be at risk because NCR contractors were not consistently deploying qualified and certified contract guards. Contract guards were on post without current suitability determinations or with expired certifications. Thirty percent of the guards in our sample had at least one expired, but required, certification. For example, guards were working with expired background investigations, medical certifications, and domestic violence certifications. In one instance, NCR adjudicated a guard unfavorable in May 2005 due to a felony assault conviction, yet the guard was still on post as of January 2006. Four guards worked during 2005 with expired suitability determinations for as long as 201 days before being recertified.

Also, security contractors were not performing their security services according to the terms and conditions of their contracts. For example, security guards who were not armed at armed posts as required; guards who were armed at posts designated to be unarmed; guards who did not have Top Security or Secret security clearances at posts that required higher level clearances; and non-citizen guards who were not carrying their required work permit cards.

These deficiencies occurred because FPS personnel were not effectively monitoring the security guard contract program. While the contractor has the primary responsibility for ensuring that all contract provisions and requirements are met, FPS is required to actively monitor and verify contractor performance.

NCR's Quality Assurance Specialists are responsible for the day-to-day inspection and monitoring of the contractors' work. The role of Quality Assurance Specialists is critical to monitoring contract guard performance, as they are the primary NCR personnel on-site who can verify compliance with contract provisions and requirements. On a weekly basis, the Quality Assurance Specialists are required to collect the GSA *Record of Time of Arrival and Departure Contract Guarding Duty Register* (Form-139) from each guard post and conduct audits and inspections to identify instances of contractor violation of contract requirements. Quality Assurance Specialists review the Form-139s and other records to validate that contract guards

met contract requirements for manning their posts. Inspections consist of onsite physical inspections of contract guards that determine, for example, whether an unarmed guard was stationed at an armed post, or whether a post was abandoned. Quality Assurance Specialists are required to prepare and submit the inspection report to NCR's Contract Section by the fifth workday following the month in which guard services were provided. We concluded that Quality Assurance Specialists were not consistently collecting and auditing the Form-139s and submitting Inspection Reports to the NCR Contract Section. For one building we visited, a contract guard stated that no one had collected the Form-139s in the five months since he started working at that building. Of the Inspection Reports submitted during November and December 2005, 73 percent were not submitted timely, and were late by as much as 13 months.

NCR's Contract Section personnel are responsible for processing deductions to contractor invoices due to noncompliance issues uncovered by the Quality Assurance Specialists. Contract Specialists were not making deductions to contractor invoices when appropriate. Specifically, they did not process potential deductions from contractor invoices totaling almost $1.3 million when guard companies failed to comply with contract requirements.

FPS explained that these lapses were due to understaffing. Inadequate contractor oversight can result in the government paying for services it did not receive, loss of monies resulting from contract deductions due to nonperformance, and placing FPS-protected facilities, employees, and facility visitors at risk.

Federal Protective Service Financial Management and Contractor Payments

The Federal Protective Service continues to face financial management challenges from its transition from the GSA to DHS and, specifically, to ICE. According to our October 2006 audit of FPS contract guard service operations, FPS was not paying invoices for its contract guard services nationwide in a timely manner, resulting in a violation of the Prompt Payment Act. Of the 25,557 invoices paid from October 1, 2004, to November 21, 2005, 88 percent were not paid within 30 days as required by the Prompt Payment Act. As a result, FPS paid more than $1.2 million in interest to guard companies that are contracted by FPS to protect federal buildings for late payments made during this time period. The principal reason for FPS' inability to pay private guard contractors timely was its transition from the GSA Financial Management System to the ICE Federal Financial Management System on October 1, 2004, which occurred before the system was adapted to meet the unique financial and budgeting requirements associated with FPS' business processes.

The DHS, Office of the Under Secretary for Management, originally directed that the FPS transition from the GSA Financial Management System to the ICE Federal Financial Management System be completed by October 1, 2003. Following the initial review of the unique financial management requirements needed to support the FPS offsetting collections program, the transition date was extended to October 1, 2004. FPS officials said that, despite attempts to explain FPS business processes and Federal Financial Management System needs to the ICE Office of Financial Management, problems with adapting the Federal Financial Management System to FPS needs remained and suggested that the transition to the ICE system be postponed. However, DHS required FPS to transition to the system on October 1, 2004,

despite concerns about the system's ability to meet FPS needs. ICE financial management staff had assured the staff of the Senate Appropriations Committee, in a briefing on February 17, 2005, that the FPS transition would be completed by March 31, 2005.

However, problems with contractor payments and the transition to the Federal Financial Management System continued. In a May 6, 2005, memorandum to the Assistant Secretary for ICE, the Director of FPS outlined what he considered systemic problems and issues with the Federal Financial Management System and reported that problems with contractor payments had, in fact, worsened since the transition. An independent auditor contracted by our Office to perform an audit of DHS financial statements also concluded that the integration of FPS' accounting processes from GSA to ICE created numerous issues with the integrity of FPS transaction data and represented a material weakness in ICE's internal controls[2].

FPS Budget and Finance officials in Region 3 and FPS Headquarters officials informed us that inadequate training prior to the transition and the difficulty in using the Federal Financial Management System also contributed to the invoice payment problems. These officials indicated that the system is difficult to navigate and that errors are time-consuming to correct.

Follow-Up on OIG Report on Improving FPS Contract Guard Oversight

We issued a report entitled "*Federal Protective Service Needs to Improve its Oversight of its Contract Guard Program*" on October 30, 2006. We made four recommendations to the NCR Regional Director, and one recommendation to the FPS Director to strengthen controls over its security guard contract program.

Since our audit was issued in October 2006, we have updated FPS progress on implementing our recommendations to improve management of its security guard contract program. We consider 4 of the 5 recommendations resolved and closed. The actions planned and taken by FPS to improve its contract monitoring efforts should ensure that contractors are deploying qualified and certified guards at federal facilities in the National Capital Region.

For example, FPS created standard operating procedures that outline a process to monitor contract performance and guard company deductions that are proposed, assessed, and actually taken. The agency also plans to increase the number of trained personnel involved in monitoring the contract guard program. In addition, the agency reported that a process has been developed to assess and report on contractor performance and use past performance as a factor in the selection process for future contractor selection.

Furthermore, FPS established a centralized procurement organization with all procurement personnel reporting directly through a chain of command leading to the ICE Head of the Contracting Activity. FPS is also establishing Consolidated Contracting Groups in Washington, DC, Denver, CO, Philadelphia, PA, and Fort Worth, TX. In May 2007, agency officials briefed our office on improvements it has made to its invoice payment procedures and systems, and provided information that indicated significant improvements in the timeliness of

[2] *DHS' Performance and Accountability Report for Fiscal Year 2005*, November 15, 2005, Department of Homeland Security.

contractor payments, with 74 percent of all invoices paid on time as of March 31, 2007. In addition, ICE pointed out that the following improvements have been realized since it has centralized its procurement operations:

- More timely and effective rejection of improperly submitted invoices based on Prompt Payment Act requirements
- Elimination of lost invoices
- Reduction in prompt payment interest
- Reduction in duplicate/erroneous payments
- Improvement to financial controls and reporting
- Enhancement to automated tools for managing/tracking ICE invoices

We consider one recommendation to be resolved but still open. It requires the NCR Director to review all inspection reports and proposed deductions for the period March 1, 2003 through the present and initiate collection actions on all contracts determined to be deficient. We are in the midst of discussions with FPS officials and are considering alternative actions that the Assistant Secretary proposed as a feasible, cost-effective approach to closing this recommendation.

FPS Budget Shortfall and Future Changes in Strategy

FPS operations are funded solely through security fees and reimbursements collected from federal agencies for security services rendered. FPS charges agencies for security services based on the building's identified security level and building-specific security needs. Buildings are categorized in five levels: Level V is the highest in terms of building security and Level I is the lowest. Levels are assigned primarily according to the number of tenants within a facility and take into consideration the square footage of office space, volume of public contact, and tenant agency mission functions. A facility's designated security level translates to minimum security standards that must be met. FPS conducts periodic risk assessments to validate a facility's security standards and countermeasures in place and to determine whether additional security enhancements are needed.

Funding issues have been a problem for FPS even prior to its transfer to the Department of Homeland Security. GAO reported in 2004 that the security fees collected in the past by GSA were not sufficient to cover the cost of FPS operations, and that the deficits were covered by GSA using monies from its federal building fund.

In response to the GAO report, FPS unveiled a strategy for providing security services and allocating its manpower. The agency will increase its emphasis on setting security standards and ensuring compliance with those standards. FPS says it will target its efforts and resources according to a risk-based model, concentrating on federal facilities with security levels III and IV. The strategy also calls for a reduction in manpower from about 1200 to 950 positions through out-placing to other ICE and DHS components through attrition. In response to our report, FPS has already taken steps it believes have strengthened its monitoring and oversight of the contract guard program.

Meeting the agency's workforce reduction targets through out-placing and attrition carries with it attendant risks. Without careful planning, proposed staffing and service reductions could lead to uneven effects across the nation, perhaps placing some facilities and its employees at risk. In some locations or offices within FPS, the agency's most knowledgeable employees may be the most likely to leave FPS and not be replaced. FPS could experience higher attrition in major urban centers as compared to regional and field locations. These factors may result in a significant loss in workforce skill and knowledge, skills imbalances, with some areas and locations hit harder than others.

To address these challenges before they become problems, FPS should be proactively engaging in workforce planning and implementing appropriate strategies to ensure staff levels and competencies are in place to carry out its mission and effectively protect federal facilities, employees and visitors. Continuous monitoring of attrition within FPS will allow the agency to identify locations that will require special attention to ensure that mission-related responsibilities are not negatively impacted.

I will conclude by saying that ICE's senior officials are well aware of these issues and are making progress in resolving them. Furthermore, my office is highly committed to the continued oversight of these and other financial and contract management challenges confronting ICE. Our continued oversight in these areas is intended to facilitate solutions that will improve ICE's ability to carry out its management functions in an efficient, effective, and economical manner.

I would like to commend ICE for the cooperation they have shown my audit team throughout our audits and in resolving our recommendations, and for the steps they have taken to address our concerns. We look forward to working closely with ICE to improve their management of the security guard program.

Madam Chair and members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you may have.

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

July 16, 2007

The Honorable Richard L. Skinner
Inspector General
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Inspector General Skinner:

On June 21, 2007, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces." Attached you will find additional questions that the Subcommittee would like you to answer for the hearing record.

Please respond to these questions by the close of business on August 17, 2007. Please send your responses to: Leila Kahn, 586 Ford House Office Building, Washington, DC 20515. Due to delays in the receipt of mail in the mail screening process, I also request that you email and/or fax your response to Ms. Kahn at Leila.Kahn@mail.house.gov and (202) 226-6012. Should you have any questions or concerns, you may reach Ms. Kahn at (202) 226-4697.

Sincerely,

Eleanor Holmes Norton, M.C.
Chair
Subcommittee on Economic Development, Public Buildings, and Emergency Management

QUESTIONS FOR THE RECORD
Subcommittee on Economic Development, Public Buildings, and Emergency Management Oversight and Investigations Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces"
June 21, 2007

1. You found significant understaffing in the contracting office during your audit of the FPS oversight of its contract guard program (OIG-07-05). How do you believe understaffing contributed to the problems you found in the National Capitol Region?

2. Do you have reason to believe that the staffing problems have improved?

3. What challenges do you anticipate FPS will face in attempting to bolster its contract oversight function?

4. ICE has announced a plan to downsize FPS, eliminating certain functions and transitioning the workforce to meet a different mission. Do you have any concerns about FPS reducing its workforce in regards to contract oversight?

5. In your statement you say that, "Without careful planning, proposed staffing and service reductions could lead to uneven effects across the nation, perhaps placing some facilities and its employees at risk." What do you mean by "uneven effects"?

6. What kind of "risk" would facilities and employees face?

7. Has your office ever been requested by FPS to perform a criminal background check on a company or company officer participating in the contract guard program? What were your results?

8. In your opinion, is it appropriate for a former felon to be an officer in charge of a company providing security for federal employees and their workplaces?

9. What protocols should FPS contracting officers employ to ensure that a company remains financially viable and that its ownership is suitable throughout the life of the contract?

10. Weldon Waites testified that STARTECH was owned by his wife, Sharon, thus making the company a "woman-owned business." He also stated that he made the financial and operational decisions for STARTECH. Mr. Waites received an annual salary of approximately $360,000 while his wife billed the company $50 per hour for work she performed maintaining the website. Is this typical of the ownership and control structure of a "woman-owned business" as defined by SBA in order for a company to receive preferential treatment for contracting purposes?

Office of Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

AUG 1 6 2007

The Honorable Eleanor Holmes Norton
Chair
Subcommittee on Economic Development, Public
Buildings, and Emergency Management
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Holmes Norton:

This is in response to your letter in which you asked a series of questions related to my June 21, 2007, testimony before your Subcommittee on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces." To the extent possible, we have provided answers to your questions, which are based on our 2006 audit of FPS' oversight of its contract guard program,[1] as well as follow-up discussions we have had with FPS officials concerning progress the agency has made in addressing the report's recommendations. Also, the DHS Office of Security and Small Business Administration will need to provide some of the information you seek.

Question #1: You found significant understaffing in the contracting office during your audit of the FPS oversight of its contract guard program (Report Number OIG-07-05). How do you believe understaffing contributed to the problems you found in the National Capitol Region?

Answer: Our audit concluded that FPS' National Capital Region (NCR) was not adequately monitoring contract guard compliance with contract provisions. As a result, NCR contractors did not consistently meet contract provisions related to guard certifications, qualifications, deployments, and other contract provisions.

We concluded, and agency officials agreed, that this was due in large part to NCR not having sufficient Quality Assurance Specialists (QASs) and Contract Section resources to monitor the contracts. NCR's twelve QASs and eight Contract Section personnel (which included four Contract Specialists, 2 contractors, and 2 other support personnel) did not appear to be sufficient to actively monitor and verify compliance with provisions contained in 54 contracts, which covered 125 facilities and 5,700 associated contract guards.

[1] "The Federal Protective Service Needs To Improve its Oversight of the Contract Guard Program," (OIG-07-05), October 2006.

For example, on a weekly basis, the QASs are required to collect the GSA Form 139s from each guard post, audit the information on the form, inspect the facility to identify instances of contractor non-compliance, and prepare an Inspection Report. The QASs submit their Inspection Reports to the NCR Contract Section for processing. However, the QASs were not consistently collecting and auditing the GSA Form 139s and submitting Inspection Reports to the NCR Contract Section. For one building we visited, a contract guard stated that no one had inspected his facility or collected the GSA Form 139s in the five months since he started working at that building. Unless audits and inspections are conducted and the forms collected, NCR is unable to ensure satisfactory performance of guard services according to the terms specified under the contracts. If the Inspection Reports are not submitted timely to the Contract Section, monetary deduction letters for identified deficiencies cannot be prepared and FPS loses its primary tool to correct deficiencies in contract compliance. The NCR Contract Security Program Manager advised us there were an inadequate number of QASs available for the large number of guard posts they were required to inspect on a weekly basis, resulting in a backlog of inspections.

In addition, Contract Specialists were not making deductions to contractor invoices when appropriate, largely due to a lack of personnel. Specifically, the Contract Section did not process potential deductions from contractor invoices totaling almost $1.3 million when guard companies failed to comply with contract requirements. We noted during our audit that the Contract Section was operating with only one-third of the Contract Specialists it had in February 2005. Agency officials advised our audit team that vacancies in this Section were difficult to fill.

While the lack of resources was clearly a factor in poor contract oversight in NCR, we noted other factors as well that contributed to a lack of aggressive monitoring and verification of security guard contract provisions. We concluded that the NCR Contract Section did not have effective procedures and systems to track security guard contractor Inspection Reports. In addition, because the Contract Section did not maintain an inventory of FPS-protected buildings, they had no assurance that they received all required Inspection Reports for each facility. We also determined that the filing system was poor, consisting of piles of Inspection Reports and GSA Form 139s stacked on the floor of a filing room in the Contract Section. Finally, we determined that QAS activities were inadequately monitored through their chain-of-command, with FPS Area Commanders stating that they exercised no supervisory oversight of QAS contract monitoring activities, despite the fact that the 12 QASs reported to these Area Commanders.

Question #2: Do you have reason to believe that the staffing problems have improved?

Answer: Since our final report was issued in October 2006, we have maintained open and continuous dialogue with FPS and ICE officials to ensure that recommendations made in our report were being addressed and improvements have been made. We believe that ICE and FPS have taken bold steps to address our concerns about security guard contractor oversight.

The ICE Assistant Secretary reported that FPS' contracting activities have been merged into the ICE contracting component under the supervision of the Director of the ICE Office of Acquisitions Management. On June 1, 2006, the contracting component of the NCR was centralized as a Consolidated Contracting Group (CCG) and began reporting through a chain leading directly to the ICE Head of the Contracting Activity, providing for a more streamlined

reporting relationship. The Director, Office of Acquisitions Management, reported that most of the FPS contracting functions have moved to Philadelphia, Pennsylvania, where ICE has been able to more easily attract qualified and capable contracting professionals.

FPS reported to us that as of July 2007, it has 12 contracting professionals supporting NCR, and will soon fill three more vacancies. This is an increase from the eight professionals on board in the Contract Section during our audit. In addition, the agency advised that they have assigned eight additional FPS law enforcement officers to the QAS function and have implemented a monthly 100% facility check with required completion of Inspection Reports. FPS believes these law enforcement officers, who function as Inspectors, perform more efficiently and effectively than the QASs based on their law enforcement experience. Also, the agency recently reported having 32 trained and certified Contracting Officers Technical Representatives (COTRs) supporting NCR, as compared to no certified COTRs just one year ago. Agency officials advised that they want to make COTR training mandatory for their law enforcement workforce as they move to an Inspector-based system. In June 2007, FPS distributed a COTR "Guidebook" to provide background information on contracting, as well as on the policies and procedures associated with the discharge of COTR duties and responsibilities.

While we have not conducted current audit work to determine the extent to which FPS' changes in its contracting organization, resources, and procedures have improved oversight, we believe that FPS has taken positive steps to address our concerns. The FPS contracting function will be the subject of an audit during FY 2008.

Question #3: What challenges do you anticipate FPS will face in attempting to bolster its contract oversight function?

Answer: The single largest challenge FPS faces is to improve the quality of its contractor monitoring at the same time that the agency is refocusing activities, downsizing its overall workforce, shifting some of its contract monitoring resources between cities, hiring and training personnel, and reorganizing its contract monitoring reporting relationships. Agency officials advised that the financial difficulties the agency faces and providing "hands-on experience" and training to new personnel also make improving contract oversight more difficult. As an example, agency officials stated that not all security contracts have a COTR assigned to them yet. In addition, although FPS has provided COTR training to 32 personnel at NCR, many do not have practical experience. While the contracting component of the NCR has been centralized, the question remains whether additional resources will prove to be sufficient to monitor approximately 5,700 guards that protect 125 facilities under its jurisdiction.

Question #4: ICE has announced a plan to downsize FPS, eliminating certain functions and transitioning the workforce to meet a different mission. Do you have any concerns about FPS reducing its workforce in regards to contract oversight?

Answer: Agency officials advised us that their plans to refocus their activities and move to an Inspector-based workforce will not reduce the amount of resources devoted to contract oversight, but will actually increase resources devoted to this critical function. Agency officials indicated that reductions in their workforce will result in the elimination or reduction of certain activities, such as mobile patrols and response. The agency advised and provided data to indicate, as

previously stated, that additional resources have been made available to support NCR contract oversight and that the agency intends to expand COTR training and certification to its law enforcement workforce to assist in monitoring compliance with contract provisions. In addition, as noted above, FPS has implemented numerous changes in the organization and administration of its contract guard program.

Question #5: In your statement you say that, "Without careful planning, proposed staffing and service reductions could lead to uneven effects across the nation, perhaps placing some facilities and its employees at risk." What do you mean by "uneven effects"?

Answer: Agency officials advised us that, in order to meet its goals, the agency must reduce from an estimated 1,100 FTEs to a planned 950 FTEs during FY 2008. The reduction is not expected to exactly match the resource needs across the nation determined through the use of a risk based model. This may necessitate some realignment of personnel and functions to provide adequate resources to facilities and locations. Agency officials stated that this reduced FTE level will be met primarily through attrition, but also through some employees taking voluntary early retirement, and other employees being assigned to cost reimbursable details to other ICE and DHS components. Officials also advised that senior management is currently reviewing a draft personnel plan.

At this point, our concern is speculative and cautionary as, for the most part, these reductions have not yet been made and changes in FPS' strategies and activities have not been implemented. Nevertheless, we believe that this approach to workforce reduction while at the same time attempting to reorganize FPS' mission and functions needs to be closely monitored by the agency. In some locations or offices within FPS, the agency's most knowledgeable employees may be the most likely to leave FPS and not be replaced. FPS could experience higher attrition in major urban centers as compared to regional and field locations. These factors may result in a significant loss in workforce skill and knowledge, resulting in skills imbalances, with some areas and locations hit harder than others. "Realignment" of its future workforce to account for these potential imbalances may be difficult to accomplish, and could leave some facilities even temporarily at risk.

Question #6: What kind of "risk" would facilities and employees face?

Answer: The principal mission of FPS is to provide law enforcement and security services to protect government owned and occupied facilities, their tenants, and visitors and their property from harm. In large part, this role is being carried out by thousands of contract security guards who are used to deter crime in and around federal buildings. During our audit, we concluded that FPS was not adequately monitoring its guard contracts. Guards were working with expired suitability determinations, unarmed guards were working at armed posts, a guard with felony convictions was employed by one contractor, and guards did not always have the required "Secret" and "Top Secret" clearances. These lapses in contractor oversight can result in the government paying for services it did not receive and a loss of monies when contract deductions related to non-performance are not taken. To the degree that security contractors are not providing qualified, certified, and appropriately deployed guards, federal facilities, employees, tenants, and visitors also face an increased level of risk of a wide variety of terrorist and

criminal acts. The agency must carefully monitor its attrition and realignment plans to ensure that the situation we found in 2005-2006 does not continue.

Question #7: Has your office ever been requested by FPS to perform a criminal background check on a company or company officer participating in the contract guard program? What were your results?

Answer: We have no knowledge, record, or recollection of FPS ever requesting that our office perform a criminal background check on a company or company officer participating in the contract guard program.

Question #8: In your opinion, is it appropriate for a former felon to be an officer in charge of a company providing security for federal employees and their workplaces?

Answer: The answer to this question depends on the nature of the conviction and the nature of the contractor's duties and responsibilities. To the extent a conviction relates to issues that would likely arise in the normal course of providing security for federal employees, I would have concerns about a former felon being a company officer.

The DHS Office of Security can provide additional information about how it considers felony convictions in adjudicating security clearances for contractors.

Question #9: What protocols should FPS contracting officers employ to ensure that a company remains financially viable and that its ownership is suitable throughout the life of the contract?

Answer: If a contractor were generally performing according to the terms and conditions of the contract, the contracting officer would not typically inquire about the company's finances or ownership. If the contracting officer has concerns about the contractor's performance, it would be appropriate for the contracting officer to seek information to determine the causes.

Agency officials advised that contracting officers are not required to perform regular or continuing investigations into the ownership or financial status of a contractor once a contract has been awarded. Instead, it is incumbent upon the contractor to notify the contracting officer of material changes in these areas in accordance with provisions set forth within the contract. However, a contractor's failure to report material changes in ownership or financial status does not preclude contracting officers from taking the appropriate actions once the changes become known to them via other means.

Question #10: Weldon Waites testified that STARTECH was owned by his wife, Sharon, thus making the company a "woman-owned business." He also stated that he made the financial and operational decisions for STARTECH. Mr. Waites received an annual salary of approximately $360,000 while his wife billed the company $50 per hour for work she performed maintaining the website. Is this typical of the ownership and control structure of a "woman-owned business," as defined by SBA in order for a company to receive preferential treatment for contracting purposes?

Answer: The Small Business Administration would be better suited to response to this question.

Should you have any questions, please call me, or your staff may contact our congressional liaison, Tamara Faulkner, at (202) 254-4100.

Sincerely,

Richard L. Skinner
Inspector General

Good morning,

My name is Brian Smith. I am a former employee of Startech International Security and a Union Steward for the SPFPA International Union.

I would like to take a few moments of your time to respectfully and directly address the current issue(s) regarding security. Namely, **to ensure that security professionals are able to effectively protect federal employees and their workplaces.**

Although addressed in first person, I not only represent myself and my personal experiences, but the sum total of the voice and petition of all former Startech employees.

For the past 12 to 24 months, Startech International Security has repeatedly failed to pay salaries to its employees in a timely manner, and in accordance with their collective bargaining agreement(s). The most notable occurrences trail back to Feb. 24th 2006, with concurrent dates to include June 16th 2006, March 23rd 2007, May 4th 2007, May 18th 2007, and June 1st 2007. On each occasion, payroll has either been shortened, delayed, or simply not available.

As a result, I endured massive and elongated hardships. I have been penalized by my respective banking and financial institutions for the numerous overdraft and insufficient funds fees on my account(s). I have had to resort to pay-day loans and high interest cash advances in order to get through from one pay period to the next. I have even had to borrow money from friends and relatives in order to help pay bills and provide food for my wife and three boys.

On June 9th I became an alumnus of Nyack College, with a bachelor's in Organizational Management. However, due to the negative status of my bank account and a dishonored payment to the college, I was almost unable to participate in my own graduation. All of the hard work, dedication, time off from family amongst other great sacrifices made, seemed somewhat to no avail. The anticipation of celebrating one of the most monumental educational achievements in my life has been sadly overtaken by disappointment. Today, I am still unable to receive my degree or a transcript as a result.

To say the least, I (as well as my fellow colleagues) have been humiliated, embarrassed, defamed of character, and are experiencing credit damage resulting from negative and derogatory reporting. Hence this entire experience has left Startech employees ultimately devastated! This in fact is enough to hinder effective job performance, but with a sense of duty, we continued to go to work as prescribed by the Federal Protective Service in order to protect the governments' assets which include the employees of the U.S. government, within various government facilities on United States Federal properties.

Amongst other monetary issues, Union dues have been deducted from employee paychecks each pay period, but not submitted to the Union since Sept. 2006. Health insurance and 401k contributions have also been deducted, but not properly administrated on behalf of the employees. For many contract sights to include Oxon Hill Data Center, Landover Warehouse, AOL in Reston VA, and the FDA in College Park MD, a total of $528 monthly per employee has been allotted by the Federal Government for health and welfare, but no adequate plan was ever

put in place. Many covered employees were even denied medical coverage or mailed a bill with demands for payments from doctor's offices. To that extent, I am gravely concerned about my sick and personal leave and vacation time that was accrued. Also, the employer pension contributions, where are they? Is all yet lost? In regards to protecting "people" and "property", the biggest questions of the day are: "Who is going to protect us (the security professional) or our property when we have not compensated for the work that we do. How long do we have to wait, or our families have to suffer before we are properly recompensed for our circumstances? How much more are we to endure?

Undoubtedly, there is a very serious problem, as Startech International Security is not the first or only company to steal monies from their employees as well as the Federal Government, put its employees in such dire straits and hide under the veil of bankruptcy.
Thus, it is imperative that a solution is found to prevent these occurrences from ever happening again.

In conclusion, this literary correspondence represents the disgruntled and discontented but diligent, dedicated, and loyal security professionals who have endured these tumultuous circumstances, working without pay or compensation throughout the duration of the past 4-6 weeks.

Weldon D. Waites
Vice President, Business Development
STARTECH International Security

Testimony
The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces

Thank you for inviting me to share today my experience and thoughts regarding this topic. I can give only my limited perspective, but perhaps it can be helpful and offer insight in to the limitations and challenges of small service contract companies.

Two retired army officers, Marion Pinckney and Randall Ford, formed Systems Training and Resource Technologies, STARTECH, approximately 18 years ago. In the early years, STARTECH experienced moderate growth until the company entered the 8A set aside business and the aftermath of 9-11.

In the fall of 2004, Marion Pinckney asked me to help STARTECH managers reorganize and modernize the company's administrative policies and procedures. Shortly after initial discussions both Pinckney and Ford were diagnosed with cancer.

It was during this time that both owners asked me if I would be interested in purchasing the 1000 shares of outstanding stock and the ownership of STARTECH. I was interested, but I expressed reluctance due to my lack of necessary capital. Anticipating my dilemma, they provided the name of a contact at Bank of America, and after meeting with him I agreed to allow the loan underwriting process to begin. During the process, Pinkney died, leaving his stock to his wife.

Pinkney's death and Ford's health issues slowed the process, and it took over eight months to finalize the sale, which closed in late May 2005. Ford insisted on keeping 25 percent of the stock, as well as an employment agreement that provided him a private office in our headquarters facility and an annual salary of $125,000.

As we plowed through the due diligence process, it became obvious that administrative and operating changes were necessary if STARTECH was to remain competitive in federal government procurement. In particular, we discovered a dozen or more invoices that company records showed to be unpaid. We also discovered invoices that had not been prepared for work done.

In regard to the Bank of America loan, STARTECH was granted a $12 million facility comprising a 5-year term loan and borrowing base that financed the purchase price and two months of operating capital. STARTECH operated for about 12 months under this arrangement and did not miss a payment. It was during that time the government slowed its payment process, thereby causing our borrowing base to shrink. Our eligible

receivables aged to more than 90 days, thereby reducing our operating capital. As a result, Bank of America called our loan, and we began seeking a new lending partner. This can be time consuming, so we felt compelled to use personal funds in the amount of $400,000 to cover payroll.

Please also note that about the same time the DHS region 11 contracting department experienced several administrative changes. This meant that we worked with three contracting officers, two interim contracting officers, and several contract specialists, who were moved from the Navy Yard to downtown D.C.

After Bank of America called our loan, we interviewed several banks, all of which completed internal audits as part of their due diligence. STARTECH passed all audits and selected First Horizon as its new banking partner. We were approved for a $10 million facility that also included the unpaid balance of the purchase price and 45 days of working capital. The experience with First Horizon was quite similar to that with Bank of America. This time it took only six months for our borrowing base to shrink: The over 90 day accounts receivable were increasingly difficult to collect and, once again, reduced our borrowing availability.

First Horizon called our loan two weeks before Christmas 2006. Having been through this once before, we knew that the process to secure new funding would be long, tedious, and expensive due to attorneys' fees, accountants' fees, and fees associated with bank required work-out specialists. We kept all options open for funding, this time selecting Marquette Commercial Financing, a factoring company that would purchase most outstanding invoices.

As we looked for new financing, and feeling the pressure from a $12,000,000 accounts receivable base, we sought the assistance of two U.S. Congressmen. After a complete review of our accounts receivable aging, they initiated a Congressional inquiry regarding the outstanding receivables. Although this inquiry is currently underway and is showing positive results, it came too late to save STARTECH.

In mid March 2006, during the Marquette post audit process, it was discovered that a few of the invoices that had been certified and authenticated by a contract officer employed by DHS, region 11, actually had been paid. About the same time, I underwent a procedure know as radiofrequency catheter ablation to treat a heart condition known as atrial fibrillation. My recovery consisted of rest including no travel for ten days. My brother also was seriously ill and died three weeks later. During this time Marquette staff insisted that we meet with them in Washington, D.C. My doctor had not cleared me for travel so I agreed to a meeting in Columbia, S.C. At that meeting we assured them the invoices in question were not intentionally misrepresented. Keep in mind these invoices were certified and authenticated.

The meeting ended with Marquette employees assuring us that they were not in the practice of closing down businesses and looked forward to working through the situation with us. Two days later they notified us of their decision to call our loan. Although they

agreed to fund our payroll two more times, they stopped funding our payroll effective May 4, 2007, and applied over $5,000,000 of invoice payments to the outstanding loan balance. Today, the debt is $2,500,000.

As you might well imagine, May 2007 was a stressful and tense time as we struggled to meet payroll. We borrowed $1,000,000 from a personal friend and withdrew an additional $500,000 from my personal retirement account. That means that today I have used all personal funds available to me and owe an additional $1,000,000.

I am deeply sorry for the failure of STARTECH on June 1, 2007, and the resulting distress to so many employees. I did everything I knew at the time to avoid it.

Perhaps it is merely ironic, but today I am in negotiations to sell what remains of the company. Preliminary figures provided by an independent CPA firm indicate there will be adequate funds remaining in accounts receivable to pay Marquette in full, previously unpaid salaries, outstanding employee benefits, and accounts payable.

STARTECH was never bankrupt, but help has come too late.

I appreciate this opportunity to present these facts to this Subcommittee today.

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

July 16, 2007

Mr. Weldon Waites
Vice President, Business Development
STARTECH International Inc.
4840 Forest Drive PMB 361
Columbia, SC 29206

Dear Mr. Waites:

On June 21, 2007, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces." Attached you will find additional questions that the Subcommittee would like you to answer for the hearing record.

Please respond to these questions by the close of business on August 17, 2007. Please send your responses to: Leila Kahn, 586 Ford House Office Building, Washington, DC 20515. Due to delays in the receipt of mail in the mail screening process, I also request that you email and/or fax your response to Ms. Kahn at Leila.Kahn@mail.house.gov and (202) 226-6012. Should you have any questions or concerns, you may reach Ms. Kahn at (202) 226-4697.

Sincerely,

Eleanor Holmes Norton, M.C.
Chair
Subcommittee on Economic Development, Public Buildings, and Emergency Management

QUESTIONS FOR THE RECORD
Subcommittee on Economic Development, Public Buildings, and Emergency Management Oversight and Investigations Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and their Workplaces"
June 21, 2007

1. You purchased the company personally, and then you also personally took out a mortgage for your condominium. Then you paid down the mortgage with company funds. In other words, you were paying down a personal obligation with corporate funds. Did you have a corporate resolution authorizing that use of corporate funds? If so, produce a copy of the corporate resolution.

2. Specifically, how much was paid down on the mortgage? Was the second loan you took out, personal as well? You said that second loan you took out was in the amount of $8 million. With that $8 million you paid out the outstanding $6 million of personal obligation. So, basically, you skimmed $2 million from the company, right? Did you declare those $2 million dollars as personal income?

August 17, 2007

Eleanor Holmes Norton, MC.
Chair, Subcommittee on Economic Development, Public Buildings, and Emergency Mangement
Washington, D.C. 20515

Dear Chairwoman Norton,

This is in response to your letter of July 16, 2007, in which you asked me to answer several questions to clarify my testimony before your committee oversight hearing on July 21, 2007.

Your questions indicate that confusion remains about the mortgage for my D.C. condo. Please remember that I received a housing allowance, which was part of my contract employment agreement with STARTECH from the beginning of my relationship with the company. I will answer your questions in detail and provide some history as clarification.

The former owners understood that I am a long-time resident of South Carolina and would not consider a permanent relocation. As a result, they agreed the company should cover my travel expenses and provide a housing allowance for my time spent in Washington, D.C.

I received a housing allowance from STARTECH from December 2004 until April of this year. My wife and I leased an apartment in mid-December 2004 in the District of Columbia and remained in that location until December 2006.

We ultimately purchased a condo in the District in mid-November 2006 and moved there in December 2006. The first payment was due in January 2007and was nearly the same amount as rent on the previously leased apartment. STARTECH made that payment and two more: the February and March 2007 payments.

By the time the April 2007 payment was due, it was clear that the company could no longer keep up these payments. My wife and I began paying the mortgage from our personal funds at that time.

This means that STARTECH made three mortgage payments, each in the amount of $3,554.13 or a total of $10,662.39. Also, the financing for this property was arranged with a $60,000 down payment from my personal funds, and first and second mortgages. I must stress that no funds from STARTECH were used in the mortgage arrangements, and the company has not made a payment since February 2007.

consultation with our CPA, we decided to factor our receivables, choosing Marquette financial as our lender. After Marquette's three-month audit and due diligence process, we closed the loan on March 16, 2007, paid off First Horizon Bank ($5,261,298.95), and began using the balance of $1,500.000 for operating capital. We were with Marquette for 45 days before they called our loan in April 2007.

Their work out arrangement was different from the two previous lenders. They took 100 percent the government payments that were factored, ignoring our original agreement with them, and applied the proceeds (more than $5,000,000) to the loan balance while forcing STARTECH to fund its payroll and other financial obligations. During that period, which ended in May 20007, we put into the company over $3,000.000 from our personal funds, which included our retirement funds and personal loans.

We had made arrangements on May 15, 2007, to close a loan with a new lender who understood the government contracting business and were willing to work with us. They seemed to appreciate the fact that we were committed to saving STARTECH. "If some one is willing to put in over 3 million dollars, we are willing to work with them." Unfortunately, they required documentation that only your whistle blower could provide. She was too busy giving STARTECH's assets away and answering correspondence.

Conclusion:
Our corporate books have been audited numerous times, before and after your hearing, showing us to be in compliance with the Internal Revenue Service and all other accounting procedures and protocols. During a final audit, we confirmed that at the time of your hearing, the federal government still owed STARTECH more than $7,000,000.

Interestingly, I think the record shows that your whistle blower's main point was that the government was current with its payment obligations to STARTECH. Wrong! The day after the hearing, more than $3,700,000 in payments from our U.S. government clients was deposited with the Department of Labor and is being used to reconcile some $1,500,000 in back payroll payments to former STARTECH employees. The remaining funds ultimately will be used to pay our other obligations.

As a tax paying U.S. citizen, I would greatly appreciate your assistance, along with that of Congressmen Spratt and Clyburn, in collecting the remaining funds owed STARTECH, currently estimated to be $3,500,000.

Finally, many other points need to be clarified and corrected in your record, including but not limited to the fact that I did not at any time 'skim' money from STARTECH International Security. If you are truly interested in the mission of oversight of how federal employees and their workplaces can be made safe through contract guard companies and their relationship with the Department of Homeland Security, you will help see to it that the Department's financial obligations are met with reliable on time

In an aside, it is conventional wisdom that most financial experts, including the company's CPA, agree that purchasing property is a better use of money than making rental payments over a long period of time

Finally, yes, there was corporate resolution to support this housing allowance.

In regard to the second section of questions included with your correspondence, I will begin with the purchase of STARTECH in May 2005.

The purchase was arranged with Bank of America preceded by a complete audit of company records by the bank's experts and under the guidance of three separate law firms. The original purchase price was $6,342,530.50, and that amount, plus two months operating capital was financed in the loan package making our total obligation $8,500,000, which we were required to personally guarantee.

STARTECH enjoyed moderate growth during the last part of 2005 and on into 2006, even though we were hampered by seriously delayed payments from our U.S. government clients. STARTECH managed, however, to make payments to Bank of America on time, but our borrowing base was shrinking due to these delayed payment obligations. So much for compliance with the prompt payment act!

Although STARTECH remained current with its payments to Bank of America, records show that delayed federal payments caused STARTECH to violate its lending ratio requirements. So, Bank of America called our loan. Please note that during this time, we personally kept STARTECH alive by putting more than $500,000 into the company to be used as operating capital.

In the winter of 2006, STARTECH found a new lender and began a relationship with First Horizon Bank, a government contract lender. Again, we were audited and passed all scrutiny. We initially borrowed $5,189,792.02, paid off our obligation to Bank of America, and used our borrowing base for operating capital. This means that we reduced the amount of our loan by $1,152,738 (interest plus principal).

In December 2006, First Horizon made the decision to terminate its government lending operations and called our loan. It is interesting to note that last month First Horizon closed all 18 of its branches in the District of Columbia/Baltimore region.

Although First Horizon used this decision to call our loan, you should note that STARTECH encountered the identical problem with this First Horizon loan due to late payments from our U.S. government clients. Once again our borrowing base shrank and resulted in a second covenant violation.

In early 2007, STARTECH was forced to find a new lender, this time and after

payments.

Sincerely,

Weldon D. Waites
Vice President, Business Development
STARTECH International Security
4840 Forest Drive, PMB 361
Columbia, S.C. 29206

Information House Subcommittee on Investigations and Oversight

Thursday, June 21, 2007

Testimony: Submitted by Caleb A. Gray-Burriss, Executive Director. NASPSO

My name is Caleb A. Gray-Burriss, I am presently Executive Director of the National Association of Special Police and Security Officers (NASPSO). I founded NASPSO in 1994 and it was chartered as a 9B3 Security Professionals Union. Since 1994 I have observed ongoing abuse of the government funded programs for Contract Security. With the Oklahoma Bombing then the 911 disaster, terrorism has become an unfortunate reality in America.

Ladies and Gentlemen the subject of today's hearing, corruption by the Security Contractors and Government Contracting Officials, is a very serious one. Security Personnel working to protect employees in federal and state facilities have been the victims of this corruption causing them overwhelming hardship. Yes, it is apparent that the Government has failed in its responsibility to protect the Private Security Professional against unfair treatment by the companies that employ them.

The Government consistently awards Security Contracts to the lowest bidder with no regard for the competency or solvency of the company. The lack of adequate oversight by the Government has given the Security Companies "carte blanche" to violate federal and state labor laws, ignore wage determinations and disregard the rights of American Workers. The creation of Homeland Security has only exacerbated the problem by giving companies another layer of bureaucracy to hide behind.

In 1995 Security Companies used the Service Contract Act "Wage Determination" to keep their employees wages low by applying Guard I ($8.50 per hour) and Guard II ($11.50 per hour) status on federal and state contracts, Guard I being unarmed and Guard II being armed. NASPSO questioned the validity of Guard I and Guard II status classifications and requested a clarification from the Department of Labor (DOL). DOL determined that all Guards on federal and state contracts were Guard II status and authorized that back pay be paid to those who were classified incorrectly.

As the need for Private Security Personnel in Federal facilities increased and its haste to provide these services the Government was negligent in its determination of requirements, no High School Diploma, minimal language requirements and unclear security background check guidelines. Subsequently, the Government changed its requirements to include the completion of high school. As a result, numerous Security Guards who had been working for years lost their jobs. NASPSO challenged the

Governments position and requested that a "Grandfather Provision" be added. This allowed many of the Security Guards to be grandfathered in and remain employed.

NASPSO encourages and supports the ongoing training of Security Personnel unfortunately, the majority of security companies do not consider training a priority nor has the Government. Too many Project Managers and Supervisory Security Personnel lack management skills. Some companies do not monitor certifications, effectively, resulting in lost time on the job for the guards.

NASPSO and other Unions representing Security Personnel have made efforts to initiate changes to improve their working environment. In some cases, they have been successful but in to many situations Union efforts have been perceived and interpreted as troublemaking. I agree that many Unions representing Security Personnel do not know enough about the Security Industry but NASPSO has been committed to keeping abreast of the industry standards and changes in order to keep its Members aware. NASPSO has also made efforts to learn, listen and share its knowledge of the industry not only with Members but with security companies and government contracting officials. Unions are responsible to its Members, NASPSO has aggressively represented its Members and exposed security companies' activities and policies and procedures that are not in their best interest. Our experience has been that the Government is hesitant to respond to request from Unions to investigate or increase monitoring of those companies with Government contracts. In addition the Government awards contracts again and again to companies that have blatantly violated labor laws.

NASPSO has been fighting these injustices for years. My family and I have personally financed NASPSO and the hard work of loyal and dedicated Security Professionals have resulted in NASPSO's continued growth. NASPSO's Executive Committee and Officers are working Security Professionals. Being a small Union, NASPSO has attempted mergers with other Unions only to discover that their interest was in collecting Union dues and establishing "Sweetheart Deals" with security companies. In one situation our entire Union Treasury was stolen and we had no way of retrieving it because the policies and guidelines of the National Labor Relations Board (NLRB) are very limited with regard to small labor organization operated by its Members.

In 2004 NASPSO rebuilt itself as an independent Union starting with no funds, no Members but with a few dedicated Security Professionals who believed in us. Over the last 2 years, NASPSO has grown and has continued to challenge companies and file charges on behalf of our Members. NASPSO's survival has been threatening and perplexing to a number of individuals and organizations. As a result, NASPSO and I have become the target of security companies and competing Unions' smear campaigns and false allegations. Most recently, subsequent to receiving information (oral depositions) from individuals associated with a competing Union, the Government has accused me of stealing Members' pension money. My only hope is that the Government is truly interested in finding the truth. That is another situation and example of the injustices a small, minority labor organization faces in the Security Industry.

There are many security companies as well as 9b3 Unions that have little regard for Security Professionals that they employ or represent. Startech is a prime example, a company that more than once has violated the terms of their contract only to be allowed to bid on and be awarded yet another contract.

In conclusion, NASPSO's mission, as the collective bargaining representative of Security Professionals, is to enhance their professionalism, improve their working conditions, and heighten their knowledge, understanding and level of awareness of their rights and the Security Industry. Too many security companies are driven solely by the desire for "Profit Maximization". Too many Government contracting officials lack an adequate knowledge of labor law and the Security Industry to be effective, this includes the employees of the General Services Administration (GSA), DOL, NLRB as well as Homeland Security. These are the organizations responsible for writing contracts, conducting the procurement process and monitoring the performance of contract incumbents.

NASPSO will continue to represent, speak out and work to correct the injustices suffered by Security Professionals in America. I am encouraged by the attention and concern of this Committee with regard to this situation and hope that it will continue regarding other concerns of Security Professionals.

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