

**REWARDING BAD ACTORS: WHY DO POOR PER-
FORMING CONTRACTORS CONTINUE TO GET
GOVERNMENT BUSINESS?**

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

MARCH 18, 2010

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REWARDING BAD ACTORS: WHY DO POOR PERFORMING CONTRACTORS CONTINUE TO GET GOVERNMENT BUSINESS?

THURSDAY, MARCH 18, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:09 a.m., in room 2154, Rayburn House Office Building, Hon. Edolphus Towns (chairman of the committee) presiding.

Present: Representatives Towns, Cummings, Kucinich, Tierney, Watson, Quigley, Norton, Speier, Driehaus, Chu, Issa, Mica, Bilbray, Jordan, Chaffetz, and Luetkemeyer.

Staff present: John Arlington, chief counsel, investigations; Aaron Ellias, staff assistant; Craig Fischer, investigator; Neema Guliana, investigative counsel; Adam Hodge, deputy press secretary; Carla Hultberg, chief clerk; Marc Johnson and Ophelia Rivas, assistant clerks; James Latoff, counsel; Leneal Scott, IT specialist; Mark Stephenson, senior policy advisor; Ron Stroman, staff director; Gerri Willis, special assistant; Alex Wolf, professional staff member; Lawrence Brady, minority staff director; John Cuaderes, minority deputy staff director; Frederick Hill, minority director of communications; Adam Fromm, minority chief clerk and Member liaison; Stephanie Genco, minority press secretary and communication liaison; Seamus Kraft, minority deputy press secretary; Stephen Castor, minority senior counsel; and Ashley Callen, minority counsel.

Chairman TOWNS. Good morning and thank you all for being here.

Today the committee continues its oversight of the Federal Government's use of suspension and debarment, a process that is supposed to prevent taxpayer money from going to the bad apples of the contracting world.

Suspension and debarment can be an effective tool for Federal agencies to ensure contractor performance. Unfortunately, as we will hear today, the suspension and debarment tool often goes unused, quietly rusting away in the procurement tool box.

More than \$500 billion of the taxpayers' money goes to Federal contractors each year. It is a massive job to ensure that billions of dollars in taxpayer money is spent effectively and wisely, and that Federal dollars do not go to the incompetent and the unproductive, the con men and the con women.

Suspension and debarment is the last line of defense against such abuse, and should only be used in the most seriously cases. But suspension and debarment only protects our Government if agencies use it.

In February of last year, we held a hearing on the operation and use of the Excluded Parties List System. We found that some Government agencies were ignoring Federal regulations by awarding funds to businesses that had been suspended or debarred. We also found that Federal agencies took far too long to suspend or debar, if they did it at all.

Now, a year later, it seems little has changed.

In three separate reports, the Inspectors General of the Department of Homeland Security, the Department of Transportation, and the U.S. Agency for International Development found that their respective agencies have failed to use the suspension and debarment system or have been so slow in using it that the poor performers raked in millions and millions and millions in the time period.

For example, the DOT IG found that, on average, it took DOT 300 days to reach a suspension decision and 415 days to process a debarment decision. These decisions are supposed to be made within 45 days.

In one such delay, the IG found that one Kentucky company committed contract fraud by bribing an official to receive bid information. During the 10-months it took DOT to suspend this company, they received \$24 million in Recovery Act funds.

Similarly, at DHS, the IG found that DHS had only 10 debarment cases in 4 years, an incredibly low number for an agency that spends an enormous percentage of its budget through contracting. In one glaring example, there were no debarment actions by FEMA, an agency that had well-publicized problems with contractors during Hurricane Katrina. That, to me, is very interesting.

Unfortunately, the news isn't much better at USAID. The IG found that GA Paper International and Ramtech Overseas, Inc. admitted that they had submitted more than 100 false claims for reimbursement. Though they agreed to pay \$1.31 million to the Government, USAID never initiated a suspension or debarment action.

If you aren't going to suspend or debar contractors for fraud, what does it take?

As the old saying goes, "Fool me once shame on you, but fool me twice, shame on me." In this case, shame on our Government for being fooled over and over and over again by the same contractors.

It is way past time for agencies to suspend and debar bad actors and for agency managers to aggressively enforce this process.

As I have said before and I want to emphasize today, I am not against contracting or contractors. I am against weak management and poor contractor performance. I know that responsible contractors and the witnesses today share this view as well.

The failure to enforce the law against bad actors is unfair to responsible companies and it is unfair to the taxpayers whose money we are using.

I look forward to hearing from both management and the IGs about what can be done to address this problem.

I will now yield to the ranking member of the committee from California, Congressman Issa, for his opening statement.

[The prepared statement of Chairman Edolphus Towns follows:]



**Opening Statement of
Chairman Edolphus Towns**

House Committee on Oversight and Government Reform

March 18, 2010

**“Rewarding Bad Actors: Why Do Poor Performing Contractors
Continue To Get Government Business?”**

Good morning and thank you all for being here.

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More than \$500 billion of the taxpayers’ money goes to Federal contractors each year. It is a massive job to ensure that billions of dollars in taxpayer money is spent effectively and wisely, and that federal dollars do not go to the incompetent and the unproductive, the con men and the frauds.

Suspension and debarment is the last line of defense against such waste. Individuals and companies that are suspended or debarred are prohibited from receiving contracts or grants until they can clean up their acts. In addition, the government maintains a database of all suspended and debarred contractors so that when a Federal agency hands out money, we can make sure it does not end up in the hands of proven bad actors.

But suspension and debarment only protects our government if agencies use it. This does not appear to be happening.

In February of last year, we held a hearing on the operation and use of the Excluded Parties List System. We found that some government agencies were ignoring federal regulations by awarding funds to individuals or businesses that had been suspended or debarred. We also found that federal agencies took far too long to suspend or debar, if they did it at all.

Now, a year later, it seems little has changed.

In three separate reports, the Inspectors General of the Department of Homeland Security, the Department of Transportation, and the U.S. Agency for International Development found that their respective agencies have failed to use the suspension and debarment system or have been so slow in using it, that the poor performers raked in millions in the interim.

For example, the DOT IG found that, on average, it took DOT 300 days to reach a suspension decision and 415 days to process a debarment decision. These decisions are supposed to be made within 45 days.

In one such delay, the IG found that one Kentucky company committed contract fraud by bribing an official to receive bid information. During the ten months it took DOT to suspend this company they received \$24 million in Recovery Act funds.

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If you aren't going to suspend or debar contractors for fraud, what does it take?

As the old saying goes, "Fool me once shame on you, but fool me twice, shame on me." In this case, shame on our government for being fooled over and over again by the same contractors.

It is way past time for agencies to suspend and debar bad actors and for agency managers to aggressively enforce this process.

As I have said before and I want to emphasize: I am not against contracting, or contractors. I am against weak management and poor contractor performance. I know that responsible contractors and the witnesses today share this view.

The failure to enforce the law against bad actors is unfair to responsible companies and it is unfair to the taxpayers.

I look forward to hearing from both management and the IGs about what can be done to address this problem.

####

Mr. ISSA. Thank you, Mr. Chairman, and thank you for holding this hearing. As you recall, the first hearing held by this committee after you became chairman was on substantially the same subject. I will ask today that you join me in a letter asking for the GAO to update their findings so that we can look forward to not only having new facts, but, in all likelihood, new enforcement.

Chairman TOWNS. Without objection, I will join you on that.

Mr. ISSA. Thank you, Mr. Chairman.

The goal of today's hearing is not just to shed light on an ongoing issue, but to make sure that the industry of both contractors and the Government agencies that oversee those contractors realize that the time, as the chairman said, is long overdue to bring about quick and predictable debarment and suspension.

Each of us may have different examples of those entities which should be suspended or debarred. The truth is all of the chairman's likely candidates should be scrutinized and either cleared or taken off the rolls, and all of my candidates, I suspect, should be either evaluated and cleared or taken off the rolls. It is, in fact, in my opinion, every single contractor's responsibility to live up to a high standard, and if there is any question from any quarter as to their conduct, it should be thoroughly investigated.

Just yesterday, at the chairman's directive, we reviewed the question of both contractors and private individuals either, employees or Government contractors, who were seriously delinquent in their taxes, whether they should also be ineligible for contract or even employment.

Although there is not bipartisan support on how to achieve this, there is bipartisan recognition that bad actors make for bad government.

Mr. Chairman, I will delve slightly into one partisan example, but I do so for a reason. We in the Congress voted on a bipartisan and overwhelming basis in the House and the Senate to defund ACORN. Whether we agree with Federal court decisions now pending or not, it is clear that some members of the court believe that the Association of Community Organizations for Reform Now [ACORN], in their opinion, cannot be defunded by congressional fiat. That begs the real question: Why is there were people repeatedly breaking laws, being indicted and even convicted, and still operating within that organization? In fact, funds still being received even after it was shown that funds of the Federal Government had been embezzled and covered up.

This is an example where, from this dais, we cannot bring about effective enforcement. We should not, on a regular basis, take up the question of any company or any organization. But in order to live to that expectation that I think the chairman and I want us to do, which is to never again have a House floor vote or a Senate vote related to defunding an organization, we must call on our agencies to do their job not only better, but much quicker.

So, Mr. Chairman, my apologies for something which has often been considered to be partisan, but I believe that partisanship would have been completely unnecessary and tough votes for people on both sides would have been unnecessary if in fact the use of these tools had been aggressive. None of us would have questioned if an organization or an individual had been reviewed and

properly cleared. But to not be reviewed, to go on receiving additional funds by any organization, including contractors and, quite frankly, even the continuation of Federal employees, must in fact reach a higher standard, one that the chairman made clear by having his first hearing on this subject and is making clear today by having an additional hearing.

So I join with the chairman in all of his remarks and yield back the balance of my time.

[The prepared statement of Hon. Darrell E. Issa follows:]

EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS
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Statement of Rep. Darrell Issa, Ranking Member

“Rewarding Bad Actors: Why Do Poor Performing Contractors Continue to Get Government Business?”

March 18, 2010

Thank you, Chairman Towns, for holding this hearing about the government’s efforts to protect taxpayer dollars from going to unworthy contractors.

As the House Committee with primary jurisdiction over federal contracting, we are engaged today in the kind of oversight that is necessary for the U.S. government to conduct the people’s business in a 21st century context. This goal, Mr. Chairman, has always been a bipartisan concern, and I am encouraged that under your chairmanship we will continue in that spirit.

Recent reports from the Inspectors General – whose testimony we will consider today – have profiled the ongoing struggle for federal agencies to apply suspension and debarment policies and procedures against poorly-performing contractors. Moreover, we have been alerted to the reluctance of some federal agencies to protect taxpayer dollars by consistent enforcement, and in the case of the Department of Transportation, we have learned that suspension and debarment decisions have been viewed as a secondary concern. Thankfully, we have also learned that DOT is responding to the IG report with proactive steps to correct the problem.

I am concerned, however, that the roughshod way that this Administration has handled its economic recovery agenda is going to encourage rather than curtail waste and fraud in government contracting. Moreover, I am alarmed at the recent decision in a federal court to protect one of the worst actors in American history, the Association of Community Organizations for Reform Now, or ACORN.

If ever there was an organization that deserved to have its federal funding permanently stripped, it is this organization. From election fraud, to covering up embezzlement, to abuse of tax-exempt privileges, money-laundering, racketeering, and a host of other criminal acts, ACORN is emblematic of the problems that can occur when federal agencies are careless in awarding taxpayer dollars.

There is no ambiguity in the government’s process for suspension and debarment. The Federal Acquisition Regulation (FAR) prescribes the process clearly. The government always retains the right – indeed the responsibility – to terminate or cancel any existing contract when clear wrongdoing has occurred.

*Statement of Rep. Darrell Issa, Ranking Member
March 18, 2009
Page 2*

Finally, Mr. Chairman, today's hearing allows this committee to explore the full rationale for a consistent application of the suspension and debarment process across the federal government. In fact, suspension and debarment is not only designed to prevent bad actors from receiving government funds. It also serves to promote reform in a contractor's operations so that it can emerge from the suspension and debarment list, and resume work that benefits U.S. taxpayers.

A little more than one year ago, Mr. Chairman, you convened a hearing of this Committee to examine similar issues related to government contracting. I said then, and I repeat today that we "have a singular obligation to ensure that [federal funds] are spent in a cost-effective manner, with as little waste as possible."

I also noted that the system designed to protect taxpayers "suffers from fundamental flaws." One year later, I am concerned that we have made little progress in this area.

Today's hearing must serve notice to every federal agency and every federal contractor that this Committee will not falter in our vigilant oversight of all issues related to federal contracting. We will not turn a blind eye to the squandering of taxpayer dollars on contractors who are guilty of waste, fraud, and abuse. And we will not tolerate bureaucratic inertia or ideological favoritism to protect organizations like ACORN, and others, who have violated the taxpayers' trust.

Thank you again, Mr. Chairman, and I look forward to hearing from today's witnesses.

###

Chairman TOWNS. Thank you very much. I thank the gentleman from California for his statement and also thank him for the work that he has done on this issue as well. Thank you.

Let me first check if anyone else has an opening statement. I yield to the gentleman from Florida for a 5-minute opening statement.

Mr. MICA. Thank you very much, Mr. Chairman, for yielding. As the Republican leader of the Transportation and Infrastructure Committee, I take particular interest in today's hearing, and thank you for holding it. I wish we were doing an even better job in our committee, Transportation and Infrastructure. We do have a lot of responsibility as the largest committee in Congress and a lot of oversight. But I am particularly interested in what you have found here, and it does give me great concern. We have tried to conduct regular overview of stimulus dollars, and I think that is very important because it was a huge amount of money. I think now it is scored at somewhere around \$862 billion.

Today, the President is going to sign a so-called jobs bill of \$17 billion or \$18 billion, however you figure it, and it also has a high emphasis on infrastructure and T&I projects.

First of all, I am deeply concerned about getting that money out. To date, as of March 3rd, the last report I had from our committee staff, \$48 billion in stimulus money that went through the Department of Transportation of those \$862 billion, the \$48 billion, only 18 percent had gotten out, which gives me great angst about what the President is going to sign today, a much smaller amount, even getting that money out and people not having jobs. My State rose in unemployment in the January report to one of the top 10.

But the difficulty in getting money out is one thing. Oversight is another thing. But then to find out that the Department of Transportation is not being a good overseer of those contractors and those vendors who are getting some of this money. And if you read the report—and, again, this is a very shocking report that has come out by the Inspector General of DOT—it takes so long to debar someone or find them ineligible that we may have in fact already given—and I have some reports and I am having our staff investigate it—we may have given money to people who should not be participating in this process.

So we aren't getting the money out. We are possibly giving the money to people who shouldn't be eligible players in this, and, again, it is deeply concerning and frustrating from our standpoint.

But I thank you for conducting this hearing. We are going to dedicate some of our investigative staff to going after folks who, now we are learning, again possibly should have been debarred or disallowed in this process from receiving money who may have received that money; and we intend to also bring this report to our DOT and T&I Committee, and we will continue to follow this. But appreciate again your work, both the Inspector General and this committee. Thank you.

Chairman TOWNS. I thank the gentleman from Florida for his statement.

Now, at this time, we will introduce our panel of witnesses: Mr. Calvin Scovel III, Inspector General of the U.S. Department of Transportation. Welcome.

Mr. Richard L. Skinner, Inspector General for the U.S. Department of Homeland Security. Welcome.

Mr. Donald A. Gambatesa, Inspector General for the U.S. Agency for International Development. Welcome.

Mr. Gregory H. Woods, Deputy General Counsel for the U.S. Department of Transportation.

Ms. Elaine C. Duke, Under Secretary for Management of the U.S. Department of Homeland Security. Welcome.

And Mr. Drew W. Luten III, Acting Assistant Administrator for Management, U.S. Agency for International Development.

Let me welcome all of you to the committee.

It is a longstanding policy that we swear all of our witnesses in, so if you would stand and raise your right hands.

[Witnesses sworn.]

Chairman TOWNS. You may be seated.

Let the record reflect that the witnesses all answered in the affirmative.

I would like to just go right down the line. As you know, the procedure is that the light starts out on green; then it goes to yellow, which means start winding down; then it goes to red. Everywhere in America red means stop.

So, Mr. Scovel, why don't we start with you? Then we will come right down the line, keeping that in mind.

STATEMENTS OF CALVIN L. SCOVEL III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION; RICHARD L. SKINNER, INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY; DONALD A. GAMBATESA, INSPECTOR GENERAL, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT; GREGORY H. WOODS, DEPUTY GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION; ELAINE C. DUKE, UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; AND DREW W. LUTEN III, ACTING ASSISTANT ADMINISTRATOR FOR MANAGEMENT, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

STATEMENT OF CALVIN L. SCOVEL III

Mr. SCOVEL. Mr. Chairman, Ranking Member Issa, members of the committee, thank you for inviting me here today to testify on DOT's Suspension and Debarment Program.

Over the last 4 years, the Department contract and grant obligations averaged \$56 billion annually. Given the significant dollars at stake, plus an additional \$48 billion in ARRA funds, it is imperative that parties who should be suspended or debarred not receive Federal contracts and grants. However, weaknesses in DOT's S&D program make these funds vulnerable to unethical, dishonest, or otherwise irresponsible parties.

Today I will focus on two major weaknesses: first, delays in DOT's S&D decisions and reporting; and, second, the lack of effective management controls and oversight. These weaknesses were found at the Federal Highway Administration, Federal Aviation Administration, and Federal Transit Administration, which together represented more than 90 percent of DOT's S&D activity over a recent 3-year period.

Over the past 2 years, we have reported on major delays in DOT's S&D decisions and reporting. Our work found that, on average, the operating administrations we reviewed took over 300 days to reach a suspension decision and over 400 days to reach a debarment decision.

In one recent case, Federal Highways took 10 months after receipt of our suspension referral to suspend individuals charged with bribery, conspiracy, theft, and obstruction of justice. Federal Highways' delay in making a suspension decision resulted in the Commonwealth of Kentucky awarding \$24 million in ARRA-funded contracts to companies that we believe met the legal test to be considered affiliates of these individuals.

Several factors contribute to these delays. First, operating administrations generally do not rely on indictments or convictions to establish the evidentiary basis for suspension or debarment. Instead, they often perform extra, time-consuming tasks such as researching additional information on the case and analyzing the competitive impact of the case on Federal aid programs. Such tasks are not required by regulations.

Second, operating administrations have not assigned sufficient priority to their S&D workload. Instead, staff typically performs this work as a collateral duty. Attorneys, for example, may be pulled from their S&D duties to perform litigation and other assignments their administrations determine to be a higher priority.

We also found that DOT does not support its S&D decisions within timeframes required by regulation. Nearly half of the S&D decisions we reviewed were not entered into the Government's Excluded Party Listing System within 5 days of making a decision. DOT's procurement office exceeded the 5-day requirement by as much as 864 days and 14 cases took over 100 days. Such time gaps allow unscrupulous contractors to go undetected by officials seeking to identify excluded parties before awarding new contracts or grants.

The Department's lack of effective controls and oversight exacerbates these weaknesses. For example, DOT S&D policy requires officials to complete all necessary tasks for making a suspension decision or proposing a debarment within 45 days. Yet, the policy has been subject to interpretation and operating administrations exceed the 45-day limit.

DOT's policy also assigns responsibility for monitoring its S&D program to the Office of the Secretary and the Department's nine operating administrations. Without clear accountability, the Office of the Secretary is unaware of the many S&D-related problems within the Department and cannot take appropriate corrective action.

Finally, DOT lacks controls to ensure that data in the EPLS are accurate. Unreliable data not only weakens contracting officers' ability to confidently identify excluding parties, it also weakens the usefulness of DOT's annual S&D reports as an oversight tool. In fiscal year 2008 alone, the annual report excluded 53 pending S&D cases, leaving the Department without knowledge of those cases that most merited immediate attention.

Since we issued our January report, DOT officials have stepped up their efforts to address our concerns. Specifically, the Office of

the Secretary and the administrations are working to increase priority in handling S&D cases and clearly identified responsibilities and timeframes. Continued vigilance in these efforts will be critical to close oversight gaps.

I would like to take this opportunity to thank the Department for its recent efforts to finalize its S&D order. However, until our formal recommendation followup process is completed, we don't feel it would be appropriate for me to comment on the proposed order at this time.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions you or other members of the committee may have.

[The prepared statement of Mr. Scovel follows:]

**Before the Committee on Oversight and Government Reform
United States House of Representatives**

For Release on Delivery
Expected at
10:00 a.m. EDT
Thursday
March 18, 2010
CC-2010-036

Weaknesses in DOT's Suspension and Debarment Program Limit its Protection of Government Funds

**Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation**



Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to discuss our recent report on the Department of Transportation's (DOT) Suspension and Debarment (S&D) Program.¹ Making timely S&D decisions and promptly reporting them is critical to helping ensure that government contractors who have acted unethically do not receive additional government dollars. DOT is responsible for overseeing significant contract and grant obligations to meet its mission needs. These obligations averaged \$56 billion annually over the last 4 years. It is imperative that DOT's stewardship of these taxpayer dollars include adhering to Federal S&D regulations and policies, which permit agencies to exclude parties found to be unethical, dishonest, or otherwise irresponsible, from receiving contracts and grants involving Federal funds.

Over the past 2 years, including our May 2009 Advisory,² we reported weaknesses in DOT's S&D Program that increase the risk of awarding contracts and grants to irresponsible contractors—a risk that escalated with the disbursement of \$48 billion to DOT under the American Recovery and Reinvestment Act (ARRA) of 2009. Today, I would like to discuss the delays in DOT's S&D decisions and reporting, and the lack of effective controls for managing and overseeing its S&D Program. My testimony is based largely on our work at the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA), which collectively represented over 90 percent of DOT's S&D activity from calendar years 2005 through 2008.

IN SUMMARY

Significant delays in DOT's suspension and debarment decisionmaking process have given unscrupulous contractors ample opportunity to bid for and receive contracts. On average, it took over 300 days to reach a suspension decision and over 400 days to reach a debarment decision. These delays are largely due to lengthy and unnecessary reviews conducted before deciding cases and a lack of priority assigned to DOT's S&D workload. At the same time, DOT's management controls are not adequate to safeguard the Department's efforts to exclude prohibited parties that agencies must suspend or to propose debarment. A weakness surrounding DOT's main S&D policy is its inability to clearly define that DOT needs to suspend—or propose debarment—of parties within a

¹ DOT's Suspension and Debarment Program Does Not Safeguard Against Awards To Improper Parties, ZA-2010-034, January 7, 2010. OIG reports and testimonies can be viewed on our website at: www.oig.dot.gov.

² See U.S. Department of Transportation, Office of Inspector General, *ARRA Advisory – DOT's Suspension and Debarment Program*, AA-2009-001, May 18, 2009. This includes our reports on top management challenges facing DOT, see DOT's Fiscal Year 2009 Top Management Challenges, PT-2009-005, November 17, 2008 and DOT's Fiscal Year 2010 Top Management Challenges, PT-2010-008, November 16, 2009.

required 45-day limit. DOT's S&D Program is also limited by the absence of strong program oversight. The cumulative effect of these weaknesses increases the risk that DOT and other agencies will award contracts and grants to parties that DOT will ultimately suspend or debar.

BACKGROUND

In fiscal year 2008, the Federal Government's contract obligations exceeded \$500 billion to over 160,000 contractors. Suspensions and debarments—actions taken against parties found to be unethical, dishonest, or otherwise irresponsible—are intended to protect this significant investment by excluding irresponsible parties from receiving contracts and grants involving Federal funds for a specific period of time. One agency's S&D action is applicable Governmentwide, a feature aimed at improving the strength of this tool. (See exhibit A at end of this statement for key elements of these policies.) Within DOT, the Office of the Secretary (OST) and DOT's nine Operating Administrations (OA) are responsible for managing their own S&D programs. Our Office of Investigations supports these efforts by referring information on indictments and other court actions to OAs for use in their S&D decision-making.

In 2005, DOT revised its S&D policy, *Governmentwide Debarment, Suspension and Ineligibility*, in part, after learning it awarded a contract to a company under our investigation. The revisions aimed to strengthen DOT's S&D policies and add accountability to the S&D Program by, for example, establishing a 45-day deadline for making S&D decisions, reporting decisions to the General Services Administration, and requiring an annual report on all S&D actions. In addressing our 2006 National Fraud Prevention Conference, then Secretary Mineta noted that the revised policy represented "zero-tolerance" for those who try to short-change the American people and urged DOT administrators to enforce it vigorously.

DOT is required to report excluded parties in the General Services Administration's Excluded Party Listing System (EPLS), a web-based system to track S&D decisions Governmentwide. EPLS includes information such as the contractor's name, address, and identification number; the cause for suspension or debarment and the associated period of exclusion; and the name of the agency that took the action. DOT is responsible for reporting accurate data within 5 work days of the action's effective date.

LENGTHY DELAYS IN MAKING AND REPORTING S&D DECISIONS INCREASE RISK OF AWARDING CONTRACTS TO IMPROPER PARTIES

The Department's OAs generally do not meet DOT's deadlines for deciding and reporting S&D cases. Delays are largely due to unnecessary and lengthy reviews taken before deciding cases and a lack of priority assigned to DOT's S&D workload. Reporting of

DOT's S&D decisions was also untimely. Nearly half of the S&D decisions we reviewed exceeded the Department's 5-day requirement for entering such decisions into EPLS. These delays not only put DOT at risk of awarding contracts or grants to parties who should be suspended or debarred, but they create funding risks that could impact the effective and efficient use of funds—especially those awarded under ARRA. This risk extends to other Federal agencies as well because agency S&D decisions apply Governmentwide.

Lengthy Decision Process Poses Significant Risks

About 70 percent of DOT's suspensions we reviewed took more than the required 45 days, and the average processing time was 301 days. Debarment decisions were also untimely and took on average 415 days. The risks posed by these delays are illustrated by the following examples:

- **Recovery Act funds were awarded to parties under indictment:** In the 10 months after FHWA received our September 2008 referral, the Commonwealth of Kentucky used ARRA funds to award contracts to companies whose officials were affiliated with parties that FHWA ultimately suspended. Specifically, between June and August 2009, the Commonwealth of Kentucky awarded \$24 million in ARRA funds to companies that FHWA—the largest recipient of ARRA funding in DOT—could have immediately suspended under DOT's S&D policy and Code of Federal Regulations. Our September 2008 referral to FHWA was based on an indictment charging company officers and a state government official with bribery, conspiracy, theft from a government agency receiving Federal funds, and obstruction of justice. In July 2009, FHWA eventually suspended the individuals cited in our referral, two of whom were affiliated with the companies awarded ARRA contracts.
- **Delayed debarment action prompted the Environmental Protection Agency (EPA) to assume FHWA's lead in joint investigation:** FHWA and EPA conducted a joint investigation of a contractor who had been indicted in 2004 and then pled guilty in 2005 to conspiracy, bribery, and unlawful storage of hazardous materials.³ While FHWA acted as the lead agency, it did not take timely action to suspend the indicted contractor. For more than 2 years after the company pled guilty, FHWA's debarment action remained "pending." Ultimately, EPA debarred the company and its principals in mid-2007. According to an FHWA suspension and debarment official, the case "slipped through the cracks," and FHWA needed to reevaluate supporting information to close the case. In September 2009—27 months after EPA's debarment—FHWA administratively revised its records to show this case was closed. DOT OAs generally lack follow-up procedures to provide closure to their open cases.

³ According to 2 CFR, 180.620, when more than one Federal agency has an interest in a suspension or debarment, agencies may consider designating one agency as the lead agency for making the decision.

Unnecessary Reviews and Insufficient Prioritization Contribute to Untimely S&D Decisions

Federal regulations and DOT's Order provide clear criteria for DOT to move swiftly on investigative referrals. The criteria state an indictment is adequate evidence to support a suspension, and a conviction or civil judgment is adequate evidence to support a debarment. However, OAs frequently perform extra reviews in deciding their S&D cases, such as researching and gathering additional information on the case, analyzing the competitive impact of the case on Federal-aid programs, and developing recommendations to suspend or debar the party. These reviews are generally conducted without deadlines or monitoring. According to FHWA, which processes the majority of S&D cases in DOT, the additional reviews allow parties—many of which are small businesses that depend solely on the Federal Government for work—an opportunity to show why they should not be suspended. Yet Federal regulations provide for suspended parties to contest a suspension or take remedial measures to get the suspension lifted. By unnecessarily prolonging time-sensitive suspension and debarment decisions, FHWA makes other DOT and Federal agencies vulnerable to doing business with fraudulent or unethical parties.

Insufficient prioritization of S&D workload can further prolong S&D decisions. Officials and support staffs assigned to do S&D work told us such work is performed as a collateral duty, which competes with their other duties and responsibilities. For example, attorneys responsible for S&D are pulled from their S&D duties to perform high profile litigation and other assignments their OA determined to be a higher priority.

Fewer Than Half of S&D Decisions Met DOT's and Federal Reporting Requirements

Both Federal regulations and DOT's Order require that S&D actions be entered into EPLS within 5 work days after an action's effective date. However, our review showed almost half of the 132 EPLS S&D entries between June 2005 and July 2008 were made after this 5-day requirement. DOT data entry exceeded the requirement from 3 to 864 days, and 14 cases took over 100 days.

Several factors contributed to these delays, which affect OAs as well as DOT. In one case, FTA did not provide documentation on one business and four individuals it debarred in November 2006 until March 2007. When we brought this condition to the attention of FTA officials, they stated that the delay was due to staff misplacing paperwork on these decisions. Although no new contracts or grants had been awarded to the business or individuals during this period, this example highlights how DOT and other Federal agencies could be vulnerable to awarding new contracts or grants to

unethical parties. One DOT representative also noted some submissions lacked data elements required by Federal regulations and were returned to OAs for completion.

DOT LACKS ADEQUATE MANAGEMENT CONTROLS AND OVERSIGHT TO ENSURE S&D PROGRAM INTEGRITY

A lack of strong management controls—those that emphasize accountability, monitoring, and clear organizational roles and responsibilities—has further weakened DOT's S&D Program. Such weaknesses include differing OA interpretations of DOT's 45-day policy for making S&D decisions and a lack of reliable EPLS data. In addition, delegation of S&D program management to OST and the nine OAs has created gaps in DOT's knowledge of program weaknesses that warrant corrective actions. While DOT has taken measures to close these gaps, they have proven ineffective.

DOT Policy on Timeliness of S&D Decisions Has Been Subject to Interpretation and Action

DOT's Order aims to ensure accountability for the Department's S&D Program by establishing a 45-day deadline for DOT officials to complete all needed tasks to make a final suspension decision or propose a debarment decision. However, the 45-day S&D policy has been interpreted differently by officials responsible for suspensions and debarments in the OAs we reviewed, as shown in the following table.

OA's Varying Interpretation of 45-day Requirement in DOT's S&D Order

OA	Interpretation of goal of the 45-day requirement
FHWA	Divisions are to conduct research and provide an S&D recommendation to FHWA's suspension and debarment officials.
FAA	Headquarters staff are to make a decision after it receives a recommendation and supporting information for an S&D action from a FAA regional office.
FTA	Suspend or propose debarment after receiving a referral notification.

Source: OIG analysis of OA practices.

These varying interpretations create opportunities for delays—some significant—and ultimately put DOT and other Federal agencies and recipients of Federal funds at an increased risk of awarding contracts and grants to irresponsible parties.

Unreliable EPLS Data Hinders DOT's Ability To Identify Excluded Parties

DOT's contract and grant officials are required to check EPLS before making awards to ensure that suspended or debarred parties do not receive new contracts or grants. DOT is required to enter a range of information provided by OAs on excluded parties into EPLS,

including an entity's DUNS number,⁴ enabling agencies to more confidently determine whether a specific contractor has been excluded. However, data entered into EPLS are not always accurate or complete, and therefore contracting officers cannot confidently identify excluded parties. For example, from a universe of 49 suspended or debarred firms we identified in EPLS, 16 were miscoded by DOT as "individuals," and 8 were missing required DUNS numbers. OAs are responsible for providing DUNS numbers; however, OA representatives said they were not aware of the requirement, or they did not know how to find the DUNS number.

Other actions not accurately reflected in EPLS included a business that was incorrectly removed from EPLS by DOT staff and left off for over 2 ½ years, and nine parties were listed more than once. The importance of DOT providing accurate information to EPLS is heightened by the fact that the General Services Administration does not verify data directly provided by agencies.

Incomplete S&D Annual Reports Do Not Help Close Oversight Gaps

DOT is required to prepare an annual report detailing all OA cases in which S&D actions were considered, initiated, or completed, and the status or outcome of each case. The annual report was intended to be used as an oversight tool for Office of General Counsel and OIG to assess OA compliance with the Order. However, past annual reports were incomplete and inaccurate. For example, the 2008 annual report excluded 53 open cases from prior years. The 2005, 2006, and 2007 annual reports also excluded required written justifications documenting why an OA decided not to suspend or debar parties in nearly half (19 of 40) of the cases. Other problems with these reports included cases with incorrect action dates, missing referral dates, and duplicate entries. DOT's Order has not assigned responsibility to DOT or its OAs for ensuring that annual report information is accurate, and the failure of DOT and its OAs to pay sufficient attention to detail, such as verifying data when preparing the annual submissions, contributed to these errors.

SharePoint Use Has Not Improved DOT's Management of S&D Information

DOT replaced its paper-based reporting of S&D cases in 2007 with SharePoint, an electronic system. According to DOT's former Senior Procurement Executive, SharePoint is intended to help OAs track cases on a day-to-day basis, as well as for management to monitor DOT's S&D Program. DOT began a SharePoint pilot program in June 2009 to allow managers to perform keyword queries and generate their own summary reports. DOT has not yet reported on the results of the pilot.

⁴ DUNS numbers are unique nine-digit identification numbers for companies and individuals assigned by Dun & Bradstreet, Inc.

Conclusion

The persistent problems we have identified in DOT's S&D Program significantly weaken one of the Department's strongest deterrents against contract fraud, waste, and abuse. Despite DOT's 2005 revision to its S&D Order, deficiencies in the S&D Program have left the Department unable to achieve the desired outcome of having a strong S&D Program. In our January report, we recommended several actions to strengthen DOT's internal controls and oversight of its S&D process and to close the significant gaps in the process. (See exhibit B at end of this statement for a list of our recommendations.) Until such actions are taken, DOT will continue to risk disbursing billions of dollars, including ARRA funds, to parties intent on defrauding the Government.

I would like to take this opportunity to thank the Department for its continuing efforts in reviewing its S&D Order. However, since our comprehensive review of DOT's suspension and debarment process is ongoing, we do not feel it would be appropriate to comment on the proposed Order until our formal recommendation follow-up process is completed.

Mr. Chairman, this concludes my statement. I would be happy to address any questions you or other Members of the Committee may have.

**EXHIBIT A. SUMMARY OF KEY ELEMENTS OF FEDERAL
SUSPENSION AND DEBARMENT POLICIES**

SUSPENSION ACTIONS	DEBARMENT ACTIONS
Overview	
<ul style="list-style-type: none"> Temporarily prevents a party from participating in most government funded procurement and nonprocurement^a transactions^b pending completion of an investigation or legal proceedings. 	<ul style="list-style-type: none"> Final determination that party is not presently responsible and thus ineligible to participate in federally funded contracts or grants.
Standards of Evidence / Causes	
<ul style="list-style-type: none"> Adequate evidence that there may be a cause of debarment; an indictment for criminal conduct constitutes adequate evidence. Immediate need for action to protect Federal business interests. 	<ul style="list-style-type: none"> Preponderance of evidence that party warrants debarment; a conviction of criminal conduct or a civil judgment constitutes a preponderance of evidence. Agency must consider remedial measures and mitigating factors when determining party's present responsibility.
Timeframe for OAs to Take Action under DOT's Order	
<ul style="list-style-type: none"> Within 45 days of notification of indictment or other referral. 	<ul style="list-style-type: none"> Within 45 days of notification of conviction or other referral.
Prior Notice	
<ul style="list-style-type: none"> None required 	<ul style="list-style-type: none"> At least 30 days
Period of Ineligibility	
<ul style="list-style-type: none"> Usually not to exceed 1 year 	<ul style="list-style-type: none"> Usually not to exceed 3 years
Entitlement To Contest	
<ul style="list-style-type: none"> After notice from the agency's suspension official, but a suspension is effective immediately. 	<ul style="list-style-type: none"> If a party contests the debarment during the notice period, the debarment is not effective until the suspension and debarment official issues a written decision.

Source: DOT Order 4200.5D, Governmentwide Debarment, Suspension and Ineligibility, 2 CFR, Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), FAR, and AMS.

^a Nonprocurement includes any transaction, other than a procurement contract, including but not limited to grants, cooperative agreements, loans, and loan guarantees.

^b A suspended or debarred party may not participate in "covered transactions." Covered transactions include contracts, grants, cooperative agreements, direct loans or contracts or subcontracts under them. During an assessment the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents are also covered transactions. For DOT, contracts and grants are the most common types of covered transactions. As a result, we will use the term "contracts and grants" to refer to all covered transactions.

**EXHIBIT B. DOT-OIG SUSPENSION AND DEBARMENT
REPORT RECOMMENDATIONS**

Recommendations to DOT's Senior Procurement Executive (SPE):

1. Revise DOT Order 4200.5D, *Governmentwide Debarment, Suspension and Ineligibility* to:
 - a. Assign an office oversight responsibility for monitoring DOT's implementation of the S&D Program.
 - b. Require that OAs establish implementation procedures for their S&D Program roles and responsibilities.
 - c. Clarify that OAs are to issue suspension or debarment notices—or make a written justification why a suspension or debarment is not warranted under the circumstances—within 45 days of notification of a referral.
 - d. Require that OAs follow S&D evidence standards provided under Federal regulations—an indictment is a sufficient basis by itself for suspension, and a civil judgment or conviction is a sufficient basis for debarment—and that factors not contemplated by regulations should not be considered when determining a party's present responsibility.
2. Modify DOT's SharePoint and establish corresponding internal controls and validation processes to:
 - a. Ensure the entry of accurate, complete, and timely S&D data, such as periodic reconciliations between case files and SharePoint.
 - b. Upgrade SharePoint to allow queries and summary reports for the system to be used as a management oversight tool and meet the annual report requirements.
3. Improve DOT's internal controls for the entry of accurate, complete, and timely S&D information to EPLS, such as periodic reconciliations between SharePoint and EPLS.
4. Require OAs to immediately provide DOT a full inventory of DOT's open S&D cases.

Recommendations to the Federal Aviation Administration (FAA):

5. Revise FAA's Procurement Guidance, *Debarment and Suspension* to:
 - a. Assign an office oversight responsibility for monitoring implementation of FAA's S&D Program.
 - b. Require the establishment of implementation procedures for their S&D Program roles and responsibilities.
 - c. Clarify that FAA is to issue suspension or debarment notices—or make a written justification why a suspension or debarment is not warranted under the circumstances—within 45 days of notification of a referral.
 - d. Require adherence to S&D evidence standards provided under Federal regulations, namely to (1) suspend parties upon learning of their indictment, and (2) debar parties upon learning of their conviction or receipt of a civil judgment.
6. Improve its internal controls for the entry of accurate, complete, and timely S&D information to EPLS, such as periodic reconciliations between SharePoint and EPLS.

Chairman TOWNS. Thank you very much for your statement.
Mr. Skinner.

STATEMENT OF RICHARD L. SKINNER

Mr. SKINNER. Good morning, Chairman Towns, Ranking Member Issa, members of the committee. Thank you for having me here today to talk about the Department of Homeland Security's Suspension and Debarment Program.

I think we can all agree that the private sector plays an important role in assisting Federal agencies in the performance of their basic missions. I also think that we can agree, for the most part, contractors doing business with the Federal Government are honest, ethical, and responsible companies and persons. Unfortunately, there are those unscrupulous few who choose to take advantage of its commercial or contractual relationship with the Federal Government by behaving dishonestly, unethically, or irresponsibly.

To protect itself from such unscrupulous people, the Federal Government has implemented a Government-wide Suspension and Debarment Program. This is perhaps the most effective tool in the Government's arsenal of enforcement devices. Unfortunately, it is not always being used effectively or, in some cases, not being used at all.

The under-utilization of suspension and debarment action is by no means just a DHS problem, but appears to be a Government-wide problem. Both the Department of Justice-led National Procurement Fraud Task Force and the Council of Inspectors General on Integrity and Efficiency have concerns that Federal Suspension and Debarment Programs are not being fully utilized.

In particular, we believe that there may be a lack of coordination between Federal prosecutors and investigators and those officials charged with implementing Federal Suspension and Debarment Programs. We believe the significant cause of the ineffectiveness is the tendency of investigators and prosecutors to not alert suspension and debarment officials about a matter until the case is completed, and the reluctance of many agency officials to take action in the absence of an indictment or conviction.

A robust and transparent Suspension and Debarment Program is needed at the Department of Homeland Security and other Federal agencies. Contractors who have failed to perform or who have willfully violated Federal criminal and civil statutes should not be allowed to do business as usual with the Federal Government.

Acquisition management is just not a matter of awarding a contract, but an entire process that begins with identifying a mission need and developing a strategy to fulfill that need through a thoughtful, balanced approach that considers cost, schedule, and performance. The intent of the process is to ensure that the Government acquires goods and services that represent a best value for taxpayer dollars.

As our recent audit report points out, although the Department of Homeland Security has suspension and debarment policies and procedures, it has been reluctant to apply them against poorly performing contractors. We identified 23 instances where contracts were terminated for default or cause, but were not reviewed to determine whether a suspension or debarment referral was war-

ranted. In fact, between 2004 and 2008, the Department initiated only one debarment case for contractor performance, and only did so at the urging of the Defense Contract Management Agency.

When asked to explain the absence of performance-based suspension and debarment actions, senior procurement officials throughout the Department said that they were reluctant to initiate such actions because they were either too resource-intensive or too punitive in nature, or they would have too negative an impact on the contractor pool. Instead, Department procurement officials said that they preferred to use other administrative remedies, such as cure notices, not exercising option years, and, in the most severe cases, termination for convenience or cause or default.

The Department's components also were not always reporting pertinent contract performance data for poorly performing contractors in either DHS's contractor performance tracking system or the Government-wide past performance information retrieval system. The Department terminated 23 contracts for cause between 2004 and 2008, yet only two were recorded in a Government-wide Past Performance Information Retrieval System. As a result, critical contract performance information has not been disseminated to procurement officials within the Department or across Government for use in making future source selection decisions.

The Department recognizes these shortcomings and, as you will hear, has taken positive steps over the past 6 to 9 months to prove both its performance reporting in its review of poorly performing contractors. Policies and procedures intended to increase the Department's awareness of poorly performing contractors are or will be in place in the near future and steps are being taken to ensure that all pertinent contract performance information is recorded in appropriate agency and government-wide data bases.

Finally, the Department has advised us that it intends to conduct an oversight review during the fourth quarter of this year. Because we commend the Department for these actions and because contracting is such a large part of the Department's budget, my office also intends to continue to provide oversight of the Department's acquisition management function, including the Suspension and Debarment Program, over the months and years to come.

Mr. Chairman, members of the committee, this concludes my prepared remarks. At the appropriate time, I would be pleased to answer any of your questions.

[The prepared statement of Mr. Skinner follows:]

STATEMENT OF RICHARD L. SKINNER

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

MARCH 18, 2010



Introduction

Good morning Chairman Towns, Ranking Member Issa, and members of the committee. Thank you for inviting me to testify today about the Department of Homeland Security's (DHS) Suspension and Debarment Program.

Acquisition management is not just a matter of awarding a contract, but an entire process that begins with identifying a mission need and developing a strategy to fulfill that need through a thoughtful, balanced approach that considers cost, schedule, and performance. The intent of the process is to ensure the government acquires goods and services that represent a best value for taxpayer dollars. Suspension and debarment are powerful tools that the government should use to protect itself and the taxpayers against contractors who commit fraud, behave unethically, or willfully fail to perform. The intent of the suspension and debarment process is to ensure that the government acquires goods and services that represent a best value for taxpayer dollars.

My testimony today will address four areas: the department's use of suspension and debarment, the department's efforts to record contractor performance information, and actions the department has taken as a result of our recommendations. Finally, I will address suspension and debarment in a government-wide context, as these issues are not unique to the DHS.

Federal Acquisition Regulations Regarding Suspension and Debarment

Federal Acquisition Regulations (FAR) require agencies to solicit offers from, award contracts to, and consent to subcontracts only with responsible contractors. Suspensions and debarments are discretionary actions that agencies implement to protect the federal government. Suspensions and debarments exclude contractors who commit fraud, behave unethically, and willfully fail to perform, or have a history of failure to perform according to the terms of a contract from conducting business with the federal government.¹

Suspensions are temporary in nature and are used to protect the federal government until investigations and any ensuing legal proceedings that could lead to debarment actions are completed. A suspension may not extend beyond 18 months unless legal proceedings have been initiated within that period. Causes for suspension actions include, among others, adequate evidence of the following:

- Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or state contract;

¹ 48 C.F.R. 9.402(b), "The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the government's protection and not for the purposes of punishment."

- Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property;
- Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor; or
- Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

Debarments, on the other hand, generally do not exceed three years but can be extended if it is determined that it is in the government's best interest. Causes for debarment actions include, among others, the following:

- Conviction of, or civil judgment for, fraud, violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity;
- Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as a willful failure to perform in accordance with the terms of one or more contracts or a history of failure to perform, or of unsatisfactory performance of, one or more contracts;
- Noncompliance with *Immigration and Nationality Act* employment provisions;² or
- Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

Federal regulations require agencies to list all suspended or debarred contractors in the General Services Administration's Excluded Parties List System.

DHS Suspensions and Debarments

The department has suspension and debarment policies and procedures in place in accordance with FAR. However, the department has been reluctant to apply these policies and procedures against poorly-performing contractors. We identified 23 instances where contracts were terminated for default or cause but were not reviewed to determine if a suspension and debarment referral was warranted. In fact, between FY 2004 and FY 2008 the department initiated only one debarment case for contractor performance, and this was done at the urging of the Defense Contract Management Agency.

² See Executive Order 12989, as amended by Executive Order 13286.

When asked to explain the absence of performance-related suspension and debarment actions, senior department procurement officials said they were reluctant to initiate suspension and debarment action against poorly-performing contractors because such actions were: (1) too resource intensive; (2) too punitive in nature; and (3) having too negative an impact on the contractor pool. Instead, department procurement officials stated that they preferred to use other administrative remedies such as: cure notices, not exercising option years, and, in the most severe cases, terminations for convenience or default.

Reluctance to pursue suspension and debarment could put the department and the government at risk of continuing to conduct business with poorly performing contractors and may result in decreased productivity and increased cost. In our view, the department needs to take additional steps to ensure that poorly performing contractors, including those whose services are terminated or considered for termination for default or cause are reviewed to determine whether a referral to a suspension and debarment official is warranted.

Recording Contractor Performance Information

The department's components are also not recording pertinent contract performance data for poorly performing contractors. As I mentioned earlier, we identified 23 instances of contract termination due to the contractor failure to perform. However, the department did not document the circumstances and conditions underlying the decisions to terminate 21 of the 23 contracts in either the Contractor Performance System or the Past Performance Information Retrieval System. As a result, critical contract performance information is not being disseminated to procurement specialists within the department or across government for use in making future source selection decisions.

The FAR requires agencies to prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold (\$100,000 in most cases) when contract work is complete.³ They also recommend that contractor performance information be documented on an annual basis when the contract period is for more than 1 year. Until recently, the Homeland Security Acquisition manual required that DHS record all contractor performance evaluations in the Contractor Performance System. Effective September 1, 2009, the Contractor Performance Assessment Reporting System replaced the Contractor Performance System as the central repository for DHS contractor performance evaluations. The Contractor Performance Assessment Reporting System feeds information regarding contractor performance into the Past Performance Information Retrieval System, a government-wide database mandated by the Office of Management and Budget. The Past Performance Information Retrieval System is a source of contractor performance information used by other government agencies when assessing a contractor's ability to perform a contract successfully.

³ See 48 C.F.R. § 42.1502 (b) (requirement to evaluate); 48 C.F.R. § 2.101 ("simplified acquisition threshold" defined).

With the exception of construction and architect-engineering service contracts, there is no government-wide requirement for agencies to document when a contractor has been terminated for cause or default, regardless of the circumstances or the dollar value of the contract. Despite the absence of such requirements, we believe that it is in the government's best interest to be aware of a contractor's failure to perform. Recording the identity of poorly performing contractors and the rationale underlying termination decisions in agency and government-wide databases would increase the knowledge base of government procurement professionals. It would also reduce the risk of entering into contractual relationships with individuals and corporate entities that have histories of not performing in accordance to contract requirements.

Amendments have been proposed to expand the requirement for federal agencies to record contract performance information for contracts that have been terminated for cause or default.⁴

DHS Taking Action To Address Problem

The actions taken by the department since our report was issued in February are a positive first step. Policies, procedures, and internal controls intended to increase the department's awareness of poorly-performing contractors are being developed and implemented. For the first time, contracting officers are being required to notify the department's chief procurement officer of any termination notice for any order exceeding \$1 million. Contracting officers must also provide a copy of any determination of non-responsibility to the suspending and debarring official when a determination is based in whole or part on the prospective contractor's:

- Lack of satisfactory performance record under DHS contracts;
- Lack of satisfactory record of integrity and business ethics; and
- Inability to qualify under applicable laws and regulations.

The department has also agreed with our recommendation that all pertinent contractor performance information, as defined by statute or regulation, needs to be recorded in appropriate agency and government-wide data bases. DHS has conducted agency-wide training for contracting personnel, contracting officer's technical representatives, and has published updated guidance in the Homeland Security Acquisition manual.

Finally, the department has stated its intention to conduct an oversight review during the fourth quarter of FY 2010 to determine the extent to which its components are complying with Homeland Security Acquisition manual requirements. We will continue to monitor the department's progress in implementing a meaningful and transparent suspension and debarment program that truly protects the government's interest.

⁴ Federal Register, Volume 74, Number 169, September 2, 2009, Federal Acquisition Regulation; FAR case 2008-016, Termination for Default Reporting.”

Suspension and Debarment is Not Just a DHS Challenge

The under-utilization of suspension and debarment actions is by no means just a DHS problem. For example, the National Procurement Fraud Task Force's Suspension and Debarment Subcommittee found that many federal agencies resist pursuing fact-based suspension and debarment cases because these types of cases are resource intensive. They noted that while conviction debarments are much easier to process, it can take 2-3 years to get a conviction, during which time the government risks continuing business with a bad business partner.

The subcommittee is working on developing a white paper that will identify best practices for suspension and debarment, but has identified the following elements for an effective suspension and debarment program:

- A dedicated person/group charged with proactively identifying potential suspension and debarment cases that need action
- Protocols establishing officials responsible for putting suspension and debarment referral packages together
- Legal support for the acquisition officials who pursue suspension or debarment actions against contractors
- Effective coordination and ongoing communication with the agency's Office of Inspector General
- Effective coordination with the Department of Justice

A robust and transparent suspension and debarment program is essential to effective acquisition management. Contractors who have failed to perform or who have willfully violated federal criminal and civil statutes should not be allowed to do "business as usual" with the federal government.

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

Chairman TOWNS. Thank you very much for your opening statement.

Mr. Gambatesa.

STATEMENT OF DONALD A. GAMBATESA

Mr. GAMBATESA. Good morning, Chairman Towns, Ranking Member Issa, members of the committee. I am pleased to appear before you today to testify on behalf of the Office of the Inspector General for the U.S. Agency for International Development and to be joined by my colleagues from other oversight organizations and representatives of agencies with whom we work. Today I would like to share our assessment of USAID's activities related to suspension and debarment.

In October 2009, we concluded an audit of USAID's suspension and debarment practices. We found that suspension or debarment had not been considered in all cases in which those exclusions might have been warranted. Consideration of suspension and debarment was limited to cases investigated by our office that included criminal or civil prosecution, and action was not always taken in response to other types of referrals. This limited approach to suspensions and debarments resulted in actions in only nine cases during the period covered by our audit, which was approximately 4 fiscal years.

When USAID took suspension and debarment actions, it did not always do so properly. Some debarred entities were not entered into the Excluded Parties List System and others were listed late. Moreover, USAID sometimes failed to document that it had checked the Excluded Parties List System to determine whether firms were precluded from receiving Federal funds. The agency could not establish that it had performed these checks in 20 of the 54 contracts we examined. However, our audit did not identify any instance in which USAID issued contracts or grants to entities listed in the System.

We believe that USAID's organizational approach to suspension and debarment reduces its ability to use these exclusions effectively. At the time of the audit, the review, approval, and implementation of suspensions and debarments were managed by offices and individuals with many varied responsibilities. Other Federal agencies we surveyed had established units specifically dedicated to suspension and debarment activities. We recommended that USAID consider adopting a similar approach.

Overall, our report made 12 recommendations. We recommended corrective measures to strengthen documentation related to suspensions and debarments, as well as improvements in policies, procedures, and guidance. We also recommended that USAID consider alternative organizational approaches and take steps to identify best practices. USAID managers agreed with nine recommendations and planned steps to address them.

The agency is still considering recommendations to enhance its organizational approach and identify best practices. As of earlier this week, action had not been taken to close any of the audit recommendations; however, I understand that significant progress is being made in that effort.

Many skilled and capable employees are committed to USAID's mission and the agency works with a host of implementing partners that demonstrate a similar dedication to their work and provide high-quality services. By excluding ineligible entities, the suspension and debarment process reinforces the credibility and effectiveness of the agency's efforts and those of its implementing partners, and helps protect taxpayers' dollars.

We look forward to continuing to work with USAID to strengthen its suspension and debarment efforts.

Mr. Chairman, I thank you for the opportunity to address the committee, and I appreciate your interest in our work. I would be happy to answer any questions.

[The prepared statement of Mr. Gambatesa follows:]

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TESTIMONY OF

THE HONORABLE DONALD A. GAMBATESA,

INSPECTOR GENERAL,

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,

U.S. HOUSE OF REPRESENTATIVES

USAID SUSPENSION AND DEBARMENT PROCESS

MARCH 18, 2010

Chairman Towns, Ranking Member Issa, Members of the Committee,
I am pleased to appear before you today to testify on behalf of the Office of
Inspector General (OIG) for the U.S. Agency for International Development
(USAID) and to be joined by my colleagues from other oversight

organizations and representatives of the agencies with whom we work to prevent fraud, waste, and abuse in agency programs and operations. Today, I would like to share our assessment of USAID's activities related to suspension and debarment.

USAID relies heavily on contractors and grant recipients to advance Agency goals and objectives and implement major development projects. From fiscal years (FY) 2003 to 2007, USAID awarded approximately \$4 billion in contracts and grants per annum. By acting in the public interest to suspend or debar underperforming firms and firms and individuals convicted of wrongdoing, USAID can help ensure the prudent use of taxpayer dollars by excluding these firms and individuals from Government-financed activities. It is therefore vital that the Agency maintain effective processes for (1) examining cases to determine whether to pursue suspension and debarment actions, (2) carrying out suspensions and debarments, and (3) using information about suspensions and debarments in contracting and grant-making processes. Shortcomings in the suspension and debarment process could result in missed opportunities for USAID to identify contractors and grantees that perform unacceptably and to prevent other agencies from experiencing decreased productivity, increased cost, or possible abuses caused by these contractors and grantees.

As you know, in October 2009, we concluded an audit of USAID's suspension and debarment practices for FY 2003 to 2007. Our audit found a number of problems with Agency practices and decision-making processes that constrain it from operating as effectively as it could.

USAID undertakes a range of actions to address poor performance and wrongdoing by contractors and grantees. These actions exist along a continuum that extends from denials of claims to contract terminations, and—in the most serious cases—from compliance agreements to suspensions and debarments. The serious nature of suspension and debarment requires that these exclusions be imposed only in support of the public interest and not solely as a response to past performance that could have been better. Our examination of USAID's suspension and debarment activities reveal no instances in which the Agency had pursued these sanctions with insufficient cause. Indeed, the subjects of eight of the Agency's nine suspension and debarment cases from FY 2003 to 2007 had been indicted or convicted in a civil or criminal proceeding.

Rather than applying these sanctions too broadly, USAID had not considered the use of suspension or debarment in all cases in which they might have been warranted. Over the period of our audit, USAID had limited consideration of suspension or debarment chiefly to entities subject

to indictments or convictions. Further, it had weighed these sanctions only in cases that had been investigated by our office. USAID did not take suspension or debarment actions in response to any other type of referral—such as those from our office in cases that had been declined for prosecution but nevertheless were candidates for suspension and debarment, or referrals from contracting officers or other Agency employees. In two cases, USAID did not take action to suspend or debar firms even when they had acknowledged making significant false and inflated claims for reimbursement. Nor did it seek suspension or debarment of any entities on the sole basis of a demonstrated pattern of serious and continuing unsatisfactory performance or unsuitability.

This limited approach to considering suspensions and debarments led USAID to apply these sanctions in relatively few cases. During the period covered by our audit, USAID documented or reported suspension actions in only two cases and debarment actions in only seven. These actions applied to \$378.5 million in grants and contracts out of an estimated total of \$20 billion during the period.

When USAID did pursue suspension and debarment actions, it did not always execute them properly. In particular, USAID did not routinely abide by Federal guidelines on providing notice of its final debarment

decisions, entering suspension and debarment information into the Federal database of excluded parties, or documenting the actions it took.

USAID is required to formally notify contractors of final debarment decisions within 30 days of procurement debarments and within 45 days of nonprocurement debarments. However, USAID met those time standards in only one of its six documented debarment cases. In three cases, the Agency never sent final notices of debarment to contractors. USAID's failure to do so could have created uncertainty about its actions and provided affected contractors with a basis to contest their ineligibility to compete for and receive Federal awards.

As you know, a key step in the process of effectively suspending or debarring an organization from Government contracts and awards is listing the entity in the Excluded Parties List System (EPLS)—the system for tracking entities that have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded or disqualified. By entering information into EPLS, USAID can help ensure that its personnel and those of other agencies do not award funds to suspended and debarred entities. Federal agencies are required to enter information about their exclusion actions in EPLS within 5 workdays. Despite this requirement, we found that the Agency had taken longer to list excluded entities in EPLS in

six of nine cases. In one case, it did not enter complete information, and omitted four debarred entities from EPLS.

In another case, we had difficulty discerning what steps, if any, the Agency had taken to implement a debarment decision because the division responsible for maintaining debarment records had no documentation of the matter. This instance of poor recordkeeping appeared to be part of a troubling pattern arising from a lack of standard documentation procedures and inattention to proper record-retention practices.

Finally, we found that USAID had not consistently used available information on excluded firms to inform its contracting processes. Federal agencies must perform EPLS checks at two points before awarding funds: during the bidding process and during the award process. To determine whether USAID had consulted EPLS as required, we reviewed a random sample of Agency contracts. We found that USAID generally lacked documentation that it had checked EPLS during the bidding process, and documentation of such checks during the award process was inconsistent. USAID could not establish that it had performed required EPLS checks at any point for 20 of the 54 contracts we examined.

Given the Agency's limited consultation of EPLS during the contracting process, we were concerned that it may have awarded funds to

entities precluded from receiving them. Fortunately, our analysis of USAID acquisition and assistance records found no instances in which the Agency had engaged in business with excluded parties listed in the system.

USAID relies on primary contractors to certify that their personnel and subcontractors are eligible to receive Federal funds. Primary contractors must certify that they are sufficiently responsible to carry out a Federal contract and not restricted from so doing. However, USAID did not always ensure that its contractors provided such self-certifications, as 15 of the 54 contracts we reviewed did not have completed certifications.

Taken together, our findings present significant opportunities for USAID to improve the effectiveness of the suspension and debarment process. We believe that the organizational approach to suspension and debarment that the Agency has taken has reduced its ability to effectively use these exclusions. At the time of the audit, USAID had concentrated responsibility for the review, approval, and implementation of these exclusion actions in the hands of offices and individuals with many varied responsibilities, which may take their attention away from suspension and debarment responsibilities. At the working level, suspension and debarment activities were managed by a division with 17 other significant responsibilities. At the time of our review, this division had no full-time

staff dedicated exclusively to suspension and debarment matters. USAID's suspension and debarment official was also its senior procurement executive and the Director of the Office of Acquisition and Assistance.

We surveyed six other Federal agencies with active suspension and debarment programs and learned that four of them had established divisions or offices specifically dedicated to debarment activities. These units had full-time, dedicated personnel and legal support. We recommended that USAID consider adopting a similar organizational approach.

Overall, our report made 12 recommendations for improvements to the policies, procedures, and approach that the Agency has taken with respect to exclusion actions. USAID managers agreed with nine of our recommendations and planned steps to address them. The Agency is still considering recommendations on enhancing its focus on suspension and debarment procedures and adopting best practices. As of March 15, 2010, USAID has not taken final action to close any of the audit's recommendations.

Suspension and debarment are not the only tools available to USAID for addressing concerns about contractor and grantee performance, and we recognize that these sanctions should be applied judiciously. The scope and scale of many performance issues may call for less severe measures.

However, we believe that the Agency should consider suspension and debarment actions in more cases and develop more effective procedures and approaches for pursuing them. Current limitations in USAID's approach constrain the Agency's contributions to a system that supports the public interest and adds to the fundamental fairness of Government contracting and grant making.

USAID has many skilled and capable employees who demonstrate their commitment to the Agency's mission every day. The Agency partners with a host of corporations, nonprofits, and private voluntary organizations that demonstrate a similar dedication to their work and provide high-quality services and support. By excluding ineligible suppliers and contractors from USAID-financed activities, USAID's suspension and debarment process reinforces the credibility and effectiveness of the Agency's efforts and those of its implementing partners. The Agency's suspension and debarment process also helps other Federal agencies avoid doing business with firms that have serious performance and ethical issues. We look forward to continuing to work with USAID to strengthen its suspension and debarment efforts in support of these ends.

I thank you for this opportunity to address the committee and appreciate your interest in our work. I would be happy to answer any questions you may have at this time.

Chairman TOWNS. Thank you very much, Mr. Gambatesa.
Mr. Woods.

STATEMENT OF GREGORY H. WOODS

Mr. WOODS. Thank you, Mr. Chairman. Chairman Towns, Ranking Member Issa, members of the committee, thank you for the opportunity to appear before you with Inspector General Scovel to discuss the suspension and debarment procedures of the Department of Transportation. My name is Greg Woods. I am the Deputy General Counsel of the Department.

In the early years of my career, I prosecuted civil fraud cases at the Department of Justice, and I know that fraud is a real threat; it is not a hypothetical. The thousands of contracts and billions of dollars funded by the Department of Transportation annually are a tempting target, and I want to assure you that the Department recognizes that threat and takes seriously its responsibility to protect the public's funds.

Inspector General Scovel has identified real concerns regarding the structure and implementation of our Suspension and Debarment Program. The Department has taken too long to process many suspension and debarment referrals. We are fortunate that the Department has not identified any instances where funds went to criminals who should have been suspended or debarred. The Inspector General rightly observes, however, that flaws in our procedure created opportunities that too readily could have been exploited. We would much rather trust in good systems than in good luck. The problems that he has identified must be fixed and fixed fast.

Over the past year, the Department has implemented changes that we believe will dramatically improve our suspension and debarment process. In response to the Inspector General's first advisory regarding this area in May 2009 in an ARRA advisory, we met with suspension and debarment officials throughout the Department to communicate the Department's heightened expectations in this area. Our suspension and debarment processes within the Federal Highway Administration, which is highlighted in the Inspector General's report, have been reconfigured to assign responsibility for tracking and managing suspension and debarment cases to their Office of Chief Counsel.

That change in management structure has already yielded results. We created a new centralized, electronic tracking system for suspension and debarment matters and, most recently, as Inspector General Scovel notes, we finalized a new order that will govern the Department's handling of suspension and debarment matters.

That order puts in place a framework that will address the concerns that we have identified in our program. It clearly defines the role of our senior procurement executive to monitor the Department's performance in this area; it clarifies the responsibility of our operating administrations to take action within 45 days of notification of an action that would justify or warrant possible suspension or debarment; and it implements a new data collection system that will help the senior management of the Department monitor the performance of suspension and debarment officials.

The Department is very thankful for the work of Inspector General Scovel in this area. His examination identified issues that should be and will be addressed promptly. We are.

I would be happy to answer any questions that you have, and I ask that my written comments be placed in the record. Thank you, sir.

[The prepared statement of Mr. Woods follows:]

**STATEMENT OF
GREGORY WOODS
DEPUTY GENERAL COUNSEL
U.S. DEPARTMENT OF TRANSPORTATION**

BEFORE THE

**OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
HOUSE OF REPRESENTATIVES**

CONCERNING

**SUSPENSION AND DEBARMENT ACTIONS AT THE
DEPARTMENT OF TRANSPORTATION**

MARCH 18, 2010

Chairman Towns, Ranking Member Issa, and Members of the Committee:

I am pleased to appear before the Committee today with Inspector General Scovel to discuss the U.S. Department of Transportation's commitment to vigorous enforcement of the suspension and debarment requirements of Federal law that protect our acquisition, grant-making, and comparable programs from fraudulent behavior, favoritism, and other threats to effective stewardship of taxpayer funds.

The Department administers some of the most significant grant-making programs in the Federal government, and Secretary LaHood has made clear that maintaining the integrity of these programs, and of our acquisition actions, is one of our most fundamental responsibilities. The Inspector General's comprehensive January report on this responsibility, and his earlier "ARRA Advisory" in May 2009, have been instrumental in bringing a new focus to the systematic implementation of suspension and debarment requirements across the Department.

I would like to review for the Committee the steps we have taken to strengthen the Department's implementation of the suspension and debarment program along the lines addressed in the Inspector General's January Report. Significantly, we have just issued an updated and more comprehensive Department Order that lays the groundwork for better management of the enforcement program across the Department. A copy of our new Order, "Suspension and Debarment Procedures and Ineligibility," has been provided to the Committee.

The new Order clarifies and strengthens the oversight and management role of the Senior Procurement Executive. The Order clearly requires that the Department take action to suspend or debar within 45 days of a referral by the Inspector General or others, or to document the reasons why action is not being taken. Adherence to the suspension and debarment evidence standards provided under Federal regulations is also clearly specified. The Department's Operating Administrations are also improving their programs, with an emphasis on ensuring that responsibilities are clearly delineated, information is well disseminated, and up-to-date procedures are employed to carry out timely suspension and debarment actions. Secretary LaHood and the leadership of the Department are committed to ensuring that the Department is effectively fulfilling its responsibilities for this important program.

We are also improving the Office of the Secretary's SharePoint monitoring system for suspension and debarment actions. Action is underway to update the existing tracking system with one that provides enhanced capabilities with regard to tracking and transparency, including automatic notice of needed actions. While the system is at the prototype stage, we believe that it will assist us in strengthening management controls to better ensure timely action on referrals across the Department.

Management has also taken action to ensure that timely, accurate, and complete information is entered into the government-wide Excluded Parties List System (EPLS). Immediately upon issuance of the OIG's ARRA Advisory, the Office of the Senior Procurement Executive created a dedicated website to systematize the reporting of all suspension and debarment actions by the Operating Administrations and by the offices within the Office of the Secretary. This data reporting also enabled the Department to maintain a centralized data collection point to monitor the full inventory of the Department's open suspension and debarment cases. Both of those functions are being incorporated into the new SharePoint System for monitoring and reporting on suspension and debarment activity in the Department of Transportation.

The Federal Highway Administration, which manages our largest grant programs, received considerable attention in the Inspector General's report. FHWA has been particularly aggressive in implementing process and management improvements to better ensure timely and appropriate action is taken on suspension and debarment referrals.

Specifically, last Spring FHWA established a dedicated team within the Office of Chief Counsel to work with FHWA's debarring official to identify, review and dispose of all referrals within established deadlines. New protocols were instituted, which call for suspension or proposed debarment orders within 45 days of notification of an indictment from any source, or providing a written justification of why a suspension or proposed debarment order is not warranted under the circumstances.

In addition, the FHWA has undertaken a number of other important measures to improve case processing. The Office of Chief Counsel has--

- increased the resources devoted to case processing;
- developed an action plan for dealing with priority cases, as well as the remaining open cases;
- established an electronic database and tracking system; and
- developed regularly updated case reports for review by FHWA management.

The FHWA Chief Counsel's Office also developed revised detailed procedures for case processing – in the field and at headquarters – intended to ensure prompt action after a referral and timely follow-up actions.

These actions by FHWA are showing results.

- Beginning in May 2009, the Office of the Chief Counsel reviewed and updated a comprehensive inventory of 56 open cases. The initial inventory identified 22 cases for priority treatment, and the FHWA has initiated actions in all those cases except two, which require additional information to proceed.
- As of March 10, 2010, action undertaken by FHWA has reduced the open cases to 32. In order to ensure that taxpayer funds are fully and effectively protected as these cases are being pursued, all of these firms, with the exception of the two lacking full information, have been suspended, pending final decision on debarment.
- Of the six cases identified in the OIG ARRA advisory, three are now closed, two parties have been suspended, and FHWA is pursuing information on the final case prior to final disposition.
- Since the issuance of the Office of Inspector General report, FHWA has received three new referrals from the OIG. Action in all three of these new cases was initiated within 45 days, in accord with the new protocols and Departmental Order.

As you know, a suspension is effective immediately, which means a suspension protects federal monies as completely as a debarment in the first instance. I can therefore assure the Committee, notwithstanding the delays that occurred in closing open suspension cases that, except for the two cases noted above, respondents are now suspended in every open FHWA case, and the public is protected.

I would like to offer a clarification and updated information regarding a conclusion by the Inspector General's Office that Recovery Act funds were awarded to companies affiliated with individuals under indictment, as indicated in today's testimony. The contracts supported by the Recovery Act funds in question were awarded by Kentucky to firms that shared an address with a company controlled by an individual that, at the time, was under indictment but has since been acquitted. Also, the son of that indicted individual had an interest in both of the firms referred by the IG that received the Kentucky contracts in question. Although we examined all of the facts about interconnections between these firms and the indicted individual, we could not conclude, based on the existing standards of evidence, that this constituted an "affiliation" that justified suspension and debarment.

The indicted individual was one of three who have since been acquitted or have had charges dismissed. They received no Recovery Act funds individually or as a principal in a business. These three individuals were suspended in July 2009 based on the September 2008 referral. We recognize this gap is unacceptably long and, as I described earlier, we have taken steps to prevent this from happening again. The effectiveness of our new process is borne out by the facts. FHWA's new procedures in place have resulted in the three new referrals received by FHWA since the May 2009 to be acted upon within the 45-day deadline.

The Department will take strong and prompt action to protect public funds. As the Inspector General recommends, we will move swiftly to suspend affiliates of suspended or debarred contractors. We believe, however, that the commitment does not diminish the due process rights of targeted firms or individuals.

Significant grant-making and acquisition actions are also carried out by the Federal Aviation Administration and the Federal Transit Administration. These two Operating Administrations have also agreed to commit the resources needed to fully address the recommendations of the Inspector General's report.

In conclusion Mr. Chairman, we believe we have taken to heart the essential elements of the Inspector General's report -- to commit high-level management and more resources to suspension and debarment cases in order to ensure rigorous enforcement, and to take definitive action in a timely manner. On behalf of Secretary LaHood and the other employees of the Department of Transportation, I want to assure you that we understand the importance of our duty to safeguard the public's money and their trust.

Working together with the Inspector General, we will work still harder so that the unscrupulous cannot participate in our grant programs and acquisitions, and potentially others across government.

Thank you again for the opportunity to discuss these important matters. I would be pleased to answer any questions you may have.

Chairman TOWNS. Without objection, so ordered. Thank you for your statement.

Ms. Duke.

STATEMENT OF ELAINE C. DUKE

Ms. DUKE. Good morning, Chairman Towns, Ranking Member Issa, and members of the committee. Thank you for hosting this hearing this morning. I am Elaine Duke, the Under Secretary for Management and Chief Acquisition Officer for the Department of Homeland Security.

Successful contractor performance is important in terms of both mission success and sound business practices. As we seek to use contracts to provide critical mission capability, we must ensure that we are being good stewards of the taxpayers' dollars. Contract oversight in the Department is a collaborative effort between our program managers, contracting officers, and contracting officer technical representatives. We measure this contract performance in terms of cost, schedule, and performance; and when a contractor fails to meet the terms of the contract, we must take appropriate action based on the specific circumstances which give us different remedies to address the performance.

When failing to perform a contract results in termination for default, the next step is evaluating whether the contractor should be referred for suspension and/or debarment. Suspension and debarment are intended to protect the Government from continuing to contract with an irresponsible contractor. The Federal Acquisition Regulation sets forth the criteria that may result in suspension or debarment, including fraud, violating antitrust statutes, bribery, falsification of records, violation of Federal tax laws, violation of Federal equal opportunity provisions, and other Federal statutes. Further, a contractor's willing failure to perform, history of failure to perform, or unsatisfactory performance may require a suspension or debarment.

Since 2007, DHS has initiated suspension or debarment actions against more than 240 contractors or individuals. The majority of DHS actions are for immigration statute violations. In addition, DHS has recently put additional procedures in place to improve our execution of existing policies regarding terminations, suspensions, and debarments.

Some of the recent actions we have taken include requiring contracting officers to assess all contract terminations for default or suspension possibility; a mandatory review by the senior component suspending and debarring official of every contractor that is terminated for default or cause to determine if suspension and/or debarment is appropriate; notifying our DHS chief procurement officer of any termination exceeding \$1 million to ensure the Department reviews the components decision on these terminations; and requiring all DHS contracting personnel to input performance reviews into the contract performance data base.

I look forward to working with our Inspector General, Mr. Richard Skinner, in going forward to continue to improve our administrative controls over the termination, suspension, and debarment process, and I look forward to answering questions from this committee this morning.

[The prepared statement of Ms. Duke follows:]



**TESTIMONY OF ELAINE C. DUKE
UNDER SECRETARY FOR MANAGEMENT
DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

UNITED STATES HOUSE OF REPRESENTATIVES

March 18, 2010

Chairman Towns, Ranking Member Issa, and Members of the Committee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) policies and procedures regarding suspension and debarment of contractors. I am the Under Secretary for Management (USM) and Chief Acquisition Officer (CAO) for DHS. In coordination with the Office of the Chief Procurement Officer (OCPO), I oversee the DHS acquisition portfolio, including nine contracting activities that award more than fourteen billion dollars a year in contracts and other business agreements. The OCPO provides the acquisition policies and procedures that establish the framework for awarding and administering contracts.

Contractor Performance

Successful contractor performance is important in terms of both mission success and sound business practices. As we seek contracts that provide critical mission capability, we must ensure that we are being good stewards of taxpayer dollars. Contract oversight that holds our industry partners accountable is a collaborative effort between our program managers, contracting officers, and the Contracting Officer Technical Representatives (COTRs). In most cases, contractor performance is measured in terms of cost, schedule, and performance. When a contractor fails to meet the terms of the contract, we take the appropriate action based on the specific circumstances. There are different remedies that we can pursue when a contractor fails to meet a requirement of the contract.

When the terms of the contract are not fulfilled, DHS, like all other federal agencies, can seek "consideration," requiring the contractor to adjust the contract price or provide substitute work

within the scope of the contract. However, in the event the contractor is unable—or anticipated to be unable—to complete the required work and other alternatives are not available, the contracting officer determines if termination for default (or cause) is in the best interest of the government.

Suspension and Debarment

When failing to perform a contract results in termination for default, the next step is evaluating whether the contractor should be referred for suspension and/or debarment. Suspension and debarment are intended to protect the government from continuing to contract with an irresponsible contractor. The Federal Acquisition Regulation (FAR) sets forth criteria that may result in suspension and/or debarment, including fraud, violating anti-trust statutes, bribery, falsification of records, violation of federal tax laws, or violation of Federal equal employment opportunity protections. Further, a contractor's willful failure to perform, history of failure to perform, or unsatisfactory performance may warrant suspension or debarment. If a termination is associated with any of these criteria, the contracting officer, in consultation with the Office of General Counsel, determines if the contractor or individual should be referred for suspension and/or debarment. If referred, the Suspending or Debarring Official reviews the facts and decides whether suspension or debarment is the appropriate action.

Since 2007, DHS has initiated suspension or debarment actions against more than 240 contractors or individuals. In addition, DHS has recently put additional procedures in place to improve our execution of existing policies regarding terminations, suspensions, and debarments, as well as reporting such actions in past performance databases.

New Policies and Procedures

DHS has taken several actions to strengthen its policies and procedures regarding termination, suspensions, and debarments. Recent reforms include:

1. Requiring contracting officers to assess all contract terminations for default or for cause for potential referral for suspension and/or debarment and to ensure they are fully compliant with federal and DHS policy;
2. Mandatory review by the senior component suspending and debarring official of every contractor that was terminated for default or for cause to determine if suspension and/or debarment of the contractor is appropriate;
3. Notifying the DHS Chief Procurement Officer of any terminations of contracts exceeding \$1 million to ensure that the Department reviews the component's decision for these terminations.
4. Requiring all DHS contracting personnel to input performance reviews of current DHS contracts and actions on past terminations since 2007 into federal tracking databases in a timely manner in order to ensure DHS and all agencies across the federal government do not award new contracts to vendors with poor past performance records. DHS has trained more than 3,000 personnel in the use of its new performance review system.

Going forward, the Department will use contractor past performance as a strong consideration in determining whether contractors should be awarded new contracts. The Department is also evaluating whether suspension/debarment functions should be moved from the procurement office to another part of the Department. We are currently meeting with several other federal Departments on this topic to learn from their best practices.

Conclusion

DHS is committed to awarding and administering its contracts in accordance with the Federal Acquisition Regulations and holding our contractors accountable for their actions. As a result, we have taken actions to improve our policies and procedures and will continue to look for ways to strengthen our contracting program. Thank you for the opportunity to testify before the Committee. I am glad to answer any questions you may have.

Chairman TOWNS. Thank you very much, Ms. Duke, for your statement.

Mr. Lutén.

STATEMENT OF DREW W. LUTEN III

Mr. LUTEN. Chairman Towns, Ranking Member Issa—when he returns—and esteemed members of this committee, thank you for extending the invitation to appear before you today. I am pleased to provide you with an update on USAID’s progress to strengthen processes and procedures related to suspension and debarment, and to report on our implementation of the recommendations from our Inspector General.

We found the October 2009 report from the USAID Inspector General to be very timely. While we had made some progress since the period covered by the report, which went up to 2007, we recognized that there were a number of things that we needed to do to improve our capacity and our processes for handling suspensions and debarments. We need to do this in order to put USAID in a better position to be more proactive in overseeing contractor performance and compliance, and taking action as and when appropriate.

We take very seriously our duty to suspend and debar those parties who seek to defraud the Government or abuse the privilege of receiving taxpayer funds. We have taken steps to address all of the IG’s recommendations. Corrective action on six has been completed and will be formally reported back to the IG shortly, and the rest are in process, in varying stages of completion.

The biggest change that we have made was to approve the establishment of a separate division within our Office of Acquisition and Assistance that will be responsible for partner compliance and oversight. We made this decision after surveying several Federal agencies. This division will be separate from the units that are responsible for soliciting and awarding and administering Federal contracts and grants. It will report directly to the senior procurement executive, who is the suspension and debarment official.

The new division will have a dedicated staff to focus on suspension, debarment, and other oversight matters. It will develop case files, evaluate facts, make recommendations for action, as well as track the overall status and progress of its case load. An experienced procurement officer was assigned to build the division, and recruitment of staff will occur over the coming months.

One of the other things that we have done is increase our inter-agency engagement on suspension, debarment, and compliance matters, looking for information about firms and organizations, as well as lessons learned from other agencies. We now have regular representation at the Interagency Suspension and Debarment Council and also serve on the EPLS Committee at GSA.

In the meantime, we are managing an expanding workload of compliance matters. We are finding that the new Federal Acquisition Regulation provision on contractor business, ethics, and conduct which became effective in December 2008, is expanding our reach in the area of compliance oversight. This clause provides for contractor self-reporting of potential criminal violations, false claims, overpayments, and other misconduct. We have developed

standard procedures for reviewing and making decisions with regard to such disclosures from contractors. Each case is vetted by a panel of specialists from multiple disciplines who review the reported information and the severity of the wrongdoing.

Each potential suspension and debarment or other compliance action, however it is identified—by IG referral, through contractor self-reporting, through interagency collaboration, or other sources—is considered on its own merits under the criteria set forth in the Federal Acquisition Regulation and our agency’s own non-procurement regulation with respect to suspension and debarment.

As an agency, in appropriate situations, in addition to seeking suspension and debarment, as appropriate, we also find that there are appropriate situations where an administrative compliance agreement is the best practice to be applied under particular circumstances, considering the nature of the wrongdoing and, very importantly, considering the response of the contractor or grantee. All of these are taken into consideration.

In pursuing our foreign affairs mission, USAID works in more than 80 developing countries around the world, often in difficult conditions or in environments with underdeveloped financial and governance systems. In appropriate circumstances, the compliance agreement is a tool that allows us to help willing organizations, both U.S. organizations and non-U.S. organizations, deal with problems, improve their capacity to operate effectively, and become accountable and recipients of U.S. funding.

In closing, I will just say again that our IG’s report was very timely and has focused us on taking actions that we know that we need to take. With improved policies, with a dedicated unit, with better interagency collaboration, we are putting ourselves in a much better position to proactively protect the taxpayer dollars that are entrusted to us.

Thanks for the invitation to be here today. I would be happy to take questions that you may have.

[The prepared statement of Mr. Luten follows:]

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Drew W. Luten
Senior Deputy Assistant Administrator
Bureau for Management

Testimony before the
Committee on Oversight and Government Reform

U.S. House of Representatives

March 18, 2010

Chairman Towns, Ranking Member Issa, and esteemed members of this committee, I thank you for extending the invitation to appear before you today. I look forward to providing you with an update from the U.S. Agency for International Development on our efforts to strengthen processes and procedures related to suspension and debarment activities. I understand that this committee seeks answers on how USAID is responding to the recent October 2009 report issued by USAID's Office of the Inspector General (OIG), titled "Audit of USAID's Process for Suspension and Debarment."

Accordingly, I will provide you with a brief overview of where we are to date and how we are moving forward to enhance our oversight capabilities to ensure strong protection of U.S. taxpayer funds.

I serve, in my role at USAID, as Senior Deputy Assistant Administrator for Management. Under my responsibilities, I oversee the activities of the Office of Acquisition and Assistance (OAA), which directly reviews and takes action to investigate and pursue suspensions and/or debarment of individuals and organizations. It is this office that worked so closely with our OIG during the recent audit and which moved forward to immediately address weaknesses even before a final report was released.

We take our duty seriously to suspend and debar those parties who seek to defraud or abuse U.S. taxpayer funds. As such, management agreed with the majority of OIG's 12 recommendations offered through the audit process. In particular, we agreed to: 1) improve our decision-making processes through dedicated staff; 2) enhance overall procedures to find and manage cases of waste, fraud, and abuse more effectively; and 3) communicate decisions more quickly.

We recognized at that time that our capabilities to expand beyond the basic systems we had in place were limited and that our consistent documentation and notification processes required more stringent review. To put it simply, we often were in reactive mode on cases for potential suspension and debarment rather than in the more preferable proactive position. This was due in part to limited staffing and resources devoted to this specific purpose.

After conducting careful organizational surveys of more than eight federal agencies—large and small, we found that the best way forward for our agency was to establish an independent unit devoted solely to partner compliance and performance oversight. In January 2010, we approved the establishment of a separate division to be housed within USAID's Office of Acquisition and Assistance that will refer cases directly to the Senior Procurement Executive, who would hold delegation of authority to suspend or debar.

This partner compliance and performance oversight division will maintain a dedicated staff to focus on matters of statutory suspension and debarment actions. The unit will hold the responsibility for the development of case files, the evaluation of the facts of each case, and the provision of recommendations on these cases. We are in the process of formalizing the roles and responsibilities for this unit and are working with our Human Resources Office to recruit talented expertise for the unit. As of late January, we dedicated a full-time professional to this unit to serve as a suspension and debarment officer. Once fully operational, the new division will devote effort, time, and resources to track trends related to partner compliance issues, such as recurring performance issues and terminations for default. Through comprehensive and

consistent monitoring, USAID will identify, in advance, potential suspension and/or debarment actions.

Ultimately, this division will strengthen our decision-making processes, enhance procedures, and organize communications appropriately for timeliness and efficiency in our debarment and suspension functions. The unit will coordinate carefully with our already existing teams of auditors and evaluators who provide in-depth oversight of our partner organizations. USAID is taking the necessary actions to build a strong foundation for this partner compliance and performance oversight unit as we follow through and further the goals defined in our management response to USAID's OIG audit.

In order to enhance the overall suspension and debarment process, we recently finalized a USAID set of standard operating procedures (SOPs) designed to ensure full compliance with federal regulations. We established new filing procedures to strengthen the Agency records on actions taken for suspension and debarment in accordance with USAID's regulations and will be updating internal USAID policy. As a matter of policy, the Agency is taking regular steps to report out on active cases through the now robust interagency process.

USAID finds active engagement within the interagency process critical as we apply USG-wide lessons learned and best practices. We now have regular representation on the Interagency Suspension and Debarment Council. We also benefit from close coordination with our USAID OIG, our Office of General Counsel (GC), and the Department of Justice for appropriate resolutions.

As we seek new avenues to ensure that our protective net for U.S. taxpayer funds is stretched wide and far to uncover cases of waste, fraud, or abuse, we are actively applying the new Federal Acquisition Regulation Clause 52.203-13, Contract Code of Business Ethics and Conduct, which became effective in December 2008. This contractor self-reporting clause has provided us with an opportunity to broaden our investigations, better monitor contractor responsibility, and resolve cases of wrongdoing or misrepresentation against the U.S. government. This helps us to hold our contractors responsible for potential criminal violations, false claims, overpayments, and other misconduct. As a direct result, the Office of Acquisition and Assistance developed standard procedures for processing the self-disclosure statements per the FAR.

First, an email box, managed by OAA and to be managed by the new independent unit, was created and disseminated to allow contractors to directly disclose credible evidence of a violation of federal criminal law involving potential criminal violations, including false claims, bribery, and gratuity violations, connected to the award, performance, or close-out of a government contract or subcontract.

Second, these "Contractor Disclosure Statements," as we term them, for a prime or sub-awardee are vetted through a panel of specialists from various disciplines who review these reports for the merit of the statement received, the severity of the wrongdoing, and the appropriate Agency action, if any, to be pursued. Upon review by this Contractor Disclosure Board, final decisions, in consultation with our GC and USAID OIG, are delivered to the Agency Senior Procurement Executive for final

decision. USAID is handling six such self-disclosure reports currently through this system and we find that the Contractor Disclosure Board is working.

In ensuring we capture new or ongoing cases of misuse of U.S. taxpayer funds, we focused on updating all contracting officers, contracting officer's technical representatives, and encouraging all other responsible parties to refer any matters appropriate for consideration to the debarring and suspending official. In May 2010, we will be providing up-to-date training for our worldwide staff of contracting and agreement officers, and in the next few months we will engage through Contracting Officer's Technical Representatives training to ensure that this new guidance is included and shared with those seeking certification and training to direct our programs and oversee the day-to-day activities of our development partners worldwide.

Once a decision is made through our consultations with OIG, our General Counsel, and review of the facts and results of an investigation, USAID takes actions related to suspension and debarment guidance appropriately. In some cases, if the circumstances and the response of our partner warrants, USAID will work through an Administrative Compliance Agreement to track, monitor, and oversee the financial and performance statements of a partner. As an Agency, we find this tool a best practice to assure we can meet our mission and protect U.S. funds entrusted to us. USAID works by engaging internationally, nationally, and locally in more than 80 developing countries around the world. While we work with numerous U.S.-based development partners through these engagements, we also engage extensively at the local level—in developing countries, where financial, governance, health, education, and other systems may be weak. These engagements bring their own set of challenges and risks

when we partner with a local firm in a nation to implement a health education program or to build local capacity systems. The Compliance Agreement tool allows us to reform corporate cultures into vigilant stewards of taxpayer funds.

In FY 2009, USAID conducted more than \$4.6 billion in acquisition actions. Under assistance mechanisms, we issued more than \$8.9 billion through USAID grants and cooperative agreements. We have more work to do to more proactively protect each of these dollars, but we have taken great strides to date to strengthen our procedures and meet our needs. As we move forward with a single devoted unit and appropriate staff, we will continue to build our resources and capabilities to implement new changes or share information on suspended or debarred actors more quickly through alert systems for example.

We will also be devoting the new unit—in close coordination with our audit and evaluation divisions—to monitor actual trends in contractor performance to be sure we capture any egregious business practices and protect our development goals and taxpayer funds. This will, in addition to the practices and processes I have mentioned today, help us to capture more cases of waste, fraud, and abuse and more successfully protect U.S. taxpayer dollars.

In closing, I thank you again for inviting me to be here with you today. I am happy to take any questions you may have in regards to our ongoing efforts to strengthen our suspension and debarment actions.

Thank you.

Chairman TOWNS. Thank you very much.

Let me begin by first thanking all of you for your statements.

This would be to you, Mr. Woods, and to Ms. Duke and to Mr. Lutten. All of you, I am sure, know what is happening in your agencies. Why aren't bad actors being suspended or debarred, is it the red tape? What is the problem? Because you seem to know what is going on.

We can start with you, Mr. Woods, and come right down the line.

Mr. WOODS. Thank you, Chairman Towns. Respectfully, what the Inspector General identified in his report was that the Department was taking too long in dealing with referrals that were made primarily by his office regarding people who had been indicted of crimes, and, sir, we agree with the findings in his report that in many instances we simply took too long, and thanks to his advisory in May 2009 and his recent report, we have been taking steps to try to speed up the processing of those suspension and debarment procedures.

For us, thankfully, we haven't yet seen instances where people have gotten our money who should have been suspended or debarred, but as I said in my introductory remarks, sir, that, I think, in some ways is due to some luck. We have taken too long from the referral to suspension or debarment, but so far we have been fortunate to not find instances where somebody got money, a bad actor got our money that should not have. We need to improve our systems to make sure that doesn't happen.

Chairman TOWNS. But that is too much money to leave up to luck.

Mr. WOODS. I completely agree, sir. Our systems have to be improved and the Inspector General's advice and advisories have been taken well to heart.

Chairman TOWNS. Ms. Duke.

Ms. DUKE. I believe within DHS, and the data shows, it is part of our startup. When the Department started, we merged 22 agencies and struggled with the administrative stand-up of the Department. Our contracting workload doubled early on in the Department, and this was one of the programs in the contract management acquisition management that we needed to put the building block in place.

Now, the good news is our data does show the building blocks are starting to work. For instance, as an IG report is a report of the past, the data is correct in the IG's report, but our data does show we are increasing our suspension and debarments. In fact, we doubled in 2009 the debarments we did in 2008, and this year, in fiscal year 2010, so far, just in the first half of the year, we have nearly double what we have done in fiscal year 2009. We do have to still make more systemic administrative controls, but I think our data shows we are getting this situation administratively under control.

Mr. LUTTEN. I think our issues have been similar to other agencies. In our case, expansion of mission and expansion of program without adequate building of the infrastructure for stewardship, of which this is a part, is part of the cause.

Part of it, as our IG has pointed out in his report, was lack of focus and lack of organizational focus on this, which we are remedying. In fact, since the period covered by the report, but even be-

fore the issuance of the report, we were devoting more attention to this. I think the report indicated that there were only nine actions taken.

We now have 26 actions, suspension and debarment actions that we have taken since 2003. We have 18 more active cases that are under various stages of review. So it was increase in the program, need to have the stewardship infrastructure catch up with the increase in the program. We are increasing the number of suspension and debarment actions really since the period of the report that was covered, and the new organizational changes will help us do this more effectively.

Chairman TOWNS. The restructuring, when did that take place?

Mr. LUTEN. It has been approved and it is in the process of being staffed now, so we approved it in January. I approved it in January and we moved an officer to build the division. And even before that we are just devoting more attention to suspension and debarment.

Chairman TOWNS. Thank you very much.

I yield 5 minutes to the gentleman from California, the ranking member, Congressman Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Where to begin sometimes is hard on these, but, Ms. Duke, do you need additional tools in order to hold FEMA or any other part of Homeland Security accountable?

Ms. DUKE. Two things. One is at the Federal level there is a new system that is being deployed next week, it is the Federal Awardee Performance and Integrity Information System. This is going to be very helpful to DHS and all the other departments. What it does is brings past performance and integrity and debarment information all together in one data base. This is a Federal initiative that will be helpful.

Within DHS, I think the additional tool we need—and Mr. Skinner and I have talked about this—is just a better system to control and bring visibility. We do not have a single authority in DHS right now, and that is something we gained from the IG report and are looking at, is how can we bring the administrative processes together under one leader. But in terms of authorities, I think we have the appropriate authorities; we just need to fine-tune the administrative controls.

Mr. ISSA. Let me ask an old businessman's question. I will just run down each of you. In business, if I have a contractor who performs poorly, if I have a contractor who is under indictment, if I have a contractor who has had three people arrested for selling coke on the premises and I become aware of it, I look at my purchasing agent and I say this all scores, this all scores into the question of this company or this vendor.

If I have a contractor who fails their, in our industry, ISO 9000 or 9001, the actual quality, it scores. Do we have to give you authority to use scoring like that so that at least while somebody has these documentable events—not tried in every court and appealed all the way through the men and women here across the street in black robes, but at least these are legitimate markers. Do we need to give you the authority to say we are going to score that so these individuals fall lower on their success rate of getting new contracts and renewals?

Mr. Scovel, start right down.

Mr. SCOVEL. Good morning, sir. Sir, we think the Department of Transportation has every tool that they need and every—

Mr. ISSA. Well, clearly you are not using the tools. So that is the question, if in fact we gave you an overt tool that said these analyticals, maybe unproven, may be weighted in a renewal? Let's face it, at DOD, one of the biggest problems is you have a contractor who does a bad job and they get an automatic renewal. They get to do a bad job on what they are doing and they often say, well, but he met the minimums.

So I ask you again do you have that tool? Do you want that tool, the tool to be able to use these kinds of performances—some extraneous, but in the consideration not of debarment, but of the question basically—it is more of a suspension question—of do they win the new grant, do they win the new aware?

And I am thinking in my mind of ACORN, and I am thinking of ACORN because I can understand why somebody would say, look, they already have the grant, they have already hired the people. While they are going on their appeal on voter fraud, maybe we won't do it. But the question of new money. And we switch to Lockheed Martin, we could switch to Boeing. We could switch to any company; fill in the blank. Do you have that tool? I think the answer is no, you don't.

Mr. SCOVEL. No, we do not.

Mr. ISSA. Would you like to have that tool? And if not, why not? That is the entire question and I just want those questions answered by each of you, if I could, please.

Mr. SCOVEL. Sir, from the point of view of my office, the Inspector General—

Mr. ISSA. I am talking about the agency each oversees more than anything else.

Mr. SCOVEL. From the Department's point of view you are asking.

Mr. ISSA. Yes.

Mr. SCOVEL. I must leave that question officially to the Department. From my point of view, sir, to the extent that discretion, unfettered discretion enters into the analysis, we would probably find that problematical. And I am sure our work would result in findings of disparate treatment from case to case.

Mr. ISSA. OK. Mr. Skinner.

Mr. SKINNER. Yes, I agree.

Mr. ISSA. And obviously I am not suggesting that we invent discretion, but, rather, we document criteria that would allow for that, such as indictment, such as adverse reporting. There would have to be a list. But right now it appears as though groups that would fail under that don't meet the threshold for 400 days to get suspended or debarred.

Mr. Skinner. And my time is up, so if we could just be as quick as possible.

Mr. SKINNER. Yes, I agree with Mr. Scovel. Right now, it is very, very subjective. However, there are certain bars or parameters that should be established. Indictments, arrests should weigh in very, very heavily into your decision as to whether you want to proceed. Right now, if you are convicted, you are prohibited unless there is

a waiver, and it has to be justified. But there are performance measures below that. You may not be convicted, you may not be indicted; you may be terminated for cause. Those things I think should have a greater weight than some of the other factors.

Mr. ISSA. They currently do. Yes, sir.

Mr. GAMBATESA. Yes, sir, I agree with Mr. Skinner that the convictions and indictments are obviously something that has more weight. But in areas where there is an agreement or some sort of settlement agreement to avoid prosecution, I think those should be scored in some way, or under-performance should be scored in some way.

Mr. ISSA. Mr. Woods.

Mr. WOODS. Sir, quickly, just to note, the majority of our funds are passed through grants to the States, so the States are entering into contracts with the direct contractors. I do believe that States use information of that sort in order to determine the present responsibility of contractors using our funds.

Mr. ISSA. Ms. Duke, the person I really wanted to start with.

Ms. DUKE. Within DHS, I think the biggest tool we have is our people. Recording past performance information is time-consuming, but it is absolutely important. So, as we seek to buildup our contracting and our program management staff, I think the biggest thing we could use is support in the budget. I know that is difficult in such a tight year, but this is an important function, but it is time-consuming to do this well; and I think throughout the Federal Government that type of information is not recorded appropriately, so it is not available for use—

Mr. ISSA. Yes, but I am only speaking—and I apologize, we have really gone over—the tool of selectively not granting extensions or new contracts or grants to individuals who have adverse reporting, allowing that to be formally weighted in the process. And the reason I think the chairman and I probably are both interested in this is we clearly want to get a tool that is easier to use than the 400-day that we seem to never be able to get down, or the 300-some day. That tool is all I wanted an answer on.

Ms. DUKE. Yes, I believe the tool is there, and we need to use it.

Mr. ISSA. Mr. Lutten.

Mr. LUTTEN. We absolutely need to use the tools that are currently available and keep doing what we are doing to focus on staffing and paying more attention. But the idea of additional criteria and criteria that are differentiated depending on which each one is would be welcome, I think. I mean, I am not sure how it would work, but it is a discussion that is probably worth having.

Mr. ISSA. Thank you.

Thank you, Mr. Chairman.

Chairman TOWNS. The gentleman's time has expired.

I now yield 5 minutes to the gentleman from Illinois, Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Lady and gentlemen, I guess I am inclined to ask about specific issues such as once an entity has been suspended or debarred, they must be entered into the EPLS system within 5 days. That doesn't include those that are terminated, which seems to be a shortcoming here.

But listening to you and the fact that we are here the second in a year going over the exact same things, I guess I wonder, to an extent, if you were in my place, what difference does it make? You begin to get the impression that the agencies, if they don't like something, they are not going to do it anyway; they are not going to file data within the prescribed period, they are not going to pursue issues on a timely basis.

And here is my personal favorite: Department procurement officials characterize the process as being too resource-intensive, punitive, and negatively impact the size of the contractor pool. That is my favorite. We want a large pool so even if we have inept, corrupt people, we will have a larger pool. It is exactly what we are dealing with in SELPA. So if someone could help me here explain, if you are in my shoes, why bother if the agencies are going to act as independent victims anyway?

Mr. Skinner, if you want to jump in.

Mr. SKINNER. May I respond? Yes, the responses that we received—and this was from procurement officials throughout the Department—concerning the procurement pool or being too punitive or we just don't have the resources, it is too resource-intensive is something I think cannot be explained.

First of all, and I agree, if you are not performing and you have a history of not performing, then you should be eliminated from the pool. What I would suggest is, when I hear those types of responses and I look at these contracts, I think the problem lies in the contracting officer or the contracting rep is not comfortable with the way the contract was written to begin with, so they feel that they may be vulnerable. That is, if we are going to terminate you for lack of performance and a continued lack of performance, then we have to demonstrate that we clearly articulated in the terms of that contract that this is what we wanted as an end result. Unfortunately, we cannot always do that, so, therefore, they feel we may be partially at blame for not clearly articulating the terms of the contract and what goods and services we wanted at the end of the road; and I think therein lies part of the problem.

The other thing I think is in fact a resource issue. The Department, at least in the Department of Homeland Security, we had to dig the Office of Procurement throughout the Department and all the components had to dig themselves out of a hole. They were grossly understaffed. The urgency of the mission trumped good business practice in the early days. That is starting to change and we are starting to see evidence of that now as we buildup and have a better training program, increased staffing, more experienced staffing to address these other issues.

The third point that I would like to make is we have to hold these people accountable. Like you said, why bother if you are not going to be held accountable? And one of the ways of doing that I would suggest is that—and we have discussed this throughout the Department—is to start putting these types of performance indicators in your performance evaluation plan for the individual contracting officer, for the individual contracting technical rep, for the project manager. Hold them accountable for their actions when things cannot be explained.

Mr. QUIGLEY. Just with yourself, sir, the issue of whether the entity has been suspended or debarred has to be entered into the data base, would you add terminated as well?

Mr. SKINNER. In the—

Mr. QUIGLEY. Into the EPLS.

Mr. SKINNER. Oh, that is a separate data base. I think that data base should be held exclusively for those that have been in fact suspended or debarred. I think there are other ways through the Government-wide tracking system and through the new system—well, the new system will capture this, but through Past Performance Tracking Retrieval System, that information should be clearly articulated in that system.

Mr. QUIGLEY. But we have already heard and read that agencies aren't even reading what is on this system, EPLS, in evaluating and going forward with these entities. Is a separate system now just going to confuse the issue; it is one more thing to check?

Mr. SKINNER. No, I don't think—and I have yet to take a very close look at it. I am sure my cohorts that are involved in the procurement acquisition or those in the community have. This is not a new system. Well, it is a new system, but what it does, it collects all the information from the various systems. So this new tracking performance and integrity system will—it is one-stop shopping, so to speak, is my understanding. So when you go in and put in a DUNS number or a company name or an individual name, you should be able to extract information that are in all these other systems that are being maintained.

Mr. QUIGLEY. Thank you.

Mr. TIERNEY [presiding]. Thank you, Mr. Quigley.

Mr. Mica, you are recognized for 5 minutes.

Mr. MICA. Thank you.

You know, one of the things we have been trying to do is get the stimulus money out. I am thinking maybe it is good we aren't getting it out, because we probably are giving it to as many bad actors, since the system doesn't seem to work to catch or stop them.

In the Kentucky case it took 300 days, Mr. Scovel, to reach a suspension, and then a debarment was 400 days, is that correct?

Mr. SCOVEL. Almost, Mr. Mica. It took about 10 months from the time of my office's referral of the indictment of individuals to the Federal Highways Administration for Federal Highways to make the suspension decision.

Mr. MICA. In the meantime, they had given \$24 million in contract to a firm that had been indicted, I guess, or charges against some of the principals.

Mr. SCOVEL. Twenty-four million dollars in recovery funds were awarded to three companies. Well, a couple of the contracts were awarded before the suspension decision was made and one after.

Mr. MICA. Well, there is obviously not a system to alert people when prosecutorial action is taken, but when the suspension or debarment takes place, do we notify the States immediately? Is there a State alert? Since most of these folks we heard a lot of the money is passed through, like the stimulus, to the States. There is an alert system?

Mr. SCOVEL. Yes. They have access as well to the Excluded Party Listing Service.

Mr. MICA. OK.

Mr. WOODS. That is correct, sir. In fact, our systems require that each of the States, before they award a contract, check the EPLS system and certify they haven't been excluded.

Mr. MICA. But the problem we have is getting the money out in a hurry, which we want to do. Mr. Oberstar and I tried to get it out in a year. If it is 365 days and it takes 400 days for this process, we could be in fact awarding and people could have contracts that really are bad actors. So we do have a problem. And some of the remedial action may not cure the problem that has been mentioned today.

Ms. DUKE, Homeland Security. OK, I have a bad actor question for you. We are talking about contractors. I want to talk about employees. I notified your agency when one of my sheriffs got me, when I was back home some months ago, and said what the hell is going on in Washington? TSA is hiring people that we fired as bad employees.

One sheriff told me three employees, one was a good guy and two were bad guys. Two shouldn't be working anywhere for the misconduct that they found them guilty of. They were hired by TSA, working in TSA at one of the airports; he got information back. And none of the three were ever checked or vetted. He went back to his personnel office and they checked; they never had a call, a comment from TSA or Homeland Security. We are hiring people in sensitive security positions in your agency who are bad actors. What is the problem?

Ms. DUKE. Well, we do do suitability checks on our employees from a security standpoint. I will check—

Mr. MICA. How about just checking the previous employer? I mean, that is the first thing I would do. I don't have the biggest personnel human resources operation in the world, but that is the first thing we do. And I still don't even know the resolution, because I am not sure if you even responded to my question yet.

Ms. DUKE. I do agree with you, Mr. Mica, that reference checks in employment are very valuable, and I will look into that.

Mr. MICA. OK.

Finally, Mr. Lutten, you were talking about additional criteria there and all that, but it has been brought to my attention that one of your contractors or guarantees is engaged in false claims at litigation with your agency and the Department of Justice. The Department of Justice and USAID, according to court filings, believe that a company called Disaster Relief Construction, Inc. submitted approximately \$40 million in false claims. Has USAID taken any action to suspend or debar that company?

Mr. LUTTEN. I must say that I am not specifically familiar with that case.

Mr. MICA. I don't think they have. And if they haven't, why not, if that is the case?

Mr. LUTTEN. Could we respond to you after this hearing?

Mr. MICA. Yes, I would like to see a response.

Mr. LUTEN. We will answer that.

Mr. MICA. And I will ask unanimous consent that his response be made part of the record.

Chairman TOWNS [presiding]. Without objection, so ordered.
[The information referred to follows:]

**Questions for the Record Submitted to
USAID Senior Deputy Assistant Administrator Drew Lutten by
Representative Mica
House Oversight and Government Reform Committee
March 18, 2010**

Question

What actions has USAID done to date to suspend or debar Disaster Relief Construction, Inc.?

Answer:

In 2001, USAID's Inspector General referred a case involving Disaster Relief Construction, Inc. to the Procurement Executive at that time. After review and discussions, USAID pursued a completion of a settlement agreement with the company in question. As a result, the firm was excluded from competing on contracts in Honduras for a one-year period. Action continues on this case in U.S. District Court to date; USAID will continue to watch this situation.

USAID is moving forward with building its division devoted to Debarment and Suspension actions. We concurred with all of USAID Inspector General's recommendations. (At the time of the IG report, USAID noted that it required one key policy decision before being able to move forward with all IG recommendations. We made the policy decision and are now acting on all IG recommendations.) Since the release date of the report, we continue to move forward to ensure that our system is strengthened and effective in making deliberate decisions on ongoing cases and any new incidents.

Mr. MICA. Thank you.

Chairman TOWNS. I thank the gentleman from Florida.

Ms. Chu.

Ms. CHU. Mr. Gambatesa, in your testimony you stated that your department had surveyed six other Federal agencies with active suspension and debarment programs, and that four out of six had established divisions or offices that were especially dedicated to these activities. What are these six Federal agencies and what were the respective agency track records with regard to S&D before establishing these special divisions and afterwards, and should all agencies have divisions or offices that are separate, just concentrating on this?

Mr. GAMBATESA. Well, we surveyed a large group in the Government, pretty much all agencies, and the six that responded were I believe the Department of the Navy—I have them here somewhere—the U.S. Air Force, the Defense Logistics Agency, GSA, and EPA all responded back to us.

And, I am sorry, the second part of your question?

Ms. CHU. The second part of my question is whether there should be separate offices that handle suspension and debarment, and whether that would make the process more efficient.

Mr. GAMBATESA. Obviously so. Our report recommended just that, that USAID establish such an office, and my understanding from Mr. Luten is that they are in the process of doing just that.

Ms. CHU. OK. And I am wondering, with the other agencies, are you in the process of establishing a separate office?

Ms. DUKE. Within DHS, we are looking at it. We have three separate, very separate ways we have to consider debarment: one is under grants or financial assistance, the second is under procurements; and the third is under immigration law. We believe now, to be efficient and make sure that this is done quickly, that a decentralized look at it—because they are done by very separate groups in DHS—is important, but we are looking at where in DHS, under a centralized authority, should the three pieces come together. So we are working with our Inspector General on seeing what is best for our Department.

Mr. WOODS. Like DHS, we have a number of operating administrations within the Department of Transportation, each of which has both procurement, buying things, and non-procurement grant authority; and for each of those there is a separate suspension and debarment official. What we have implemented now, and are strengthening, have been strengthening over the course of the last year, is centralizing responsibility for oversight of all of the suspension and debarment activities within the Office of the Secretary, which sits astride the operating administrations and we have designated our Office of Senior Procurement Executive to fit that function.

Ms. CHU. Well, let me then concentrate on transportation, Mr. Woods. The Inspector General found that your annual report is intended to be an oversight tool, but that the annual report was riddled with incomplete and inaccurate information, such as excluding open cases from prior years, incorrect action dates, and duplicate entries. How do you anticipate moving the agency forward and having annual reports that really close this oversight gap, and do you

have the resources to do this overhaul and piece together information going back to 2005?

Mr. WOODS. Thank you. The Inspector General did identify deficiencies in the annual reports that were submitted for those years. What we are doing in order to correct that is we are implementing a new electronic system that will allow each of those operating administrations to input information to a centralized data base.

The system that we are putting in place will ultimately allow the Inspector General to input the initiation of a suspension or debarment proceeding or a referral into that system, and that will allow the Office of Senior Procurement Executive that I mentioned earlier to have direct visibility on a real-time basis to what each of the operating administrations is doing.

So we are hoping we are both going to have more transparency regularly and, because we are going to have more regular visibility into the information that is being placed into the system, it will be easier for them to compile the annual report, rather than going back to the operating administrations and asking them to deliver up the components that would comprise it. And I think that was a big source of the failures in the reports that General Scovel pointed to.

Ms. CHU. And you—

Mr. WOODS. Sorry, in response to the second part of your question, a lot of this, again, as General Scovel pointed to, is really a question of management and a need to focus the people that we have working on this area more on their responsibilities and educating them in what those are. We are working on the process of that and we are hoping that with the resources we currently have, with enhanced management oversight and clearer procedures, we will be able to get that done.

Ms. CHU. And you think you will be able to go back to 2005 and correct the mistakes of the past?

Mr. WOODS. I believe that we can, yes, ma'am.

Chairman TOWNS. The gentlewoman's time has expired.

I now yield to the gentleman from Missouri, Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. If there is no objection, I would like to add to the record a copy of the letter that Mr. Mica was referring to during his questioning of Ms. Duke with regards to the two sheriff's employees.

Chairman TOWNS. I am sorry, I didn't hear that.

Mr. LUETKEMEYER. Mr. Mica referred to a letter that he was talking about with Ms. Duke. He would like to just add that to the record, if there is no objection to that.

Chairman TOWNS. Without objection.

Mr. LUETKEMEYER. Thank you, sir.

[The information referred to follows:]



U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
 Chairman

Washington, DC 20515

John L. Mica
 Ranking Republican Member

David Heymafeld, Chief of Staff
 Ward W. McCarragher, Chief Counsel

December 9, 2009

James W. Coon II, Republican Chief of Staff

The Honorable Richard Skinner
 Inspector General
 U.S. Department of Homeland Security
 7th and D Streets, SW, Room 3636
 Washington, DC 20528

Dear Inspector General Skinner:

I have recently received information that raises great concern about the Department of Homeland Security's (DHS) hiring practices and the failure of agencies within the Department to conduct thorough background investigations of their job applicants. There are two specific incidents in a County that I represent where individuals who were dismissed from County employment due to inappropriate conduct were subsequently hired by agencies within the DHS. The most alarming part of the reports I have received is that in both cases the County was never contacted by the DHS agencies regarding the background of the two individuals in question.

Therefore, I am writing to request that you conduct a thorough investigation of the Department of Homeland Security's (DHS), and specifically the Transportation Security Administration's (TSA) and the Custom and Border Protection's (CBP), hiring practices. As part of your investigation, I would request that you contact Sheriff Ben F. Johnson of Volusia County, Florida and Lt. Robert Goggin the head of the Sheriff Department's Internal Affairs Office. Both can be reached at (386) 736-5961.

Given the important security functions carried out by DHS, TSA and CBP, it is critical that they make hiring decisions based upon thorough background investigations that include contacting previous employers. I am most interested in your findings and recommendations. Thank you in advance for your kind consideration of my request.

Sincerely,

John L. Mica
 Ranking Republican Member

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

As I have been listening to the comments this morning and going through the testimony and some of the summaries, it is very troubling to see what is going on here. One of the comments was, additionally, the DHS IG reported that on at least 21 occasions the agency failed to record a termination for default or cause in Government-wide past performance data bases. DOT: The staff, with responsibility for suspension and debarment, viewed it a secondary to their duties. Debarment and suspension decisions were not timely. USAID: The actions the agency did take were poorly executed.

As I have sat here on this committee over the past several months, it seems as though—and this morning is symptomatic of this—that we have an almost blatant disregard sometimes for the rules; we have a lack of will to enforce the rules that are there; and if not just totally incompetent. And it is very disturbing to me because there should be oversight over all of this. I mean, when you get moneys to be distributed, there should be a process in place for oversight immediately. That should be a part of the process of distribution of the money.

And this morning we talk about now we are going to take action here, now we are going to take action here, now we are going to do this. Where were you? Why didn't we do something before? Why did we have to come here? This should have been done months, if not years, ago in all of these situations. This is ridiculous. You guys are the first caretakers of the dollars, not us. We are the secondary group here. You are the first caretakers.

I would like to ask how many of you are taxpayers? Show of hands, anybody a taxpayer? All of you?

Chairman TOWNS. If not, we are going to invite IRS to our next hearing. [Laughter.]

Mr. LUETKEMEYER. Remember, you all are under oath now. How many of you are outraged about what is going on by a show of hands? Any of you outraged about what is going on? Some of you no? You are not upset that there are taxpayers' dollars being wasted here, that people are getting contracts that shouldn't be given contracts? There are some of you that are not outraged? I didn't see six hands. So you don't really care, Ms. Duke, is that right?

Ms. DUKE. I very much care, yes.

Mr. LUETKEMEYER. You are not outraged by what is going on?

Ms. DUKE. I am outraged if a company that should be debarred is getting Federal dollars, yes.

Mr. LUETKEMEYER. Why hasn't something been done before? Why is it not? Why does it take a hearing like this to raise this issue?

Ms. DUKE. In DHS, in both the IG review and our review, we have no records of a company that should have been debarred not—or contract dollars going to a company that has been debarred or is proposed for debarment. So I do agree that there are more things that need to be done.

Mr. LUETKEMEYER. Well, in one of these descriptions here, a summary of the report indicates that some individuals in the Department or the staff felt that the suspension or debarment was viewed as secondary to their duties. Now, I have served in the private sector and I have served as a division director in the public sector as well, and I can tell you that whenever you have this sort

of attitude, it tells you one of two things: either you don't care or you have way too much money and they are willing to waste it; and that has to stop.

Mr. Chairman, I yield back the balance of time.

Chairman TOWNS. The gentleman from Missouri yields back.

I now recognize the gentleman from Ohio, Mr. Kucinich.

Mr. KUCINICH. Mr. Chairman, thank you very much for holding this hearing. I would like to ask some questions of Ms. Duke. And I would ask you if you would pull the mic close so that we can hear your responses.

You expressed in your testimony the importance of contractor performance and mission success and sound business contractors. Yet, the DHS IG found that between 2004 and 2008, a time period that includes Hurricane Katrina and the well-publicized contractor malfeasance that ensued, DHS had only 10 debarment cases. An article in The Nation magazine, which, without objection, I would like to submit for the record—

Chairman TOWNS. Without objection, so ordered.

Mr. KUCINICH [continuing]. Reported that the number of private security companies registered in Louisiana jumped from 185 to 235 within 2 weeks of the hurricane. Former Department of Homeland Security Spokesperson Russ Knock told the Washington Post, he "knew of no Federal plans to hire Blackwater or other private security firms that worked for New Orleans." Yet, days later Blackwater announced they were hired by DHS to guard reconstruction projects in Louisiana.

[The information referred to follows:]

THE Nation.

Blackwater Down

By *Jeremy Scahill*

This article appeared in the October 10, 2005 edition of *The Nation*.

The men from Blackwater USA arrived in New Orleans right after Katrina hit. The company known for its private security work guarding senior US diplomats in Iraq beat the federal government and most aid organizations to the scene in another devastated Gulf. About 150 heavily armed Blackwater troops dressed in full battle gear spread out into the chaos of New Orleans. Officially, the company boasted of its forces "join[ing] the hurricane relief effort." But its men on the ground told a different story.

Some patrolled the streets in SUVs with tinted windows and the Blackwater logo splashed on the back; others sped around the French Quarter in an unmarked car with no license plates. They congregated on the corner of St. James and Bourbon in front of a bar called 711, where Blackwater was establishing a makeshift headquarters. From the balcony above the bar, several Blackwater guys cleared out what had apparently been someone's apartment. They threw mattresses, clothes, shoes and other household items from the balcony to the street below. They draped an American flag from the balcony's railing. More than a dozen troops from the 82nd Airborne Division stood in formation on the street watching the action.

Armed men shuffled in and out of the building as a handful told stories of their past experiences in Iraq. "I worked the security detail of both Bremer and Negroponte," said one of the Blackwater guys, referring to the former head of the US occupation, L. Paul Bremer, and former US Ambassador to Iraq John Negroponte. Another complained, while talking on his cell phone, that he was getting only \$350 a day plus his per diem. "When they told me New Orleans, I said, 'What country is that in?'" he said. He wore his company ID around his neck in a case with the phrase Operation Iraqi Freedom printed on it.

In an hourlong conversation I had with four Blackwater men, they characterized their work in New Orleans as "securing neighborhoods" and "confronting criminals." They all carried automatic assault weapons and had guns strapped to their legs. Their flak jackets were covered with pouches for extra ammunition.

When asked what authority they were operating under, one guy said, "We're on contract with the Department of Homeland Security." Then, pointing to one of his comrades, he said, "He was even deputized by the governor of the state of Louisiana. We can make arrests and use lethal force if we deem it necessary." The man then held up the gold

Louisiana law enforcement badge he wore around his neck. Blackwater spokesperson Anne Duke also said the company has a letter from Louisiana officials authorizing its forces to carry loaded weapons.

"This vigilantism demonstrates the utter breakdown of the government," says Michael Ratner, president of the Center for Constitutional Rights. "These private security forces have behaved brutally, with impunity, in Iraq. To have them now on the streets of New Orleans is frightening and possibly illegal."

Blackwater is not alone. As business leaders and government officials talk openly of changing the demographics of what was one of the most culturally vibrant of America's cities, mercenaries from companies like DynCorp, Intercon, American Security Group, Blackhawk, Wackenhut and an Israeli company called Instinctive Shooting International (ISI) are fanning out to guard private businesses and homes, as well as government projects and institutions. Within two weeks of the hurricane, the number of private security companies registered in Louisiana jumped from 185 to 235. Some, like Blackwater, are under federal contract. Others have been hired by the wealthy elite, like F. Patrick Quinn III, who brought in private security to guard his \$3 million private estate and his luxury hotels, which are under consideration for a lucrative federal contract to house FEMA workers.

A possibly deadly incident involving Quinn's hired guns underscores the dangers of private forces policing American streets. On his second night in New Orleans, Quinn's security chief, Michael Montgomery, who said he worked for an Alabama company called Bodyguard and Tactical Security (BATS), was with a heavily armed security detail en route to pick up one of Quinn's associates and escort him through the chaotic city. Montgomery told me they came under fire from "black gangbangers" on an overpass near the poor Ninth Ward neighborhood. "At the time, I was on the phone with my business partner," he recalls. "I dropped the phone and returned fire."

Montgomery says he and his men were armed with AR-15s and Glocks and that they unleashed a barrage of bullets in the general direction of the alleged shooters on the overpass. "After that, all I heard was moaning and screaming, and the shooting stopped. That was it. Enough said."

Then, Montgomery says, "the Army showed up, yelling at us and thinking we were the enemy. We explained to them that we were security. I told them what had happened and they didn't even care. They just left." Five minutes later, Montgomery says, Louisiana state troopers arrived on the scene, inquired about the incident and then asked him for directions on "how they could get out of the city." Montgomery says that no one ever asked him for any details of the incident and no report was ever made. "One thing about security," Montgomery says, "is that we all coordinate with each other--one family." That co-ordination doesn't include the offices of the Secretaries of State in Louisiana and Alabama, which have no record of a BATS company.

A few miles away from the French Quarter, another wealthy New Orleans businessman, James Reiss, who serves in Mayor Ray Nagin's administration as chairman of the city's Regional Transit Authority, brought in some heavy guns to guard the elite gated community of Audubon Place: Israeli mercenaries dressed in black and armed with M-16s. Two Israelis patrolling the gates outside Audubon told me they had served as professional soldiers in the Israeli military, and one boasted of having participated in the invasion of Lebanon. "We have been fighting the Palestinians all day, every day, our whole lives," one of them tells me. "Here in New Orleans, we are not guarding from terrorists." Then, tapping on his machine gun, he says, "Most Americans, when they see these things, that's enough to scare them."

The men work for ISI, which describes its employees as "veterans of the Israeli special task forces from the following Israeli government bodies: Israel Defense Force (IDF), Israel National Police Counter Terrorism units, Instructors of Israel National Police Counter Terrorism units, General Security Service (GSS or 'Shin Beit'), Other restricted intelligence agencies." The company was formed in 1993. Its website profile says: "Our up-to-date services meet the challenging needs for Homeland Security preparedness and overseas combat procedures and readiness. ISI is currently an approved vendor by the US Government to supply Homeland Security services."

Unlike ISI or BATS, Blackwater is operating under a federal contract to provide 164 armed guards for FEMA reconstruction projects in Louisiana. That contract was announced just days after Homeland Security Department spokesperson Russ Knocke told the Washington Post he knew of no federal plans to hire Blackwater or other private security firms. "We believe we've got the right mix of personnel in law enforcement for the federal government to meet the demands of public safety," he said. Before the contract was announced, the Blackwater men told me, they were already on contract with DHS and that they were sleeping in camps organized by the federal agency.

One might ask, given the enormous presence in New Orleans of National Guard, US Army, US Border Patrol, local police from around the country and practically every other government agency with badges, why private security companies are needed, particularly to guard federal projects. "It strikes me...that that may not be the best use of money," said Illinois Senator Barack Obama.

Blackwater's success in procuring federal contracts could well be explained by major-league contributions and family connections to the GOP. According to election records, Blackwater's CEO and co-founder, billionaire Erik Prince, has given tens of thousands to Republicans, including more than \$80,000 to the Republican National Committee the month before Bush's victory in 2000. This past June, he gave \$2,100 to Senator Rick Santorum's re-election campaign. He has also given to House majority leader Tom DeLay and a slew of other Republican candidates, including Bush/Cheney in 2004. As a young man, Prince interned with President George H.W. Bush, though he complained at the time that he "saw a lot of things I didn't agree with--homosexual groups being invited in, the budget agreement, the Clean Air Act, those kind of bills. I think the Administration has been indifferent to a lot of conservative concerns."

Prince, a staunch right-wing Christian, comes from a powerful Michigan Republican family, and his father, Edgar, was a close friend of former Republican presidential candidate and antichoice leader Gary Bauer. In 1988 the elder Prince helped Bauer start the Family Research Council. Erik Prince's sister, Betsy, once chaired the Michigan Republican Party and is married to Dick DeVos, whose father, billionaire Richard DeVos, is co-founder of the major Republican benefactor Amway. Dick DeVos is also a big-time contributor to the Republican Party and will likely be the GOP candidate for Michigan governor in 2006. Another Blackwater founder, president Gary Jackson, is also a major contributor to Republican campaigns.

After the killing of four Blackwater mercenaries in Falluja in March 2004, Erik Prince hired the Alexander Strategy Group, a PR firm with close ties to GOPers like DeLay. By mid-November the company was reporting 600 percent growth. In February 2005 the company hired Ambassador Cofer Black, former coordinator for counterterrorism at the State Department and former director of the CIA's Counterterrorism Center, as vice chairman. Just as the hurricane was hitting, Blackwater's parent company, the Prince Group, named Joseph Schmitz, who had just resigned as the Pentagon's Inspector General, as the group's chief operating officer and general counsel.

While juicing up the firm's political connections, Prince has been advocating greater use of private security in international operations, arguing at a symposium at the National Defense Industrial Association earlier this year that firms like his are more efficient than the military. In May Blackwater's Jackson testified before Congress in an effort to gain lucrative Homeland Security contracts to train 2,000 new Border Patrol agents, saying Blackwater understands "the value to the government of one-stop shopping." With President Bush using the Katrina disaster to try to repeal Posse Comitatus (the ban on using US troops in domestic law enforcement) and Blackwater and other security firms clearly initiating a push to install their paramilitaries on US soil, the war is coming home in yet another ominous way. As one Blackwater mercenary said, "This is a trend. You're going to see a lot more guys like us in these situations."

About Jeremy Scahill

Jeremy Scahill, a Puffin Foundation Writing Fellow at The Nation Institute, is the author of the bestselling *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, published by Nation Books. He is an award-winning investigative journalist and correspondent for the national radio and TV program *Democracy Now!*. [more...](#)
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Mr. KUCINICH. When asked by Mr. Scahill, the reporter, on what authority Blackwater employees were operating in New Orleans, they replied, "they were under contract with the Department of Homeland Security. We can make arrests and use legal force if we deem necessary."

Now, does Blackwater still have a contract with Homeland Security, or their predecessor renamed company known as "Xe?"

Ms. DUKE. I would have to check to see if any, but I do know that they are on the list, so they wouldn't have any new contracts. I would have to check and get back to you for the record.

Mr. KUCINICH. So you don't really know. I mean, this company is infamous, but you really don't know if they are working for you or not.

Ms. DUKE. I would have to check to see if there are any residual contracts before I gave you a precise answer.

Mr. KUCINICH. Well, we know that they were awarded a contract with DHS, despite their reputation for complete disregard for lives of people in Afghanistan and Iraq. I mean, it was so bad that they ended up having to change their name to "Xe." What I would like you to find out if they are still working for DHS.

What would a contractor have to do, what kind of conduct or behavior would rise to the level of debarment?

Ms. DUKE. Well, there are several criteria. One is willful non-performance; violations of integrity; violations of statute, such as immigration law, drug-free workplace, environmental law. So there are many different areas. The predominance throughout the Federal Government debarments are for violations of key statutes, not for nonperformance.

Mr. KUCINICH. One of the things that the Inspector General's report says, "The Department is reluctant to apply the policies and procedures against poorly performing contractors. Department procurement officials characterize the suspension and debarment process as being too resource-intensive, punitive, and as negatively impacting the size of the contractor pool, and that the agency prefers to use what the Inspector General called other administrative remedies."

Now, would you agree that the suspension and debarment procedure is intended to be punitive and that there are cases in which contractors ought to be punished for egregious violations of law?

Ms. DUKE. The suspension and debarment system is to protect the Government, and that is what I think it is—

Mr. KUCINICH. Is what?

Ms. DUKE. Is to protect the Government and the taxpayers' dollars.

Mr. KUCINICH. Well, I know that, but I am trying to get some response from you about do you feel you have enough resources to pursue debarment, or are you not able to do it because you just can't get into debarment cases because they are so costly? What is your philosophy on that? Would you rather not get into debarment issues and just use administrative discipline?

Ms. DUKE. No, that is not true. In terms of—I think what Mr. Skinner said earlier about the startup of the Department of Homeland Security and the shortage of the resources did contribute significantly. It is very time-consuming to record past performance

and to do the full complement of contract administration, and I think we are working toward two things: one is getting resources on the management side. I think the second area we are looking for is focusing not just on speed, but doing business well, as Mr. Skinner said.

Chairman TOWNS. The gentleman's time has expired.

Mr. KUCINICH. Mr. Chairman, my time has expired, but I would ask the Chair this, that if the Chair would join me in a request for information about the status of Blackwater and/or Xe with respect to Homeland Security.

Chairman TOWNS. Without objection, I would be delighted to do so.

I now yield 5 minutes to the gentlewoman from California, Congresswoman Speier.

Ms. SPEIER. Thank you, Mr. Chairman. And I want to applaud you for holding this hearing today. I think if this committee dedicated the next 6 months to really improving the response by these agencies, we would have done a great service to the American people.

I believe that this is simply scandalous. To think that a company that actually pled guilty in 2005, pled guilty in 2005, continued to receive payments by the Federal Government for 2 additional years before any action was taken to debar it is absolutely unacceptable. There is no way that you can justify that under any set of circumstances.

Now, I believe that part of the problem is that the Inspector Generals don't have any teeth. I think, based on what I have heard today, you make recommendations and the various agencies can take you up on those recommendations or not take you up on those recommendations. For instance, Mr. Luten said that he agreed with most of the recommendations by the Inspector General, but not all of them.

So I have a question for you, Mr. Gambatesa. What recommendations did they not embrace and do you think that those recommendations should be embraced and, if so, what should we do about it?

Mr. GAMBATESA. Thank you. Obviously, we think all the recommendations should be embraced or we wouldn't have made them. The three that they hadn't reached management decision on so far had to do with the restructuring of the office, establishing a permanent office and consultation with the oversight board. To say that the IGs don't have teeth, our teeth, I think, is our ability to press the agency and forward our reports to the Congress if the agencies don't respond to final action within the allotted period of time that is required by the Inspector General Act. So I think in that way we do. We also have the ability to elevate recommendations to the head of the agency if they are not responded to.

Ms. SPEIER. Well, with all due respect, this is a very busy place, and we will hold a hearing and we will kind of flush it out, and we will put a spotlight on it, and then we go about working on any number of other issues; and another year passes by and then maybe there is another hearing.

So I really believe that this committee needs to, one, introduce a bill that requires that each of these agencies have an office of

compliance, debarment, and suspension so that they are solely focused on looking at these contractors to see if in fact they have complied with the law, complied with their contracts. I don't think that is going to happen otherwise.

There will be some effort made by some of these agencies to do a little bit, but unless you have someone dedicated to this function, it is not going to take place. And based on your comments, it sounds like USAID is not all that interested in complying with that recommendation.

And to you, Mr. Luten, I was just in Pakistan and I met with one of your representatives there who was bemoaning the fact that one of the contractors, a U.S. contractor, who had a large sum of money was expected to build X number of schools and—I think the number was 30, but don't hold me to it—and, in fact, over the course of the contract they had only built 5. Now, I don't know how you rank that. Is that nonperformance or is that circumstances beyond their control? But, to me, that is nonperformance. That person should no longer be a contractor with the United States of America.

If this excluded party system is not even observed by the agencies, then it is not working, and we have to come up with a better system; and that is why I think it is going to require Congress to do some of the heavy lifting here in order to have some accountability, because the Inspector Generals can recommend, but you can choose not to take them up on their recommendations, and you might get a slap on the hand here, but that may be the end of it. So to you, Mr. Luten, if you would just comment on whether or not you think building 5 schools instead of 30 schools has met the performance requirements.

Mr. LUTEN. I would like to comment on the comments earlier to Mr. Gambatesa. We accepted all of the recommendations that they have provided. What the issue was that at the time the report was issued, we immediately agreed to take nine recommendations and needed to go make some management decisions on how to implement the remaining three. So we have completed action on six and the action on the remaining six are in process.

Ms. SPEIER. Well, let me interrupt you. In your testimony you said, as such, management agreed with the majority of OIG's 12 recommendations offered through the audit process. That is what you said in your testimony, your sworn testimony this morning.

Mr. LUTEN. OK, then that is in error. That was the written testimony.

Ms. SPEIER. That is what you also said.

Mr. LUTEN. I did? OK. We are acting on all of them and six have been completed. We have taken the steps to establish a separate unit to focus specifically on contractor and grantee compliance and oversight that will improve our work with the EPLS system, as well as engage better with the interagency to gather more information and do compliance oversight better, and we take this very seriously.

On Pakistan, I would have to go and get specific information. The security conditions in Pakistan and Afghanistan are big factors that may be an issue in that matter; I just don't know the details of that. But 5 out of 30 does sound—

Chairman TOWNS. The gentlewoman's time has expired.

Mr. LUTEN [continuing]. Does sound like it is clearly something that needs to be looked at from a performance perspective.

Chairman TOWNS. I yield now 5 minutes to the gentleman from California, Congressman Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

Lady, gentlemen, let me just say, as a former mayor and chairman of a county of over a million, I take a look at this and I just can't fathom how we would ever allow this in local government. I mean, this is almost like the government version of too big to fail is too big to be effective or even decent. I mean, some of this stuff at a local level would just be nailed down really quick. There is not a city manager that would survive with this kind of lack of response to a problem. There is not a building inspector or a public works director that would survive 6 months with this kind of thing. And I hate to say it, it sort of really reinforces the argument of a lot of people in this town that Washington spending money has a built-in inefficiency that we should avoid like the plague.

Now, Ms. Duke, when we got into Katrina—and I am going to let you work on this because I am going to shift over to the gentleman next to you. But I looked at Katrina. I was down there. My wife's family is from New Orleans and we have a place in Mississippi, and I saw the way that was handled. How many people that were in that fiasco of abuse and money switching and everything else, how many of them have been debarred and restricted from access? I mean, I understand when you work with Louisiana you have a State half under indictment and half under water, but this thing is the Federal Government's responsibility, not Louisiana's responsibility.

Ms. DUKE. The DOJ Procurement Fraud Task Force has indicted and convicted several contractors and individuals. FEMA has not debarred anyone, to my knowledge; it has been handled through the DOJ Procurement Fraud Task Force to this point.

Mr. BILBRAY. So, in other words, you have to be convicted before FEMA is going to restrict your access to any more contracts?

Ms. DUKE. You do not have to be convicted. I mean, there has been a conservatism that—

Mr. BILBRAY. Well, who has been restricted who hasn't been convicted by FEMA?

Ms. DUKE. No one to this point.

Mr. BILBRAY. OK. That is what I mean. You may say that, but in results—

USAID, one of the untold stories, in my opinion, after going to Afghanistan and talking with people, is one of the great untold stories. Everybody has talked about the for-profit abuses in Iraq under the Bush administration. No one seems to be talking about the so-called non-profits and their abuses and their corruption in the system in Afghanistan during the Bush administration.

And I think if there is one place that this committee should be able to find bipartisan effort is to find out why have we totally ignored the abuses of the non-profits in Afghanistan at a time when we all are very aware of the for-profit violations in Iraq?

Do you have any comments about the handling of those grants and those programs in Afghanistan with the non-profits?

Mr. LUTEN. They are subject to the same basic set of rules and approaches. I would have to get back to you separately on what actions have been taken with respect to non-profits. Some of our suspension and debarment actions are with respect to non-profits, but I don't have the data specifically for Afghanistan. We also work with organizations on compliance agreements. Sometimes compliance agreements are done in conjunction with investigations by the Department of Justice or actions by the Department of Justice and entered into in settlement cases; in some cases they are done apart from a legal setting.

Mr. BILBRAY. OK. And let me just take—all of us should be responsible for this, but wouldn't you admit that Congress, the oversight agencies, the media have not given the same attention to corruption or abuses in the non-profits, especially Afghanistan, that has been focused on the for-profits in other countries? Wouldn't you agree that, culturally, at least the major appearance is that the same hard standard is not being applied to the non-profits as it has been, at least from the media and the attention by Congress, if not by the agencies themselves, that we have done with the for-profits?

Mr. LUTEN. I am doing sort of a quick mental scan of news articles and so on, and there may be that impression, but that is not our approach with respect to—we should be treating them the same. It is Federal dollars—

Mr. ISSA. Would the gentleman yield?

Mr. BILBRAY. Yes, I would yield.

Mr. ISSA. Just a quick followup. Ms. Duke, if I understood you correctly, as of 2007, 768 people were convicted, far more were charged, and yet, related to Katrina, FEMA has zero debarments.

Ms. DUKE. That is correct, Mr. Issa.

Mr. ISSA. OK. Then on behalf of the committee, why wouldn't we author a bill that created immediate and automatic debarment at the time of a conviction? You have discretion at the time of an accusation; you have discretion at the time of the indictment.

But why would the chairman and I not author a bill that would simply create automatic debarment so that your failure of your agency years later, and I have 2007, but you have made it clear that you haven't done anything as of 2010. This is not 400 days, this is zero response. Do you have any answer for why the chairman and I shouldn't simply author a bill and take it out of your hands at least as to criminal convictions?

Ms. DUKE. It has to be dealt with either way. It is something we will deal with. Such a bill would not be—no, I can't say anything about why—

Mr. ISSA. You wouldn't oppose it, since obviously FEMA hasn't done anything about these 768 people that have been convicted?

Ms. DUKE. No, I would not oppose it at this point.

Mr. BILBRAY. To reclaim my time, it would sure be convenient not to have our contracts being administered out of a Federal penitentiary cell, right?

Chairman TOWNS. The gentleman's time has expired.

I now yield 5 minutes to the gentlewoman from California.

Ms. WATSON. Thank you so much, Mr. Chairman. Since I am just now getting here, I don't know if some of these questions have been asked, but I will go over them too.

Since 1975, USAID has experienced a gradual downsizing of its staff. For instance, in 1990, USAID had nearly 3,500 people administering \$5 billion a year in aid, but as of 2009 there were only 2,200 people overseeing more than \$8 billion annually. And during the Secretary's confirmation hearings, Secretary of State Hillary Clinton, she highlighted this issue, stating that USAID has half the staff it used to have, while foreign aid and reconstruction efforts have been increasingly privatized.

How would you say the decrease in staff has affected USAID's ability to optimally implement Federal acquisition regulations? And let me ask Mr. Gambatesa if you can respond.

Mr. GAMBATESA. Yes, thank you. In other audits also that we have performed over the last few years, we found that there was a lack of staffing in the contracting area and we have made recommendations to the agency for that improvement, and they have taken action to hire contracting officers and contracting officer technical representatives and others to oversee contracting problems. There was also a problem with training of contracting officers, we found in a previous audit report—not this one with suspension and debarment—and they have taken action on a number of those issues.

I won't speak for Mr. Luten, but in this specific audit of suspension and debarment, it wasn't specifically brought out that the problem was lack of staffing; however, the way the office is structured with a small number of individuals doing a number of different jobs, one would have to say that they need more people to do the job more effectively. Even though we didn't really look at that specifically in the audit, one could draw that conclusion.

Ms. WATSON. Mr. Luten.

Mr. LUTEN. Yes. We have, in recent years, received the funding and focused our attention on hiring additional staff, particularly foreign service officers. This will include a substantial number of foreign service officers in what you might call the stewardship backstops, contracting officers, financial controllers, administrative managers, as well as in technical specialties, because they are involved in procurement and grant making as well. This is going to put us in a better position to manage the process of planning and executing programs, engage more directly, provide better oversight.

There are a number of components to oversight in Federal procurement and grant making. Suspension and debarment is part of it, but the rest of it is really important too, and we are putting ourselves in a better position to manage the increase in program resources that have been provided in recent years. So it is something that has received attention in the last 3 fiscal years and we are acting on that to build the capacity back toward where it should be.

Ms. WATSON. The developing work that USAID undertakes in Afghanistan is critical to this administration's mission in the region, and the military alone cannot achieve long-term stability for the Afghan people. One important USAID program is the Accelerating Sustainable Agriculture Program to combat the cultivation of opium poppies and to provide long-term economic opportunities to Afghans. The program was started in November 2006 under a \$102 million contract for Chemonics International. Unfortunately, a

2008 audit reported by USAID's Inspector General revealed that, 2 years into the program's implementation, the contractor could not prove that it had fulfilled any of the program's eight project goals.

Mr. Lutten, again, after the release of the IG's audit report, did USAID increase their oversight of the program and is there documented proof that this contractor has since improved their performance? And has Chemonics received any additional USAID contracts?

Mr. LUTEN. If you would permit, I would like to respond separately on the Chemonics contract. I will comment that the challenges in Afghanistan are significant, particularly security-related. But if it is acceptable, we will provide you a separate response on that contract in Afghanistan and your questions.

Ms. WATSON. I would like to have it in writing.

Let me ask Mr. Gambatesa has the Office of the Inspector General continued to review USAID's Accelerating Sustainable Agriculture Program and their contractor?

Mr. GAMBATESA. Yes, we continue to do a number of oversight activities in Afghanistan. I would have to get back to you with the specifics on that program after the 2008 audit. I know we have done some other work, but I don't have it right here with me, but I certainly can get that to you.

Ms. WATSON. Do you think—

Chairman TOWNS. The gentlewoman's time has expired. Would you like an additional minute?

Ms. WATSON. Just 30 seconds. I just wanted to—

Chairman TOWNS. All right. I would be delighted to yield an additional 30 seconds.

Ms. WATSON. OK.

Do you believe that USAID has the resources it needs to adequately monitor this contractor's performance and the grant recipients? That was the basis of my original question.

Mr. GAMBATESA. In most of our audits we will look at reasons why something isn't working satisfactorily and, as I said earlier, oftentimes we come up with lack of oversight by contracting officers or those responsible. There could be a lot of reasons for this, but to say they do or don't at this point is very difficult to say.

We have to attribute these things to something, and it is easy to say they don't have enough people to do it, but is that always the reason? Sometimes it is lack of training; sometimes it is lack of oversight of the contractors or grantees; or sometimes it is lack of oversight by the contractors or grantees of their subs. And without getting into a specific audit, it is difficult to generally say what the problem is, but those problems all exist in many of the audits that we have done in Afghanistan.

Chairman TOWNS. Thank you very much.

Before we close, the ranking member asked a question or raised an issue that I think I want to sort of explore a little further. He asked what do we need to do from a congressional standpoint; do you need additional tools in order to make this work? And the reason I want to stay with this is that I remember a couple of years ago a gentleman at the airport, who indicated that he had been in Washington working in Government for 40 years—he went back to the Carter administration—he went on to tell me, in terms of how

long he had been involved, and he said that there is something that we do not look at when we come to these kinds of settings and talk about waste and fraud and all of that. He said that some contracts require the contractor purchasing special kinds of things. He says maybe it is a kitchen, he used the example.

And he said you buy all this equipment for this particular company, which is paid for out of government dollars in many instances, and then they do not perform. And rather than go to somebody else, the fact that you have invested all this money in this particular item, you say, well, we will ignore their behavior because it will cost us too much to move to somebody else at this particular time.

Is this an issue? Let me go right down the line. Is this a problem in any way? Does this kind of thinking go into it as a reason why sometimes there is not movement?

Unidentified SPEAKER. The cost-benefit of debarment.

Chairman TOWNS. Yes, the cost-benefit of debarment. That is what we are really talking about.

Ms. DUKE. There are provisions that if you suspend or debar a contractor, that you can re-procure and actually charge those costs back. So if it is happening, it should not be happening that way because we do have the ability to both deal with that contractor terminate, that contract for default and recoup the taxpayers' dollars in an effective way.

Chairman TOWNS. But the fact that it is a long process, does that come into play as to why you don't do certain—I am trying to get a picture here why certain things are not happening.

Ms. DUKE. Mr. Chairman, I will have to say that I think that the acquisition work force Federal-wide is under-resourced and there was an indication or a question earlier that I didn't get a chance to answer—is it incompetence? I believe we have an extremely competent acquisition work force in DHS.

There is a shortage of people. In the 1980's and 1990's we cut the acquisition work force and increased contracting dollars, and we are suffering from that. The Department and our appropriators have helped us to start to recover, but I think we and the Federal Government are digging themselves out of a hole in that whole area and not just on suspension and debarment, but about effectively managing contractor performance in general.

Chairman TOWNS. Anyone?

Mr. WOODS. Mr. Chairman, as you said, suspension and debarment is the last line of defense. I think within the Department of Transportation, we are actively trying to keep fraud from happening before you get to this. From my information, for example, we only had 24 suspension or debarments during the course of 2008, but that doesn't mean that we are not focused on stopping fraud before people enter into contracts.

So 24 of the number of contracting actions that we are involved in is a relatively small part of our activity. What we need to do is focus more attention on that last line of defense in addition to all the steps that we have been taking up to that point.

And to answer your question, I think that your involvement in this process, along with the effective oversight of our Inspector

Generals, has been very helpful in helping us to sustain management oversight of the program.

Chairman TOWNS. Mr. Luten.

Mr. LUTEN. Sorry, out of order here. I don't think that the concerns about taking action and then needing to reprogram or re-procure are behind the delays or behind the weaknesses in the approach to suspension or debarment; I think it has been a lack of focus. I think it has been a lack of resources devoted specifically to suspension and debarment, and that is why we are in the process of refocusing and resourcing the effort.

I do absolutely agree with Ms. Duke's comments that the Federal procurement work force is solid, but the volume of dollars that have gone through Federal contracts and grants in recent years has escalated dramatically, and the infrastructure, the human infrastructure and the system's infrastructure to keep up with that has not caught up yet. So that is the overarching issue. Suspension and debarment is a portion of that and, specific to this hearing, we are going to do our part to focus our efforts on better suspension and debarment activities.

Chairman TOWNS. Well, let me thank you for your testimony this morning and to say to you that we really need to do better, and we are willing to work with you to do better. If there is something that we need to do, I know a couple Members mentioned possible legislation, and I am not there yet, but the point of the matter is that we have to make certain that tax dollars are not wasted. We have an obligation and responsibility to make certain that the money goes to do the kinds of things that we are saying they are going to do.

So I want to thank you again for your testimony and let you know that we will be following up on this, because we see it as being very, very serious; and the fact that not too much is happening. So when you have a situation where not too much is happening, people continue to do whatever it is, and without any corrections. So the point is that we need your help in that regard and, of course, the inspectors, when they make recommendations, I think we should take them very, very seriously.

So thank you again for your testimony.

The committee will adjourn for 2 minutes.

[Whereupon, at 11:53 a.m., the committee proceeded to other business.]

[Additional information submitted for the hearing record follows:]

**Questions for the Record Submitted to
USAID Senior Deputy Assistant Administrator Drew Lutten by
Representative Speier
House Oversight and Government Reform Committee
March 18, 2010**

Question:

Please comment on whether you think a contractor who builds five schools instead of 30 schools (or something thereabout) has met the performance requirements?

Answer:

When looking at the numbers five and 30, alone, it certainly appears as though performance under the USAID award may be a factor. In some cases, contractor or grantee performance issues affect the results and in other situations, often within conflict zones, unknown factors at time of design or security-related matters may play a role in derailing project goals. For each award where performance indicators suffer, we work to identify the performance issues and to resolve these if possible in order to reach the intended development goals under the given program. In the case referred to above, the USAID Inspector General issued a report with four administrative comments, without major findings. When a case is egregious and involves misuse of funds, however, we do consider steps to terminate an award or pursue legal actions.

This is the reason USAID determined that we would allocate valuable resources to stand up a team dedicated specifically to suspension and debarment issues within the Office of Acquisition and Assistance. We concurred with this and other recommendations of our IG audit on USAID's process for suspension and debarment. (At the time of the IG report, we noted in our comments that we concurred with the majority

of recommendations. Recommendations 10 and part of 11, however, relied upon a decision to be taken under Recommendation 9. That decision was taken and we are moving forward with responding to all recommendations in the IG report.)

In the case I believe you referred to regarding 5 buildings out of 30, USAID issued an award to a U.S.-based engineering, construction, and operations firm to conduct reconstruction activities in the post-earthquake zone. This award began October 26, 2006 with a target completion of October 26, 2011 and an initial ceiling of \$120 million. The goal was to construct—up to high standards for an earthquake zone—new schools and hospitals. During the life of the award, USAID evaluated the contractor's progress on the program goals and found they rated high for the past three years in the Contractor Performance Reporting system. Currently, more than 13 health facilities have been completed with 15 more already underway; 15 schools have been completed with 8 additional ones scheduled for completion in coming months. Construction on additional schools has already begun as well.

USAID is closely monitoring the work to be sure it is complete to earthquake standards and to ensure that our program aligns appropriately with the overall USG strategy for Pakistan.

**Questions for the Record Submitted to
USAID Senior Deputy Assistant Administrator Drew Luten by
Representative Bilbray
House Oversight and Government Reform Committee
March 18, 2010**

Question:

What comments do you have about the handling of grants to non-profits in Afghanistan?

Answer:

USAID actively pursues our suspension and debarment cases without bias for non-profit entities or for-profit firms. Our suspension and debarment records include cases involving contractors as well as grantees. As well, we conduct ongoing audits and evaluations designed to reveal fraud, waste, or abuse regardless if the party is designated a contractor or a grantee. To ensure the good use of U.S. taxpayer funds overall in our development work, we continually monitor and review our programs delivered through contracts, cooperative agreements, and grants. If we receive a report of misuse of funds, we handle the matter rigorously for a non-profit or a for-profit firm.